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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.[1] In both situations, most counties limited the amount of time that proponents and opponents of requests could testify.[2] For example, a Gwinnett County court held that zoning decisions are legislative acts and, therefore, certain due process requirements are not necessary.[3] 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.[4] As a result, a proceeding intended to last twenty minutes could last for two hours.[5] 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 quasi-judicial 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."[7] To accomplish this, the Act adds the grant of a special use permit to the definition of zoning decision.[8] Further, the Act explicitly provides that a zoning decision constitutes a final "legislative" action.[9] 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.[11] The bill, as introduced, passed the Senate without controversy.[12] 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."[13] 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.[14] The Senate refused to concur with the House amendments on March 18, 1998.[15] 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.[16] On March 19, 1998 the House insisted on the amendments.[17] That day, the bill was sent to the

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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).

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