Georgia Association of Zoning Administrators
Summer Conference
August 24, 2012

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.)

In approving a cell tower under the county's administrative procedures, the county mailed a letter to the next-door resident who filed suit claiming due process violation. Under federal law, method of notice satisfies due process if it is "reasonably calculated" to apprise interested parties of the pendency of the action. Mailing notice under Henry County procedure satisfied that required method of notice. The county does not have to assure that the resident received actual notice.

II. TIME LIMITATIONS FOR FILING AN APPEAL TO SUPERIOR COURT

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

The county commissioner, a sole commissioner in Pickens County, sent a letter to a developer notifying him that a proposed subdivision had to comply with new zoning ordinances requiring minimum lot sizes of one acre for subdivisions among other provisions. That letter constituted a zoning decision by the sole commissioner, and the developer's failure to file an appeal within 30 days of that letter was not timely and was thus dismissed.

III. NON-CONFORMING USES

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

Construction of a zoning ordinance is a question of law for the courts and is to be strictly construed in favor of the property owner. In this case, no evidence supported the county zoning board's rejection of a junkyard owner's application for business license based on the contention that the business could no longer lawfully operate as a permitted non-conforming use under the zoning ordinance. Evidence indicated that the junkyard continued to operate in a manner identical to the prior owner who had operated a similar business when the zoning ordinance was adopted and that the junkyard was not discontinued for a sufficient period to have abandoned the right to this non-conforming use under the ordinance.

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)

Under RLUIPA, no substantial burden violates the act where, although government action may make religious exercise more expensive or difficult, it does not place a substantial pressure on the religious institute to violate or forego its religious beliefs. RLUIPA is not violated if the zoning ordinance permits only a smaller facility than requested or in limiting the number of parking spaces so long as the limitations are not a burden on the free exercise of the applicant's religion. In the RLUIPA challenge, the court is required to determine whether the zoning regulation has imposed pressure so significant to require the applicant to forego their religious beliefs. The city's limitation on parking was the result of a neutral ordinance applying parking restrictions on a mathematical basis. Furthermore, the city found that lack of adequate parking could cause an excessive or burdensome use of existing infrastructure. The fact that the city adopted conditional zoning limiting the size of the structure and number of parking spaces does not violate RLUIPA.

V. LIABILITY OF COUNTY BUILDING INSPECTOR

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

A county building inspector is entitled to official immunity from suit in its individual capacity if his inspection of a residence is a discretionary act rather than a ministerial act. Qualified immunity affords protection to inspectors for discretionary actions taken within the scope of their official authority. A ministerial act is commonly one that is simple, absolute, definite, and arising under conditions admitted or proved to exist and requiring the execution of a specific duty. A discretionary act, on the other hand, calls for the exercise of personal deliberation and judgment. Evidence showed that the building inspector was granted discretion in determining how he went about conducting the inspection, the methodology he employed, and the number of inspections that he made as well as requirements he placed on contractors afterwards. Therefore, the inspection of the residence was a discretionary act, and the building inspector was entitled to qualified immunity from suit by the building owner.

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)

The issue before the court is whether a commissioner ". . .had a direct or indirect financial interest in the outcome of the zoning vote—an interest which was not shared by the public generally, and which was more than remote or speculative." A judicial inquiry into the circumstances of the conflict of interest of the commissioner is proper even thought the bias of the commissioner was not raised in the zoning hearing before the board of commissioners.

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

A county commissioner had a conflict of interest when he voted to purchase a tract of land for use by the county as a landfill. Three tracts were under consideration by the county for the landfill. The two tracts rejected by the county were in close proximity to a tract of land co-owned by the commissioner which he intended to develop as a subdivision. The commissioner admitted in testimony that the proximity of the two rejected tracts would affect the value of his land and his ability to sell lots in the subdivision. The Supreme Court found that the effect on the commissioner's pecuniary interest was direct and immediate. Because of this conflict of interest, the court voided the vote by the county to purchase the third tract under consideration for its landfill.

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. The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;

2. The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss

information on matters related for the purpose of the agency at which no official action is to be taken by the members;

3. The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal offices and at which no official action is to be taken by the members;

4. The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or

5. The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term meeting shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

Open meetings shall be:

1. Open to the public (visual and sound recording shall be permitted)

2. Set for a time, place, and date of the regular meeting of the agency pursuant to notice posted at least one week in advance and maintained in a conspicuous place available to the public at the regular meeting place of the agency, as well as the agency's website, if any.

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 soon 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 two business days of the adjournment of an open meeting, a summary of the subjects acted on and the members present at the meeting is required to be available for public inspection.

Minutes of an open meeting:

1. Minutes shall be promptly recorded not later than immediately following the next regular meeting of the agency.

2. Minutes shall include names of the members present, a description of each motion or proposal, identity of the person making and seconding the motion or other proposal, and a record of all votes.