



Essential Zoning Law

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TOPICS

- Conflicts of Interest and Other Ethical Issues
- Constitutional Issues
- Zoning Procedures Act and Public Hearings
- Using Zoning Standards
- Zoning Conditions / Special Use Permits

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CONFLICT OF INTEREST IN ZONING ACT

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

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WHICH PUBLIC OFFICIALS?

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



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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.



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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



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PUBLIC OFFICIALS (continued)

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



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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)



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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.



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What happens if disqualification prevents you from having a quorum?

- OCGA § 36-67A-5 provides for appointment of a special master to make a *recommendation*.
- Then the disqualification is waived.



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ADDITIONAL ETHICAL CONSIDERATIONS CONCERNING VOTING



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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.



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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



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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



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Staying Out of Trouble

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



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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



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What is the Purpose of Zoning?



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How much say should the government have in the use of private property?



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How much say should others have in the use of private property?



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Constitutional Restrictions on the Exercise of Zoning Power

1. Taking without just compensation
2. Due process
3. Equal Protection
4. Vested rights
5. Eminent domain



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Letter of Constitutional Objection



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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



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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



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Variance

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



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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.



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Vested Rights

- The right to create a use *not currently in existence* because of official approval and substantial expenditures in reliance of the approval
- Brown v Carson, 313 Ga. 621 (2022)



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- Limited in Time
- Limited in Scope
- With a Stated Purpose



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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



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Common non-conforming use provisions

- May continue in operation, but,
 - May not be expanded except in conformity
 - May not be rebuilt if destroyed



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Due Process

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



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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



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Comprehensive Planning

- Comp Plan
- Future Land Use Map
 - Character areas vs. districts
- Non-binding / amendable
- Importance of Consistency



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ZONING PROCEDURES ACT

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



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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;



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- (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.
- (F) The grant or denial of a variance or conditions concurrent and in conjunction with [(C) or (E) above].

O.C.G.A. § 36-66-3(4)



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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.



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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)



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NOTICE OF PUBLIC HEARING

(Application by City Council)

- ❖ 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)



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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)



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Conducting a zoning hearing

1.

Set up procedures for calling and conducting of the hearing as required by O.C.G.A. § 36-66-5(a).

2.

Prepare a copy of the procedures for distribution to the attendees as required by O.C.G.A. § 36-66-5(a).

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3.

Give the required notice under the Zoning Procedures Act, O.C.G.A. § 36-66-4.

Published notice

Sign

Letters to adjoining property owners
(if in ordinance)

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4.

Staff prepares written and presents analysis.
Recommendations and the Ultimate Issue

5.

Conduct a hearing, at least 10 minutes per side.

6.

Applicant first, then public, with applicant having equal time and opportunity for rebuttal.

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7. Have the official zoning map and future land use plan present at the hearing for use by anyone at the hearing.

8. Record the public hearing, either by a tape recorder or a court reporter.

9. Prepare minutes / prepare written notice of decision.



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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)



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USING ZONING STANDARDS

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



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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;



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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.



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Special use permits / conditional uses

- Uses which are permitted in a district only with special approval.
- Importance of criteria
 - Objective versus Subjective criteria
- Examples:
 - Landfill - Crematory - Asphalt Plant



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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



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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



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Annexation and Zoning

- OCGA 36-66-4(d)
- Complete the rezoning process except for the final vote prior to annexation.
- Zoning hearing before annexation vote.
- Same zoning procedures. (sign and published notice)
- Then vote on zoning and annexation.



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Overlay Districts

Allows you to treat certain areas specifically without affecting the underlying zoning.

Allow / disallow certain uses, regardless of the underlying zoning district.

Require special design criteria.


