

Joint Workshop for Madison and Morgan County Elected and Appointed Officials

February 26, 2011

Presented by

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**LEGISLATIVE V. ADMINISTRATION
LAND USE DECISION-MAKING AT
THE LOCAL GOVERNMENT LEVEL**

**Legislative decisions are defined by
the Zoning Procedures Act, O.C.G.A.
§ 36-66-1 et seq., as follows:**

- Adoption of a zoning ordinance
- Adoption of an amendment to a zoning ordinance changing the text
- Rezoning of property from one zone to another
- Adoption of an amendment to a zoning ordinance for annexed property
- Grant of a permit relating to special use of property

**Legislative decisions are based on
broad discretionary power inherent
in the legislative process.**

In zoning, the legal issue is the constitutionality of the existing zoning—not whether the proposed zoning is constitutional or provides a higher and better use.

DeKalb County v. Dobson, 267 Ga. 624, 482 S.E.2d 239 (1997)

**Usual challenge to the
constitutionality of an existing
zoning is under a takings analysis.**

Zoning ordinances are presumed to be valid.

Gradous v. Board of Commissioners of Richmond County, 256 Ga. 469, 349 S.E.2d 707 (1986)

To successfully challenge a denial of rezoning,
a land owner must show by clear and
convincing evidence that the current zoning is
a substantial detriment without a substantial
benefit to the public benefit.

DeKalb County v. Dobson, 267 Ga.App. 624,
482 S.E.2d 239 (1997)

A substantial detriment is difficult to show.

- Evidence of economic loss alone is not sufficient to show substantial detriment.
- Evidence of difficulty to develop property under existing zoning is not sufficient to support a legal conclusion of substantial detriment.
- Evidence that property more valuable if rezoned is not sufficient to show substantial detriment.

DeKalb County v. Chamblee Dunwoody Hotel Partnership,
248 Ga. 186, 281 S.E.2d 525 (1981)

Evidence of Substantial Public Benefit

- Consistency of the zoning with the comprehensive plan is important evidence of substantial benefit to the public.

City of Atlanta v. Tap Associates, 273 Ga. 681, 544 S.E.2d 433 (2001)

**The Zoning Procedures Act,
O.C.G.A. § 36-66-1 et seq., requires
a local government to adopt
standards which govern the
exercise of zoning power.**

10 Do's and Don'ts for Conducting Zoning Public Hearing

1. Do express a continuously open mind about the zoning issue before, during, and after the public hearing.
2. Don't promise a vote.
3. Do make your statements to the chair—avoid arguing with your colleagues or anyone in the audience.
4. Don't interject personalities into your comments.
5. Do elicit agreements from the property owner for conditions to protect neighboring property owners.

6. Do make your vote based on the record of the public zoning hearing.
7. Do state any conflicts of interest at the beginning of the hearing on the zoning matter and either sit quietly by or excuse yourself from the hearing room.
8. Don't base a decision on factors not connected with the established zoning standard.
9. Don't tell the property owner and neighborhood to go "work it out".
10. Don't talk about campaign contributions during the hearing.

Administrative Land Use Decisions

1. Variances
2. Subdivision plat approvals
3. Administrative decisions and appeals
4. Conditional use permits

Due Process Requirements in Administrative Hearings:

- Notice of the hearing
- Right to present evidence
- Right to representation by counsel
- Right to cross examine witnesses
- Right to a written decision based on evidence presented at the hearing

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

Appeals of Administrative Decisions to the Superior Court

- Court reviews record only.
- No new evidence presented to the court.
- Court reviews record to determine if decision maker acted beyond its discretionary powers, abused its discretion, or acted arbitrarily or capriciously regarding an individual's constitutional rights.

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

Dealing with Ex parte Contact (or talking outside the public hearing)

Conditional Zoning

Rezoning subject to special conditions for protection or benefit of the neighbors to ameliorate the effects of a zoning change.

Cross v. Hall County, Georgia, 238 Ga.
709, 235 S.E.2d 379 (1977)

Conditional Use Permits

Special land use permitted in a zoning district but subject to additional conditions and administrative approval.