Case Law Regarding Land Use, Zoning, and Special Codes

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- Special Ordinances cover a wide spectrum of subject matter
- For this discussion, we will discuss:
  - Determination of whether a special ordinance is de facto zoning
  - The Intersection of Land Use Policy and Zoning

Special Ordinance Status

BACKGROUND

- Clarkston had a Gasoline Service Station Ordinance that imposed min. distance requirements between service stations and certain other uses
- Fairfax applied for a building permit to build a service station
- City denied application because it didn't meet minimum distance to a school or other place of assembly
- Fairfax appealed permit denial, asking superior court to order the city to issue the requested permit
- One issue on appeal was whether the GSSO was a de facto zoning ordinance

FAIRFAX MK, INC. V. CITY OF CLARKSTON (2001)

COURT'S ANALYSIS

- Zoning must be distinguished from other special regulations that apply to development such as building permit requirements
- Each regulation type is independent of the other and each seeks to accomplish its purpose by a different means
- Referred to the statutory 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

COURT'S ANALYSIS

- There is a difference between a local government's exercise of its general "zoning" powers and other more specific "police" powers
- The regulation of certain types of businesses due to their inherent character is not general and comprehensive like zoning
- Instead, such regulation is special and limited in scope, and is governed by the circumstances at the time of application, and nature of the business, the applicant, and the proposed location
- Basically, such ordinances regulate the proposed occupation, not the general use of the land

FAIRFAX MK, INC. V. CITY OF CLARKSTON (2001)

COURT'S ANALYSIS

- Then the Court articulated a rule for identifying special ordinances that are de facto zoning regulations
- A special ordinance is not zoning merely because it touches the land if:
  - It applies to a particular activity where it is carried out **and**
  - It does not suspend or limit the zoning ordinance
- Each regulation type is independent of the other and each seeks to accomplish its purpose by a different means
- Legal standards for independent special ordinances:
  - They cannot be arbitrary or capricious
  - This means their provisions must be rationally related to a legitimate government purpose

BACKGROUND

- Bd of Comm’rs adopted comprehensive Tree Protection Ordinance in 1999
- New ordinance recognized many benefits of trees, and regs necessary to
  - Preserve the public’s health, safety, welfare, environment, and aesthetics, and
  - Provide proper and sufficient regulation of tree removal and/or replacement
- Homebuilders challenged the new ordinance three weeks after it was adopted
  - Tree ordinance was a zoning regulation
  - Ordinance was invalid because it was not adopted per the Zoning Procedures Law
- Question on appeal: was the tree ordinance was a de facto zoning regulation?

GREATER ATLANTA HOMEBUILDERS ASSOC. V. DEKALB COUNTY (2003)

COURT'S ANALYSIS

- A zoning ordinance establishes procedures and zones/districts to regulate uses and development of property within those zones/districts
- The tree ordinance only contains three references to zones or districts:
  - In 4 zoning districts, stream buffers and 100-year floodplains included in math calculations
  - In some res. districts, front yard trees are required with new construction
  - Landscaping density requirements differ based on whether property is residential or non-res
- These limited references don't transform tree ordinance into a zoning regulation
- Majority of ordinance's requirements apply uniformly to all land and land disturbance regardless of location within the county

Table TPO-1

Single-family Minimum Tree Density Requirements by Zoning (Total trees planted)	
R-4B	2 trees per lot
R-5, R-4, and R-4A districts	21 trees per acre
R-3 and R-3A districts	22 trees per acre
R-2 and R2A districts	25 trees per acre
R-1 districts	28 trees per acre
RG, PD, and all other districts	20 trees per acre

Zoning	Minimum Trees Retained (Total DBH Inches)	Maximum Recompense per Acre
R-1	65%	$35,000
R-2	50%	$35,000
R-2A	50%	$25,000
R-3, R-3A	40%	$25,000
R-4, R-4A, R-G, R-LC	35%	$15,000
RG-4, RG-5	10%/20%*	$22,500
R-4B	10%/20%*	$12,500
R-5	10%/30%*	$15,000
MR, MRC, I-MIX	10%	$25,000
O&I, C(1-5), I(1&2)	25%	$35,000
PD, PD-H, PD-MU, PD-OC, PD-BP, SPI Districts, Historic and Landmark Districts, and other special zoning categories**	Treat according to underlying zoning categories	Treat according to underlying zoning categories

ATLANTA TREE ORDINANCE'S REFERENCES TO ZONING

CALLBACK TO LAST SESSION

- "The [city of Atlanta's] comprehensive development plan is not a zoning ordinance…" Jackson v. Goodman, 247 Ga. 683
- 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

Dinsmore Dev. Co. v. Cherokee County (1991)

- County denied SUP based solely on zoning purpose and intent provisions
- Purpose and intent language is just a statement of goals that doesn't govern the disposition of zoning applications

Hixon v. Walker (1996)

- Planning director denied Hixons' permit application even though it complied with all applicable land development code
- Director's decision was based on the code's purpose sections prioritizing:
  - Protection of the county's character and stability,
  - Encouragement of orderly and beneficial development,
  - Protection and conservation of property values, and
  - Minimizing conflicts between land and building uses
- Hixons filed a lawsuit challenging the planning director's decision

Hixon v. Walker (1996)

- Administrative government decisions are valid only if they are based on “ascertainable standards” that allow applicants to intelligently seek approval
- Policy statements don’t generally meet this rule because they are typically just general statements of government goals
- The court also said that, in prior case, a “purpose” section didn’t meet the rule because:
  - It only appeared in a preamble section and
  - There was no cross-reference between it and the substantive permit requirements

Hixon v. Walker (1996)

- Ultimately, the court articulated a new rule re: the enforceability of government land use policies
- Policy statements, such as purpose provisions, aren't binding unless they:
  - Are incorporated by reference into substantive approval standards, or
  - Set forth "ascertainable standards" by which applicants can intelligently seek approval

Questions?