

Georgia Association of Zoning Administrators
Summer Conference
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Legal and Legislative Update

Presented by

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I. NOTICE OF ADMINISTRATIVE PROCEEDING

Sanders v. Henry County, Georgia, 2012 WL 2894292 (decided July 17, 2012, 11th Cir.)

Mailing notice of administrative hearing on cell tower satisfied the required method of notice under Henry County procedures.

II. TIME LIMITATIONS FOR FILING AN APPEAL TO SUPERIOR COURT

Mortgage Alliance Corp. v. Pickens County, ---
Ga.App. ---, --- S.E.2d --- (July 11, 2012)

Letter from sole commissioner on zoning decision had to be appealed within 30 days of the letter.

Targovnik v. City of Dunwoody Zoning Board of Appeals, 307 Ga.App. 140, 704 S.E.2d 448 (2010)

A local government's zoning ordinance may specify a particular method of appellate review, including writ of certiorari.

Taco Mac v. City of Atlanta Board of Zoning Adjustment, 255 Ga. 538, 340 S.E.2d 922 (1986)

The critical date for marking the time of appeal from a zoning decision is the date the official notification is sent by letter to the applicant, not the date the board orally denied the request.

III. NON-CONFORMING USES

Haralson County v. Taylor Junkyard of Bremen, Inc., --- Ga. ---, --- S.E.2d --- (2012)

Junkyard was non-conforming use since owner continued to operate in a manner identical to the prior owner who operated a similar business when the zoning ordinance was adopted.

Henry v. Cherokee County, 290 Ga.App. 355,
659 S.E.2d 393 (2008)

A non-conforming use runs with the land.

Ordinance provision to prevent expansion of a non-conforming use: “no such non-conforming use of land shall in any way be extended, either on the same or adjoining property.”

**IV. RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT (RLUIPA)**

Church of Scientology of Georgia, Inc. v. City
of Sandy Springs, Georgia, 843 F.Supp.2d 1328
(N.D.GA. 2012)

Zoning regulation that imposed pressure so significant to require applicant to forego religious beliefs is RLUIPA violation.

City's neutral ordinance limiting parking on mathematical basis is not a violation of RLUIPA.

V. LIABILITY OF COUNTY BUILDING INSPECTOR

Howell v. Willis, --- Ga.App. ---, --- S.E.2d ---
(decided July 13, 2012)

Building inspector entitled to qualified immunity in claim of liability arising out of inspection of building.

Clive v. Gregory, 280 Ga.App. 836, 635 S.E.2d 188 (2007)

The duty to make a final inspection of a building is a ministerial act. Failure to make the final inspection therefore would defeat defense of official immunity.

Vann v. Finley, 313 Ga.App. 153, 721 S.E.2d 156 (2012)

Inspector's duty to conduct reconnect inspection before authorizing connection of electricity to residence was a ministerial act to which official immunity did not apply.

VI. ETHICAL CONSIDERATIONS IN ZONING DECISIONS

Wyman v. Popham, 252 Ga. 247, 312 S.E.2d 795
(1984)

Evidence that one member of the board of commissioners sold all the sand to a zoning applicant used in his business and another commissioner did all the applicant's gutter work was sufficient to find fraud and corruption in commissioners' vote to approve zoning for the applicant.

Olley Valley Estates, Inc. v. Fussell, 232 Ga. 779, 208 S.E.2d 801 (1974)

Raising the challenge of conflict of interest after the vote by commissioner may be considered by the superior court.

Vickers v. Coffee County, 255 Ga. 659, 340 S.E.2d 585 (1986)

Commissioner had conflict of interest where he admitted that proximity of the two tracts rejected by the county for a landfill would affect the value of his land and ability to sell lots in his subdivision.

VII. AMENDMENTS TO THE 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 members of the governing body or any committee at which official business, policy, or public matter of the governing body or agency is formulated, presented, discussed, or voted upon.

Meetings shall not include:

1. Meeting for purpose of making inspection of physical facilities or property.
2. Attending state-wide, multi-jurisdictional, or regional meetings or to participate in seminars or courses of training.
3. Meeting with officials of the legislative or executive branch of state or federal offices at which no official action is taken.

*Meetings shall not include:
(continued)*

4. Traveling to a meeting or gathering, so long as no official business, policy, or public matter is formulated or discussed.
5. Meeting at social, ceremonial, civic, or religious events as long as no official business is discussed.

The exclusions in the statute do not apply if it is shown that the primary purpose of a meeting is to evade or avoid the requirements for conducting a meeting.

Open meetings shall be:

1. Open to the public.
2. Set for a time, place, and date of the regular meeting of the agency.

Open meetings at a time or place other than a regular meeting:

Requires written notice posted at least 24 hours at the place of the regular meeting and to the legal newspaper.

Published agenda of open meetings:

An agenda of an open meeting shall be made available not more than two weeks prior to the meeting.

Summary of subjects acted on:

A summary of the subjects acted on and the members present shall be made available within two business days of the adjournment.

Minutes of an open meeting:

1. Minutes shall be promptly recorded not later than the next regular meeting.
2. Minutes shall include names of the members present, description of the motion or proposal, identity of the person making and seconding the motion, and a record of all votes.