

Georgia Association of Zoning Administrators
Summer Conference
July 29, 2011

**Key Topics of Interest in
Zoning and Land Use Administration**

Presented by

Frank E. Jenkins, III

JENKINS & BOWEN, P.C.

15 South Public Square
Cartersville, Georgia 30120
(770) 387-1373

11 Cedar View Drive
Savannah, Georgia 31410

fjenkins@ga-lawyers.pro

**LOCAL GOVERNMENTS'
UPPER HAND IN MAKING
ADMINISTRATIVE
PERMIT DECISIONS**

Local Government Administrative Decisions

1. Variances
2. Subdivision Plats
3. Permit Applications
4. Conditional Use Permits

On Appeal to Superior Court

- Sole function of superior court is to determine (1) whether there is any evidence to support the findings of the board and (2) whether the board abused its discretion.

- On appeal, any evidence in support of the board's decision is sufficient to uphold the decision.

City of Atlanta v. Starship SM-92 Enterprises of Atlanta, Inc., 308 Ga.App. 700 (2011)

**ADOPTING AN IRON-CLAD
SIGN ORDINANCE THAT
WILL HOLD UP IN COURT**

Constitutional Basis for Sign Ordinance

1. Traffic Safety
2. Aesthetic Interest of Community

Basis must be supported by studies showing connection between traffic safety and sign restrictions and aesthetic benefit to community.

Reference those studies in Ordinance; have them present at hearing on adoption and include studies in record.

Essential Constitutional Safeguards

1. Standards for approval of sign permits
2. Time limit for approving or denying sign permit
3. Procedure for appeal

Regulation of signs must not be content based

- if you have to look at the message to see if the sign is permitted, ordinance is content based

HOW TO PROPERLY CONDUCT AN ADMINISTRATIVE HEARING

Key Case on Procedures for Administrative Hearings

The administrative decision-making process is akin to a judicial act; the board determines the facts and applies the ordinance legal standards to them.

Jackson v. Spalding County, 265 Ga. 792, 462 S.E.2d 361 (1995)

On appeal, the Superior Court only reviews the record of the hearing before the local government; no new evidence is presented.

Emory University v. Levitas, 260 Ga. 894, 401 S.E.2d 691 (1991)

Administrative Hearings

1. Provide the required notice of the hearing as set forth in the local ordinance.
2. Establish written procedures for conduct of the hearing and provide a copy to all attendees.

The recommended procedures are as follows:

- a. Allow the applicant to make the first presentation.
- b. Provide for witness testimony.
- c. Allow for cross-examination by interested parties (require interested parties to be represented by someone).
- d. Allow interested parties to introduce evidence.

- e. Allow cross-examination of the interested parties by applicant.
- f. Require that all documents be marked as exhibits.
- g. Upon conclusion of the hearing for each application, make a decision.
- h. Reduce all decisions to writing.

3. Prepare a record or file for each application which should include the application and any documents introduced or provided as exhibits and the transcript of the hearing. It is especially important that this be prepared in the event of an appeal.
4. Have a professional staff member explain the case to the Board. Allow him or her to be examined as appropriate by the applicant or interested parties. The professional staff may make a recommendation of a desired result, but it is not required.

5. Provide the same file to the applicant as is provided to each board member. Make sure each board member has a copy of the file prior to the hearing. Make the file available to the parties interested upon request.
6. Have the official zoning map and future land use plan present at the hearing for use by anyone at the hearing.
7. Record the public hearing, either by a tape recorder or a court reporter. If the case is appealed, prepare a transcript.

**LAND USE CONDITIONS,
INCLUDING CONDITIONAL
ZONING: WHAT A TOOL!**

Conditional zoning is enforceable if the conditions are imposed pursuant to the police power for the protection or benefit of neighbors to ameliorate the effects of a zoning change.

Warshaw v. City of Atlanta, 250 Ga. 535 (1983)

Cross v. Hall County, 238 Ga. 709 (1977)

Conditional zoning is rezoning subject to conditions which are not applicable to other land similarly zoned.

Cross v. Hall County, 238 Ga. 709 (1977)

Enforcement of Zoning Conditions

“Rezoning is conditional only if the conditions are set forth in the rezoning resolution itself or if an examiner of the resolution would be alerted to the existence of such conditions.”

Cherokee County et al. v. Martin, 253 Ga.App. 395, 559 S.E.2d 138 (2002)

Zoning Ordinance should authorize imposition of condition in connection with rezoning of property and should provide procedures for amendment to conditions.

**LOCAL GOVERNMENTS
AND THE SPECIAL NATURE
OF APPEALS OF
ADMINISTRATIVE DECISIONS
TO THE SUPERIOR COURT**

A local government ordinance may specify the method of appeal to the Superior Court

1. Writ of Certiorari (O.C.G.A. § 5-4-1, et seq.)
2. Appeal

Targovnik v. City of Dunwoody Zoning Board of Appeals, 307 Ga. App. 140 (2010)

If the local government ordinance is silent as to method of appeal, then appeal is made by Petition for Mandamus.

Dougherty County v. Webb, 256 Ga. 474 (1986)

ETHICAL CONSIDERATIONS CONCERNING VOTING

Ethical Issues

- ◆ Little v. City of Lawrenceville et al., 272 Ga. 340, 528 S.E.2d 515 (2000)
- ◆ Dunaway v. City of Marietta, 251 Ga. 727, 308 S.E.2d 823 (1983)
- ◆ Crozer et al. v. Reichert et al., 275 Ga. 118, 561 S.E.2d 120 (2002)



OPEN AND PUBLIC MEETINGS ACT

O.C.G.A. Chapter 50-14

Who is subject to the act?

Every county, municipality, commission, agency, board, department or authority of each county or municipality.

What meetings are required to be opened?

A gathering of a quorum of the governing body or any committee of its members, pursuant to schedule, call, or notice at a designated time and place at which official business or policy of the governing body or agency is to be discussed or at which official action is to be taken or, in the case of a committee, recommendation on official business or policy to the governing body are to be formulated or discussed.

Open meetings shall be:

- ◆ Open to the public (visual and sound recording shall be permitted).
- ◆ Set for a time, place, and date of the regular meeting of the agency pursuant to notice posted and maintained in a conspicuous place available to the public at the regular meeting place of the agency.

Open meetings at a time or place other than that prescribed for regular meetings:

- ◆ Pursuant to written notice at least 24 hours at the place of regular meetings and notice at least 24 hours to the legal newspaper if the meeting is not held at a time or place for regular meetings of the agency.

Published agenda of open meetings:

- ◆ An agenda of all matters expected to be considered at an open meeting shall be available upon request and posted at the meeting site in advance as reasonably possible but not more than 2 weeks prior to the meeting. (other agenda items may be considered and acted upon at the meeting)

Summary of subjects acted on:

- ◆ Within 2 business days of the adjournment of an open meeting, a summary of the subjects acted on is required to be available for public inspection.

Minutes of an open meeting:

- ◆ Minutes shall be promptly recorded not later than immediately following the next regular meeting of the agency.
- ◆ Minutes shall include names of the members present, a description of each motion or proposal, and a record of all votes.