

# **Bond Case Briefs**

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## **ZONING & PLANNING - MONTANA**

### **Hartshorne v. City of Whitefish**

**Supreme Court of Montana - May 11, 2021 - P.3d - 2021 WL 1884148 - 2021 MT 116**

Residents brought action for declaratory relief, challenging city ordinance permitting commercial development of certain area through a conditional use permit, instead of a planned unit development, as illegal spot zoning and as violating uniformity requirements.

The District Court granted summary judgment to residents on uniformity claim and struck certain conditional commercial uses, but denied summary judgment on spot zoning claim. Developer appealed, and residents cross-appealed.

The Supreme Court held that:

- Ordinance was not improper spot zoning, and
- Ordinance did not violate uniformity requirements.

Ordinance allowing for commercial use, through conditional use permit, in on certain parcel where the prevailing use was residential was not improper spot zoning, where neighborhood plan, which was adopted before the zoning ordinance, specifically contemplated “commercial uses intended to be complimentary to the proposed development of the neighborhood,” while ordinance changed the discretionary review process from a planned unit development to a conditional use permit, both processes were similar and required review for neighborhood compatibility, and parcel affected by the ordinance, although small and owned by single developer, was same size as it was when the neighborhood plan designated it for mixed-use.

Ordinance which rezoned parcel in largely residential area to preserve developer’s opportunity to seek commercial development through a conditional use permit after the planned unit development process became unavailable did not violate uniformity requirements; district to which statute applied were not the “use districts” in the city code but rather were the “districts” on the city’s zoning map to which the use districts were applied, and parcel was in its own zoning district such that the zoning ordinance was uniformly applied within that district.