

The Legal Foundations of Planning and Zoning in Georgia

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Legal Foundations

- Basic Legal Concepts
- Constitutional Framework
- Statutory Framework
 - Georgia Planning Act: Zoning Issues
 - Zoning Procedures Act
 - Steinberg Act (Zoning Proposal Review Procedures)
 - Development Impact Fee Act
 - Conflict of Interest in Zoning Act

Legal Foundations

- Constitutional Limitations
 - Taking without just compensation
 - Due Process
 - Equal Protection
 - Vested Rights
 - Eminent Domain and Inverse Condemnation

Legal Foundations

- Relationship between Planning and Zoning
- Special Issues
 - Zoning Conditions
 - Sign Ordinances
 - Religious Uses

Basic Question: Why have zoning?

- Land use restrictions aim to prevent problems caused by the "pig in the parlor instead of the barnyard." Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926).
- Reserving land for single family residences preserves the character of neighborhoods, securing "zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974).

Benefits of Zoning

- Prevent incompatible adjacent uses
- Aesthetics
- Control growth and development patterns
- Encourage specific growth and development patterns

Key Zoning Terms

- Zoning Ordinance: ordinance that divides jurisdiction into districts and regulates uses
- Zoning Map: map that delineates districts
- Zoning Decision: adopt ordinance, map, text amendment, or grant special use permit
- Variance: grant of permission to alter some quantitative criteria of the ordinance, based on a hardship

Constitutional Framework

- 1957 Planning and Zoning Enabling Act eliminated by 1976 and 1983 Constitutions
- Source of authority is Art. 9, Sec. 2, Para. IV, and general police power
- Lawful as long as serves a reasonable government purpose and not arbitrary
- Presumptively valid, even based only on aesthetics

Constitutional Authority To Plan And Zone

- The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the general assembly from enacting general laws establishing procedures for the exercise of such power.

Ga. Const. Art. 9, §2, Para. IV

Direct Constitutional Authority to Counties and Cities to Plan and Zone Trumps All Statutes and Ordinances

Statutory Framework

- General Assembly, under Constitution, can only adopt procedural requirements
- Planning is distinct from zoning, and the General Assembly has adopted planning requirements

Georgia Planning Act of 1989, OCGA § 36-70-1 et seq.

- Required creation of comprehensive plans, and provided organization structure and process of review, through DCA regulations.
- Updated to provide more detailed and sophisticated planning: Minimum Planning Standards; SB 86 reduced to “basic local plan.”
- Regional Commission review of Developments of Regional Impact; SB 86 deleted review

Zoning Procedures Law, OCGA § 36-66-1 et seq.

- Essentially created to require notice and a rehearing for zoning decisions.
- Requires at least 15 days prior advertisement and posting of signs in some circumstances.
- Applies to rezoning, text amendment, adoption of zoning ordinance, special use permit and annexation.

Zoning Procedures Law, OCGA § 36-66-1 et seq.

- Requires adoption of standards governing zoning decisions.
- Requires adoption of policies and procedures for zoning hearings, including equal time and minimum of 10 minutes per side.

Zoning Procedures Law, OCGA § 36-66-1 et seq.

- Supreme Court held that the ZPL preempted the provisions in a City Charter for the purposes of the adoption and amendment of zoning ordinances. Little v City of Lawrenceville, 272 Ga. 340 (2000)
- Strictly construed; any mistake renders decision void.

Zoning Proposal Review Procedures (Steinberg Act), § 36-67-1 et seq.

- Counties of more than 625,000 at 2000 Census and cities in those counties over 100,000
- Requires written review under standards by applicant and staff and consideration of those criteria by Planning Commission and Board of Commissioners

Steinberg Standards

OCGA § 36-67-3(1-6)

- Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;
- Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

Steinberg Standards

OCGA § 36-67-3(1-6)

- Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
- Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;

Steinberg Standards

OCGA § 36-67-3(1-6)

- If the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan; and
- Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

Development Impact Fee Act, OCGA § 36-71-1

- To ensure that new growth pays no more than its proportionate share of the costs of public facilities needed to serve new growth.
- Public facilities include: Water system, sewer system, stormwater system, road system, parks and recreation, public safety (fire, police, E911) and libraries.

Development Impact Fee Act, OCGA § 36-71-1

- Development “exaction” is a requirement that compels the payment, dedication, or contribution of goods, services, land, or money as a condition of approval.
- System improvements can only be imposed by impact fee. Project improvements can still be required.
- Contract zoning is always illegal.

Conflict of Interest in Zoning Act, OCGA § 36-67(A)-1

- Applies to governing authority and planning commission, when conducting rezoning (only).
- Requires disclosure and recusal when have direct property interest or at least 10 percent financial interest in the owner of property.
- If have member of family that meets test, only disclose, not recuse.

Conflict of Interest in Zoning Act, OCGA § 36-67(A)-1

- Also requires disclosure of campaign contribution by applicants and opponents if exceed \$250 over two immediately prior years.
- Violation misdemeanor.
- If recusals result in no quorum, special master makes recommendation, but board still takes vote.

Constitutional Restrictions on the Exercise of Zoning Power

1. Taking without just compensation
2. Due process
3. Equal Protection
4. Vested rights
5. Eminent domain and inverse condemnation

Taking Without Just Compensation

- Traditional Zoning Challenge: whether the existing zoning imposes a significant detriment and is insubstantially related to the public health safety and welfare
- Difficult to prevail
- Does not result in damage award

Due Process

- Failure to provide notice and hearing
- Failure to comply with Zoning Procedures Law
- Failure to comply with own ordinance provisions

Equal Protection

- To treat two similarly situated properties differently
- To enforce the zoning ordinance differently for two similarly situated properties

Vested Rights

- The right to continued use of a property once approved, or once expenditures occur in reliance on an approval of some sort; a form of due process
- Many different varieties, very fact specific
- Grandfathering is granted by ordinance

Eminent Domain and Inverse Condemnation

- Physical possession of property for government purposes, or deprivation of all economic use
- Regulations that impose costs on property (health, building, zoning, environmental) are not eminent domain takings, but valid exercises of the police power

What is the relationship between zoning and planning?

- Planning is mandatory; implementation is not
- Depends on quality of staff and commitment of governing body
- Zoning overpowers planning
- Can be a partnership or anarchy

What is the role of the comprehensive plan in the zoning process?

- Aspirational
- Advisory
- Non-binding
- Potentially reinforcing

Kingsley v. Florida Rock

259 Ga.App. 207 (2002)

- Notice requirements of zoning not apply to planning.
- Planning not impose immediate restrictions on land use
- Planning contemplates the evolvement of an overall program or design of future physical development

Kingsley v. Florida Rock

259 Ga.App. 207 (2002)

- Zoning is one of the means to carry out the comprehensive plan
- Requirement that rezoning must comply with comprehensive plan is not same as zoning

Lamar County v. E.T. Carlyle Co.

277 Ga. 690 (2004)

- Involved solid waste management plan, but court relied on Kingsley
- Plan is guide, does not have force of law
- County may enact zoning on matters not specifically addressed in comprehensive planning

City of Atlanta v TAP Associates

273 Ga. 681 (2001)

- Developer challenged denial of rezoning for mixed-use Buckhead condo/hotel/retail/rest.
- Comp. plan had policy of residential in area
- Experts on both sides agreed protecting single family is in the public interest

City of Atlanta v TAP Associates

273 Ga. 681 (2001)

- “...the city's zoning decision is consistent with the policies and long-range planning goals for the area as adopted in the comprehensive development plans and the Buckhead transit station report. These development proposals were adopted after extensive study and often contentious debate among the interested parties, including city planners, the business community, and neighborhood residents, about the best plan for managing the growth and development of the area.”

Special Issue: Zoning Conditions

- Conditions imposed so as to ameliorate the negative effects of the proposed rezoning for the protection of neighboring properties.
- Conditions should be related to the project, so as to avoid being illegal “exactions” under Development Impact Fee Act.
- Must be specific.

Cherokee Co. v. Martin, 253 Ga.App. 395 (2002)

- A condition must be expressly made within the four corners of the rezoning resolution. A rezoning resolution, unconditional upon its face and containing no reference to any stipulations or qualifications, cannot be converted into conditional zoning by discernment of the collective state of mind of the rezoning body at the time of adoption. Rezoning is conditional only if the conditions are set forth in the rezoning resolution itself or if an examiner of the resolution would be alerted to the existence of such conditions.

Cherokee Co. v. Martin, 253 Ga.App. 395 (2002)

- Examples include (1) naming the zoning classification “Residential Conditional,” (2) stating the condition in the rezoning resolution, and (3) passing a rezoning resolution “pursuant with stipulations presented by [the applicant],” which stipulations are recorded in the county board's official public minutes.

Zoning Conditions: Lessons Learned

- Put in writing, or clearly state in the motion
- Statements by applicant are not binding
- Condition to the site plan
- Conditions become part of the ordinance and can only be amended by rezoning action

Special Issue: Sign Ordinances

- Regulations must not be content-based
- Can regulate time, place and manner
- Traps: on-premises, real estate signs, construction signs, weekend directional signs, governmental signs, historic signs, places of interest
- Permitting scheme; sign registration

Special Issue: Religious Uses

- RLUIPA: Religious Land Use and Institutionalized Persons Act
- Cannot discriminate against religion
- Cannot place substantial burden on religious practices
- Must treat on equal terms to similar uses

QUESTIONS AND ANSWERS

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- Thank You!