**JUST WHEN YOU THINK YOUR REZONING IS APPROVED … NOT SO FAST**

Successfully rezoning a piece of property can feel like moving a mountain. The meetings with neighbors, homeowner associations, Planning & Zoning staff, the review by a Planning & Zoning Commission, and ultimate approval by a Board of Commissioners (or similar governing body) is a huge accomplishment realized only by hours of work and dedication to your project. But remember those unhappy neighbors who spoke in opposition to your rezoning request at the Board of Commissioners meeting? Unfortunately, if they are still unhappy that you successfully rezoned your property, they can still cause trouble for you down the road in one of two ways: (1) bringing a lawsuit against you and the local government to challenge the rezoning, or (2) opposing the land disturbance and building permits that you need to continue with your project.

**1. Unhappy Neighbors Challenge Rezoning**

In order to bring a lawsuit challenging a rezoning decision, the unhappy neighbors must first demonstrate that they have “standing” to bring the lawsuit. This is a very specific test where the neighbors must show (1) they have a substantial interest in the rezoning decision (persons in the general community who may suffer a mere inconvenience by the rezoning do not qualify); and (2) they have suffered “special damages,” or damages not suffered by the general public. For example, the fear of decreased property values, or increased traffic, noise, or light resulting from a rezoning are insufficient to prove special damages. This is an extremely high burden and is seldom met.

Assuming the unhappy neighbors can meet the high burden to establish standing for a lawsuit, they may then challenge the rezoning on either a substantive or procedural basis (or both). If the neighbors lodge a substantive challenge, they must show that the rezoning decision was either (1) a result of fraud or corruption; (2) a manifest abuse of the zoning process to the oppression of the neighbors; or (3) the local government’s rezoning decision was unconstitutionally arbitrary and unreasonable. Under any of these prongs, the neighbors must present factual evidence to the Court to meet their high burden of proof. This process often includes enlisting expert witnesses to substantiate (and defend) these allegations.

Unhappy neighbors can also attempt to challenge a rezoning decision on procedural grounds. Georgia’s Zoning Procedures Law provides minimum standards that local governments must follow in the rezoning process related to notice of a proposed rezoning, a public hearing, and the government’s exercise of their zoning powers. Typically, local governments also enact their own set of rules regarding notice and hearing procedures in addition to the minimum standards set by the ZPL. If a local government does not follow the requirements of the ZPL or its own rules, a court can set aside the rezoning as null and void.

**2. Unhappy Neighbors Try to Block Permits**

Another tactic that unhappy neighbors sometimes employ is attempting to block permits (i.e., land disturbance, building permits, certificates of occupancy, tree removal permits) through the local government’s appeal process. The decision by an administrative official to issue a permit is typically appealable under the local government’s code of ordinances. All local governments maintain their own appellate procedures, so it is important to know the ground rules in the specific jurisdiction. Generally, an interested neighbor may appeal the decision of an administrative official to issue a permit. Local codes provide a specific mechanism for the appeal, and the standard that the appealing neighbor must meet. For example, a neighbor unhappy with the issuance of a tree removal permit in the City of Atlanta may only appeal the decision if he lives within 500 feet of the property or within the NPU, and then must show that the administrative official issuing the permit either misapplied or misunderstood the tree ordinance in issuing the permit. (Atl. Code 158-65). Appeals related to the issuance of these necessary permits can further delay your project, as a permittee is typically not allowed to proceed with work under the permit until the appeal is resolved.

Don’t break out the party hats and balloons too soon after receiving your favorable rezoning decision. Just because you have your rezoning finished does not necessarily mean that you are finished with unhappy neighbors who can continue to throw up roadblocks on your route to completing your project.