

**LEGAL ISSUES ASSOCIATED
WITH PLANNING AND DEVELOPMENT**

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- I. Planning, Zoning, and Administrative (or Quasi-judicial) Decisions
 - A. Planning Decisions: adoption of comprehensive plan, adoption of other regulations, including zoning regulations, environmental protection regulations.
 - B. Zoning Decisions: rezoning of property, amendment to text or map, grant of special use permit.
 - C. Administrative (quasi-judicial) Decisions: variances, special exceptions, preliminary plat approval.

- II. Laws Relevant to Planning Decisions
 - A. Georgia Planning Act, O.C.G.A. § 50-8-7 et seq.
 - B. Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq.
 - C. Development Impact Fees Act, O.C.G.A. § 36-71-1 et seq.

- II. Laws Relevant to Zoning Decisions
 - A. Procedural Constraints
 - 1. The Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq.
 - 2. Open Meetings Act, O.C.G.A. § 50-14-1 et seq.
 - 3. Open Records Act, O.C.G.A. § 50-18-70 et seq.

4. Due Process

B. Ethical Constraints

1. Conflicts of Interest in Zoning Actions, O.C.G.A. § 36-67A-1et seq.
2. Local Ethical Codes
3. Constitutional Trust Provision, Art. 1, Sec. 2, Para. 1
4. Case law: a zoning commissioner should be disqualified if he holds a direct or indirect financial interest in the outcome of the zoning vote, which is not shared by the public in general and which is more than remote or speculative.

C. Special Issues

1. Contract Zoning / Conditional Zoning
2. Spot Zoning
3. Moratoria
4. Vested Rights / Grandfathering

III. Challenges to Zoning Decisions

A. Prerequisites

1. Standing: substantial interest/aggrieved citizen test
2. Standing: declaratory judgment test
3. Timeliness: 30 days

B. Standard of Review

1. Fraud or manifest abuse of zoning power
2. Violation of ordinance / abuse of discretion
3. Proof of conflict of interest

IV. Differences Regarding Administrative Decisions

- A. Review is on the record
- B. Ex parte contacts raise concerns
- C. The Conflict of Interest in Zoning Act does not apply, by its own terms.
- D. Due process requires fair hearing: 1) notice; 2) opportunity to present case and cross-examine; 3) detailed minutes or transcript of hearing; and 4) written explanation of the reasons for decision.
- E. Abuse of discretion / any evidence test

V. Further Information

- A. Location to find Georgia Code online:

<http://www.legis.state.ga.us/htdig/search.htm>

- B. Location to find Hall County, Gainesville Ordinances online (and many other Georgia jurisdictions and other states):

<http://www.municode.com>