



Keeping You Legal: ZPL Refresher

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PROMOTING EXCELLENCE IN GOVERNMENT

TOPICS

- Constitutional Issues
- Zoning Procedures Law
- Using Zoning Standards
- Legislative vs. Administrative Decisions
- Zoning Conditions / Special Use Permits
- Conflicts of Interest and Other Ethical Issues



Constitutional Authority to Plan and Zone

The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the general assembly from enacting general laws establishing procedures for the exercise of such power.

Ga. Const. Art. 9, §2, Para. IV



Constitutional Restrictions on the Exercise of Zoning Power

1. Taking Without Just Compensation
2. Due Process
3. Equal Protection
4. First Amendment



Taking without Just Compensation

- Traditional Zoning Challenge: whether the existing zoning imposes a significant detriment and is insubstantially related to the public health, safety and welfare



Eminent Domain / Inverse Condemnation

- Physical possession of property for government purposes, or deprivation of all economic use
- Regulations that impose reasonable costs on property (health, building, zoning, environmental) are not eminent domain takings, but valid exercises of the police power



Variance

- When an ordinance by its strict construction would result in a taking, the ordinance usually has a variance provision.



Common Variance Provisions

- Hardship not caused by the property owner;
- Due to the specific nature of the property (topography, geography, etc.);
- Ordinance can be varied in a way that preserves and accomplishes purpose of ordinance; and
- Ordinance varied only so much as necessary to avoid the hardship.



Vested Rights

- The right to create a use *not currently in existence* because of official approval and substantial expenditures in reliance of the approval



Non-conforming / grandfathered use

- An *established use* that was once legal but which is no longer legal because of a change in the ordinances.
- Grandfathering is granted by ordinance
- Subject to the terms of the ordinance



Common non-conforming use provisions

- May not be expanded except in conformity
- May not be rebuilt if destroyed
- Amortization



Equal Protection

- To treat two similarly-situated properties differently
- To enforce the zoning ordinance differently for two similarly-situated properties
- Importance of Future Land Use Map



Due Process

- Failure to provide notice and hearing
- Failure to comply with Zoning Procedures Law
- Not necessarily the same as a trial



ZONING PROCEDURES LAW

O.C.G.A. Chapter 36-66



ZONING DECISION means final legislative action by a local government which results in:

- (A) The adoption of a zoning ordinance;
- (B) The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;



- (C) The adoption of an amendment to a zoning ordinance which rezones property from one zoning classification to another;
- (D) The adoption of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality; or
- (E) The grant of a permit relating to a special use of property.

O.C.G.A. § 36-66-3(4)



NOTICE OF PUBLIC HEARING

(Application for Rezoning by Property Owner)

- ❖ Notice published in a newspaper of general circulation within the territorial limits of the jurisdiction at least 15 days, but not more than 45 days, prior to the hearings.
- ❖ The notice must state the time, place and purpose of the hearing.



NOTICE OF PUBLIC HEARING

(Application for Rezoning by Property Owner)
(continued)

- ❖ Notice shall include location of the property, the present zoning classification of the property, and the proposed zoning classification of the property.
- ❖ A sign placed in a conspicuous location on the property containing information required by the zoning ordinance not less than 15 days prior to the date of the hearing.

O.C.G.A. § 36-66-4(b)



NOTICE OF PUBLIC HEARING

(Application by City Council or Board of Commissioners)

- ❖ Notice published in a newspaper of general circulation within the territorial limits of the jurisdiction at least 15 days, but not more than 45 days, prior to the hearings.
- ❖ The notice must state the time, place, and purpose of the hearing.

O.C.G.A. § 36-66-4(a)



PUBLIC HEARING PROCEDURES

A local government is required to give equal time to both proponents and opponents of the zoning application. In addition, the written procedures must state that each side shall have no less than 10 minutes.

O.C.G.A. § 36-66-5(a)



Annexation and Zoning O.C.G.A. § 36-36-110 et seq.

- City gives notice of request for annexation and zoning.
- County has 30 days to object.
- If no objection, City may proceed, but only consistently with the notice.



If County Objects...

- **Narrow grounds:** A Material Increase in Burden on the County based on:
 - Proposed change in zoning or land use
 - Proposed increase in density
 - Infrastructure demands related to the proposed change.
- Must be substantially different from what would be permitted under the County's zoning ordinance or comprehensive plan.



County annexation and zoning objection...

- Goes to arbitration through DCA
- Detailed criteria in the statute...
- If arbitration panel finds objection valid, can make recommendations that are binding and are to be recorded on the deed records of the property.
- City may then finish annexation consistently or deny annexation.



Annexation and Rezoning under ZPL

- O.C.G.A. § 36-66-4 provides that the rezoning hearing must be performed (but not the final vote) prior to annexation.
- The 100% annexation process itself does not require public hearings. (distinguish 60% method)
- Best practice is to go through rezoning process (planning commission and public hearing) and then vote to annex and zone at the same time.



ZPL PREEMPTS LOCAL PROVISIONS

- Supreme Court held that the ZPL preempted the provisions in a City Charter for the purposes of the adoption and amendment of zoning ordinances.

Little v. City of Lawrenceville, 272 Ga. 340 (2000)

- Failure to strictly comply may render decision void.



ZONING STANDARDS UNDER ZPL

[E]ach local government shall adopt standards governing the exercise of the zoning power, and such standards may include any factors which the local government finds relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property.

O.C.G.A. § 36-66-5(b)



USING ZONING STANDARDS

- Required for Rezoning, Special Use Permits, Text Amendments
- Guhl Factors



Guhl Factors

(Guhl v. Holcolmb Bridge Road Corp., 238 Ga. 322 (1977))

- (1) existing uses and zoning of nearby property;
- (2) the extent to which property values are diminished by the particular zoning restrictions;
- (3) the extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public;



Guhl Factors

- (4) the relative gain to the public, as compared to the hardship imposed upon the individual property owner;
- (5) the suitability of the subject property for the zoned purposes; and
- (6) the length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the property.



Zoning Conditions

Conditions imposed so as to ameliorate the negative effects of the proposed rezoning for the protection of neighboring properties.

What does your ordinance say about conditional uses?

Due process concerns



Zoning Conditions

- Put in writing, or clearly state in the motion
- Condition to the site plan
- Conditions become part of the ordinance and can only be amended by rezoning action



Special use permits

- Uses which are permitted in a district only with special approval.
- Similar to a conditional use approval, except that any special use will require special approval.
- Importance of criteria
- Examples:
 - Landfill - Crematory - Asphalt Plant



City of Roswell v. Fellowship Christian School, Inc.

- Special use permit denied because of traffic concerns.
- Statement of traffic concerns by neighbors on the record was sufficient evidence to support decision.



Sweet City Landfill, LLC v. Elbert County

- Landfill company challenged County’s refusal to enter into a host agreement.
- There had not been a ruling on the landfill company’s special use permit application.
- Claims were not ripe.



Diversified Holdings v. Suwanee

Edwards v. City of Warner Robins

City of Cumming v. Flowers

Schumacher v. City of Roswell



CONFLICT OF INTEREST IN ZONING ACT

O.C.G.A. Chapter 36-67(A)



WHICH PUBLIC OFFICIALS?

- PLANNING COMMISSION
- GOVERNING AUTHORITY
 - MAYOR
 - COUNCIL
 - COUNTY COMMISSION



WHEN?

- Only “Rezoning action”: action by local government adopting an amendment to a zoning ordinance which has the effect of rezoning real property from one zoning classification to another.
- Not ZPL Definition: adopt ordinance, amend text, amend map, rezone annexed property, and special use permit



PUBLIC OFFICIALS

- Any ownership interest in the property
 - Disclose and disqualify
- Financial interest in business entity with any ownership in the property
 - Financial interest = 10%
 - Disclose and disqualify



PUBLIC OFFICIALS (continued)

- Family members with ownership or financial interest
 - Family = spouse, mother, father, sister, brother, son, daughter
 - Disclose



PUBLIC OFFICIALS

- Prohibited activities: actions carried out in the official's public capacity
- Permitted activities: actions normally and properly undertaken by any other private property owner including supplementation of application, responding to inquiries from zoning authorities, or altering the property at issue or the business conducted thereon.
- Little v. City of Lawrenceville, 272 Ga. 340 (2000)



APPLICANTS and OPPONENTS

- Applicant, opponent or attorneys.
- Campaign gifts or contributions totaling \$250.
- 2 yrs. preceding the zoning application.
- File within 10 days of application for applicant, 5 days prior to hearing for opponent.



ADDITIONAL ETHICAL CONSIDERATIONS CONCERNING VOTING



Ethical Issues

- Improper Conflict of Interest: When a public officer, in the discharge of his public function, acts upon a measure relating to a *specific transaction* and such transaction shall *directly* and *immediately* affect his pecuniary interest. A remote or speculative financial interest will not support a conflict of interest allegation.



Ethical Issues

- *White v. Board of Com'rs of McDuffie County*, 252 Ga.App. 120 (2001) – bank officer on Board
- *Dunaway v. City of Marietta*, 251 Ga. 727 (1983) – VP disclosed but still presided



Ethical Issues

- Public officers are the trustees and servants of the people and are at all times amenable to them. Const. Art. I, §2, ¶ 1
- Crozer et al. v. Reichert et al., 275 Ga. 118 (2002) – planning director sought approval, subordinate reviewed
- Wyman v. Popham, 252 Ga. 247 (1984) – Commissioners sold to applicant



Staying Out of Trouble

- Avoid prejudice
- Avoid pre-hearing public comments
- Avoid ex parte communications
 - Legislative versus quasi-judicial meetings
- Limit comments at hearing to relevant criteria
- Disclose and recuse if conflict of interest is questionable


