

ANNEXATION FROM A TO Z

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Annexation is governed by O.C.G.A. Title 36, Chapter 36 (§ 36-36-1 et seq.) That chapter describes three main types of annexation: the 100 percent method, the 60 percent method, and annexation by resolution and referendum. Property can also be annexed by local act of the General Assembly. Each will be outlined in turn, and deannexation procedures will be briefly discussed. Following that will be an analysis of zoning problems that arise in the annexation context, as well as a discussion of the Zoning Procedures Law as it relates to annexation. Finally, this paper will address the newly added provisions related to the resolution of annexation disputes, O.C.G.A. § 36-36-110 et seq., which became effective on September 1, 2007.

I. ANNEXATION BY THE 100 PERCENT METHOD

Municipal corporations can annex unincorporated areas contiguous to the existing corporate limits – “contiguous” means abuts the municipal limits, or is separated by a street, river or railroad-type right-of-way, or city land, or land owned by some other political subdivision, or the lands owned by the state. O.C.G.A. § 36-36-20.

When a municipal corporation wishes to annex a body of parcels at one time, all of the parcels proposed to be annexed are treated as one body, regardless of the number of owners, and all parcels are considered to be contiguous to the limits of the municipal corporation if any one part of the entire body abuts the municipal limits. O.C.G.A. § 36-36-21.

A. Requirements for Application for Annexation:

1. Written.
2. Signed by 100 percent of owners (or legal representative thereof) of all the land, except the owners of any public road or right-of-way; however, owner of private road must consent or sign application.
3. Complete description of lands to be annexed.

See O.C.G.A. § 36-36-21.

B. When an application for annexation is received, the municipality must:

1. Within five business days give written notice of the proposed annexation to the governing authority of the county wherein the property is located.

2. The notice must include a map or other description sufficient to identify the area.
3. The notice must be sent certified mail, or statutory overnight delivery, return receipt requested.

See O.C.G.A. §§ 36-36-6 and 36-36-9.

- C. The county must respond, via certified mail, return receipt requested, within five business days of receipt, and inform if any county owned facilities are located in the proposed area to be annexed. O.C.G.A. §§ 36-36-7 and 36-36-9.
- D. When a municipal corporation annexes the property on both sides of a county road right-of-way, unless the municipality and county agree otherwise by joint resolution, the annexing municipal corporation assumes the ownership, control, care and maintenance of that right-of-way. O.C.G.A. § 36-36-7.
- E. Once the property is annexed, identification of property shall be filed with the Department of Community Affairs and the governing authority of the county in which the property is located. These reports should be filed no later than 30 days following the last day of the yearly quarter in which the annexation become effective. For a complete description of what must be included in these reports, see O.C.G.A. § 36-36-3(a). O.C.G.A. § 36-36-3.
- F. See Section X below for further timelines on dispute resolution. (Thirty days to object under that statute).

II. ANNEXATION BY THE 60 PERCENT METHOD

Under this method, municipal corporations of at least 200 persons can annex a contiguous area – but contiguous area has a different definition from the definition of the 100 percent method. Here, “contiguous” means at least one-eighth of the property’s aggregate external boundary must abut the municipal boundary (or would abut if not separated by streets, rivers, public rights-of-way, county land, city land or state land). O.C.G.A. § 36-36-31.

When a municipal corporation wishes to annex a body of parcels at one time, all of the parcels proposed to be annexed are treated as one body, regardless of the number of owners, and all parcels are considered to be contiguous to the limits of

the municipal corporation if any one part of the entire body abuts the municipal limits. O.C.G.A. § 36-36-32.

A. Requirements for Application for Annexation

1. Written.
2. Signed by at least 60 percent of the electors resident in the area and at least 60 percent of the record title holders of the fee simple title (or legal representatives thereof) of the land area, by acreage. Name, address and date of signature must also be printed on application, along with whether the applicant is a landowner, elector, or both.
3. A complete description of lands proposed to annex. The property cannot cross county lines by this method. O.C.G.A. § 36-36-33.
4. All signatures must be collected within one year from the date the first signature is collected. Failure by the municipality to collect the required signatures within the one-year period will invalidate previously collected signatures.

See O.C.G.A. § 36-36-32.

B. When an application for annexation is received, the municipality must:

1. Within five business days give written notice of the proposed annexation to the governing authority of the county wherein the property is located.
2. The notice must include a map or other description sufficient to identify the area.
3. The notice must be sent certified mail, or statutory overnight delivery, return receipt requested.

See O.C.G.A. §§ 36-36-6 and 36-36-9.

C. The county must respond, via certified mail, return receipt requested, within five business days of receipt, and inform if any county owned facilities are located in the proposed area to be annexed. O.C.G.A. §§ 36-36-7 and 36-36-9.

D. The municipality evaluates the application:

1. In order to determine electors in the area, the municipal governing body must obtain a list of electors from the board of registrars of the county.
2. Owners of public lands and roads are not considered in calculating the acreage.

See O.C.G.A. § 36-36-32.

E. If the application does not comply with the requirements, the applicant is notified of the deficiency. O.C.G.A. § 36-36-34. If the requirements are satisfied, the municipal corporation prepares a report, setting forth:

1. Municipal plans for extending police, fire, garbage and street maintenance to the area, as well as the extension of water and sewer service.
2. A map showing present and proposed boundaries of the city, the major water mains, sewer interceptors and outfalls, and proposed extensions of such.
3. The plans for the extension of water mains and sewer outfall lines must provide for the extension of these services within 12 months from the effective date of the annexation.
4. This report must be prepared and available to the public at least fourteen days prior to the public hearing.

See O.C.G.A. § 36-36-35.

F. Public Hearing

1. Held within 15 to 45 days after petition determined valid under step D. above.
2. Notice of time and place must be given in writing to the persons presenting the petition, and it must be advertised once a week for two consecutive weeks in a newspaper of general circulation in the municipality and in the area proposed for annexation.

3. All persons resident or owning property in the municipal corporation or the area to be annexed may be heard.

See O.C.G.A. § 36-36-36.

- G. Any property owner or elector may withdraw his consent in writing postmarked or received within three days after the public hearing. The compliance must then be recalculated. O.C.G.A. § 36-36-36.
- H. If after the hearing, the municipal corporation wants to go forward with the annexation, it may do so by ordinance, within 60 days of the validation of all signatures. O.C.G.A. § 36-36-37.
- I. Once the property is annexed, identification of property shall be filed with the Department of Community Affairs, and the governing authority of the county in which the property is located. These reports should be filed no later than 30 days following the last day of the yearly quarter in which the annexation becomes effective. For a complete description of what must be included in these reports, see O.C.G.A. § 36-36-3(a). O.C.G.A. §§ 36-36-38 and 36-36-3.
- J. Ad valorem taxes shall not be applied to the newly annexed area until January 1 of the following year. O.C.G.A. § 36-36-38.
- K. Within thirty days, any elector or property owner of the annexed area or the municipal corporation may file a petition for declaratory judgment in the county superior court, to determine the validity of the annexation as related to this chapter of the Georgia Code. Whenever such a petition is filed, the municipality should file the record of the official actions in regards to the disputed application, along with a certified copy of the annexing ordinance.
- L. The court can declare the annexation void if they find a lack of substantial compliance with the annexation provision contained in this chapter of the Georgia Code. If the court finds a procedural defect or defects in the plans for extending services to the annexed area, the court will issue a judgment to cure the defect and uphold the ordinance, if possible. Further review is normally available. O.C.G.A. § 36-36-39.

III. ANNEXATION BY THE RESOLUTION AND REFERENDUM METHOD

Municipal corporations have the authority to extend their boundaries by resolution and referendum. O.C.G.A. §§ 36-36-50 et seq.

A. Standards for area to be annexed

1. Adjacent or contiguous, with at least one-eighth of the aggregate external boundaries coinciding with the then existing municipal boundaries. O.C.G.A. §§ 36-36-52 and 36-36-54.
2. No part within the boundary of another municipal corporation or county. O.C.G.A. § 36-36-54.
3. No part may be receiving municipal services from any other government entity than the city proposing annexation; can be waived by agreement. O.C.G.A. § 36-36-54.
4. Must be developed for urban purposes – two people per acre, and at least 60 percent divided into lots and tracks of five acres or less, and 60 percent of lots are less than one acre. O.C.G.A. §§ 36-36-54(c). For examples of methods to determine population and the degree of land subdivision, see O.C.G.A. § 36-36-55.
5. Exemption from (4) available if the non-urban area separates the existing municipal boundaries from an area meeting the definition of (4) in such a way that area meeting the definition of (4) is either not adjacent to the municipal boundary or cannot be served by the annexing municipality without extending services and water and sewer lines through the non-urban area. Furthermore, the non-urban area has to be at least 60 percent bounded by a combination of the city boundary and the boundary of the area meeting the definition of (4). O.C.G.A. § 36-36-54(d).
6. Natural topographical boundaries, such as creeks, streams and ridge lines, should be used where practical. In the event a street is used as a boundary, where practical, the city shall include land on both sides of the street. O.C.G.A. § 36-36-54(e).

B. The municipal corporation must prepare a report containing the following:

1. Municipal plans for extending police, fire, garbage and street maintenance to the area, as well as the extension of water and sewer

service, and showing the general land use plan of the area-including timetables.

2. A map showing present and proposed boundaries of the city, the major water mains, sewer interceptors and outfalls, and proposed extensions of such.
3. The report must be available at least 14 days prior to public hearing, make it available to the public in the city clerk's office, and may prepare a summary for public distribution.
4. A statement that the requirements of A. above have been met.
5. Describe the plans for financing the expansions of services.
6. In terms of the timetable for the construction of water mains and sewer outfall lines to the annexed area, such construction shall begin no later than 18 months following the effective date of the annexation.

See O.C.G.A. § 36-36-56.

C. Municipality must pass a resolution:

1. Stating the intent to annex.
2. Describing the boundaries.
3. Fixing a date for a public hearing between 30 and 60 days after the passage of the resolution.

See O.C.G.A. § 36-36-57.

D. Upon adoption of the resolution, the city must:

1. Within five business days give written notice of the proposed annexation to the governing authority of the county wherein the property is located.
2. The notice must include a map or other description sufficient to identify the area.

3. The notice must be sent certified mail, or statutory overnight delivery, return receipt requested.

See O.C.G.A. §§ 36-36-6 and 36-36-9.

- E. The county must respond, via certified mail, return receipt requested, within five business days of receipt, and inform if any county owned facilities are located in the proposed area to be annexed. O.C.G.A. §§ 36-36-7 and 36-36-9.

- F. Notice of the public hearing must:

1. Show the date, time and place of the hearing.
2. Describe clearly the boundaries of the area under consideration.
3. State that the report under B. is available in the city clerk's office at least 14 days prior to the hearing.
4. Be advertised once a week for three successive weeks in a newspaper of general circulation within the municipality (last ad at least one week before hearing), or if no such paper, post in at least three public places of area to be annexed and in three public places within the municipality for 30 days prior to the hearing.

See O.C.G.A. § 36-36-57.

- G. Public hearing:

1. City official presents and explains the report described in section B. above.
2. All persons resident or owning property in the territory described in the notice of the hearing and all residents of the municipality shall be given an opportunity to be heard.

See O.C.G.A. § 36-36-57.

- H. Referendum to ratify or reject annexation:
1. Held between 30 and 60 days after the public hearing.
 2. Held under procedures of Chapter 2, Title 21 of the Official Code of Georgia regarding special elections, as far as practical.
 3. Only persons registered to vote for members of the General Assembly, residing, on the date of the adoption of the resolution, in the proposed area to be annexed, shall vote on the referendum.
 4. Majority wins. If majority vote is not to annex, no attempt at annexation under of any portion of the property by this method can be tried again for two years.

See O.C.G.A. § 36-36-58.

- I. Once the property is annexed, identification of property shall be filed with the Department of Community Affairs and the governing authority of the county in which the property is located. These reports should be filed no later than 30 days following the last day of the yearly quarter in which the annexation become effective. For a complete description of what must be included in these reports, see O.C.G.A. § 36-36-3(a). O.C.G.A. §§ 36-36-59 and 36-36-3.
- J. This method does not apply to any territory which has been a part of a municipal corporation for three years immediately prior to July 1, 1970, and which has been or is in the process of being deannexed from the corporate limits of such corporation. O.C.G.A. § 36-36-61.
- K. Appeal to the superior court is available, but in determining whether the criteria of A. have been met, the court must use the city's estimates so long as those estimates meet certain criteria described in the statute. O.C.G.A. § 36-36-55.

IV. ANNEXATION BY LOCAL ACT OF THE GENERAL ASSEMBLY

The General Assembly has the authority to pass local Acts annexing territory to municipal corporations. The above methods are derived from the General Assembly's legislative power to annex. This authority was codified effective July 1, 1996 as Article 1A of Chapter 36, Title 36. Annexation or deannexation can be accomplished by this

method. Municipalities are “creations of the General Assembly,” so their boundaries may be changed by the General Assembly.

- A. Local Acts annexing areas comprised of more than 50 percent residential property, by acreage, must use this Article. Residential is defined as a lot 5 acres or less on which a habitable dwelling unit is located. Presumably this article need not be followed for annexation of property less than 50 percent residential. O.C.G.A. § 36-36-15.
 - B. The author of the legislation must:
 - 1. Give notice of the intention to introduce the bill by advertising said intent in the newspaper in which the sheriff’s advertisements are published for the locality. Such notice must be published one time before the bill is introduced and can be published no earlier than 60 days prior to the beginning of the session at which the bill is introduced.
 - 2. Give notice to the affected municipality of the intention to introduce the bill by mail, fax, or other means within 7 days of the time in which the notice is published in the newspaper as described in 1.
 - 3. Attach a copy as advertised and an affidavit stating that the notice was published, and all other notice requirements were met.
- See O.C.G.A. § 28-1-14.
- C. After receiving the notice from the author of the legislation as described in (B), the municipality shall then send a copy of the proposed legislation, via certified mail, or statutory overnight delivery, return receipt requested, to the governing authority of the county wherein the property is located. O.C.G.A. §§ 36-36-6 and 36-36-9.
 - D. The county must respond, via certified, return receipt requested, within five business days of receipt, and inform if any county owned facilities are located in the proposed area to be annexed. O.C.G.A. §§ 36-36-7 and 36-36-9.
 - E. The legislation may incorporate referendum approval under the terms and conditions specified in local law. However, such referendum approval is required if the area to be annexed contains more than 500 people, or more than 3 percent of the municipality’s population. The municipality must pay for the referendum. O.C.G.A. § 36-36-16.

- F. There is no contiguity requirement for this method. See, City of Fort Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

V. ANNEXATION OF UNINCORPORATED ISLANDS

- A. Under Article 6 of Chapter 36, Title 36, an unincorporated island consists of an unincorporated area in existence as of January 1, 1991 with its aggregate boundaries abutting a city, or a combination of cities. In other words, the entire border of this island must touch the boundaries of incorporated areas, whether one city or several. The unincorporated land can be separated by county, municipal or state land, or by the width of a creek or river, a street right-of-way, or a railroad/public service right-of-way. For example, a parcel of land, entirely abutted along its perimeter by city land, except for a small parcel of state property on the border, could still be annexed. All the property must be in the same county. For many years in order to qualify as an unincorporated island, in addition to the requirements above, the unincorporated area had to consist of 50 acres or less. That requirement, however, was removed from the statute by a 2000 amendment. O.C.G.A. § 36-36-90.
- B. Municipalities can annex unincorporated islands by ordinance, at a regular meeting of the city governing authority, thirty days after written notice to owners. No application or permission is required. O.C.G.A. § 36-36-92(b).
- C. Notice of intent must be mailed to owners at last known address as it appears on the ad valorem tax records of the county wherein the property is located. O.C.G.A. § 36-36-92(b).
- D. Once the property is annexed, identification of property shall be filed with the Department of Community Affairs and the governing authority of the county in which the property is located. These reports should be filed no later than 30 days following the last day of the yearly quarter in which the annexation become effective. For a complete description of what must be included in these reports, see O.C.G.A. § 36-36-3(a). O.C.G.A. §§ 36-36-92(b) and 36-36-3.
- E. An unincorporated island can be surrounded by one city or several. The city with the greatest boundary has the right to incorporate; however, the affected municipalities may agree otherwise. The unincorporated island can be separated from the city by a street right-of-way, a creek or river, or a public service/railroad right-of-way owned by some other entity, and still

share a contiguous boundary, allowing annexation. O.C.G.A. § 36-36-92(c).

- F. Municipal services to the annexed area should be supplied in substantially the same manner as they are to the rest of the municipality; however, the extension of water and sewer services should be accomplished pursuant to the policies in effect in the city for extending these services to individual lots and subdivisions. O.C.G.A. § 36-36-92(e).
- G. This annexation contains a Code requirement that it be precleared by the U.S. Justice Department pursuant to the Voting Rights Act of 1965. Application for preclearance shall be submitted not later than 90 days (formerly 60) following the adoption of the annexation ordinance. (All annexations must be precleared, see infra.)

VI. GENERAL PROVISIONS APPLICABLE TO ALL ANNEXATIONS

- A. In general, ownership of county properties and facilities is not affected by annexation of the area they are in. O.C.G.A. § 36-36-7(b).
- B. If a municipality annexes on both sides of a county road right-of-way, the municipality shall assume the ownership, control, care and maintenance of that property unless the county and municipality agree otherwise. O.C.G.A. § 36-36-7(c).
- C. If a county owned property or county owned facility is no longer useable for service to the unincorporated area of the county, the municipality is required to acquire such property provided the annexation is final, the property or facility is solely funded by, and solely provides service to, unincorporated areas, and the county adopts a resolution declaring the property unusable only as a result of the annexation. The county receives fair market value – as determined by agreement or by special master appointed by superior court. O.C.G.A. § 36-36-7(d).
- D. Annexations done by methods other than local Act are effective for ad valorem tax purposes on December 31 of the year during which the annexation occurred. If an independent school district exists within the boundaries of a municipality, other effective dates may be established solely for determining school enrollment. For all other purposes, annexations are effective on the first day of the month following the month during which the requirements of the method are met. O.C.G.A. § 36-36-2(a). (Amended effective July 1, 1996 – prior law made annexations

effective on last day of calendar quarter, and lacked the ad valorem provision).

Annexations by local Act become effective for ad valorem purposes on December 31 of the year in which the annexation occurred, but for all other purposes become effective on the date the local Act becomes effective or on such date as is specified in the Act. O.C.G.A. §§ 36-36-2(b).

- E. Annexations or deannexations which would create unincorporated islands are prohibited. An unincorporated island consists of an unincorporated area whose boundaries are entirely bounded by one or several cities, or an unincorporated area which the county has no reasonable means of physical access to for provisions of services. O.C.G.A. § 36-36-4.
- F. The requirements of the Voting Rights Act, 47 U.S.C. § 1971 et seq., apply to all annexations. O.C.G.A. § 36-36-3. The basis of this requirement is the effect annexation has on voting. Even the annexation of vacant land which is anticipated to become residential has been held to require preclearance, as it constituted a “change in voting practice or procedure.” City of Pleasant Grove v. U.S., 479 U.S. 462, 107 S.Ct. 794, 93 L.Ed.2d 866 (1987). After-the-fact preclearance, while an oxymoron, does solve the problem. City of Arcade v. Emmons, 268 Ga. 230, 486 S.E.2d 359 (1997). O.C.G.A. § 36-60-11 requires all actions precleared by a local government to be submitted to the Attorney General.
- G. Annexation Across County Boundary Lines. Annexation across county boundary lines, when the municipality does not already have property in the new county, can only be performed subject to special procedures contained in O.C.G.A. § 36-36-23. Within ten business days of receiving an application for annexation, the municipal corporation shall provide written notice to the county governing authority of the adjoining county of its intent to annex into the county. A meeting between the county governing authority and municipal governing authority shall be held to discuss the proposed annexation if the county governing authority files a written request for such meeting with the municipal governing authority within 15 days of receipt of the notice of the proposed annexation. The requested meeting shall be held within 15 days of the request by the county unless otherwise agreed to by the county and the municipality.

No municipality may annex into an adjoining county in which the municipality is not already located unless otherwise agreed to by the county governing authority of the adjoining county. Such annexation shall

be deemed approved, unless the county governing authority adopts a resolution opposing the annexation within 30 days following the earlier of:

1. The completion of the meeting between the municipal and county governing authorities, if any, pursuant to subsection (a) of this Code section; or
2. Thirty days after notice of the proposed annexation from the municipal corporation to the county governing authority, if no meeting is requested by the county governing authority.

In making its decision, the county governing authority shall consider the following factors:

1. Whether the annexation ordinance is reasonable for the long-range economic and overall well-being of the counties, school districts, and municipalities affected by the annexation;
2. Whether the health, safety, and welfare of property owners and citizens of the county, municipalities, and area proposed to be annexed will be negatively affected by the annexation;
3. Whether the proposed annexation has any negative fiscal impact on the county, school districts, and other municipalities that have not been mitigated by an agreement; and
4. The interests of the property owner seeking annexation.

If the county governing authority disapproves the annexation, the municipal corporation may challenge the disapproval by filing a complaint in the superior court of the adjoining county into which such annexation has been proposed. The challenge shall be heard by either a judge or senior judge who is not from the circuit in which either the county or the municipality is located. If the court finds by a preponderance of the evidence that the determination by the county based upon the factors enumerated in above is correct, then the denial by the county shall be sustained. If the denial is not sustained, the annexation may proceed.

VII. DEANNEXATION OF PROPERTY

Deannexation of property is possible by two methods: local Act of the General Assembly, or by the reverse 100 percent method. O.C.G.A. § 36-36-22. Property deannexed by local Act cannot be “reannexed” by the same municipality under

any provision of this Title 36, Chapter 36, for a period of three years. O.C.G.A. § 36-35-2(b). For a local Act, the same provisions would apply. For a reverse 100 percent method, the following provisions apply.

A. Requirements for Application

1. Written
2. Signed by all of the owners of all of the land, except the owners of any public street, road, highway, or right-of-way, proposed to be deannexed.
3. Containing a complete description of the lands to be deannexed.

See O.C.G.A. § 36-36-22.

B. Next, a resolution of the county in which such property is located consenting to such deannexation must be passed. O.C.G.A. § 36-36-22.

C. When such application is acted upon by the municipal authorities and the land is, by ordinance, deannexed from the municipal corporation, an identification of the property so deannexed shall be filed with the Department of Community Affairs and the governing authority of the county in which the property is located. These reports should be filed no later than 30 days following the last day of the yearly quarter in which the annexation becomes effective. For a complete description of what must be included in these reports, see O.C.G.A. § 36-36-3(a). O.C.G.A. §§ 36-36-22 and 36-36-3.

VIII. ZONING IN RELATION TO ANNEXATION

Once an annexation is effective, which occurs on the first day of the month following satisfaction of all annexation requirements of the method followed, the property transfers from the jurisdiction of the county, losing whatever zoning the county provided, and becomes unzoned. This issue presents problems to most cities conducting annexation. A variety of invalid zoning methods has been used in the past. The main difficulty involved conducting rezoning hearings of property not in the city; the alternative was a period when property was unzoned. Recognition of this problem sparked amendments to the Zoning Procedures Law (the “ZPL” located at O.C.G.A. § 36-66-1 et seq.), designed to address the problems.

Those amendments, effective July 1, 1996, added a new definition to “Zoning Decision,” to include an amendment to a zoning ordinance which zones property which is to be annexed by a municipality. O.C.G.A. § 36-66-3.

The main amendment provides the procedure to be followed by municipalities when they annex property. The procedures required by the ZPL can be initiated at any time notice of the proposed annexation is provided to the county under O.C.G.A. § 36-36-6. The required public hearing must be held prior to the annexation. An additional notice of the annexation must be published in the county’s general circulation newspaper. The final vote cannot be held prior to adoption of the annexation ordinance or resolution or the effective date of the local Act annexation. Once the zoning procedures are followed and the municipality approves the zoning, it becomes effective on the date the annexation becomes effective, or on the date actually approved, whichever is later. O.C.G.A. § 36-66-4(d).

The General Assembly revisited the ZPL in 1998, adopting further procedures relating to annexation of property. Qualified municipalities are now authorized to adopt a zoning ordinance that provides for all annexed property to come into the city for the same use for which that property was zoned immediately prior to such annexation. O.C.G.A. §§ 36-66-4(e). Qualified counties that deal with deannexed properties can adopt similar ordinances. (Id.). Qualification means that the relevant city and county must have a common zoning ordinance with respect to zoning classifications.

Further 1998 amendments relate to location of a halfway house, drug rehabilitation center or other drug treatment facility. O.C.G.A. §§ 36-66-4(f) requires a public hearing six to nine months before the final action of the zoning. The government must give notice of the hearing by posting notice and publishing in a general circulation newspaper. No further requirement besides a hearing is required, but this provision may violate the Americans with Disabilities Act, 42 U.S.C. § 12131, and the Rehabilitation Act, 29 U.S.C. § 794. Treating a rezoning differently for persons with handicaps potentially violates that act, and the ZPL is facially discriminatory. The ADA and the Rehabilitation Act were both found to be violated by a zoning ordinance in the Ninth Circuit Court of Appeals. (See, Bay Area Addiction Research and Treatment Inc. v. City of Antioch, 179 F.3d 725 (9th Cir. 1999)).

Finally, in 2003, the General Assembly enacted additional requirements relating to military bases, installations and airports. O.C.G.A. § 36-66-6 requires that any city with a planning department or agency responsible for reviewing zoning proposals investigates and addresses additional considerations enumerated in the statute if the property proposed to be zoned is within 3,000 feet from one of the above military areas. The additional items of consideration generally relate to whether the proposed change in land use will adversely affect the operation or safety of the nearby military facilities. The

statute also requires coordination with the commander of the military base, installation or airport at least 30 days prior to the hearing required by O.C.G.A. § 36-66-4(a).

IX. PROBLEMS UNDER FORMER ZONING LAW

The amendments to the ZPL were necessitated by the quandary cities were left in when attempting to annex property. Often, the municipality made a mistake and inadvertently left the property unzoned, thus creating future land use problems and spawning litigation.

One invalid method used in the past was to adopt a provision in the zoning ordinance that all future annexed property is to be zoned one particular way. Cities would sometimes simply state in their ordinance or council minutes that the property was annexed as R-1, for example. Another invalid method was to have a provision in the zoning ordinance that any property annexed keeps the zoning classification assigned by the county. Typical problems arose when the county's residential designations did not specifically match any municipal residential designation, as is frequently the case.

The problem with these methods is that they do not comport with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Applying zoning to newly annexed property would likely have qualified as a "zoning decision" under O.C.G.A. § 36-66-3 (and has now been formally made one), and as such, a variety of procedures are necessary. Of course, annexations effective prior to the effective date of the ZPL (January 1, 1986) are not subject to its requirements.

Failure to comply with the Zoning Procedures Law invalidates the zoning. McClure v. Davidson, 258 Ga. 706, 373 S.E.2d 617 (1988). Just because the zoning is invalid, does not invalidate the annexation. City of Cartersville v. Bartow County School Dist., 145 Ga.App. 129, 243 S.E.2d 293 (1978).

Unfortunately, the consequences of these improper zoning decisions potentially go unnoticed for years, after substantial development of the subject property and the surrounding property. The result is political turmoil and one or more lawsuits. Cities would be well advised to reexamine annexations in their files, and if necessary, rezone those properties in a constitutional fashion. Though this can create unwanted publicity and essentially awakens a sleeping dog, sooner or later the problem will be noticed.

X. THE RESOLUTION OF ANNEXATION DISPUTES

Beginning on September 1, 2007, a set of all new practices and procedures for resolving annexation disputes became applicable in this State. These procedures are laid out in O.C.G.A. § 36-36-110 et seq., and apply to all annexations done after September 1, 2007 in the State of Georgia, with the exception of those accomplished through local Acts of the General Assembly. O.C.G.A. § 36-36-110. Because of newness of these procedures, the courts have not yet offered their guidance in explaining how some of the more ambiguous and unclear sections of this Article will operate.

- A. When a petition for annexation is received, the city must notify the governing authority of the county by certified mail or statutory overnight delivery of the petition. The notice must include a copy of the annexation petition showing the proposed zoning and land use for the area. O.C.G.A. § 36-36-111. See also the general annexation notice provisions of O.C.G.A. § 36-36-6.
- B. After being given notice, if the county raises no objection to the annexation, the annexation procedure may then move forward. O.C.G.A. § 36-36-112.
- C. As a condition of the annexation, for a period of one year, the city must not change the zoning or land use plan for the annexed property to a more intense density or use than that stated in the notice given to the governing authority of the county. This does not apply, however, if the city makes the change in the delivery agreement or comprehensive plan, and the change is adopted by the city, county, and all required parties. O.C.G.A. §§ 36-36-112 and 36-36-117.
- D. After being given notice, the governing authority of the county can object to the annexation.
 - 1. Requires a majority vote by the governing authority.
 - 2. Must be a material increase in burden upon the county related to one or more of the following:
 - a. Change in the zoning or land use;
 - b. Increase in density; and/or
 - c. Increase in demands on infrastructure because of the change in zoning or land use.

3. For the county's objection to be valid, the change in zoning or land use must result in:
 - a. A substantial change in the intensity of the use;
 - b. A change to a significantly different use;
 - c. A significant increase in the net cost of infrastructure; ***or***
 - d. A significant diminishment of the value or useful life of a capital outlay project provided by the county to the area proposed to be annexed.
4. In addition to meeting one of the conditions in (3), the change in zoning or land use must also differ substantially from the uses:
 - a. Suggested by the county's comprehensive land use plan; ***or***
 - b. Permitted by the county's zoning and land use ordinances.
5. Delivery of services is generally not a valid objection, but it can be used to support an otherwise valid objection.
6. The objection by the county governing authority:
 - a. Must be specific.
 - b. If objection is based on financial impact, must show evidence of the alleged impact.
 - c. Must be delivered to the governing authority of the annexing city by certified mail to be received no more than 30 days after the original notice was received by the county from the annexing municipality.

See O.C.G.A. § 36-36-113.

- E. If an objection is made by the county, a five-member arbitration panel has to be formed within 15 days of the first objection. O.C.G.A. § 36-36-114.

F. Arbitration Panel Member Selection

1. The process begins with three pools of arbitrators developed by the Department of Community Affairs (DCA)
 - a. **Pool 1:** Currently or previously elected municipal officials (no longer than 6 years out of office).
 - b. **Pool 2:** Currently or previously elected county officials (no longer than 6 years out of office).
 - c. **Pool 3:** Individuals employed by a college or university in the State of Georgia with at least a masters degree in public administration or planning.

See O.C.G.A. § 36-36-114(b).

2. The DCA will choose, at random, four individuals from pool one, four individuals from pool two, and three individuals from pool three (cannot be residents of affected county or municipality). O.C.G.A. § 36-36-114(c).
3. After the individuals are chosen at random from each pool, the city gets to strike two names from the county official's pool, and one name from the academics pool. In a same manner, the objecting county may then strike two names from the city official's pool, and one name from the academics pool. O.C.G.A. § 36-36-114(c).

G. Arbitration Panel Meeting

1. The county, city and applicant/property owner are allowed to present evidence and argument at meetings open to the public.
2. The panel first determines if the county's grounds for objection are valid.
3. Among other things, the panel will consider existing land use and patterns and plans, and zoning patterns, in both the city and county, as well as the approval of similar developments or changes in intensity or use by the county in the past. O.C.G.A. § 36-36-115(a)(2).
4. Majority Rules. A decision by a majority of the panel is binding on all parties involved.

5. Among other remedial powers, the panel may establish zoning, land use or density conditions to the area proposed to be annexed.

See O.C.G.A. § 36-36-115.

- H. The County pays at least 75% of the cost of the arbitration, with the remaining 25% divided between the county and city in a manner in which the panel deems appropriate. However, in the event the panel finds that a frivolous position has been advanced, the advancing party must bear the entire cost of the arbitration. O.C.G.A. § 36-36-115(a)(4). It is uncertain whether this would include attorney's fees, for example.
- I. If there are other annexation disputes between the city and county, under certain circumstances, the panel may agree to consolidate the disputes for judicial economy purposes. O.C.G.A. § 36-36-115(e).
- J. Appeal of the Panel's Decision
 1. The city, county, or annexation applicant can appeal the decision of the panel to the superior court of the county where the subject property is located within 10 days from the receipt of the panel's findings.
 2. The appeal must be based on errors of fact or law, bias or misconduct of an arbitrator, or the panel's abuse of discretion.
 3. A superior court judge who is not a judge in the circuit in which the county is located will issue a decision within 20 days from the filing of the appeal.

See O.C.G.A. § 36-36-116.

- K. If at any time during the process the annexation is abandoned by the city or the applicant, for a period of one year, the county must not change the zoning, land use or density for the annexed property. This does not apply, however, if the county makes the change in the service delivery agreement or comprehensive plan, and the change is adopted by the city, county, and all required parties. O.C.G.A. § 36-36-118.
- L. The final resolution of an objection, whether by agreement of the city and county, act of the panel, or appeal to the superior court, is valid for a

period of one year, and the county is estopped from raising any further objection as to the subject annexation during that one year period.

XI. IMPORTANT ANNEXATION CASES

City of Fort Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997) dealt with a problem that has vast potential in the annexation arena. The claim was that a prior annexation was invalid; therefore, the contiguous annexations that depended on the prior annexation were void. If an early annexation done improperly falls, all the annexations that attached to it and depended on it for contiguity will fall as well. In this particular case, the earlier annexation was held valid, even though it was not contiguous, because the annexation was done by a local Act of the General Assembly, and such annexations are not bound by contiguity requirements.

City of Arcade v. Emmons, 268 Ga. 230, 486 S.E.2d 359 (1997) dealt with failure to preclear an annexation under the Voting Rights Act, 42 U.S.C. § 1973. There, the City had allowed people to vote in an election, despite the fact that they lived in areas that had been improperly annexed. The impropriety was failure to preclear the annexation with the Justice Department. Despite receiving the preclearance during the pendency of the suit, the issue was not necessarily rendered moot. The trial court had set aside the election, and the Supreme Court noted that the power was proper, but it should be exercised only when absolutely necessary to protect important voting rights, and reversed the trial court's action. The Court concluded by noting that, since the error had been corrected, the matter was ended.

City of Smyrna v. Adams, 255 Ga. App. 453, 565 S.E.2d 606 (2002) recognized the rule espoused in Boger, and in doing so held that it is proper to challenge the validity of an annexation by challenging the validity of a prior annexation of contiguous property. The court invalidated the annexations of two unincorporated islands based on a procedurally improper annexation done sixteen years before.

City of Riverdale v. Clayton County, 263 Ga.App. 672, 588 S.E.2d 845 (2003) dealt with a situation where an annexation was invalidated due to the city's failure to produce adequate plans for the extension of services to the area to be annexed as required by O.C.G.A. § 36-36-35, and its failure to make a determination that the proposed annexation was in the best interest of the citizens of the city and the area to be annexed as required by O.C.G.A. § 36-36-37(a). The Court held that the best interest determination must be made for the annexation to be valid. Although technically it is not required to be made on the record, the court noted that "it certainly behooves any municipal corporation to make a record of such a mandated determination." As for the extension of services, the plans provided by the city contained only short, conclusory statements by the heads of the various departments that such services could be

provided. The Court held that these sorts of statements were inadequate under the statute because they prevented the public from participating intelligently in the hearing on the annexations.

Fayette County v. Steele, 268 Ga.App. 13, 601 S.E.2d 403 (2004) dealt with a situation where the landowner excepted a 10-foot strip from two parcels to be annexed in order to avoid creating an unauthorized unincorporated island. The County raised an objection on the basis that the exception violated the “entire parcel” requirement of O.C.G.A. § 36-36-20(a). The Court began by noting that the General Assembly intended that a liberal policy apply in the area of municipal annexations. The Court concluded that because it was undisputed that the 10-foot strip was not excepted in an attempt to evade the “entire parcel” requirement of O.C.G.A. § 36-36-20(a), the annexation was not invalid. The Court noted that if it were to rule for the County in this situation that it would, in effect, leave this particular landowner with no way to have his property properly annexed.

Cobb County v. City of Smyrna, 270 Ga.App. 471, 606 S.E.2d 667 (2004) dealt with a situation where the City of Smyrna desired to tie into water lines owned by the county, but located in an area annexed by the city. In support of its actions, the City cited O.C.G.A. § 36-34-5, which states that a city is authorized to “access, extend and tie on to all water lines within its municipal limits.” On the other hand, the county pointed to O.C.G.A. § 36-36-7(b), which states that “a county’s ownership and control of its facilities in an annexed area is not to be diminished by an annexation.” The court, by applying a common rule of statutory construction, concluded that the city had a right to tie into the water lines, despite the fact that they were owned by the county. In fact, the court concluded that cities have a right to extend any water line located within its municipal boundaries. The court, however, noted that city could not extend or obtain access to the line without acquiring the right through one of the three methods enumerated by the statute (i.e. acquisition by gift, purchase, or by the exercise of the right of eminent domain).

Bradley Plywood Corp. v. Mayor & Alderman of City of Savannah, 271 Ga.App. 828, 611 S.E.2d. 105 (2005) dealt with a situation where it was the practice of the city to hold regular meetings every other Thursday, and that such meetings were scheduled in September or October of the previous year. In this case, the every other Thursday schedule resulted in meetings falling on Thanksgiving and Christmas day. Recognizing these dates, the City included asterisks by these days on the original schedule noting that they would be held on alternative dates because of the holidays. At a regular meeting in October, the City voted to reschedule these meetings to November 26 and December 23, respectively, and immediately posted these dates on the City’s website, at the meeting location, and on the door of the city clerk’s office. The City then sent a letter to the property owners on November 15, and sent legal notice to the property owners in the area to be annexed on November 26. Finally, at the December 23 meeting the

annexation was approved and became effective eight days later. The plaintiffs sought to have the annexation ordinance declared null and void based on the argument that the ordinance was not adopted at a “regular meeting” as required by the Open Meetings Act, because the meeting was held on an earlier date than the date shown on the original schedule. The Court held that because the notation on the original schedule stated that the meeting would have to be rescheduled, the first date was actually set during the October regular meeting when the date was set for December 23. As a result, there was no rescheduling that turned the regular meeting into a special meeting. The plaintiffs also challenged the annexation by arguing that they did not receive 30 days notice as required by O.C.G.A. § 36-36-92(b) because the city did not send out actual legal notice until November 26. The Court held that the language of the statute requires that the annexation occur no later than 30 days after the notice is mailed, and not, as the plaintiffs asserted, that the annexation occur no sooner than 30 days after the notice is mailed.