Avoiding Conflicts of Interest In Zoning Actions

DAVID C. KIRK, AICP
Troutman Sanders, LLP

Understanding the state's Conflict of Interest in Zoning Law can help county officials safely steer through the 'often stormy seas' of local zoning decisions without jeopardizing themselves, or their decisions.

Georgia county officials constantly face difficult decisions about the future of their communities. At times, these decisions have the potential to directly or indirectly affect their own interests or the interests of a family member, friend, or business associate. An actual conflict of interest may impact not only the official taking action, but could potentially invalidate the action. Accordingly, knowing the difference between what constitutes an actual conflict of interest and what does not allows the local official to act and vote with confidence.

Understanding the Georgia Conflict of Interest in Zoning Actions Law, O.C.G.A. §§ 36-67A-1 through 36-67A-6, can help county officials safely navigate the often stormy seas of local zoning decisions without imperiling themselves or their decisions.

Limited in scope

The scope of the Conflict of Interest in Zoning Actions Law is extremely limited; it only applies to"rezoning actions" – defined in the law as "action by the local government adopting an amendment to a zoning ordinance which has the effect of rezoning real property from one classification to another." O.C.G.A. § 36-67A-1(9). The law's provisions thus do not apply to local government actions involving variances, special/conditional use permits, or changes to previously imposed conditions of zoning.

The law requires "local government officials" – defined as any member of the local governing authority as well as any member of a planning or zoning commission – to take specific actions when he or she knows or reasonably should know any one of three circumstances related to a rezoning action the official has the duty to consider. These circumstances include the following:

- The official has a "property interest" – defined as direct ownership, no matter how small – in the real property that is the subject of the rezoning action.
- The official has a "financial interest" – defined as a 10 percent interest or greater – in any

business with a "property interest" in the real property that is the subject of the rezoning action.

• The official has a "member of the family" – defined as a spouse, parent, sibling, or child – with either a "property interest" or a "financial interest" in the real property that is the subject of the rezoning action. O.C.G.A. § 36-67A-2.

If any of the above circumstances exist, the official must immediately disclose the nature and extent of the interest, in writing, to the local governing body. Thus, even if the official is a Planning Commissioner, the County Commission must be notified. This disclosure becomes a public record. In the event the official has a "property interest" or "financial interest" in the real property that is the subject of the rezoning action, the law also requires the official to be disqualified from voting on the request.

This interest must be directly and immediately affected by the specific rezoning action, not remote or speculative. *See White v. Board of Comm'rs of McDuffie County,* 252 Ga. App. 120 (2001).

If such an interest exists, the Law further prohibits the disqualified official from taking any action on behalf of himself or herself or any other person to influence action on the rezoning application. Georgia's courts have interpreted this prohibition with sufficient flexibility to allow the disqualified official to take steps normally and properly taken by other private property owners to influence the application. See *Little v. City of Lawrenceville,* 272 Ga. 340 (2000). Thus, hiring a zoning attorney or consulting planner to advocate for the rezoning action would seem permissible, as would, according to the court, "supplementation [of the application], responding to inquiries from zoning authorities, or altering the property at issue or the business conducted thereon."

Georgia courts have held that self-interested or conflicted participation in a zoning decision will invalidate the zoning action taken. Thus, by acting in violation of the Law, the official not only may harm himself or herself, but may invalidate the zoning decision and consequently erode the integrity of the county's zoning decision-making process.

Thus, it would appear that as long as the disqualified official is not acting in the official's public capacity he or she may take any number of actions in support of the application, not unlike any other private citizen.

In the event the official has a "member of the family" with a "property interest" or "financial interest" in the rezoning action, the law does not expressly disqualify the official from voting on the request. However, the official considering casting a vote in such matters should consider not only the letter of the law, but the public perception resulting from the official's active participation in a rezoning decision benefiting a family member.

Often the appearance of impropriety is as harmful to citizen's perception of the integrity of public officials and the public's confidence in public actions as truly improper actions may be. In situations such as this, there is certainly no harm in leaving rezoning decisions involving family members and their interests in the hands of the public officials who have no family relationship with the applicant.

While the opportunities to run afoul of the law seem minimal, doing so can have harsh consequences both for the official and for any decision in which that official improperly participated. Knowingly failing to comply with the law or violating the law potentially exposes the official to criminal fines and penalties, just as violating any other state law would. Just as importantly, Georgia courts have held that self-interested or conflicted participation in a zoning decision will invalidate the zoning action taken. Thus, by acting in violation of the Law, the official not only may harm himself or herself, but may invalidate the zoning decision and consequently erode the integrity of the county's zoning decision-making process.

Another provision of the law requires applicants for rezoning actions, as well as opponents of rezoning actions, to disclose in writing campaign contributions equaling $250 or more to any local government official who will consider the application. The law defines "campaign contribution" as equivalent to the term "contribution" under Georgia's Ethics in Government Act, O.C.G.A. § 21-5-1 through 21-5-76.

Applicants must file this information within 10 days of filing the application. A practice used by many cities is to require this information as part of any rezoning application. More problematic logistically is the requirement that opponents to a rezoning action file such disclosures no less than 10 days prior to the first public hearing

ACCG Welcomes Summer Interns

Beth Bradley (standing) and Victoria Jessie are ACCG's newest interns. Both are graduate students planning public careers .

ACCG welcomed summer interns Elizabeth "Beth" Bradley and Victoria Jessie in the past month, both working on ACCG research projects. Victoria is researching Georgia courthouse renovation initiatives and working with policy staff on Governor Perdue's Litter Abatement Team, which ACCG is on alongside 20 or so other state organizations and agencies. Victoria is completing her Masters in Public Administration at Clark Atlanta University and plans to go into community and economic development on earning her MPA, within the next year. Victoria earned her B.A. in Sociology, at James Madison University in Harrisonburg, Virginia. Very interested in nonprofit agencies, she has over three years' project planning experience interning with nonprofits. At James Madison, she also was director of Issues and Cultural Awareness for the University Program Board.

Beth Bradley is designing a civic education needs project for ACCG's upcoming Youth in Government initiative. She is writing a handbook for county officials to use in establishing a local board of youth, who will in turn design civic education programs for their peers. Bound for law school this fall at Florida State University, Beth, who most recently worked for the Georgia Senate's Higher Education Committee as an aide, ultimately wants to work in a public service capacity in her native Georgia. Beth attended Mercer University in Macon, graduating in 2003 with a degree in psychology and English. Besides her internship with the Senate, she served an internship with the Governor's Office, and also served as director of Education at Macon's Sylvan Learning Center and as a career counselor for the Georgia Child Care Council.❑

on a matter.

While some local governments require speakers at public hearings to submit a disclosure form prior to speaking, in practice there is no easy way to assure opponents who must file disclosure forms meet the law's requirements by filing in advance of the hearing.

A final provision in the law allows for the appointment of a special master in the event a local governing body is unable to achieve a quorum for a zoning decision due to potential conflicts of interest. In this unlikely event, the special master (who is appointed by the superior court) holds the public hearing and makes a recommendation to the local governing body. All members of the local governing body, including those otherwise disqualified, may participate in the final decision where the special master has made a recommendation.

In conclusion, it is vitally important for county officials to be aware of the ramifications of the Georgia Conflict of Interest in Zoning Actions Law on both their personal and public actions. When faced with a potential conflict situation, the county official is well-served by immediately consulting the county attorney for specific guidance on how to proceed.

As a general rule, erring on the side of disclosure and recusal protects both the county official and the county's zoning actions not only from the legal consequences of improperly participating in such decisions, but from the similarly harmful consequences of negative public perception.❑

David C. Kirk is an attorney and member of the American Institute of Certified Planners, whose practice focuses on land use, zoning, and development matters for public and private sector clients. He can be reached at 404-885-3415. The author advises that this article should not be considered as legal advice, and is offered solely for educational and informational purposes.