

Georgia Association of Zoning Administrators
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Legal and Legislative Update

Presented by

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I. CONSTITUTIONAL CHALLENGE FIRST TO LOCAL GOVERNMENT

City of Suwanee v. Settles Bridge Farm, LLC,
292 Ga. 434 (2013)

Before a land owner may file a claim in court challenging the constitutionality of a special use permit or requirement of a special use permit, it must first apply to the local authority for relief.

II. CONSTITUTIONAL CHALLENGE

Association of Guineans in Atlanta, Inc. v. DeKalb County, 292 Ga. 362 (2013)

A land owner must make a constitutional attack on a zoning ordinance before the local governing body in order to afford that body the opportunity to amend the ordinance and, for example, rezone property. However, a constitutional challenge to a zoning matter which is not made to the local government cannot be asserted for the first time in superior court. In making a constitutional challenge, a verbal assertion of a constitutional attack may be sufficient.

III. APPEALS TO COURT

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.

IV. NON-CONFORMING USES

Haralson County v. Taylor Junkyard of Bremen, Inc., 291 Ga. 321, 729 S.E.2d 357 (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.”

V. 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.

**VI. 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.

VII. VESTED RIGHTS

A. Fulton County v. Action Outdoor Advertising, JV, LLC, 189 Ga. 347, 711 S.E.2d 682 (2011)

Billboard companies had vested rights to issuance of permit upon filing application for lawfully permitted use.

B. North Georgia Mountain Crisis Network, Inc. v. City of Blue Ridge, 248 Ga.App. 450, 546 S.E.2d 850 (2001)

A land use that is merely contemplated for the future but unrealized as of the effective date of a new zoning regulation does not constitute a nonconforming use.

C. Meeks v. City of Buford, 275 Ga. 585, 571 S.E.2d 369 (2002)

The issue in this case is whether a property owner obtained a vested right to use undeveloped investment property in accordance with a variance granted in 1985, 14 years earlier.

**D. Marietta Properties, LLC v. City of Marietta, 319
Ga.App. 184 (2012)**

A property owner claiming a vested right to use property must make that claim to the local government before an appeal is made to the superior court. A claim of vested right to use property may not be made for the first time in superior court.

E. Union County v. CGP, Inc., 277 Ga. 349, 589 S.E.2d 240 (2003).

The issuance of a building permit results in a vested right only when the permit has been legally obtained, is valid in every respect, and has been validly issued.

F. Cohn Communities, Inc. v. Clayton County, 257 Ga. 357, 359 S.E.2d 887 (1987).

“The rule in Georgia is that where a landowner makes a substantial change in position by expenditures in reliance upon the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance which would otherwise preclude the issuance of a permit.”

G. Corey Outdoor Advertising, Inc. v. The Board of Zoning Adjustments of the City of Atlanta, 254 Ga. 221, 327 S.E.2d 178 (1985).

Property owner did not obtain a vested right to build a sign even though the city issued a permit if the permit was invalid because the location of the sign violated the sign ordinance.

VIII. CONDITIONAL ZONING

Cross v. Hall County, 238 Ga. 709, 235 S.E.2d 375 (1977).

Conditions will be upheld if imposed for the protection or benefit of neighbors to ameliorate the effects of the zoning change.

IX. ENFORCEMENT OF ZONING CONDITIONS

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

X. MORATORIUMS

- May adopt moratorium without complying with the Zoning Procedures Law requirement.

City of Roswell v. Outdoor Systems, Inc., 274 Ga. 130, 549 S.E.2d 90 (2001)

- Moratoriums are used to avoid acquiring vested rights.

XI. SPECIAL USE PERMITS

The terms “special use permit” and “conditional use permit” mean essentially the same thing. Both involve a special use authorized by the zoning ordinance, but the ordinance provides that such uses are allowed only upon condition that it’s approved by the appropriate local government subject to meeting certain standards or conditions.

City of Atlanta v. Wansley Moving & Storage Company, 245 Ga. 794, 267 S.E.2d 234 (1980)

Special use permits must be either approved or denied based upon specific standards.

Without standards a special use permit ordinance is unconstitutional.

City of Atlanta v. Wansley Moving & Storage Company, 245 Ga. 794, 267 S.E.2d 234 (1980)

STANDARDS FOR SPECIAL USE PERMITS MAY BE OBJECTIVE OR DISCRETIONARY

- Special Use Permit must be granted if the applicant meets objective standards.

Fulton County v. Bartenfeld, 257 Ga. 766, 363 S.E.2d 555 (1988)

- Discretionary standards give the local governing body discretion when deciding whether to grant a permit.

EXAMPLES OF DISCRETIONARY STANDARDS

- The board may give a particular emphasis to the evaluation of the characteristics of the proposed use in relation to the immediate neighborhood and compatibility of proposed use with the neighborhood.

Gwinnett County v. Ehler Enterprises, 270 Ga. 570, 512 S.E.2d 239 (1999)

“The benefits of and need for the proposed [land use] are greater than any possible depreciating effects and damages to the neighboring properties.”

**Suddeth v. Forsyth County, 258 Ga. 773,
373 S.E.2d 746 (1988)**

XII. PROPER METHOD FOR ADOPTION OF OFFICIAL ZONING MAP

1. Zoning ordinance expressly incorporates map.

“Zoning shall be as much a part of the Resolution as if the matter were fully described herein.”

2. Zoning Administrator maintains zoning map in his office.
3. Minutes show that official zoning map present at hearing when it was adopted.