Joint Workshop for Madison and Morgan County Elected and Appointed Officials

February 26, 2011

Presented by

Frank E. Jenkins, III

JENKINS, OLSON & BOWEN, P.C.

15 South Public Square
Cartersville, Georgia 30120
(770) 387-1373

11 Cedar View Drive
Savannah, Georgia 31410

fjenkins@ga-lawyers.pro
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.

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 public benefit.

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.

Evidence of Substantial Public Benefit

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

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

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.

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.