

**ZONING PROCEDURES AND ANNEXATION LAWS**

***By:***

**Peter R. Olson, Esq.**

**JENKINS, OLSON & BOWEN, P.C.**

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

24 Drayton Street, Suite 1000  
Savannah, Georgia 31401  
(912) 443-4061

## TABLE OF CONTENTS

	Page
I. Introduction .....	1
II. General Provisions Applicable to All Annexations .....	1
III. Zoning in Relation to Annexation.....	6
IV. Zoning and Annexation Problems .....	9
V. Resolution of Annexation Disputes .....	10
VI. Annexation by the 100 Percent Method .....	15
VII. Annexation by the 60 Percent Method .....	16
VIII. Annexation by the Resolution and Referendum Method.....	19
IX. Annexation by Local Act of the General Assembly .....	22
X. Annexation of Unincorporated Islands .....	23
XI. Deannexation of Property .....	24
XII. Important Annexation Cases .....	25

## **I. INTRODUCTION**

This paper seeks to cover the issues relating to zoning procedures and annexation laws, and especially the intersection of the two. Annexation is governed by O.C.G.A. Title 36, Chapter 36 (§ 36-36-1 et seq.). There are several general provisions that apply to all annexations, which a zoning administrator should be aware of, as many of them have a short fuse after receipt of an annexation application. Next follows a discussion of how annexation is treated under the Zoning Procedures Law (O.C.G.A. § 36-66-1 et seq.), and a discussion of zoning problems common to annexation.

Disputes between cities and counties have generated several attempts by the General Assembly to enact a workable process to resolve disputes. The latest provisions, codified at O.C.G.A. § 36-36-110 et seq., were adopted in 2007, and are discussed in detail. Turning to the actual process of annexation, Title 36 of the Georgia Code 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, as each municipality is nothing but a “creation of the General Assembly,” whose boundaries can be modified by the General Assembly. Each method of annexation will be outlined in turn, and deannexation procedures will be briefly discussed.

Finally, this paper contains a summary of most important annexation cases handed down by the appellate courts, as a reference point.

## **II. GENERAL PROVISIONS APPLICABLE TO ALL ANNEXATIONS**

- A. Notice. 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. O.C.G.A. § 36-36-111 now requires forwarding a copy of the petition to the County, including indicating the proposed zoning and land use for the area.
  3. All notices, whether to or from the city or county, must be sent certified mail, or statutory overnight delivery (i.e. FedEx), return receipt requested.

See O.C.G.A. §§ 36-36-6 and 36-36-9.

B. Response.

1. County Facilities. 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.
2. Zoning Objection. A municipal corporation can take no final action on an annexation except as provided in Article 7 of Title 36, which is the dispute resolution provisions. The county has thirty days from receipt of the notice to object. See Section V of this paper for a detailed discuss of the dispute resolution process.
3. Final Action. If no objection is received within 30 days of the county's receipt of notice, final action on the annexation can proceed. If objection is lodged, then the procedures discussed in Section V of this paper are triggered.

C. Ownership of County Facilities in Annexed Areas.

1. Generally. 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).
2. Roads. 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 by joint resolution. O.C.G.A. § 36-36-7(c).
3. Unusable Property. If a county owned property or county owned facility is no longer useable for service to the unincorporated area of the county after annexation, 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 if the parties do not agree within 180 days. O.C.G.A. § 36-36-7(d).

D. Utility Service Agreements. Utility service agreements in effect as of July 1, 1992 are not invalidated by annexations except by mutual written

consent. O.C.G.A. § 36-36-8. The inclusion of a date suggests, by laws of statutory interpretation, that annexation can invalidate utility service agreements entered into after that date, but there are no reported cases on that matter.

E. Unincorporated Islands. 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. This latter provision raises interesting issues, in that no annexation ever changes physical reality; it is simply an administrative boundary change. That is, roads are not physically blocked by annexation. Therefore, a reasonable interpretation of the provision is that if the county has to traverse city roads or property to access the annexed area, it is an unincorporated island, even if a sliver of access is left in some fashion. Annexations that create unincorporated islands are void, subject to challenge at any later date. As for preexisting unincorporated islands, counties can request by resolution that cities provide services to such areas. Cities can also annex them without owner consent. See Section X of this paper for further discussion.

F. 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.

- G. Post-Annexation Notice. 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. O.C.G.A. § 36-36-3. Failure to comply with this requirement does not invalidate an annexation. The report must contain:

1. The legal authority under which the annexation was accomplished, which shall be the ordinance or resolution number for any annexation effected pursuant to Article 2, 3, 4, or 6 of this chapter or the Act number if effected by local Act of the General Assembly;
2. The name of the county in which the property being annexed is located; the enactment date and effective date of the annexation ordinance, resolution, or local Act of the General Assembly; and
3. A letter from the governing authority of any municipality annexing property stating their intent to add the annexed area to maps provided by the United States Bureau of the Census during their next regularly scheduled boundary and annexation survey of the municipality and stating that the survey and map will be completed as instructed and returned to the United States Bureau of the Census.
4. The submission of the report shall be made in writing and may also be made in electronic format, at the discretion of the submitting municipality.

H. Effective Date of Annexation.

1. Annexation by Local Act. 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).
2. All Other Methods. 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).

- I. Voting Rights Act. The requirements of the Voting Rights Act, 47 U.S.C. § 1971 et seq., and particularly Section 5 of the Act, 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). Therefore, after the annexation is effective, a “Section 5 preclearance letter” is submitted to the Department of Justice, at least sixty days before any election. City of Arcade v. Emmons, 268 Ga. 230, 486 S.E.2d 359 (1997). Procedures for preclearance can be found at 28 C.F.R. part 51. The City Attorney should be involved in this submission, as it is highly technical. Useful information can be found at the Department of Justice website, [http://www.usdoj.gov/crt/voting/sec\\_5/about.php](http://www.usdoj.gov/crt/voting/sec_5/about.php). A copy of the preclearance letter should be submitted to the Dept. of Community Affairs. Additionally, O.C.G.A. § 36-60-11 requires all actions submitted for preclearance by a local government to be submitted to the Attorney General.

### **III. ZONING IN RELATION TO ANNEXATION**

- A. Effect of Annexation on Zoning. Once an annexation is effective, 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. Any rezoning occurring in connection with an annexation must comply with the ZPL. Simply stating that “all annexed property is R-1” or that “all annexed property shall be annexed at the same zoning classification as the city” are invalid (with the very limited exception of “qualified municipalities,” see below).
- B. Zoning Procedures Law. The ZPL was amended 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. § 36-66-4. The main amendment provides the procedure to be followed by municipalities when they annex property.

1. Rezoning can be initiated at any time after notice of the proposed annexation is provided to the county under O.C.G.A. § 36-36-6.
2. The required public hearing must be held prior to the annexation.
3. A newspaper advertisement must be published (15 to 45 days before the hearing) and a sign erected on the property at least 15 days before the hearing. Both notices must contain time, place, purpose of the hearing as well as location, existing zoning, proposed zoning and proposed annexation information. The purpose of the requirement is to provide notice of the proposed annexation and rezoning, consistent with ZPL requirements.
4. The final vote on the rezoning cannot be held prior to adoption of the annexation ordinance or resolution or the effective date of the local Act annexation. The proper order of events is thus rezoning public hearing, then vote on annexation (or effective date if via Local Act), then vote on rezoning (only necessary if annexation approved). These would typically all be scheduled for the same meeting.
5. 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).

C. Qualified Municipalities Exception. The General Assembly revisited the ZPL in 1998, adopting further procedures relating to annexation of property.

1. “Qualified” Local Governments. 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.).
2. Common Zoning Ordinance. Qualification means that the relevant city and county must have a “common zoning ordinance with respect to zoning classifications.” (Id.). While there are no reported cases, if the two zoning ordinances only share a similar name but the zoning classifications are not identical as to uses permitted, or other provisions, they would not likely be found to be

common zoning ordinances. The logic of this is that, if the permitted uses do not change, there is no reason for a ZPL hearing. However, if the two ordinances both have an “R-1” or “A-1” district, but the permitted uses, setbacks or other provisions are different, they are not common ordinances, since the impact of the annexation would be to permit something that was not otherwise permitted.

3. Procedure if Common Ordinance. If the ordinances truly are common (an example would be Albany-Dougherty County, who use the identical ordinance), the operation of a common zoning ordinance to zone property which is annexed or deannexed shall not require any further action by the adopting municipality, adopting county, or owner of the property annexed or deannexed, provided the ordinance states that any annexed property carries the same classification. Of course, the city can follow the ZPL procedures if it likes, and likewise it would be permissible for the owner to seek a different classification simultaneously with the annexation; that would require ZPL notice and hearing.

D. Halfway House, Drug Facility. 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 (9<sup>th</sup> Cir. 1999)). This issue has not yet been litigated in the Eleventh Circuit, which covers Georgia.

E. Military Bases. 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. This applies to all rezonings, not just connected to annexations. 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).

#### IV. ZONING AND ANNEXATION PROBLEMS

- A. Invalid Rezoning. The amendments to the ZPL discussed above 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. The courts have found that a zoning violation does not invalidate the annexation, so the result was unzoned property in the city. City of Cartersville v. Bartow County School Dist., 145 Ga.App. 129, 243 S.E.2d 293 (1978) (“Even assuming arguendo that the city did not follow proper procedures in adopting these zoning classifications, this would affect only the validity of the zoning, not the validity of the annexations.”).
- B. ZPL Definition. The Zoning Procedures Law defines a “zoning decision” as, among other things, “The adoption of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality.” Thus, adopting any zoning on an annexed property is subject to the ZPL.
- C. Improper Methods. One invalid method used in the past, and still to be found in some ordinances, 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. As this works a change in zoning, it is a “zoning decision” under O.C.G.A. § 36-66-3 and any zoning decision must comply with the Zoning Procedures Law. Another invalid method was to have a provision in the zoning ordinance that any property annexed keeps the zoning classification assigned by the county. This is discussed above under Section III(C). This only works if the county and city have identical zoning classifications, which is not the case just because they have the same name.
- D. Consequences. 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).

- E. No Statute of Limitations or Vesting. 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. There is no statute of limitations on challenging invalid annexations, and there is no vesting of rights to stay in the city. See, e.g., City of Fort Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997) (court examined propriety of annexation 11 years earlier); City of Smyrna v. Adams, 255 Ga. App. 453, 565 S.E.2d 606 (2002) (court invalidated 16 year prior annexation to stop 2001 annexations). 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.
- F. Domino Effect. Any rezoning that relies on an invalidated rezoning for contiguity or to prevent an unincorporated island will also be invalidated by the invalidation of the underlying annexation. Thus, multiple parcels can be affected by one invalid rezoning. See, e.g., City of Smyrna v. Adams, 255 Ga. App. 453, 565 S.E.2d 606 (2002) (invalid prior annexation invalidated two subsequent annexations).

## V. RESOLUTION OF ANNEXATION DISPUTES

Disputes between cities and counties over annexation became very common in the late 1990's and early 2000's era, because of the explosive growth in the Atlanta metro region. Developers found that if the county did not take a pro-growth attitude, a nearby city may well be a better choice, leading to some cities doubling or tripling their size in a short period of time, through ambitious annexations. These sorts of actions frustrated counties and their citizens, and the General Assembly began enacting a series of provisions regarding land use disputes and how to address them. The cities strongly defended their unfettered right to annex property.

The latest round in this battle began on September 1, 2007, when a set of all new practices and procedures for resolving annexation disputes became applicable in this State. These procedures are laid out in Article 7 of Title 36, 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, no decisions have been reported out of the appellate courts on this law. Likely the complexity and cost of the

process has played a part in the lack of litigation (i.e., perhaps few counties have wanted to activate this process), as has the fact that the general economic depression in the building and development industry has resulted in far fewer applications for annexation and rezoning.

- A. Notice. 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. Response. After being given notice, the county has thirty days to respond. O.C.G.A. § 36-36-113. No final action can be taken by the city except as permitted in this Article. O.C.G.A. § 36-36-111. If the county raises no objection to the annexation, the annexation procedure may then move forward. O.C.G.A. § 36-36-112.
- C. One Year Rezoning Hold. 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. Objection. 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. Arbitration Panel. 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. In arriving at its determination, the panel shall consider:
  - a. The existing comprehensive land use plans of both the county and city;
  - b. The existing land use patterns in the area of the subject property;
  - c. The existing zoning patterns in the area of the subject property;
  - d. Each jurisdiction's provision of infrastructure to the area of the subject property;

- e. Whether the county has approved similar changes in intensity or allowable uses on similar developments in other unincorporated areas of the county;
- f. Whether the county has approved similar developments in other unincorporated areas of the county which have a similar impact on infrastructure as complained of by the county in its objection; and
- g. Whether the infrastructure or capital outlay project which is claimed adversely impacted by the county in its objection was funded by a county-wide tax.

See O.C.G.A. § 36-36-115(a)(2).

- 3. The county shall provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the subject property.
- 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. Decision. If the decision of the panel contains zoning, land use, or density conditions, the findings and recommendations of the panel shall be recorded in the deed records of the county with a caption describing the name of the current owner of the property, recording reference of the current owner's acquisition deed and a general description of the property, and plainly showing the expiration date of any restrictions or conditions.
- I. Costs. 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. Costs include per diems for the panel. 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.
- J. Multiple Disputes. 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).

K. 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 very narrow grounds: 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.

L. One Year Rezoning Hold. 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.

M. Preclusive Effect. 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.

## VI. **ANNEXATION BY THE 100 PERCENT METHOD**

The 100 percent method is the simplest and most common annexation method, requiring application by 100 percent of the owners of property.

A. Contiguity. Municipal corporations can annex unincorporated areas contiguous to the existing corporate limits – “contiguous” means at least 1/8<sup>th</sup> of the external boundary or 50 feet (whichever is less) abuts the municipal limits, or is separated by city land, or land owned by some other

political subdivision, or the lands owned by the state or by the width of a street, river, or railroad/PSC regulated utility right-of-way. O.C.G.A. § 36-36-20.

- B. Special Contiguity Provision. If the property to be annexed is owned by the municipal corporation, and the county approves of the annexation by resolution, property can be contiguous if separated by city land, state land, or the width **or length** of a street, river or railroad right of way. This in effect authorizes “spoke” annexation down roads, if the county consents.
- C. Contiguity Interpretation. 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.
- D. Simple Requirements. Requirements for 100 percent annexation:
  - 1. Written application.
  - 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.
  - 4. City adopts ordinance annexing land.

See O.C.G.A. § 36-36-21.

## **VII. ANNEXATION BY THE 60 PERCENT METHOD**

This method of annexation has an elaborate procedure, and is designed to force an annexation of property when not all 100 percent of owners agree. The agreement of the owners of at least 60 percent of the acreage, and the agreement of at least 60 percent of the registered voters living in the area, must be secured.

- A. Contiguity. Under this method, municipal corporations of at least 200 persons can annex a contiguous area. 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 width of streets,

rivers, public rights-of-way, county land, city land or state land). O.C.G.A. § 36-36-31.

B. Special Contiguity Provision. 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.

C. Application. Requirements for 60 percent annexation:

1. Written application.
2. Signed by at least 60 percent of the electors (registered voters) 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.

D. Evaluation. 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. Reports. 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 B. 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. Withdrawal of Consent. 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. Approval. 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. Taxes. 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.
- J. Appeal. 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.
- K. Standard of Review. 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.

## **VIII. 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. This is mainly intended to be a method to annex developed subdivisions, as an alternative to the 100 percent method, which would hold the subdivision hostage to one property owner, or the 60 percent method, which would be harder to achieve than a majority vote, especially if only the pro-annexation voters bothered to turn out for the referendum.

- 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. Report. 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. Resolution. The 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.
4. Passage of the resolution triggers notice requirement to the county.

See O.C.G.A. § 36-36-57.

D. Notice. 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.

E. 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.

F. Referendum. A 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.

- G. Appeal. 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.

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

## **X. ANNEXATION OF UNINCORPORATED ISLANDS**

- A. Unincorporated Islands. 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.

- B. 50 Acre Maximum Deleted. 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.
- C. Involuntary. 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).
- D. Notice. 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).
- E. What Constitutes an Island. 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 the width of 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. Services. 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).

## **XI. 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. County Resolution. 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.

## **XII. IMPORTANT ANNEXATION CASES**

- A. City of Fort Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

This case involves a problem that has vast potential in the annexation arena. The claim was that a prior annexation was invalid; therefore, it was argued that 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.

- B. City of Arcade v. Emmons, 268 Ga. 230, 486 S.E.2d 359 (1997).

This case concerns the 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 to set aside the election was proper, but it should be exercised only when absolutely necessary to protect important voting rights. It therefore reversed the trial court's action. The Court

concluded by noting that, since the error had been corrected by retroactive preclearance, the matter was ended.

C. City of Smyrna v. Adams, 255 Ga. App. 453, 565 S.E.2d 606 (2002).

The Court of Appeals in this case 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 city attempted to annex two unincorporated islands made contiguous by connection to a road annexed in 1985. The plaintiff attacked the validity of the 1985 annexation and the court found that the city did not follow a proper lawful procedure as it existed at that time, and declared the 1985 annexation void. The court invalidated the annexations of two unincorporated islands based on a procedurally improper annexation done sixteen years before. Laches, or delay, was not a bar to the suit as the Court considered the claim to ripen only when the recent annexations were filed.

D. City of Buford v. Gwinnett County, 262 Ga.App. 248, 585 S.E.2d 122 (2003).

The city attempted to annex property separated from the city by three other parcels: one owned by the county, one owned by Georgia Power, and one over which the Georgia Department of Transportation has a right-of-way for the proposed Northern Arc. The trial court held that no more than one such parcel could be crossed and still meet O.C.G.A. § 36-36-21's definition of "contiguous." The Court of Appeals reversed in part and found that the General Assembly intended a liberal policy in the area of annexation by municipalities, seeking to leave such matters primarily under local control. It interpreted the statute defining contiguous area as allowing stacking of such properties. Any other interpretation would mean that a city would be forever bound by a creek next to a railroad right of way, or by a state road next to a piece of county property. However, while the county and DOT parcels could be crossed, the Georgia Power property was not a "right of way" easement as specified by the statute, but rather a fee simple grant. This was ascertained by a close examination of the language in the deed. The statute refers to "separated...by the definite width of: Any right of way of a railroad or other public service corporation." Fee simple is not a right of way. Thus the annexation was void.

- E. City of Riverdale v. Clayton County, 263 Ga.App. 672, 588 S.E.2d 845 (2003).

In this case, 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.

- F. Fayette County v. Steele, 268 Ga.App. 13, 601 S.E.2d 403 (2004).

This case interpreted an annexation 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. However, this case did not deal with the language in O.C.G.A. § 36-36-4(a)(3), which presents an argument that leaving only a sliver of access still in effect creates an unincorporated island. See Sec. II(E).

- G. Cobb County v. City of Smyrna, 270 Ga.App. 471, 606 S.E.2d 667 (2004).

In this case, 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).

H. Bradley Plywood Corp. v. Mayor & Alderman of City of Savannah, 271 Ga.App. 828, 611 S.E.2d. 105 (2005).

This case concerns the validity of notice. 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.

I. Cherokee County v. City of Holly Springs, 284 Ga. 298, 667 S.E.2d 78 (2008).

Cherokee County brought a petition for declaratory judgment and injunctive relief against the City of Holly Springs alleging the city failed to follow the procedures prescribed by O.C.G.A. § 36-36-21 and its own city ordinance during the annexation of certain properties into the corporate limits of the city. As to each of the properties in question, the county alleged that the city's efforts to annex the properties failed to comply with various procedural requirements and were therefore void. The trial court dismissed for lack of standing, but also found that an interlocutory injunction would be warranted if the county had standing. The Supreme Court found the county had standing to seek interlocutory injunction, since the county had interest in determination of its boundaries and the duties and obligations that naturally flowed therefrom. But, the Court also found that the trial court did not abuse its discretion in denying interlocutory injunction, since the parties presented conflicting evidence regarding both the threat of harm to the county and the validity of the challenged annexation applications. Although county alleged procedural deficiencies in annexation application and that the county would be harmed by possible future efforts to change the zoning of the area, the city alleged that any deficiencies in the applications had been ratified by the property owners and assured the court that neither the city nor the property owners had any present intention of rezoning.