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LOCAL GOVERNMENT

Zoning Procedures: Clarify Hearing Procedures for Adopting Zoning Ordinances

CODE SECTIONS:	O.C.G.A. §§ 36-66-3, -5 (amended)
BILL NUMBER:	HB 810
ACT NUMBER:	458
SUMMARY:	The Act clarifies the procedures used by cities and counties for the local adoption of zoning ordinances, and amends certain definitions in the Georgia Zoning Procedures Law. The Act eliminates any ambiguity as to the hearing and notice process which must be utilized by local governments.
EFFECTIVE DATE:	April 9, 1993

History

In 1991, the Georgia Supreme Court, in *Tilley Properties, Inc. v. Bartow County,*[1] struck down a Bartow County zoning ordinance because county officials did not hold the number of public hearings the court deemed necessary.[2] The 1993 Georgia General Assembly amended the Zoning Procedures Law to clarify that only one hearing is required.[3]

The General Assembly in 1985 enacted the Zoning Procedures Law.[4] The Zoning Procedures Law contained a section requiring a public hearing prior to the adoption of policies and procedures.[5] On its face, the statutory language did not appear to mandate more than one public

1. 401 S.E.2d 527 (Ga. 1991).

2. *Id.* Tilley Properties, Inc. and Vulcan Material Company owned over 700 acres that had been rezoned A-1, agricultural. *Id.* Vulcan wanted to mine granite on the property and to have the property rezoned M-1 to do so. *Id.* When its rezoning application was denied by the county, it made a challenge to the Bartow County ordinance on the grounds that the ordinance was null and void and that the ordinance had not been properly enacted. *Id.*

3. O.C.G.A. § 36-66-2(c) (Supp. 1993).

4. 1985 Ga. Laws 1139 (formerly found at O.C.G.A. §§ 36-66-1 to -5 (1987)).

5. *Id.* (formerly found at O.C.G.A. § 36-66-5(c) (1987)). According to this section, "Prior to the adoption of policies and procedures pursuant to subsection (a) of this Code section and the adoption of standards pursuant to subsection (b) of this Code section, a local government shall conduct a public hearing on the proposed action. The provisions of subsection (a) of Code section 36-66-4 relating to notices of public hearings for the purposes of that subsection shall also apply to public hearings required by this subsection." *Id.*

hearing.[6] However, the Georgia Supreme Court in *Tilley Properties, Inc. v. Bartow County*[7] struck down the Bartow County zoning ordinance because of the county's failure to follow what the court deemed proper procedure for public hearings. The dissent recognized that the language of that Code section[8] did not seem to require two separate public hearings, one relating to an initial adoption of a zoning ordinance and another hearing relating to rezoning.[9] Nevertheless, the Georgia Supreme Court interpreted the former statute as mandating two separate public hearings.[10]

HB 810

In order to protect cities and counties from possible procedural challenges to the zoning ordinances that they had enacted pursuant to the Zoning Procedures Law, the General Assembly amended the earlier language.[11] The new language still requires a public hearing but removes any possibility that two separate hearings are statutorily necessitated.[12] The Act now clearly does not mandate double hearings.[13] It eliminates the earlier ambiguity found in the prior Act.[14]

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6. *Id.*
7. 401 S.E.2d 527 (Ga. 1991).
8. 1985 Ga. Laws 1139 (formerly found at O.C.G.A. § 36-66-5(c) (1987)).
9. Justice Fletcher, in his dissent in the *Tilley* case, observed:

> I do not interpret the [Zoning Procedures Law] as requiring a two-step procedure whereby two separate public hearings must be held by a local government that has not previously adopted a zoning ordinance: the first to receive public input on a proposed ordinance establishing procedures governing calling and conducting hearings on zoning decisions and after adopting such ordinance, a second hearing to receive public input as to the proposed zoning ordinance itself.

Tilley, 401 S.E.2d at 156.

10. *Id.*
11. 1985 Ga. Laws 1139 (formerly found at O.C.G.A. § 36-66-5 (1987)).
12. O.C.G.A. § 36-66-2(c) (Supp. 1993) states:

> Prior to the adoption of any zoning ordinance enacted on or after January 1, 1986, a local government shall conduct a public hearing on a proposed action which may be advertised and held concurrent with the hearing required by subsection (a) of Code section 36-66-4 for the adoption of a zoning ordinance.

Id.

13. Telephone Interview with Rep. Curtis Jenkins, House District No. 110 (Apr. 2, 1993) [hereinafter Jenkins Interview]. Rep. Jenkins, the sponsor of HB 810, stated that the law "would be retroactive to 1986 and would help out counties and cities" who had any problems with whether or not they had satisfied the proper hearing procedures. *Id.*
14. The clarification of the public notice process received support from the Association of County Commissioners of Georgia (ACCG). Telephone Interview with James F. Grubiak, General Counsel of ACCG (Apr. 2, 1993). According to Mr. Grubiak, "Part of the reason we wanted the legislation was to make sure no county

In addition to clarifying the hearing process, the Act also changes the definition of "territorial boundaries."[15] The Code now defines "territorial boundaries" as "in the case of counties, the unincorporated areas thereof and any area defined in paragraph (5.5) of Code section 36-70-2, and, in the case of municipalities, the area lying within the corporate limits thereof except any area defined in paragraph (5.5) of Code section 36-70-2."[16]

The Act concludes with language repealing any conflicting laws or parts of laws.[17] Thus, the new language clarifies required zoning procedures and should eliminate the possibility of a city or county having its zoning ordinance judicially stricken down because of any procedural ambiguity regarding the required number of public hearings.[18]

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or city would be adversely affected by the *Tilley* decision." *Id.* The new wording "attempts to clarify and eliminate ambiguity." *Id.*

15. O.C.G.A. § 36-66-3(2) (Supp. 1993).
16. *Id.*
17. *Id.*
18. Jenkins Interview, *supra* note 13.