Georgia Association of Zoning Administrators
Winter Conference

Legislative Update & Important Zoning Decisions

Presented by

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New Acts from the 2010 General Assembly Session on Zoning and Land Use

O.C.G.A. §§ 8-2-170 and 8-2-171 Relating to Factory-Built Buildings and Dwelling Units

Effective September 1, 2010, these new acts prohibit any county or city from imposing health and safety standards or conditions based on the age of a manufactured home. They authorize the establishment of health and safety standards, but none may be based upon age.

"A county or municipality may establish health and safety standards and conditions and an inspection program for pre-owned manufactured homes which are relocated from their current locations."

O.C.G.A. § 8-2-171(c)

“Neither a county or municipality nor any inspector thereof inspecting a pre-owned manufactured home pursuant to this Code section shall be liable for any injuries to persons resulting from any defects or conditions in such pre-owned manufactured home.”

O.C.G.A. § 8-2-171(d)

King v. City of Bainbridge: Excluding Manufactured Homes from Residential Districts

A local government may exclude manufactured homes from a zoning district and at the same time permit modular homes in the same district.

The "Advanced Broadband Collocation Act," O.C.G.A. § 36-66b-1 et seq.

In reviewing an application for modification or collocation of a pre-existing wireless support structure, a local government may not condition approval on additional zoning, land use, or special use permit approvals beyond the initial zoning, land use, or special use permit approval issued for the existing wireless support structure where collocation does not increase the height, width, dimensions, or weight limits of the wireless support structure.

Amendments to O.C.G.A. §§ 8-2-111 and 8-2-112, Establishing Limitations on Local Governments Restricting Residential Industrialized Buildings

A local government is prohibited from excluding residential industrialized buildings from any residential district solely because the building is an industrialized building.

Zoning ordinances must be construed in favor of the property owner. But a zoning ordinance must be given reasonable construction.

Dawkins & Smith Homes, LLC v. Lowndes County, 306 Ga.App. 79, 701 S.E.2d 544 (2010)

In 2004 the state legislature amended O.C.G.A. § 8-2-20 to provide that the International Building Code (ICC) would constitute the state minimum standard code. As provided in O.C.G.A. § 8-2-25(a), the International Building Code shall have statewide application without adoption by a municipality or a county.

The following code section for the City of Glennville, Georgia was found to be constitutional by the Georgia Supreme Court:

It shall be unlawful for any owner or resident of any lot, area, or place located within this city to permit any weeds, grass, or deleterious, unhealthful growths to obtain a height exceeding ten inches on such property. For purposes of this section, the term "weeds" shall be deemed to mean jimpson, burdock, ragweed, thistle, cocklebur, dandelion or other unsightly growths of a like kind.

Parker v. City of Glennville, 288 Ga. 34, 701 S.E.2d 182 (2010)

A local government may specify a particular procedure for appeal of an administrative decision to the superior court. An ordinance may provide for appeal by the procedures set forth in O.C.G.A. § 5-3-20 et seq., or appeal by writ of certiorari, O.C.G.A. § 5-4-1 et seq., or if the ordinance is silent as to the procedure for appeal, by mandamus.

Targovnik v. City of Dunwoody Zoning Board of Appeals, ---- Ga.App. ---- (decided November 29, 2010); Dougherty County v. Webb, 256 Ga. 474, 350 S.E.2d 457 (1986)

Administrative hearing procedures apply to the following:

- Variances
- Approval of subdivision plats
- Appeals of administrative decisions
- Conditional use permits

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.

ADMINISTRATIVE HEARINGS

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.

ADMINISTRATIVE HEARINGS

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.

ADMINISTRATIVE HEARINGS

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.

ADMINISTRATIVE HEARINGS

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.