

Relationship Between Land Use, Zoning, and Special Codes

Harold Buckley, AICP
Wilson Brock & Irby L.L.C.

- Zoning Ordinances
- Comprehensive Development Plans
- Special Ordinances
 - Sign Ordinances
 - Historic Preservation Ordinances
 - Tree Ordinances
 - Subdivision Ordinances

TYPES OF LAND USE REGULATIONS

- “The [city of Atlanta’s] comprehensive development plan is not a zoning ordinance...” Jackson v. Goodman, 247 Ga. 683
- Comprehensive planning doesn’t impose any immediate restrictions on the use of land
- Comprehensive plans don’t independently have the force of law to regulate the use of land
- Instead, it sets policy for an over-all program or design of the present and future physical development of a total area and services
- Zoning is the implementation tool for the comp plan, and it’s subject to constitutional demands of due process and equal protection
Kingsley v. Florida Rock Industries, Inc., 259 Ga. App. 207

STATUS OF THE COMPREHENSIVE DEVELOPMENT PLAN

- The devil is in the details!
- Georgia's definition of "zoning ordinance" (O.C.G.A. § 36-66-3(5)) :*
 - Any local government ordinance or resolution
 - That establishes zones/districts and procedures
 - To regulate the uses and development standards within those zones/districts
- Any ordinance can be deemed to be a 'zoning ordinance' if it meets this definition, no matter what it's called or where it's located in the code
- Plaintiffs have challenged business license regulations for not complying with Zoning Procedures Law
- Court rejected argument b/c regulating occupations due to their inherent character is not the same thing as regulating the general uses of land
Fairfax Mk, Inc. v. Clarkston, 274 Ga. 520

ARE SPECIAL ORDINANCES ZONING ORDINANCES?

- Which of Atlanta's special ordinances may be zoning ordinances?
 - Sign Ordinance
 - Subdivision Ordinance
 - Historic Preservation Ordinance
 - Alcoholic Beverage Code
 - Tree Preservation Ordinance

GOVERNMENTS HANDLED NUISANCES BEFORE ZONING

- Laws that restrict rights to use private property for any otherwise lawful purpose must be strictly interpreted per their plan and explicit terms
- Individual regulatory provisions aren't interpreted in isolation; they're interpreted in a way that:
 - Is consistent with the city council's legislative intent,
 - Gives meaning to all the regulation's terms and provisions, and
 - Avoids contradictory, absurd, or impracticable results
- Any ambiguity in land use regulations must be resolved in favor of the free use of the land
- You can't look beyond the regulation itself for guidance unless it says you can

INTERPRETATION OF LAND USE REGULATIONS

- Applicants are entitled to review under local codes as they existed on the day they properly file an application
- Applicants generally entitled to application approval if they comply with all approval standards (govt has more discretion for rezoning apps)
- Staff decisions may be void and unenforceable if they are:
 - Not based on ascertainable approval standards in the code
 - Contrary to requirements or restrictions in the code
 - Exceeds the decisionmaker's authority, as specified in the code
- Landowners gain no enforceable 'rights' from a mistaken decision

LIMITS ON AUTHORITY DELEGATED TO STAFF

- Regulations delegating authority to staff are presumed valid, but the scope of the authority is strictly limited by their plain language
- Staff cannot do anything that's not specifically authorized by the code
- If delegation of authority is ambiguous then authority wasn't delegated
- Local decisions/actions that conflict with State law may be unenforceable
- An approval condition would be confiscatory and void if:
 - It inflicts severe hardship on an individual landowner without sufficiently protecting a valid public interest, or
 - It isn't roughly proportional to the negative project impacts being addressed

LIMITS ON AUTHORITY DELEGATED TO STAFF

- Decisions must be based on **findings of fact and conclusions of law**
- **Factual finding**: a provable existence, act, transaction, occurrence, event
- **Legal conclusion**: position or determination that's based on proven facts
- Conjecture/ inferences insufficient to support decisions
- Medical record facts: A doctor's medical observations (heart rate, body temperature, blood pressure, etc.)
- Medical record opinions: Conclusions a doctor derived from prior medical observations (Based on your heart rate, temp, pressure, you have....)

LIMITS ON AUTHORITY DELEGATED TO STAFF

Questions?