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LOCAL GOVERNMENT

Zoning Procedures: Change Definition of Zoning Decision to Include Grant of Special Use Permits

CODE SECTION: O.C.G.A. § 36-66-3 (amended)

BILL NUMBER: SB 573
ACT NUMBER: 966

GEORGIA LAWS: 1998 Ga. Laws 1391

SUMMARY: The Act changes the definition of "zoning

decision" to include the grant of permits

for special use of property.

EFFECTIVE DATE: July 1, 1998

History

Under prior law, Georgia counties granted special use permits and rezoning applications pursuant to the same procedures. In both situations, most counties limited the amount of time that proponents and opponents of requests could testify. For example, a Gwinnett County court held that zoning decisions are legislative acts and, therefore, certain due process requirements are not necessary. However, the Gwinnett County courts have also held that special use permit proceedings were quasi-judicial in nature; thus, opponents to a special use zoning request were able to offer evidence against the zoning permit. As a result, a proceeding intended to last twenty minutes could last for two hours. Senator Billy Ray of the 48th District, introduced SB 573 to establish that granting a special use permit, like a zoning decision, is in fact a legislative action and,

^{1.} See Telephone Interview with Sen. Billy Ray, Senate District No. 48 (July 10, 1998) [hereinafter Ray Interview].

^{2.} See id.

^{3.} See id.

^{4.} See id.; see also Jackson v. Spalding County, 265 Ga. 792, 462 S.E.2d 361 (1995) (holding that when a board of zoning appeals considers a property owner's variance application, the proceeding is quasi-judicial in nature).

^{5.} See Ray Interview, supra note 1. The Association of County Commissioners of Georgia supported the bill because its members knew zoning boards had to be given discretion to limit the time parties spent testifying. See Telephone Interview with James Grubiak, Lead Council for Association of County Commissioners of Georgia (July 25, 1998) [hereinafter Grubiak Interview].

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therefore, is not subject to the due process requirements of quasijudicial proceedings.⁶

SB 573

The Act provides that the granting of a special use permit shall be included in the definition of zoning decision and shall constitute "final legislative action." To accomplish this, the Act adds the grant of a special use permit to the definition of zoning decision. Further, the Act explicitly provides that a zoning decision constitutes a final "legislative" action. Under prior law, the word "legislative" was not included in the zoning decision definition. 10

SB 573, introduced by Senator Ray on February 3, 1998, passed both houses of the Georgia General Assembly in largely the same condition as introduced. The bill, as introduced, passed the Senate without controversy. On March 16, 1998, the House passed the bill with an amendment designed to facilitate actions questioning the constitutionality of a zoning ordinance and seeking a "zoning decision or zoning action." The amendment added section 1A, which provided that any party adversely affected by a zoning decision may bring an action challenging the decision in superior court. The Senate refused to concur with the House amendments on March 18, 1998. Senators opposed to the amendment were concerned that allowing all aggrieved parties to challenge a zoning decision would open the floodgates to the participation of relatively uninterested parties. On March 19, 1998 the House insisted on the amendments. That day, the bill was sent to the

^{6.} See Grubiak Interview, supra note 5; see also E-mail Interview with Rep. Warren Massey, House District No. 86 (July 6, 1998) (stating the Act is intended to clarify definitions relating to zoning).

^{7.} O.C.G.A. § 36-66-3(4)(E) (Supp. 1998).

^{8.} See id. § 36-66-3.

^{9.} Id. § 36-66-3(4).

^{10.} Compare 1985 Ga. Laws 1139, § 1, at 1140-41 (formerly found at O.C.G.A. § 36-66-3(4) (1993)), with O.C.G.A. § 36-66-3(4) (Supp. 1998).

^{11.} See Telephone Interview with Tom Gehl, Senate Research Office (July 25, 1998) [hereinafter Gehl Interview]. Compare SB 573, as introduced, 1998 Ga. Gen. Assem., with O.C.G.A. § 36-66-3 (Supp. 1998).

^{12.} See Gehl Interview, supra note 11.

^{13.} SB 573 (HCSFA), 1998 Ga. Gen. Assem.

^{14.} See id.

^{15.} See State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

^{16.} See Ray Interview, supra note 1.

^{17.} See id.

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Conference Committee, which issued a report recommending the elimination of section 1A. ¹⁸ The House and the Senate adopted the Conference Committee report and, as a result, the Act does not expand upon Georgia's current procedure for allowing aggrieved parties to challenge a zoning decision's constitutionality. ¹⁹

Joseph A. All

^{18.} See id.

^{19.} See O.C.G.A. § 36-66-3 (Supp. 1998).