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Meet the New Boss, Same as the Old Boss Zoning Hearings and ZPL Update: Best Practices and Procedures

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ATTORNEYS AT LAW

Where we came from.

The golden age of zoning hearings and appeals.

The de novo appeal.



The Takings standard.

Is the existing zoning a significant detriment to the property not justified by a substantial benefit to the public health safety and welfare?



Key elements:

1. Existing zoning
2. Significant detriment
3. Not substantially related to the public welfare



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.



Standing

The aggrieved citizen test.



Manifest Abuse of the Zoning Power

Was the city council drunk?

We are talking about the power of the public to stop the private use of land in the way that the property owner desires and the local government has approved.



The importance of the comprehensive plan.

A factor in every case.



Equal protection

What does substantially-similarly situated even mean?



The constitutional objection letter.

A public service announcement for lawyers.



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City of Cumming v. Flowers, 300 Ga. 820 (2017)

Diversified Holdings, LLP v. City of Suwanee, 302 Ga. 597 (2017)

Schumacher v. City of Roswell, 301 Ga 635 (2017)



De novo vs. “on the record”



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HB 1405

The old law, the evil and the remedy.



Effective Date July 1, 2022

Ordinances to be amended by July 1, 2023



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Rezoning:

A return to de novo bench trials



Quasi-judicial hearings:

Certiorari for now

HB 916: effective July 1, 2023- Petition for Review



What is quasi-judicial:

Variance

Special / conditional use permit



30-day notice (as opposed to between 15 and 45)

Letter to property owner

Appoint agent for service and processing appeals



The application.

Address the key factors in the application.



My pet peeves:

legal descriptions, metes and bounds, surveys, notarized forms, and other unnecessary things

We aren't conveying property here...



The importance of Staff Analysis



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YAZOO CITY STAFF ANALYSIS
APPLICATION FOR ZONING DECISION

Application # _____ Date Submitted: _____

Subject property: _____

Owner / Applicant: _____

Requested Change: _____

Are there prior applications or decisions applicable to the subject property? _____

Notice: Date of Public Hearing before Planning Commission: _____
 Date of Public Hearing before Mayor and Council: _____
 Sign posted: _____
 Letters to adjacent properties: _____
 Published Notice: _____

Is the application and notice in order to move forward? YES / NO

1. Current Zoning and Use of Subject Property



2. Current Zoning and Use of the Neighborhood



3. Requested Zoning and Use of the Subject Property



4. Comprehensive Plan



5. Department / Agency Review (attach any supporting documents)

Public Works:

Roads:

Police:

Fire:

Schools:

Water:

Sewer:

Board of Health:



6. Standards for the Exercise of the Zoning Power



(1) What are the existing land uses and zoning classifications of nearby property?



(2) Is the property suitable for the uses and purposes that it is currently zoned?



(3) Does the existing zoning negatively impact the value of the property?



(4) Does the existing zoning promote the health, safety, morals or general welfare of the public?



(5) What hardship does the existing zoning put on the property owner?



(6) Does the property have any reasonable economic use as currently zoned?



(7) If the property is vacant, how long has it been vacant?



(8) Is the proposed zoning classification suitable with the use and development of adjacent and nearby properties?



(9) Will the proposed zoning adversely affect the use of adjacent or nearby properties?



(10) Is the zoning proposal consistent with the comprehensive plan?



(11) Will the requested zoning result in a use which could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools?



(12) Are there other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal?



7. Further Comment and Recommendations:

Recommendations versus the Ultimate Issue.



Staff analysis performed by:

By: _____

Title: _____

Date: _____



Policies and Procedures for Conducting the Public hearing

10-minute minimum per side

Equal time



Best practices:

Sign up in advance

Conflicts of Interest in Zoning Act

Separating For and Against



Recording

Ex parte communications



Thank you and enjoy the rest of the conference.

Any questions??? Feel free to call: (770) 387-1373



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