

House Bill 46

By: Representative Holt of the 112th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 36 of Title 36 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to the annexation of property, so as to repeal and
3 replace provisions relating to objections to land use following rezoning; to provide a
4 statement of legislative findings and intent; to provide that whenever property in the
5 unincorporated area of a county is annexed to a city, zoning decisions applicable to such
6 property shall be made concurrently by the governing authorities of the municipality and the
7 county for a period of five years; to provide for the applicability to such territory of the
8 county land use plan in effect at the time of annexation; to provide for an effective date; to
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 1 of Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to
13 general provisions relative to the annexation of territory, is amended by revising Code
14 Section 36-36-11, relating to the effect of objection to land use following rezoning and
15 minimum procedures for addressing issues, as follows:

16 "36-36-11.

17 ~~(a) The intent of this Code section is to provide a mechanism to resolve disputes over land~~
18 ~~use arising out of the rezoning of property to a more intense land use in conjunction with~~
19 ~~or subsequent to annexation in order to facilitate coordinated planning between counties~~
20 ~~and municipalities particularly with respect to areas contiguous to municipal boundaries.~~
21 The General Assembly finds that Article IX, Section II, Paragraph IV of the Constitution
22 of Georgia provides that counties and municipalities may adopt plans and exercise the
23 power of zoning within their boundaries. Furthermore, Chapter 70 of this title requires the
24 preparation of coordinated and comprehensive plans by each local jurisdiction, authorizes
25 implementation of land use regulations consistent with such comprehensive plans, and
26 requires that plans prepared by counties and municipalities within each county be

1 compatible and non-conflicting. The intent of this Code section is to recognize that
2 comprehensive plans prepared by the several counties and municipalities reflect the will
3 of the citizens of the respective local governments in this state and, further, to provide for
4 a rational transition of land use planning and regulatory considerations exercised by a
5 county to the exercise of those powers by a municipality whenever unincorporated areas
6 of a county are annexed into a municipality.

7 ~~(b) As used in this Code section, the term 'objection' means an objection to a proposed~~
8 ~~change in land use which results in a substantial change in the intensity of the allowable~~
9 ~~use of the property or a change to a significantly different allowable use. Notwithstanding~~
10 ~~any provision of Chapter 66 of this title to the contrary, whenever property in the~~
11 ~~unincorporated area of a county is annexed to a city pursuant to Chapter 36 of this title,~~
12 ~~zoning decisions applicable to such property shall be made concurrently by the governing~~
13 ~~authority of the annexing municipality and the governing authority of the county within~~
14 ~~which the property is located for a period of five years following the effective date of the~~
15 ~~annexation.~~

16 ~~(c)(1) When an initial zoning of property is sought pursuant to subsection (d) of Code~~
17 ~~Section 36-66-4 or when the rezoning of annexed property is sought within one year of~~
18 ~~the effective date of the annexation, the municipal corporation shall give notice to the~~
19 ~~county governing authority within seven calendar days of the filing of the application for~~
20 ~~initial zoning or rezoning. Upon receipt of such notice, the county governing authority~~
21 ~~shall have seven calendar days to notify the municipality in writing of its intent to raise~~
22 ~~an objection to the proposed zoning or rezoning of the property and shall specify the basis~~
23 ~~for the objection. If the county governing authority serves notice of its intent to object,~~
24 ~~then the county governing authority shall have ten calendar days from the date of the~~
25 ~~county's notice to document in writing the nature of the objection specifically identifying~~
26 ~~the basis for the objection including any increased service delivery or infrastructure costs.~~
27 ~~The absence of a written notice of intent to object or failure to document the nature of the~~
28 ~~objection shall mean the municipal corporation may proceed with the zoning or rezoning~~
29 ~~and no subsequent objections under this process may be filed for the zoning or rezoning~~
30 ~~under consideration. Unless a county or municipality agrees otherwise, the concurrent~~
31 ~~zoning decisions required by this Code section shall be subject to the land use element~~
32 ~~of the county as it applies to the parcel or parcels of land annexed at the time of the~~
33 ~~annexation. If the next scheduled update of the county and municipal comprehensive~~
34 ~~plans pursuant to the minimum standards and procedures of the Department of~~
35 ~~Community Affairs occurs within the five-year time period specified in subsection (b) of~~
36 ~~this Code section, the land use element applicable to the annexed territory shall be~~
37 ~~established by concurrent action of the municipality and affected county.~~

1 ~~(2) Commencing with the date of receipt by the municipality of the county's documented~~
2 ~~objections, representatives of the municipal corporation and the county shall have 21~~
3 ~~calendar days to devise mitigating measures to address the county's specific objections~~
4 ~~to the proposed zoning or rezoning. The governing authority of the municipal corporation~~
5 ~~and the governing authority of the county may agree on mitigating measures or agree in~~
6 ~~writing to waive the objections at any time within the 21 calendar day period, in which~~
7 ~~event the municipal corporation may proceed with the zoning or rezoning in accordance~~
8 ~~with such agreement; or, where an initial zoning is proposed concurrent with annexation,~~
9 ~~the municipality may approve, deny, or abandon the annexation of all or parts of the~~
10 ~~property under review.~~

11 ~~(3) If the representatives of the municipal corporation and the county fail to reach~~
12 ~~agreement on the objections and mitigating measures within the 21 calendar day period,~~
13 ~~either the governing authority of the municipal corporation or the governing authority of~~
14 ~~the county may insist upon appointment of a mediator within seven calendar days after~~
15 ~~the end of the 21 day period to assist in resolving the dispute. The mediator shall be~~
16 ~~mutually selected and appointed within seven calendar days of either party's timely,~~
17 ~~written insistence on a mediator. The party insisting on use of the mediator shall bear~~
18 ~~two-thirds of the expense of the mediation and the other party shall bear one-third of the~~
19 ~~expense of the mediation. If both the municipality and the county insist on mediation, the~~
20 ~~expenses of mediation shall be shared equally. The mediator shall have up to 28 calendar~~
21 ~~days to meet with the parties to develop alternatives to resolve the objections. If the~~
22 ~~municipal corporation and the county agree on alternatives to resolve the objections, the~~
23 ~~municipal corporation may proceed in accordance with the mediated agreement.~~

24 ~~(4) If the objections are not resolved by the end of the 28 day period, the municipal~~
25 ~~governing authority or the county governing authority may, no later than seven calendar~~
26 ~~days after the conclusion of such 28 day period, request review by a citizen review panel.~~
27 ~~The citizen review panel shall be an independent body comprised of one resident of the~~
28 ~~municipal corporation appointed by the municipal governing authority, one resident of~~
29 ~~the county appointed by the county governing authority, and one nonresident of the~~
30 ~~county who is a land use planning professional mutually selected by the municipal and~~
31 ~~county appointees to the citizen review panel. No elected or appointed officials or~~
32 ~~employees, contractors, or vendors of a municipality or county may serve on the citizen~~
33 ~~review panel. If a request for review by a citizen review panel is made, the mediator shall~~
34 ~~make arrangements to appear personally at the first meeting of the panel and brief the~~
35 ~~panel members regarding the objections and proposed mitigating measures or provide a~~
36 ~~written presentation of such objections and proposed mitigating measures to the panel~~
37 ~~members on or before the date of such first meeting, whichever the mediator deems~~

1 appropriate. The citizen review panel shall meet at least once but may conduct as many
2 meetings as necessary to complete its review within a 21 calendar day period. All
3 meetings of the citizen review panel shall be open to the public pursuant to Chapter 14
4 of Title 50. Within 21 calendar days of the request for review, the citizen review panel
5 shall complete its review of the evidence submitted by the county and the municipality
6 concerning the objections and proposed mitigating measures and shall issue its own
7 recommendations.

8 (5) The citizen review panel shall recommend approval or denial of the zoning or
9 rezoning and address the objections and proposed mitigating measures. Where an initial
10 zoning is proposed concurrent with annexation, the panel may also recommend that the
11 annexation be approved or abandoned. The findings and recommendations of the citizen
12 review panel shall not be binding.

13 (6) Following receipt of the recommendations of the citizen review panel, the municipal
14 corporation may:

15 (A) Zone or rezone all or parts of the property under review;

16 (B) Zone or rezone all or parts of the property under review with mitigating measures;

17 (C) Deny the zoning or rezoning of all or parts of the property under review; or

18 (D) Any combination of the foregoing.

19 Where an initial zoning is proposed concurrent with annexation, the municipality may
20 also approve, deny, or abandon the annexation of all or parts of the property under
21 review.

22 (7) At any time during the process set forth in this Code section, the county or
23 municipality may file a petition in superior court seeking sanctions against a party for any
24 objections or proposed mitigating measures that lack substantial justification or that were
25 interposed for purposes of delay or harassment. Such petition shall be assigned to a judge,
26 pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which
27 the county is located. The judge selected may also be a senior judge pursuant to Code
28 Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall
29 determine whether any objections or proposed mitigating measures lack substantial
30 justification or were interposed for delay or harassment and shall assess against the party
31 raising such objection or proposing or objecting to such mitigating measures the full cost
32 of attorney fees and other costs incurred by the other party in responding to the objections
33 or proposed mitigating measures.

34 (8) Unless otherwise agreed, a zoning or rezoning decision made pursuant to this Code
35 section shall not be effective until 28 calendar days following the completion of the
36 process authorized by this Code section and the zoning or rezoning vote by the municipal
37 governing authority.

1 ~~(9) During the process set forth in this Code section, the municipal corporation may~~
2 ~~proceed with notice, hearings, and other requirements for zoning or rezoning in~~
3 ~~accordance with the municipality's zoning ordinance.~~

4 ~~(d) If the annexation, zoning, or rezoning is denied or abandoned based in whole or in part~~
5 ~~on the county's objections, the county shall not zone or rezone the property or allow any~~
6 ~~use of a similar or greater density or intensity to that proposed for the property which had~~
7 ~~been objected to by the county pursuant to this Code section for a one-year period after the~~
8 ~~denial or abandonment."~~

9 **SECTION 2.**

10 This Act shall become effective upon its approval by the Governor or upon its becoming law
11 without such approval.

12 **SECTION 3.**

13 All laws and parts of laws in conflict with this Act are repealed.