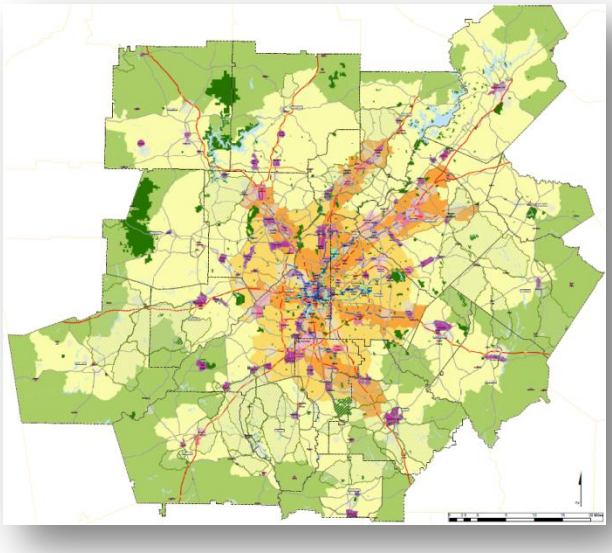
LEGAL REVIEW SUMMARY



August 4, 2010

Plan 2040 Implementation Strategy *Technical Memo*

ATLANTA REGION PLAN 2040

Legal Review Summary

PLAN 2040 IMPLMENTATION STRATEGY

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INTRODUCTION

The Atlanta Regional Commission (ARC) is the Atlanta Metropolitan Area's regional planning agency. The ARC provides a variety of land use, transportation, and human service functions for 20 counties in one of the nation's fastest growing regions. The ARC is the Metropolitan Area Planning and Development Commission (MAPDC) for the Atlanta area as well as the region's Metropolitan Planning Organization (MPO) for federal transportation planning. As Georgia's only Metropolitan Area Planning and Development Commission (MAPDC), the ARC has implemented a successful set of programs, policies, and activities to assist the Atlanta area's local government community in both managing and accommodating growth. Initiatives such as the *Envision6 Regional Development Plan* and the *Livable Centers Initiative* (LCI) have successfully encouraged the use of more sustainable development patterns.

Plan 2040, currently under development, is the metro Atlanta area's long-range plan for land development and transportation needs. The first component of *Plan 2040* is the Regional Assessment that identifies and focuses on the region's needs. During 2010 ARC staff has undertaken a series of meetings with local government elected officials and staff to investigate the possible actions, programs or new policies that should be considered in the *Plan 2040 Implementation Strategy (Regional Agenda)*.

Plan 2040 will continue the region's recent initiatives relating to land use and transportation. ARC adopted Regional Development Plan (RDP) policies as the MPO in 1999. The 2025 Regional Transportation Plan (RTP) and a Land Use Strategy were adopted in 2000. The Land Use Strategy specified eight innovative initiatives to encourage successful execution of the 2025 RTP and RDP, and more broadly, to link transportation and land use planning in the Atlanta region. The Land Use Strategy was a significant factor in the issuance of a federal conformity determination for the 2025 RTP in 2000. Ten years after the adoption of the Land Use Strategy, the region has seen new examples of new urbanism, redevelopment, mixed use projects, and transit-oriented development (TOD), and growth management.

During 2005 ARC undertook a land use scenario and RTP development process known as "Envision6". ARC's Envision6 planning process resulted in a resolution that was approved by the ARC Board in May 2006 to adopt:

- Envision6 Regional Development Plan Land Use Policies
- Atlanta Region Unified Growth Policy Map (UGPM)
- Envision6 Regional Place and Development Matrix

A Board supported Envision6 Implementation Strategy was developed based on programs and activities that ARC would undertake during the 2006 to 2009 period to better coordinate and integrate land use, transportation, water and associated regional and local plans.

Even with this recent success, the region must do more to strongly move towards patterns of growth that are more in line with the most progressive regions of the U.S. and world. The Atlanta region remains dependent on the automobile for most transportation needs. The region's housing stock is dominated by low density, single-use development. Additional development options and strategies will be needed as demographic trends create smaller households and buyers seeking new lifestyle choices. Defining the legal framework and

authority of regional and local agencies to pursue innovative planning and development strategies is needed to help guide the implementation of the Plan 2040 Regional Agenda.

ARC and its constituent communities need to:

1. Facilitate the type of development that meets their goals for design, sustainability, economic development and housing capacity, and

2. Channel development into appropriate locations, such as compact, mixed use centers.

This will require adequate legal authority by ARC to plan and influence local action, and for local government to implement regional initiatives. It should also be recognized that financial resources or other limitations can be as important as legal authority to achieving local and regional goals.

ARC has retained a consultant team consisting of White & Smith, LLC and Parsons Brinckerhoff to review ARC's previous actions to implement regional plans during the past decade (2025 Land Use Strategy and Envision6), Georgia Department of Community Affairs (DCA) local and regional planning rules, and Georgia laws related to local planning and development authority (including zoning and subdivision rules). The consultant team will make recommendations regarding programs or actions for ARC and local jurisdictions to consider that are legal under Georgia law, but that may have been overlooked or not attempted previously. As part this effort, the team will also study peer regional planning agencies.

The first phase of the project begins with a review of plan implementation authority for ARC and local governments in the region. We begin with an analysis of ARC's legal authority, considering its roles as an MAPDC, an MPO and a Regional Commission (RC) under the Georgia comprehensive planning legislation and DCA planning rules.

This report identifies potential actions that could occur under the state constitution, state statutes, and DCA rules to implement regional plans, while also considering ARC's authority as an MAPDC and MPO. We review state and local planning authority that will support regional goals. Because the extent of local government authority to guide growth and zone property is often debated in Georgia, we also review local government authority in order to provide a clear understanding of the possible actions and programs that local governments could undertake to support local and regional plans.

GEORGIA LEGAL FRAMEWORK

Georgia is unique in that its state constitution expressly recognizes zoning powers, assigning those powers to local governments. ARC is unique in its role as a regional land use planning and transportation agency. These factors combine to provide a very powerful framework for plan implementation. The legal constraints on plan implementation are not unlimited, however, and zoning agencies will face important challenges as they develop and enforce those regulations. However, the region is fortunate to have one of the nation's broadest legal foundations for regional plan implementation.

Highlights of the region's legal plan implementation framework are provided below, and are described in more detail in the ensuing chapters:

TABLE 1 GEORGIA LAND USE LAW HIGHLIGHTS

Regional Planning Principles	ARC has a traditional role as a regional MPO, but also a more cutting edge role as a regional land use planning agency. Regional agencies in Georgia do not have authority to take over land use regulatory functions that are normally assigned to local government. However, ARC plays an important coordinating role and has a significant function in guiding transportation, land use and water management decisions.
Home Rule	Georgia is a home rule state. In many states, local governments must look to state enabling legislation for authority to establish and implement land development regulations. In Georgia, local governments possess virtually unlimited authority to craft land development regulations that meet local and regional needs. While the policies and standards should be coordinated for effective regional plan implementation, the same situation applies to states where local government authority is limited to the specific terms of zoning and land use enabling legislation. In Georgia, cities and counties have more freedom to craft land use controls that fit their specific needs.
Constitutional Limitations	Local land use controls are subject to the state and federal constitutions. When developing and enforcing land use controls, local governments must consider property rights, due process, equal protection and free speech considerations. Regulations that destroy the economic value of a property, create mitigation requirements that are disproportionate to the development's impacts, or that completely fail to further a public purpose can create financial liability or result in invalidation by the courts. However, land development regulations are presumed valid, and plaintiffs who challenge regulations or zoning decisions face a steep uphill battle.
Zoning Procedures	Under the Georgia Constitution, the General Assembly may regulate local zoning procedures. The Zoning Procedures Law (ZPL) establishes the procedures for local zoning decisions. These are designed to protect the due process rights of both applicants and neighbors. Local governments must establish standards for making land use decisions – something the state and federal constitutions would require even without the statutory mandate. And, local governments must follow city and county procedures for notifying and conducting meetings, making decisions, and publication.
Vested Rights	Vested rights lock in the land development regulations that apply to an applicant. In Georgia, rights vest when an applicant files a complete application. This is earlier than in most states, where a project must be under construction in order for rights to vest. This rule gives an applicant assurance that the land development regulations do not become a moving target as it proceeds through the approval process. However, if the existing regulations are inadequate – allowing inappropriate development patterns – vested rights can pose an obstacle to implementing new planning policies. Even with Georgia's early vesting rule, there are ways to protect the planning process without intruding on the rights of property owners. These are described later in this report.

REGIONAL AUTHORITY

The Atlanta Regional Commission (ARC) is responsible for developing regional planning policies for the Atlanta metropolitan area. Georgia's comprehensive planning legislation establishes Regional Commissions (RCs) to assist local governments with the planning process and to prepare and to implement comprehensive regional plans.[1] The comprehensive planning legislation designates ARC as a Metropolitan Area Planning and Development Commissions (MAPDC) that serves as both an RC and an MPO. The MAPDC has the powers and duties of a RC in its area.[2] MAPDC authority is cumulative with Regional Commission authority, and supersedes any conflicts.[3] As a MAPDC, the ARC has all of the powers of an RC, as well as additional authority that is specific to the MAPDC. The ARC's regional authority is summarized in Table 1.

ARC is the only MAPDC in the State of Georgia. The law that created ARC provides some unique authority and allows possible activities, programs, and actions. With support from local governments, some new actions could potentially occur to aid implementation of local and regional plans.

ARC also serves as the Metropolitan Planning Organization (MPO) under federal law.[4] Federal law provides for the development of transportation plans by regional Metropolitan Planning Organizations that are created by the states. The MPO role, combined with other ARC actions could support a comprehensive strategy to implement regional land use plans linked with transportation programming.

ARC is composed of local governments throughout the region.[5] Its boundaries include 10 counties for purposes of its RC function, all or part of 18 counties for its MPO functions, and all or part of 22 counties for purposes of Clean Air Act nonattainment planning.[6] ARC has broad planning powers, and several key responsibilities that relate to plan implementation. Unlike cities or counties, ARC is a creature of statute rather than the state constitution. ARC does not have zoning authority and does not enforce land development regulations.[7] However, it does have authority to craft regional policies, to direct transportation investments, and to facilitate the implementation efforts of its constituent local governments.

As an RC, the ARC's powers are **liberally construed** to achieve their purposes.[8] In addition, ARC has all power and authority necessary or convenient to enable it to perform and carry out the duties and responsibilities imposed on it by its enabling legislation.[9] In addition, several of the RC's express powers are granted in expansive terms. For example, the statute enumerating the RC's planning and technical assistance activities states that the RC's authority is not limited to the listed activities.[10]

An important source of regional authority is the development of a regional plan. The Georgia Department of Community Affairs (DCA) prepares minimum standards and procedures for the development of regional plans.[11] As with ARC's authority, the regional planning legislation is liberally construed.[12] The DCA's rules for regional planning provide that the plan will have 3 components: (1) a Regional Assessment, (2) a Stakeholder Involvement Program, and (3) a Regional Agenda.[13] The Regional Agenda is the planning document that "lay[s] out a road map for the region's future."[14] It includes a Regional Vision, Regional Issues and Opportunities, an Implementation Program (including a Guiding Principles for all actors to use in making decisions, and a 5-year Work Program), and an Evaluation and Monitoring Program.[15] The Regional Agenda's narrative must identify implementation measures for achieving the desired development pattern that include:[16]

- more detailed sub-area planning

- new or revised local development regulations
- incentives
- public investments
- infrastructure improvements
- recommendations for fitting local character areas into the larger regional planning context

ARC reviews local government comprehensive plans for compliance with the regional plan.[17] Compliance is required for local governments to obtain Qualified Local Government (QLG) certification from the DCA. While plan implementation is not mandatory, QLG status may be required for a local government to receive state grants and loans.[18] A QLG must have a plan that complies with the state minimum standards and procedures and plan implementation mechanisms consistent with those established in its comprehensive plan and with the minimum standards and procedures.[19] The ARC reviews local plans for compliance with the Regional Agenda.[20] The DCA can decline QLC certification if a local government refuses to participate in a mediation of a conflict between its plan and the Regional Agenda.[21]

ARC prepares a long range Transportation Plan (LRTP) and Transportation Improvement Program (TIP) under the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU).[22] The federal transportation planning legislation expressly recognizes the linkage between transportation and land use. The plan process must include projects and strategies that:[23]

- support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;
- increase the safety and security of the transportation system for motorized and nonmotorized users;
- increase the accessibility and mobility of people and for freight;
- protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and **State and local planned growth and economic development patterns**;
- enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
- promote efficient system management and operation; and
- emphasize the preservation of the existing transportation system.

The Atlanta metropolitan region qualifies as a Transportation Management Area TMA under SAFETEA-LU.[24] A TMA must include travel demand reduction and operational management strategies as part of the planning process. Projects that are included in the Transportation Improvement Program (TIP) must be consistent with the LRTP.[25]

Table 1 below summarizes ARC's authority under the RC, MAPDC and MPO legislation:

TABLE 2 REGIONAL AUTHORITY SUMMARY

Authority	Statutory Basis		
	RC	**MAPDC**	**MPO**
Coordinated and comprehensive land use planning.[26]	✓		
Prescribe minimum standards and procedures that include any elements, standards, and procedures for comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process for counties and municipalities within its region and approved in advance by DCA.[27] A qualified local government (QLG) must make its local plan implementation mechanisms consistent with those established in its comprehensive plan and with the minimum standards and procedures.[28]	✓		
Assist local governments in comprehensive land use planning.[29]	✓	✓	
Review, comment and submit recommendations on local plans.[30]	✓		
Review area plans prepared for use in an area by a political subdivision or by a public authority, commission, board, utility, or agency[31] Review, comment and submit recommendations on multijurisdictional area plans for public improvements.[32]		✓	
Develop long-range transportation plans and transportation improvement programs (TIPs) that provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities).[33]			✓
Prepare studies of the area's resources as they affect existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public services, local governments, and any other matters relating to area planning and development.[34]	✓		
Research, study, and planning for:[35] • land use • transportation • service coordination		✓	
Planning, technical assistance, or coordinated and comprehensive planning that ARC or DCA deems necessary,[36] including • cooperate with all units of local government and planning and development agencies within the commission's region • coordinate area planning and development activities with those of the state and of the units of local government within the commission's region and neighboring regions and with the programs of federal departments,	✓		

Authority	Statutory Basis		
	RC	MAPDC	MPO
agencies, and regional commissions • provide technical assistance, including data processing and grant administration services for local governments, as may be requested of it by a unit or units of local government (may include technical assistance of any nature requested by a unit or units of local government within the commission's region) • coordinate and assist in plan preparation • develop and prepare plans pursuant to a contract with the local government • establish goals, objectives, policies and recommendations consistent with Governors Development Council or DCA • prepare regional plan (mandatory) • liaison with other governments, including federal government agencies and state agencies - administer programs within the state			
Require additional plan elements, subject to DCA approval.[37]	✓		
Prepare development guides[38] and recommend modification of local development plans to conform to the development guide. [39] The development guide • includes policy statements, goals, standards, programs, and maps prescribing an orderly and economic development, public and private, of the area • is based upon and encompasses physical, economic, and health needs of the area • considers future development that may have an impact on the area including, but not limited to, such matters as land use (not including zoning), water and sewerage systems, storm drainage systems, parks and open spaces, land needs and the location of airports, highways, transit facilities, hospitals, public buildings, and other community facilities and services.		✓	
Designated as the official planning agency for all state and federal programs to be carried out in the area[40] Serve as the planning agency under designated federal housing, social, health, and transportation statutes. This includes **all of the powers, duties, and authorities necessary to carry out** its responsibilities and duties under those laws.[41]	✓	✓	✓
Review all applications of municipalities, counties, authorities, commissions, boards, or agencies within the area for a loan or grant from a state or federal agency if review by a region-wide agency or body is required by federal or state law, rule, or regulation.[42] ARC's comments become part of the application.	✓	✓	
Enter into contracts, when appropriate, to administer funds involving more than one political subdivision.[43] Local governments may loan their funds, facilities,	✓		

Authority	Statutory Basis		
	RC	MAPDC	MPO
equipment, and supplies to the RC.[44]			
Contract with, apply for, and accept gifts, loans, and grants from federal, state, or local governments, public agencies, semipublic agencies, or private agencies, to expend the funds, and to carry out cooperative undertakings or contracts with any of those government or agencies.[45] Act as contracting and coordinating agent for local government where projects are regional. [46] ARC cannot tax or incur long-term debt.		✓	
Catch-all functions include the authority to carry out such other planning functions required by its council or the DCA (for RCs) [47] or as assigned or delegated by other agencies or boards, public or private, and accepted by the MAPDC. [48] Carry out other programs that the council or DCA requires from time to time.[49]	✓	✓	

Frequently Asked Questions about Regional Authority

The ARC has broad planning powers. However, the interplay between regional and local governments – such as the ARC and the region's cities and counties – is critical to achieving regional planning goals. What powers does ARC have to make regional goals and polices become reality? What influence does it have over local land use policy, infrastructure investments, and other actions that will shape the region over the life of Plan 2040? The following questions address the scope and extent of ARC's roles in the region.

1. **What is ARC's authority to provide standards and incentives for regional plan implementation?**

   The DCA's minimum standards and procedures for a Regional Agenda establish two types of performance standards:

   - A **Minimum Standard** that includes essential activities for local governments to undertake for consistency with the regional plan. These must be achieved within 3 years, and
   - An **Excellence Standard**, which includes specific ordinances, programs, or requirements that are desirable but not essential. The DCA establishes an Excellence Standard threshold that is rewarded through a Regional Steward Incentives Package.[50] The DCA will identify the Regional Steward Incentives Package.

   The DCA's Regional Agenda requirements discussed above require the ARC to encourage local government to:

   - fit local character areas into the larger Regional Development Map for the region by being consistent in terms of allowed land uses and implementation measures that are applied to achieve desired development patterns,
   - Coordinate investments in new or upgraded public facilities with the Guiding Principles, and
   - Follow the Performance Standards in developing and implementing their local comprehensive plan. This includes coordination with regional development patterns and local development regulations, incentives, public investments, and infrastructure improvements.[51]

   The DCA's Regional Agenda rules also give ARC unqualified authority to establish "incentives" as part of its implementation program. Both the Regional Agenda and the Performance Standards must include "incentives."[52] Under the state law, ARC has broad authority to participate in loan programs, intergovernmental contracts, and other mechanisms that can be used to craft incentives for development and local governments.

   The ARC has exercised direct development review authority pursuant to other legislation, such as the Chattahoochee Corridor Plan.[53] Proposed sewer lines that were planned for location within the Chattahoochee River Corridor required ARC reviews to determine consistency with the Metropolitan River Protection Act and the Plan. Therefore, ARC has taken a more direct role in the permitting process in specific situations.

2. What issues could ARC encounter in attempting to encourage regional planning?

As in most states, land use authority in Georgia is a local government function, with regional authority largely confined to persuasion.[54] The Atlanta region for MPO purposes includes portions of 18 counties and many cities, each of whom has absolute control over the land use in its territory. The Georgia Constitution vests zoning power in the local governments, and local governments may not believe that they have an incentive to work together. Through planning, incentive programs or training ARC seek to persuade local governments to implement plans, and ARC has some power of the purse to control transportation funding. However, in Georgia (as in many states) issues such as annexation can undermine regional and local plans. Developers who obtain unfavorable zoning decisions by a County may seek to annex into an adjacent City to receive the use, density or design that the County did not want for that location. Cities or counties often approve projects over the objections of their neighbors. The General Assembly has tried to address the annexation issue by repeatedly tinkering with an annexation land use dispute resolution process, first adopting O.C.G.A. § 36-36-11 and then adopting O.C.G.A. § 36-36-110 et seq. These procedures require a city to notify a county and, if there is a land use dispute, to submit to an arbitration process. If no annexation is involved, there is no dialog required, and there is no deference given to a regional plan or any regional considerations.

Thus, cities and counties are often at odds over many issues, and are likely to resist efforts to limit their plenary zoning powers (which would in any event require amending the Georgia Constitution). Regulations that stray too far into the zoning arena are subject to challenge as a violation of local Home Rule powers. The State also has the "power of the purse," but that has limited effectiveness. For these reasons it is vital for ARC to closely coordinate with local governments and seek mutually beneficial development goals.

Fortunately, ARC has significant authority to encourage sound, regional planning. These include not only the transportation and planning review functions common to regional agencies across the nation, but also specific planning functions assigned by Georgia law. These are addressed in the questions presented below.

3. What is ARC's authority to suggest appropriate land use actions as outlined in a regional plan?

ARC has the authority to undertake a variety of long and short range actions to implement the regional plan. For example, the Regional Agenda could establish a long range performance standard for development density and intensity in designated centers. As part of its technical assistance function, ARC could allocate transit funding in the TIP to centers that include target zoning densities/intensities and transit-oriented development (TOD) standards.

ARC's state and federal planning processes are continuous. Under the authority outlined above, ARC can suggest land use actions in the Regional Agenda, a Regional Work Program that includes specific action items to implement the Regional Agenda over a 5 year period,[55] as well as the MPO Unified Planning Work Program (UPWP) and the federal LRTP.

4. **What potential role(s) could ARC have in implementing single or multi-jurisdictional TDR programs (e.g. serve as TDR bank, etc.)?**

   The transfer of development rights (TDR) is a planning technique that allows local governments to encourage land or building preservation. In a TDR program, the local government designates ***sending areas***, or areas where landowners can sell development rights in exchange for protecting their land from further development. These development rights are purchased by landowners in designated ***receiving areas***. These receiving areas receive increased density/intensity in exchange for purchasing development rights.

   Georgia specifically enables TDR through a statute that was enacted in 1998.[56] The TDR statute authorizes counties to allow a transfer of "development rights" from a "sending" to a "receiving" area or property. The statute expressly authorizes development right transfers between jurisdictions pursuant to intergovernmental agreements.[57] ARC can facilitate regional transfers by acting as a TDR bank, actively brokering exchanges, and providing other technical assistance to local governments and potential buyers and sellers. ARC could perform this function through its technical assistance, contracting, fund administration, coordination, and catch-all planning functions.

5. **Without new legislation, could ARC and local governments establish an urban service limit for infrastructure and services through a memorandum of agreement? What would ARC's role be in planning and implementation? What kind of voluntary arrangement among ARC's local governments could be used to establish or reinforce this concept?**

   Some regions, such as Denver, have implemented urban growth boundaries though regional compacts. For example, the Mile High Compact in Denver establishes Urban Growth Areas (UGAs) or Urban Growth Boundaries (UGBs) within local comprehensive plans. Each local government agrees to allow urban development only within the UGAs or UGBs.[58]

   It appears that local governments in the region have authority under their zoning and police powers (discussed in "Local Authority," below) to establish the necessary regulations to create urban growth boundaries. However, as with any land use regulation, the development restrictions applied to implement the UGB are subject to constitutional challenges. In other words, the property owner just outside the boundary could challenge the boundary, and the zoning applied to that property would be evaluated under the same standard as any other challenge to zoning (as discussed in paragraph 3 on page 18). The notion that property is outside an urban growth boundary does not automatically save the zoning restrictions from being held unconstitutional. However, the restrictions are presumed constitutional, as in any challenge to a zoning classification (see paragraph 3 on page 18).

   An urban service limit for infrastructure is more defensible. Local governments have essentially complete discretion as to where they provide water and sewer service. Not providing those services to an area necessarily reduces the possibility of high-density development, especially when they are tied to regulations requiring subdivision to be on public water and sewer.

   The regional planning rules appear to contemplate a "tiered" system of growth by requiring the Regional Assessment to include a map of projected land use patterns that includes Developed, Developing, Rural and Conservation Areas. This is a multi-layered approach to the urban growth boundary concept, which simply divides a community into areas that are suitable for urban growth

and areas that are not. A tier system also contemplates developing areas, areas suitable for rural growth, and areas protected for conservation purposes.[59]

ARC would establish planning and implementation policies for UGAs, UGBs or tier systems in the Regional Agenda and Development Guide. It could participate by designating these areas in the regional map, directing high capacity transportation to these areas as part of the TIP, working with the Metropolitan North Georgia Water Planning District to designate centers and developed and developing areas in the regional water supply and wastewater plans, and providing technical assistance to local governments to develop zoning and land use regulations that encourage this pattern of development.

6. What incentives or legal tools are currently available to encourage or require inclusive housing choices in priority housing/planning areas (such as transit oriented development and employment centers)?

As is discussed above, ARC can use its planning and technical assistance powers to encourage local governments to direct higher density housing to appropriate locations or to encourage more innovative tools to provide housing for lower income families. Through conventional zoning, local government can establish appropriate densities and accommodate a variety of housing forms. Some communities in other states use "inclusionary zoning" to proactively require new development to include affordable or workforce housing units, or to create incentives to encourage affordable housing in new development.[60] Georgia has no express enabling legislation that addresses this technique, although it is probably authorized at the local level through municipal and County home rule zoning and police powers.

A regulation could, for example, require a certain number or percentage of "affordable" houses for any new subdivision. The term "affordable" would have to be defined with specificity so that the regulation is not subject to a "void for vagueness" constitutional due process challenge. Also, the impact of the affordable housing requirement would have to be measured against the viability of developing the property. The affordable housing requirement would be subject to a constitutional challenge if its restrictions made it economically unfeasible to develop. In other words, any regulation of this nature is subject to the same zoning challenge as any other zoning regulation, and are also presumed constitutional (see paragraph 3 on page 18). However, if the requirement is considered an exaction rather than an economic restriction, the local government would need to demonstrate that there housing requirement is proportionate to the impacts of the development on housing supplies for low or moderate income families (see paragraph 4 on page 18).[61] This would require a study that documents that relationship.

7. What tools or resources can ARC encourage or provide that allow for schools and local governments to jointly plan school sites and adjacent communities?

Schools are excluded from the definition of "local government" in the Regional Commission statute, but are included in the definition of "government."[62] The ARC has broad power to carry out cooperative undertakings and contracts with governments, which would include any school district or local

government.[63] The Development Guide could include design standards for walkable schools that are integrated with neighborhoods.[64] This could require coordination with any state standards for school construction.

However, local school boards are very protective of their independence and their power to select school locations without any consultation with local governments. Cooperation could be accomplished through a change in the state statutes governing education to require local school boards to consult with local governments, but that would require action by the General Assembly. It is likely that local school boards and the Georgia Association of School Boards would oppose any such change.

8. **It has been said that ARC often defers to others to 'implement' plans. What exactly are the limitations of ARC's authority as dictated by its enabling legislation? If several local governments requested ARC to undertake actions to build infrastructure or purchase services would this be legal?**

   ARC's principal role as a regional planning agency is accomplished through planning, project selection, and technical assistance, and coordination. However, as is shown in Table 2, above, the ARC has express authority as a MAPDC to sponsor regional projects and to assist in building regional infrastructure. It can act as a contracting and coordinating agent for the planning, expenditure of funds and construction of multijurisdictional projects, but it cannot levy taxes or incur debt on its own.[65] It can provide direction for plan implementation through the Regional Plan and development guides, but does not exercise, limit or compromise local zoning regulations.

9. **What role could ARC have in assisting local governments with service delivery and/or coordinating efforts that result in local governments working toward more efficient, shared delivery of services?**
   As is discussed above, ARC has very broad contracting and coordinating functions. It can administrator funds and act as agent for the construction of projects, tying into the taxing and financing authority of its constituent local governments.

10. **If ARC were to certify local comprehensive plans as entirely consistent with regional plans and policies, could ARC provide enhanced services and resources to these communities (and potentially render non-binding recommendations on local land use issues)?**

    ARC could perform these functions through its broad planning, technical assistance and coordination functions.

11. **Can ARC be a financial partner and/or participant in inter-local revenue sharing agreements?**

    While ARC could not directly raise taxes, it has broad authority to engage in cooperative undertakings and specific authority to sponsor and coordinate regional projects. This appears to support use of the revenue-sharing agreements.

12. **Is it possible for ARC to establish priority planning districts (e.g. Hartsfield-Jackson International Airport)? If so, what mechanisms, strategies, etc. could be employed to insure that planning and**

development in these areas are consistent with regional plans and how could ARC prioritize infrastructure and community investments in these areas?

The ARC's planning legislation appears sufficiently broad to designate virtually any kind of district, including large regional centers. If the districts trigger the thresholds established by DCA, the development in these districts could trigger review as a Development of Regional Impact.[66] ARC could allocate high capacity transportation investments to these centers in the LRTP and TIP, and work with local governments in these areas to update their development codes to ensure consistency with regional policies.

LOCAL AUTHORITY

Generally, local land use controls are legally valid if they are authorized by law and consistent with state and federal constitutional protections. Georgia is like most states in that zoning and land development regulation authority is assigned to local governments – i.e., cities and counties. Local governments in Georgia have home rule authority. In other words, local governments can generally implement any plan implementation control unless the power is denied by the state constitution or statute. While there are other home rule states, however, Georgia is unique in that local zoning powers are derived from the state constitution. The Georgia Constitution, Article IX, Section II, par. IV states:

> *The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power.*

Under the state constitution, therefore, local governments can both plan for future growth and adopt zoning controls. The state legislature's power is limited to procedures, although the statutes do include some substantive controls. While the constitution does not define zoning, this includes a variety of land use controls as is discussed below.

In addition to their zoning authority, counties have general police power authority. This authority applies to regulations that affect development or uses, but that do not constitute zoning. The Georgia constitution allows these regulations if they are:

- clearly reasonable
- not preempted by state statute or the state constitution[67]

The constitution allows the General Assembly to grant home rule powers to municipalities.[68] The Municipal Home Rule Act does this by a grant of authority that is similar to that given to counties, but which also requires a municipal charter.[69]

In addition, counties and municipalities have specific constitutional authority to regulate:[70]

- Police and fire protection.
- Garbage and solid waste collection and disposal.
- Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.
- Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.
- Parks, recreational areas, programs, and facilities.
- Storm water and sewage collection and disposal systems.
- Development, storage, treatment, purification, and distribution of water.
- Public housing.
- Public transportation.
- Libraries, archives, and arts and sciences programs and facilities.

- Terminal and dock facilities and parking facilities.
- Codes, including building, housing, plumbing, and electrical codes.
- Air quality control.

The General Assembly can further define, broaden, limit, or otherwise regulate the exercise a general police power.

Local zoning in Georgia is governed by three primary statutes, along with several additional statutes that augment local governments' basic planning and zoning authority:[71]

Act	Citation (Georgia Code)	Description
Georgia Planning Act	50-8	Establishes planning framework, including both regional commissions and local planning policies.
Zoning Procedures Law (ZPL)	36-66	Establishes procedures for processing, notice, public hearings, and decision making for discretionary zoning decisions. It also requires the local government to establish standards for those decisions.
Steinberg Act	36-67	Establishes procedures and zoning standards for counties with a population of 625,000 and municipalities in those counties with a population of 100,000. Based on the 2000 Census, this includes Fulton and DeKalb counties, and the City of Atlanta. Based on the Census Bureau's latest population estimates, this will likely also include Gwinnett County and Cobb County after the 2010 Census is completed.[72]
Conflict of Interest in Zoning	36-67A	Requires disclosure when decision makers in zoning cases have a financial interest in the application.
Ancillary controls:		
Impact fees	36-71	Establishes procedures for local governments to assess fees that defray the impacts of development on public facilities such as water, wastewater, roads, stormwater, public safety and library facilities.
Transfer of development rights	36-66A	Allows property owners to transfer development rights, allowing the marketplace to allocate development potential away from areas that are subject to development constraints.

Zoning typically refers to the division of an area into districts for a variety of use, dimensional, and design regulations. The zoning power is very broad, particularly in a home rule state such as Georgia.

In exercising the power to zone, a local government may:

- Establish any number of districts that it determines are appropriate
- Change those districts to increase development potential
- Change the districts, where appropriate, to reduce development potential.
- Establish conditions for rezoning

Zoning is not a static tool. While most zoning districts are designated without a sunset period, communities should prepare to revise zoning districts when needed to keep up with the demands of new growth and development trends. Local governments' constitutional authority includes the ability to rezone property that had already been zoned.[73]

Frequently Asked Questions about Local Authority

1. What is the constitutional authority for cities and counties to zone land?

The ZPL contains a very broad grant of authority for local zoning standards. These include "any factors which the local government finds relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property."[74] The terms "any" and "general welfare," in particular, lay a very broad canvas for local government to craft land development regulations that fall within the definition of "zoning."

The state constitution does not define the term "zoning," but the ZPL provides the following definition:

> *"'Zoning' means the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established."*[75]

Georgia courts have accepted and relied on this definition, and have distinguished zoning from other types of municipal police power regulations such as:[76]

- Site location regulations, such as distancing requirements for gas stations[77]
- Licensing requirements for certain types of businesses, such as adult businesses, that regulate the character of the businesses and not the general use of land.[78]
- Building, housing, plumbing, and electrical codes[79]
- Storm sewer regulations
- Sewage collection and disposal regulations
- Tree protection ordinances[80]

Sign ordinances may be subject to the ZPL if they regulate by means of zones or districts.[81]

In assessing whether a regulation is a zoning ordinance that is subject to the ZPL, courts will examine the regulation in its entirety to see if it comprehensively regulates uses by district or whether it provides a uniform standard for a use or a business.

2. What is the constitutional authority for cities and counties to adopt subdivision regulations?

Subdivision regulations are a useful way to ensure that new, "greenfield" developments are appropriately designed and mitigate their on and offsite impacts.[82] Subdivision regulations are authorized under the general police powers for municipalities and counties.[83] There is currently no state statute that governs subdivision regulations, but the state statutes allude to subdivision regulations and their use is accepted by the courts.[84]

3. Can the local government zone for more intense or less intense uses based on comprehensive plan and/or LCI plan policy?

Yes. Broad powers are given to local governments in zoning and rezoning.[85] In Georgia, zoning or rezoning decisions are considered legislative.[86] Under the principle of separation of powers, legislative decisions are presumed valid and given great deference.[87] Courts have no power to zone or to rezone property.[88] Both original zoning regulations and amendments are presumed valid until shown to be otherwise.[89] This presumption may be overcome only by clear and convincing evidence.[90]

Despite the considerable deference shown to legislative bodies, local zoning powers are not unlimited. [91] Where an ordinance prevents property owners from using their property as they choose, the action must not be arbitrary, capricious and unreasonable in exercise of the local government's discretion.[92] A zoning ordinance must have a substantial relation to the public health, safety, morals, or general welfare.[93]

Zoning challenges can fall into 3 basic categories: (1) cases involve the refusal of a local government to rezone, (2) cases involving a challenge by neighboring property owners to a rezoning, and (3) cases involving a challenge by a property owner to a downzoning (i.e., a new zoning classification that allows fewer or less marketable uses, or that apply stricter standards such as increased lot sizes).

The legal standard for cases involving a refusal to rezone is summarized as follows: [94]

- A zoning ordinance is presumed to be valid.[95]

- In a rezoning action, the only question is the constitutionality of the existing zoning on the property.[96] Because zoning decisions are legislative, courts have stated that they are invalid only if the property owner has suffered an unconstitutional deprivation.[97] The burden is on the person seeking to change the existing zoning classification to show it is invalid.[98]

- The property owner has the initial burden of proof and must make this showing by clear and convincing evidence. [99]

- The property owner must show that (1) the existing zoning presents a significant detriment to the landowner and (2) the existing zoning is not substantially related to the public health, safety, morality, and welfare.[100] There is no bright-line test for assessing what is "substantial." "Substantial" is more or less synonymous with "reasonable," but requires more than "any" evidence.[101]

- If the property owner meets its burden, then the local government must introduce evidence showing the existing zoning is reasonably related to the public health, safety, and welfare.[102] In a court challenge, the local government is only required to provide evidence to justify its zoning ordinance

as reasonably related to public interest after a plaintiff makes the showing recited above.[103] Background planning studies and the recommendations of professional staff can have a significant impact on the outcome of a court case.[104]

- Once the local government justifies its zoning as reasonably related to the public interest, the courts weigh the public benefit of the existing zoning against the detriment to the property owner.[105] The test balances public and private interests. The courts balance a landowners' right to unfettered use of their property against public's health, safety, morality and general welfare.[106] A zoning classification may be set aside if it results in relatively little gain or benefit to the public while inflicting serious injury or loss on the owner.[107] The issue is not whether the local government could have made a different decision or better designation in zoning a particular property, but whether the choice that it did make benefits the public in a substantial way.[108]

  Mere economic hardship or delay does not render an ordinance unreasonable. The question is not whether a rezoning would increase the value of the land, but instead whether the existing zoning classification deprives the landowner of property without due process of law.[109] Denial of a more profitable use does not constitute significant harm to the property owner.[110] A zoning ordinance does not exceed the police power simply because it restricts use of property, diminishes value of property, or imposes costs in connection with property.[111] Although zoning need not render property worthless before an unconstitutional deprivation occurs, a "significant detriment is not established by evidence only that it would be difficult for the owner to develop the property under its existing zoning or that the owner will suffer an economic harm unless the property is rezoned."[112] As in most states, zoning classifications are upheld even where they result in a significant reduction of property value.[113]

  On the other hand, it is not necessary that the property be totally useless for its zoned purposes.[114] The regulation may be struck down if damage to owner is significant and is not justified by the benefits to the public.[115]

- When the validity of the legislative classification for zoning purposes is fairly debatable, the legislative judgment controls.[116] The courts will invalidate the zoning regulation when it is clearly arbitrary and unreasonable,[117] or the local government abuses its discretion or acts arbitrarily.[118]

Several courts in Georgia have applied a more detailed test to determine the validity of a zoning ordinance that examines:[119]

- existing uses and zoning of nearby property;
- the extent to which property values are diminished by the particular zoning restrictions;
- the extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals, or general welfare of the public;

- the relative gain to the public, as compared to the hardship imposed upon the individual property owner;

- the suitability of the subject property for the zoned purposes; and

- the length of time the property has been vacant as zoned, considered in the context of land development in the area in the vicinity of the property.

For cases that involve a rezoning requested by an applicant, courts are very reluctant to intervene. It is very difficult for neighbors to overcome standing hurdles to challenging a rezoning, so implementing mixed use zoning or density increases face few meaningful legal hurdles.[120] Rezoning applications are often challenged as "spot zoning" – a pejorative term that refers to a small scale rezoning that classifies a property in a different category that its neighbors. Spot zoning has been found in relatively few cases. Spot zoning is legally if valid if the zoning is not arbitrary and it is done in accordance with the comprehensive plan. The analysis depends heavily on the facts of the particular case. Spot zoning has not been mentioned in a decision of the Georgia Supreme Court since 1987 and has not been seriously discussed since 1981.[121] In most states, courts uphold small scale rezonings that further planning policies that favor mixed use. In fact, as early as 1943, the Utah Supreme Court upheld a system of small scale neighborhood commercial zones in residential districts, declaring:

> *Here the general zoning plan of the city set within a reasonable walking distance of all homes in Residential "A" districts the possibilities of such homes securing daily family conveniences and necessities, such as groceries, drugs, and gasoline for the family car, with free air for the tires and water for the radiator, so the wife and mother can maintain in harmonious operation the family home, without calling Dad from his work to run errands.*[122]

Downzonings also benefit from a presumption of constitutionality, and are legally sound if they further comprehensive plan policies and do not deny a landowner all reasonable use of its property. A mere allegation that the uses in the new district are unmarketable does not render the zoning invalid.[123] In addition, property owners do not have a vested right in their existing zoning classifications (absent taking affirmative steps to vest their rights), and are not entitled to personal notice of the proposed zoning change.[124] In addition, compliance with a comprehensive plan improves the defensibility of the local government's action. [125]

4. What are the basic constitutional limits on local land use controls?

The most common constitutional issues raised with regard to land development regulations are due process, equal protection, and taking or property rights issues.

Due Process. Substantive due process requires that the zoning ordinance is rationally related to a legitimate government purpose.[126] This requires that the zoning ordinance (1) serve some public purpose and (2) the means adopted by the ordinance are reasonably necessary for the accomplishment of the purpose, and (3) are not unduly oppressive upon the persons regulated.[127] This test includes the requirement that the regulation be neither arbitrary nor capricious. [128] The rezoning tests discussed above include a due process element.

Takings/Inverse Condemnation. Most takings or inverse condemnation claims fall into two categories: deprivation of all economic use or disproportionate exaction cases.

- **Economic Use.** These are claims that the regulations are so strict that they strip a property of all economic use. In these cases, the courts focus on whether the regulation denies the owner any economically viable use of their land. These are difficult cases for property owners to win. Generally, if the ordinance allows some permissible use, a party will not be able to satisfy its burden of showing a complete lack of economically viable use.[129] Courts have tolerated large reductions in value without finding a taking. Economic takings are also distinct from the use of the eminent domain power, when property is physically taken, such as for a road widening. Just compensation is required to be paid for physical takings, but not for regulatory takings that impose a monetary burden on property:

  > *The distinction between use of eminent domain and use of the police power is that the former involves the taking of property because it is needed for public use while the latter involves the regulation of the property to prevent its use in a manner detrimental to the public interest. Many regulations restrict the use of property, diminish its value or cut off certain property rights, but no compensation for the property owner is required. Among the valid regulations of property are abatement of nuisances, zoning, health regulations, and building standards. This court tests regulation of property to determine that the government has not exceeded its police power, for excessive regulation of property violates the due process clause, and the prohibition against taking property for public use without compensation.*[130]

- **Exactions.** If the local government requires a property owner to surrender a property right – for example, to dedicate a greenway for public use – the requirement must be proportionate to the impacts of the development.[131] Typically, regulations that are generally applicable – such as impact fees – are not subject to this requirement, but may be subject to statutory or judicial "rational nexus" standards.

The difference between takings and substantive due process analysis is as follows:

> *"If … the restriction on the use of property does not have its basis in the public good and bears no substantial relation to the public health, safety, moral or general welfare of the municipality, then it cannot be justified under the police power, and in a proper proceeding, such as injunction or mandamus, might be set aside as arbitrary and capricious, and an unlawful attempt to interfere with the citizen's right in property. Also, if the restriction is so all-embracing as to completely destroy the beneficial interest of the owner in his property, it amounts to a confiscation, and the law or ordinance may in a proper proceeding be declared to be unenforceable as coming under the constitutional inhibition relating to the taking or damaging of property without just and adequate compensation."*[132]

In most states, a finding that a regulation results in a taking results in compensation to the property owner rather than invalidation of the regulation. In Georgia, courts can invalidate a regulation that results in a taking.

The fact that property is more valuable if rezoned or that it is more difficult to develop as zoned does not amount to such a significant detriment as to amount to unconstitutional taking.[133] It is not sufficient to show that a more profitable use could be made of the property.[134] As in most states, property owners are only entitled to a reasonable use[135] within a reasonable time period.[136] Relevant factors in assessing economic impact include, among others, the following:[137]

- The value of the property compared to other similarly situated properties.
- Whether the property owners have made any efforts to market their property as zoned, including specific details regarding the extent, duration or character of the marketing efforts.
- Whether there is an ongoing demand for the permitted uses.
- Whether other developers have built or are considering building similar uses in the vicinity.

Equal Protection. The federal The Equal Protection Clause requires that all persons similarly situated should be treated alike.[138] Zoning ordinances must be free of discrimination on their face and as applied.[139] Zoning regulations can make distinctions that are rationally related to a legitimate government interest. [140]

5. Can local governments in Georgia implement form based codes?

Yes. A form based code (FBC) or New Urbanist code de-emphasizes the focus of conventional zoning regulations on use districts. Instead, these regulations place a higher emphasis on community design, including building-street relationships, scale, and context. A more accurate term could be "design based zoning." These codes typically turn conventional zoning restrictions around. For example, maximum front setbacks may replace minimum front setbacks in order to bring buildings closer to the street and to eliminate front-loaded parking. In the past, FBC's for new, greenfield development were known as "traditional neighborhood development" regulations.[141] Transit oriented development (TOD) regulations also use design based zoning approaches in order to create a more compact development pattern.[142] Some TOD regulations now require a minimum – rather than a maximum – level of density or floor area, contrary to the approach of conventional zoning. In addition, Georgia's broad home rule framework is more than adequate to accommodate innovative uses of zoning and land use controls. Of course, any form-based code would be subject to the same zoning challenge as a traditional zoning ordinance. In other words, if the property owner could show that this regulation is confiscatory or is not substantially related to the public health, safety and welfare, then it would be struck down as unconstitutional. As with other land use regulations, it is presumed to be constitutional (see paragraph 3 on page 18).

While some states specifically enable form-based codes or traditional neighborhood development regulations by name, the approach likely falls within the ZPL's definition of zoning because if it regulates development by district.[143] In addition, the DCA's state planning goals and objectives specifically reference traditional neighborhood development patterns.[144] The regulations should be carefully written to avoid vagueness challenges, at least one court (in Missouri) invalidated a rear parking requirement as confiscatory, and many older cases have invalidated minimum height requirements.[145] These issues can be

resolved through careful planning, findings, and drafting. In addition, Georgia's broad home rule framework is more than adequate to accommodate innovative uses of zoning and land use controls.

Some FBC's include provisions that streamline development with the right design in the right locations. Permitting is a powerful tool for local government to encourage the form and pattern of development that furthers regional policies. The Zoning Procedures Law (ZPL) principally controls discretionary hearings. These are hearings that typically occur early in the approval process, involve a higher level agency such as a Planning Commission or legislative body, and involve a significant amount of discretion. The ZPA does not address ministerial decisions. These are decisions that are made "behind the counter," with little public review. This allows the decision to occur quickly, and with few ad hoc conditions. These streamline the process, and enhance predictability.

6. How would changes in land development regulations to implement a local plan or Plan 2040 affect vested rights?

In Georgia, rights vest when an applicant files a proper building permit application.[146] In addition, a landowner can vest by making a substantial change in position by expenditures in reliance on the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials.[147] This is earlier than in most states, where a project must be under construction in order for rights to vest. However, property owners must take some affirmative step to vest their rights. Uses that are merely contemplated for the future but unrealized as of the effective date of a regulation do not constitute a vested nonconforming use.[148]

While local governments must respect vested rights, there are several tools that can protect the planning process without intruding on property rights. First, some communities adopt moratoria while new plans or regulations are being prepared. These must follow the adoption procedures required by the ZPL, and cannot abridge vested rights. In addition, moratoria can be controversial and, in some cases, interfere with a community's housing or economic development objectives. As an alternative, communities can develop interim development standards or procedures that stay in place while the plan is updated. These allow development to proceed, but apply a higher level of design control or scrutiny than the existing regulations. Finally, communities can update their application submittal requirements to ensure that applications that are filed are done so in good faith, rather than to avoid the application of new regulations. For example, a community that does not require traffic studies for discretionary zoning applications could add those to the application to ensure that it has complete information before making the decision.

In addition, the courts have held repeatedly that prior non-conforming uses are not absolutely protected from subsequent zoning regulations, and that a government authority can require a non-conforming use to terminate in a reasonable time, generally based on the investment expectations. In other words, the property owner should have enough time to realize a decent return on the investment in the use. [149] This is a powerful tool, but is rarely used in Georgia. The City of Albany has adopted an ordinance to amortize certain billboards, and it has not been challenged.

7. Can local governments tie zoning or plat approval to adequate public facilities standards?

Adequate public facilities ordinances (APFOs) tie zoning or plat approval to the capacity of off-site infrastructure.[150] Unlike impact fees, APFOs do not require the payment of money, but instead give applicants different ways to mitigate their offsite impacts. This can include timing and phasing the development to coincide with the availability of facilities, reducing density or intensity, or – at the applicant's option – advancing the facilities. An APFO should be tied to a capital improvements program that shows when the facilities needed to accommodate growth will become available, their capacity, and how they are financed.

An APFO is probably authorized under local government constitutional zoning and home rule powers.[151] Georgia courts have upheld the practice of tying zoning and subdivision decisions to the congestion of public facilities, and the Steinberg Act criteria specifically require the local government to consider "[w]hether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools."[152] Other states have upheld APFO standards under zoning[153] and subdivision plat approval[154] authority.

However, as always, the constitutionality of the existing zoning is subject to challenge. If the property owner is left with no reasonable economic use of the property, the existing regulations are likely to be struck down as unconstitutional.

8. May a local government use facility extensions to implement a plan's urban form or locational policies?

While local governments can use their discretion in extending utilities outside of their existing boundaries, service can typically only be denied for valid, utility related reasons.[155] Courts have overturned the denial of service where utilities were adequate and available to a development.[156] However, the regional development patterns contemplated by DCA's statewide planning goals, coupled with careful, long range planning, might furnish a basis for a more systematic approach to extending services. When combined with carefully drawn zoning regulations, these can avoid the use of utility extensions that induce sprawl or leapfrog development patterns.

CONCLUSION

While comprehensive planning is important, providing an appropriate implementation framework is critical. Plans do not implement themselves. A community should follow a plan with public investment and regulatory tools that are consistent with its development, urban form, and land use policies.

In many states, regional agencies and local governments struggle to determine whether they have adequate authority to implement planning policies. This is particularly true where the plans call for aggressive changes in development patterns or innovative regulatory tools, but the enabling legislation is not up to date. Fortunately, both ARC and Georgia's local governments have ample tools for plan implementation. ARC enjoys broad planning and facilitation powers, while local governments have very broad zoning and land use authority. This is authority must be exercised in a way that complies with state law and respects the constitutional rights of property owners. However, the state constitution, planning legislation, and body of

case law provide generous sources of authority for the region's design, economic development and sustainability goals.

ENDNOTES

[1] OCGA § 50-8-30.
[2] OCGA § 50-8-83.
[3] OCGA § 50-8-42.
[4] See note 41 and accompanying text.
[5] OCGA § 50-8-84.
[6] *2010 UPWP - Unified Planning Work Program for the Atlanta Metropolitan Transportation Planning Area* (adopted Dec. 1, 2009), at 3.
[7] OCGA §50-8-46, -94(e); Griffith, "The Preservation Of Community Green Space: Is Georgia Ready To Combat Sprawl With Smart Growth?", 85 WAKE FOREST L. REV. 563, 572 (2001).
[8] OCGA § 50-8-30.
[9] OCGA §50-8-98(a); *Kingsley v. Florida Rock Industries, Inc.*, 259 Ga.App. 207, 576 S.E.2d 569 (Ga.App. 2002)(absent notification procedure for adoption of plan, the county's normal practice applied rather than the notice required by the Zoning Ordinance or ZPL).
[10] OCGA § 50-8-83(c).
[11] OCGA § 50-8-7.1(b).
[12] OCGA § 50-8-3.
[13] Ga. Comp. R. & Regs. 110-12-6-.02(1).
[14] Ga. Comp. R. & Regs. 110-12-6-.05(1).
[15] Ga. Comp. R. & Regs. 110-12-6-.02(1)(c).
[16] Ga. Comp. R. & Regs. 110-12-6-.05(2)(a)3, -(2)(c)(implementation program).
[17] Ga. Comp. R. & Regs. 110-12-1-.08(5)(d).
[18] OCGA § 50-8-8(a).
[19] OCGA § 50-8-2(a)(18).
[20] Ga. Comp. R. & Regs. 110-12-1-.08(2)(e).
[21] OCGA § 50-8-7.1(5), -2 (defining "conflict").
[22] 23 U.S.C. § 134(c)(1)).
[23] 23 U.S.C. § 134(h).
[24] 23 U.S.C. § 134(k).
[25] 23 U.S.C. § 134(j)(3)(C).
[26] OCGA § 50-8-30. "Coordinated and comprehensive planning" means planning by counties and municipalities and by regional commissions (OCGA § 50-8-31(7)).
[27] OCGA § 50-8-31(17).
[28] OCGA § 50-8--31(22)(B).
[29] OCGA § 50-8-30.
[30] OCGA §50-8-36.
[31] OCGA § 50-8-93(a)(1), 50-8-80. An "area plan" is a written proposal that involves governmental action, expenditure of public funds, use of public property, or the exercise of franchise rights granted by any public body and which affects the citizens of more than one political subdivision of an area and which may have a substantial effect on the development of an area.[31] Area plans may involve land use (not including zoning), water and sewerage systems, storm drainage systems, parks and open spaces, airports, highways and transit facilities, hospitals, public buildings, and other community facilities and services.
[32] OCGA §50-8-94.
[33] 23 U.S.C. § 134(c).
[34] OCGA §50-8-35(a)(5).
[35] OCGA § 50-8-97.
[36] OCGA § 50-8-35(a)(8), -(c).
[37] OCGA § 50-8-35(c).

[38] OCGA § 50-8-92.
[39] OCGA § 50-8-94(b).
[40] OCGA §50-8-35(e), 93(a)(2).
[41] OCGA §50-8-93(d). This includes the following statutes:

- 40 U.S.C.A. Section 461 and 40 U.S.C.A. Section 461(g), as amended, P.L. 89-117 (1965), and P.L. 90-448 (1968). *This is the comprehensive urban planning and assistance program under section 701 of the Housing Act of 1954, 94 Stat. 1662. 40 U.S.C.A. § 461 was repealed by Pub.L. 97-35, Title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.*
- 42 U.S.C.A. Section 3725, P.L. 90-351 (1968). *Related to National Institute of Justice, Section 3725, Pub.L. 90-351, Title I, § 205, June 19, 1968, 82 Stat. 199; Pub.L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 199; Pub.L. 94-503, Title I, § 107, Oct. 15, 1976, 90 Stat. 2410, related to the allocation of funds and the reallocation of unused funds. See section 3745 of this title.*
- 42 U.S.C.A. Section 246(b), P.L. 89-749, as amended, P.L. 90-174 (1967). *Grants and services to States relating to comprehensive and continuing planning for health needs.*
- Comprehensive transportation studies required by 23 U.S.C.A. Sections 101, 134, P.L. 87-866 (1962).
- 49 U.S.C.A. Section 1601, et seq.P.L. 88-365 (1964), as amended, and supplemented by administrative requirements of the United States Department of Transportation. *Codified at 49 USCA, chapter 53.*
- Any similar law enacted before July 1, 1971.

[42] OCGA §50-8-96, -37.
[43] OCGA §50-8-35(a)(10).
[44] OCGA §50-8-43.
[45] OCGA §50-8-99.
[46] OCGA §50-8-99.1.
[47] OCGA §50-8-35(a)(8).
[48] OCGA §50-8-93(a)(3), -(e).
[49] OCGA §50-8-35(a)(8).
[50] Ga. Comp. R. & Regs. 110-12-6-.05(2)(c).
[51] Ga. Comp. R. & Regs. 110-12-6-.08(2)(j).
[52] Ga. Comp. R. & Regs. 110-12-6-.05(2)(a)3; (c)2.
[53] *Threatt v. Fulton County*, 266 Ga. 466, 467 S.E.2d 546 (Ga. 1996).
[54] R. Kemp, ed., *Regional Government Innovations: A Handbook for citizens and Public Officials* (2003), at 13.
[55] Ga. Comp. R. & Regs. 110-12-6-.09(2)r).
[56] OCGA §§ 36-66A-1 and 36-66A-2, Title 36, Chapter 66A. Crick, "Transfer Of Development Rights: Revise Procedures Relating To Transfer Of Development Rights By Eliminating The Requirement Of Approval By The Local Governing Authority Prior To The Sale Of The Tdrs; Include Marsh Hammocks As An Appropriate Sending Area," 20 Ga. St. U. L. Rev. 192 (2003); Sentell, "Local Government Law," 50 Mercer L. Rev. 263, 304 (1998).
[57] Ga. Stat. § 36-66A-2.
[58] See Mile High Compact at http://www.drcog.org/index.cfm?page=MileHighCompact.
[59] R. Freilich, *From Sprawl to Smart Growth: Successful Legal, Planning, and Environmental Systems* (American Bar Association,1999).
[60] M. White, *Affordable Housing: Proactive and Reactive Planning Strategies* (American Planning Association, Planning Advisory Service Report No. 441).
[61] Courts in other states have ruled that a housing mitigation requirement is not an exaction, but these decisions are not binding in Georgia. *Action Apartment Ass'n v. City of Santa Monica*, 166 Cal.App.4th 456, 82 Cal.Rptr.3d 722 (Cal.App. 2 Dist. 2008), *cert. denied*, 129 S.Ct. 2387, 173 L.Ed.2d 1295 (2009); *Home Builders Assn. v. City of Napa*, 90 Cal.App.4th 188, 197, 199, 108 Cal.Rptr.2d 60 (2001); *Kamaole Pointe Development LP v. Hokama*, --- F.Supp.2d ----, 2008 WL 2622819 (D.Hawai'i 2008); *Commercial Builders of Northern Cal. v. City of Sacramento*, 941 F.2d 872 (9th Cir.1991), cert. denied504 U.S. 931, 112 S.Ct. 1997, 118 L.Ed.2d 593 (1992); White, *Housing Affordability and Development Management: Proactive and*

Reactive Planning Strategies (American Planning Association, Planning Advisory Service Report no. 441, December 1992); White, "The National Affordable Housing Act and Comprehensive Planning: An Overview and Analysis," 1992 *Inst. On Planning, Zoning, And Eminent Domain*, at 4-1 et seq.); White, "Using Fees and Taxes to Promote Affordable Housing," 43 *Land Use Law & Zoning Digest*, NO. 9 AT 3 (September 1991).

[62] OCGA § 50-8-31.

[63] OCGA § 50-8-99.

[64] See Salvesen & Hervey, *Good Schools — Good Neighborhoods: The Impacts of State and Local School Board Policies* (Center for Urban and Regional Studies, The University of North Carolina at Chapel Hill, June 2003).
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[65] OCGA § 50-8-99.1.

[66] Ga. Comp. R. & Regs. 110-2-3-.01 et seq.

[67] Ga. Constitution Art. 9, § 2, par. I.

[68] Ga. Constitution Art. 9, § 2, par. II

[69] OGCA § 36-35-3(a).

[70] Ga. Constitution Art. 9, § 2, par. III.

[71] Dunlavy Law Group, *The Power To Zone: Who Has It And Where Does It Come From*, at http://www.dunlavylawgroup.com/articles/authority_zone.htm.

[72] See 2008 population estimates at http://quickfacts.census.gov/qfd/states/13000lk.html. As of July 1, 2008, Gwinnett County's population is 789,499 and Cobb County is 698,158.

[73] F. P. Plaza, Inc. v. Waite, 230 Ga. 161, 196 S.E.2d 141, 143 (Ga.), cert. denied, 414 U.S. 825, 94 S.Ct. 129, 38 L.Ed.2d 59 (1973).

[74] OGCA § 36-66-5(b).

[75] OGCA § 36-66-3(3).

[76] *City of Decatur v. DeKalb County*, 256 Ga.App. 46, 567 S.E.2d 376, 2 FCDR 1919 (Ga.App. 2002); *McClure v. Davidson*, 258 Ga. 706, 711(6), 373 S.E.2d 617 (1988).

[77] *Fairfax MK v. City of Clarkston*, 274 Ga. 520, 555 S.E.2d 722 (2001).

[78] *Augusta Video, Inc. v. Augusta-Richmond County*, 2009 WL 783344 (S.D.Ga.,Mar 24, 2009)(citing *Augusta Video, Inc. v. Augusta-Richmond County*, No. 03-10574, 87 Fed. Appx. 712 (Table) (11th Cir. 2003) and *Artistic Entm't, Inc. v. City of Warner Robins*, 331 F.3d 1196 (11th Cir.2003)).

[79] *City of Decatur v. DeKalb County*, *supra*.

[80] *Greater Atlanta Homebuilders Ass'n v. DeKalb County*, 277 Ga. 295, 588 S.E.2d 694 (2003).

[81] *City of Walnut Grove v. Questco, Ltd.*, 275 Ga. 266, 564 S.E.2d 445 (Ga. 2002).

[82] R. Freilich & M. Schultz, *Model Subdivision Regulations* (American Planning Association, 1995).

[83] Roskie & Custer, "Adequate Public Facilities Ordinances: A Comparison Of Their Use In Georgia And North Carolina," 15 *Southeastern Environmental Law Journal* 245 (2007).

[84] Roskie & Custer, *supra*.

[85] *Hodge v. Board of Appeals of City of Cartersville*, 176 S.E.2d 539 (Ga.App. 1970).

[86] *RCG Properties, supra*; *Bentley v. Chastain*, 242 Ga. 348, 349, n. 3, 249 S.E.2d 38 (1978); *Westbrook v. Albany Planning Commission*, 251 S.E.2d 110 (Ga.App.,1978).

[87] *RCG Properties, supra* (citing *Gradous v. Bd. of Commrs.*, 256 Ga. 469, 470-471, 349 S.E.2d 707 (1986)).

[88] *Town of Tyrone v. Tyrone, LLC*, 565 S.E.2d 806 (Ga. 2002); *Jackson v. Goodman,* 279 S.E.2d 438 (Ga. 1981); *Hall Paving Co. v. Hall County*, 226 S.E.2d 728 (Ga. 1976).

[89] *Westbrook*, *supra*; *Smisson Gardens, Inc. v. Doles*, 244 Ga. 468, 260 S.E.2d 865 (Ga. 1979); *Avera v. City of Brunswick*, 242 Ga. 73, 75, 247 S.E.2d 868, 870 (1978).

[90] *Smission Gardens, supra; Avera, supra.*

[91] *Vulcan Materials Co. v. Griffith*, 215 Ga. 811, 114 S.E.2d 29 (Ga. 1960) held that counties had complete freedom to create any number of zones and districts, and of such size and shape as they may arbitrarily choose. This decision has been overruled in 3 separate cases. *East Lands, Inc. v. Floyd County*, 244 Ga. 761, 262 S.E.2d 51, 53-54 (Ga. 1979)(counties do not have unlimited authority to spot zone); *Cross v. Hall County*, 238 Ga. 709, 235 S.E.2d 379 (Ga. 1977) (when neighbors of rezoned property challenge the rezoning in court on its merits, it will be set aside only if fraud or corruption is shown or the rezoning power is being manifestly abused to the oppression of the neighbors); *Matthews v. Fayette County*, 233 Ga. 220, 210 S.E.2d 758 (Ga. 1974) (Constitution Art. III, Sec. VII, Par. XXIII (Code Ann. s 2-1923), was impliedly repealed by the Home

Rule constitutional amendment of 1966, as it applied to unincorporated areas, which allows counties to adopt a reasonable zoning ordinance).

[92] *Pruitt v. Meeks*, 177 S.E.2d 41 (Ga. 1970).

[93] *Legacy Inv. Group, LLC v. Kenn*, 621 S.E.2d 453 (Ga. 2005); *King v. City of Bainbridge*, 276 Ga. 484, 577 S.E.2d 772, *cert. denied*, 540 U.S. 876, 124 S.Ct. 228, 157 L.Ed.2d 138 (U.S. 2003).

[94] *City of Atlanta v. Tap Associates* , 273 Ga. 681, 544 S.E.2d 433 (Ga. 2001).

[95] *City of Atlanta v. Tap Associates, supra* (citing *Guhl v. Holcomb Bridge Rd. Corp.*, 238 Ga. 322, 323, 232 S.E.2d 830 (1977)).

[96] *City of Atlanta v. Tap Associates, supra* (citing *DeKalb County v. Dobson*, 267 Ga. 624, 626, 482 S.E.2d 239 (1997)).

[97] *Gradous v. Board of Com'rs of Richmond County*, 349 S.E.2d 707 (Ga. 1986). Zoning regulations can also be overturned if the adoption process does not comply with the Zoning Procedures Law (see discussion below). Statutory violations do not necessarily rise to the level of constitutional violations.

[98] *Smission Gardens, supra; Avera, supra*.

[99] *City of Atlanta v. Tap Associates, supra* (citing *Gwinnett County v. Davis,* 268 Ga. 653, 654, 492 S.E.2d 523 (1997); *Gradous v. Board of Comm'rs,* 256 Ga. 469, 471, 349 S.E.2d 707 (1986)); *RCG Properties, LLC v. City of Atlanta Bd. of Zoning Adjustment*, 260 Ga.App. 355, 579 S.E.2d 782, 787 (Ga.App. 2003); *Town of Tyrone v. Tyrone, LLC, supra*; *Cannon v. Coweta County*, 389 S.E.2d 329 (Ga. 1990), *overruled, King v. City of Bainbridge, supra*; *Browning v. Cobb County*, 383 S.E.2d 126 (Ga. 1989); B*oard of Com'rs of Hall County v. Skelton,* 248 Ga. 855, 286 S.E.2d 729 (Ga. 1982); *City of Thomson v. Davis*, 88 S.E.2d 300 (Ga.App. 1955).

[100] *City of Atlanta v. Tap Associates, supra* (citing *City of Roswell v. Heavy Machines Co.,* 256 Ga. 472, 474, 349 S.E.2d 743 (1986); *Gradous,* 256 Ga. at 471, 349 S.E.2d 707); *Legacy Inv. Group, LLC v. Kenn*, 279 Ga. 778, 621 S.E.2d 453 (2005); *Town of Tyrone v. Tyrone, LLC*, 275 Ga. 383, 385, 565 S.E.2d 806 (2002); *DeKalb County v. Dobson*, 482 S.E.2d 239 (Ga. 1997).

[101] *Guhl v. Par-3 Golf Club, Inc.*, 238 Ga. 43, 44-45, 231 S.E.2d 55 (1976).

[102] *City of Atlanta v. Tap Associates, supra* (citing *Fulton County v. Wallace*, 260 Ga. 358, 361, 393 S.E.2d 241 (1990)).

[103] *DeKalb County v. Dobson*, 482 S.E.2d 239 (Ga. 1997).

[104] Compare *Guhl, supra* (upholding a refusal to rezone where planning staff recommended denial), with *Barrett, supra* (overturning refusal to rezone where Planning Commission had recommended the change). See *City of Atlanta v. Tap Associates, supra* (upholding refusal to rezone from single family to mixed use where the zoning regulations were "adopted after extensive study and often contentious debate among the interested parties, including city planners, the business community, and neighborhood residents, about the best plan for managing the growth and development of the area.")

[105] *City of Atlanta v. Tap Associates, supra*.

[106] *Gwinnett County v Davis, supra*; *Browning v. Cobb County*, 383 S.E.2d 126 (Ga. 1989); *Gradous, supra.*

[107] *Board of Com'rs of Hall County v. Skelton, supra*; *Smisson Gardens, Inc. v. Doles*, 244 Ga. 468, 260 S.E.2d 865 (Ga. 1979); *Barrett v. Hamby*, 235 Ga. 262, 219 S.E.2d 399 (1975).

[108] *City of Atlanta v. Tap Associates, supra* (citing *Holy Cross Lutheran Church v. Clayton County,* 257 Ga. 21, 23, 354 S.E.2d 151 (1987)).

[109] *DeKalb County v. Chamblee Dunwoody Hotel Partnership*, 248 Ga. 186, 281 S.E.2d 525 (1981).

[110] *Smission Gardens, supra* (citing *Guhl v. Par-3 Golf Club, Inc.*, 238 Ga. 43, 45, 231 S.E.2d 55 (1976)).

[111] *Parking Ass'n of Georgia, Inc. v. City of Atlanta*, 450 S.E.2d 200 (Ga. 1994), *cert. denied*, 515 U.S. 1116, 115 S.Ct. 2268, 132 L.Ed.2d 273 (1995).

[112] *Town of Tyron, supra.*

[113] *Gradous v. Board of Com'rs of Richmond County*, 256 Ga. 469, 349 S.E.2d 707 (1986)(upholding refusal to rezone where property as zoned was worth $174,900.00 and if rezoned would be worth $351,400.00 – a 50% reduction in valude).

[114] *Board of Com'rs of Hall County v. Skelton, supra.*

[115] *Board of Com'rs of Hall County v. Skelton, supra.*

[116] *City of Atlanta v. Tap Associates, supra* (citing *Fulton County v. Wallace*, 260 Ga. 358, 361, 393 S.E.2d 241 (1990)).

[117] *King v. City of Bainbridge, supra; Smission Gardens, supra; Avera, supra*.

[118] *Hodge, supra.*

[119] *Board of Com'rs of Hall County v. Skelton*, 248 Ga. 855, 286 S.E.2d 729 (Ga. 1982); *Guhl v. Holcomb Bridge Road*, 238 Ga. 322, 323-24, 232 S.E.2d 830 (1977).

[120] Peter R. Olson, Esq. & Brandon L. Bowen, Esq., "Neighbors Challenging Zoning and Land Use Decisions," Land Matters (July 2008).

[121] Olson & Bowen, *supra*. The author updated this statement to July 2010, and the absence of references to spot zoning is still true.
[122] *Marshall v. Salt Lake City*, 105 Utah 111, 141 P.2d 704 (1943); see also *Purser v. Mecklenburg County*, 127 N.C.App. 63, 488 S.E.2d 277 (N.C.App. 1997)(upholding rezoning to mixed use district based on plan policies).
[123] *Turner v. City of Atlanta*, 257 Ga. 306, 357 S.E.2d 802 (1987).
[124] *Turner, supra*.
[125] *Turner, supra*.
[126] *Fairfax MK, Inc. v. City of Clarkston*, 274 Ga. 520, 555 S.E.2d 722 (Ga. 2001)(citing *Bradshaw v. Dayton*, 270 Ga. 884(1), 514 S.E.2d 831 (1999); *City of Lilburn v. Sanchez, supra* at 521, 491 S.E.2d 353; *Cannon v. Coweta County*, 260 Ga. 56, 57, 389 S.E.2d 329 (1990), *overruled, King v. City of Bainbridge*, 276 Ga. 484, 577 S.E.2d 772 (Ga. 2003); and comparing *Gradous v. Bd. of Commissioners*, 256 Ga. 469, 349 S.E.2d 707 (1986)).
[127] *Fairfax MK, Inc. v. City of Clarkston*, 274 Ga. 520, 555 S.E.2d 722 (Ga. 2001)(citing *Cannon v. Coweta County, supra*).
[128] *Hayward v. Ramick*, 248 Ga. 841, 843(1), 285 S.E.2d 697 (1982); *Rockdale County v. Mitchell's Used Auto Parts*, 243 Ga. 465, 254 S.E.2d 846 (1979); *City of Atlanta v. Tap Associates*, *supra*.
[129] *Greater Atlanta Homebuilders Ass'n v. DeKalb County*, *supra*.
[130] *Pope v. City of Atlanta*, 242 Ga. 331, 334, 249 S.E.2d 15 (1978).
[131] *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994).
[132] *City of Thomson v. Davis*, 88 S.E.2d 300 (Ga.App. 1955).
[133] *Delta Cascade Partners, II v. Fulton County*, 260 Ga. 99, 390 S.E.2d 45 (Ga. 1990).
[134] *Avera v. City of Brunswick*, 242 Ga. 73, 247 S.E.2d 868 (1978)(citing *Humthlett v. Reeves*, 212 Ga. 8, 15, 90 S.E.2d 14 (1955); *Guhl v. Par-3 Golf Club, Inc.*, 238 Ga. 43, 231 S.E.2d 55 (1976)).
[135] *Cobb County v. McColister*, 261 Ga. 876, 413 S.E.2d 441 (1992)(no taking on denial of rezoning where property owner "still had possession and use of the land where [it] could have built in accordance with the existing zoning or applied for a different type of zoning.").
[136] *Forsyth County v. Greer*, 211 Ga.App. 444, 439 S.E.2d 679 (1993)(no taking resulted from delay in issuing permits and certificates necessary to develop a subdivision, denying request for damages under 42 U.S.C. § 1983).
[137] *Town of Tyrone v. Tyrone, LLC*, 275 Ga. 383, 565 S.E.2d 806 (2002).
[138] *Dover v. City of Jackson*, 246 Ga.App. 524, 541 S.E.2d 92 (2000)(citing *Spence v. Zimmerman*, 873 F.2d 256, 261 (11th Cir.1989).
[139] *North Georgia Mountain Crisis Network, Inc. v. City of Blue Ridge*, 248 Ga.App. 450, 546 S.E.2d 850 (2001); *Cobb County v. Peavy*, 248 Ga. 870, 286 S.E.2d 732 (1982); *Tuggle v. Manning*, 224 Ga. 29, 159 S.E.2d 703 (1968); *City of Rome v. Shadyside Memorial Gardens*, 93 Ga.App. 759, 92 S.E.2d 734 (1956).
[140] *Dover, supra* (protecting neighborhood character is a legitimate government interest).
[141] D. Slone and D. Goldstein, eds., *A Legal Guide to Urban and Sustainable Development for Planners, Developers and Architects* (Wiley, 2008); Congress for the New Urbanism, *Codifying the New Urbanism* (American Planning Association, Planning Advisory Service Report No. 526, 2004).
[142] White, *The Zoning and Real Estate Implications of Transit-Oriented Development*, Transit Cooperative Research Program (TCRP) Legal Research Digest, No. 12 (January 1999).
[143] White & Jourdan, "Neotraditional Development: A Legal Analysis," 49 Land Use Law & Zoning Digest, No. 8 at 3 (August 1997).
[144] Ga. Comp. R. & Regs. 110-12-6-.06(3)(m).
[145] White & Jourdan, *supra*.
[146] P. Olson, "Vested Rights, Grandfathering and Moratoria," Land Matters (Oct. 2007).
[147] *Barker v. County of Forsyth*, 248 Ga. 73, 281 S.E.2d 549 (1981).
[148] *North Georgia Mountain Crisis Network, Inc. v. City of Blue Ridge*, 248 Ga.App. 450, 546 S.E.2d 850 (Ga.App. 2001).
[149] See *BBC Land & Development, Inc. v. Butts County*, 281 Ga. 472, 640 S.E.2d 33 (2007); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 267 Ga.App. 134, 601 S.E.2d 106 (2004); *Ralston Purina Co. v. Acrey*, 220 Ga. 788, 142 S.E.2d 66 (1965); *Gifford-Hill & Co., Inc. v. Harrison*, 229 Ga. 260, 191 S.E.2d 85 (1972); *Purple Onion, Inc. v Jackson*, 511 F.Supp. 1207 (N.D.Ga. 1981).
[150] Freilich & White, *21st Century Land Development Code* (American Planning Association, 2008); White, *Adequate Public Facilities Ordinances and Transportation Management* (American Planning Association, Planning Advisory Service Report No. 465, August 1996).
[151] Roskie & Custer, *supra*.

[152] OCGA § 36-67-3.
[153] *Golden v. Planning Bd. of Town of Ramapo*, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (N.Y.), *app. diss'd*, 409 U.S. 1003, 93 S.Ct. 440, 34 L.Ed.2d 294 (1972); *Beaver Meadows v. Board of County Com'rs of Larimer County, State of Colo.*, 709 P.2d 928 (Colo. 1985)(upholding denial for lack of offsite capacity and offering mitigation alternatives in lieu of denial, even where the state provided for strict construction of authority).
[154] *Garipay v. Town of Hanover*, 351 A.2d 64 (N.H. 1976)(upholding denial of subdivision plat based on the inability of offsite roads to handle the additional traffic generated by the subdivision).
[155] *Cobb County v. Webb Development, Inc.*, 260 Ga. 605, 398 S.E.2d 3 (Ga. 1990); *Denby v. Brown*, 230 Ga. 813, 199 S.E.2d 214 (Ga. 1973).
[156] *DeKalb County v. Townsend Associates, Inc.*, 243 Ga. 80, 252 S.E.2d 498 (Ga. 1979).