

Construction in Violation of Zoning Laws

Rabbi Dovid Grossman

Question: Reuven decided to build an extension next to Shimon's property. When Shimon complains that Reuven's construction violates the local zoning laws, Reuven responds that it is still permitted since it does not violate any of the halachos found in *hilchos shechenim*. Is Reuven correct or may Shimon prevent him from continuing the construction due to the local laws, and if so, how?

Answer: We mentioned in the previous session that there is a major *machlokes* among the *poskim* as to the parameters of *dina d'malchusa dina* (the law of the ruler is the binding law). Nevertheless, most opinions would say that zoning laws are indeed included within the scope of *dina d'malchusa*.

According to the approach that holds that *dina d'malchusa* applies to land-based laws determined by the king, it would be included since the local governing bodies do indeed have some ownership of the land and have the right to create laws as to how landowners may and may not use their property.

According to the approach that holds that *dina d'malchusa* applies to issues that are considered *l'tovas hamedina* (for the benefit of the citizens), zoning laws would be included as well. This is because it can be assumed that land ordinances do usually benefit most people by ensuring that no individual can simply act as he wishes with his land without any limitations in a manners that could cause damage to others.

Another relevant factor could be that of *minhag*, that when all parties conduct themselves in a certain way, the common practice can often override the halacha within *dinei mamonos*. Thus, since most landowners generally accept and abide by zoning laws, the status of those laws would be considered binding by halacha as well.

Finally, another reason to rule that the zoning laws must be followed is that it may be included in the case of a *chatzer hashutafin* (courtyard jointly belonging to partners). In such a case, if a group of people purchased land together, it is accepted that if they agreed at the outset to follow certain accepted rules regarding land, those rules are binding on them. Since some Acharonim hold that all residents of a city or town are considered *shutafin* in these respects, the common zoning laws that were accepted by all residents when moving in would be included in the outset as in the case of a *chatzer hashutafin* and would have to be followed.

Based on all of these factors, a Bais Din addressing the case of Reuven and Shimon described above would likely rule that Shimon must comply with the local zoning laws and may not continue building his extension, even if it does not violate halacha.