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General Assembly of Georgia

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Via Email Transmission
(Fran.Millar@senate.ga.gov)

Honorable Fran Millar
Senator, 40th District
319-B CLOB

RE: Municipal Regulation of Local School District Property.

Dear Senator Millar:

I understand from Alex Azarian that you desire an opinion as to the authority of a municipal corporation to enforce its ordinances in reference to real property owned by a local school district. As discussed in more detail below, while a local school district using its property for a governmental purpose would not be subject to municipal zoning regulations, it would be subject to other regulations, such as municipal building codes and land-disturbing activity requirements.

More than three decades ago, the Georgia Supreme Court declared it "a general rule that in their use of land a state government and its agencies are immune from operation of local zoning regulations." Macon Association for Retarded Citizens v. Macon-Bibb County Planning & Zoning Commission, 252 Ga. 484, 488 (1984). Furthermore, this concept has applied to local school districts for over twenty years. Macon-Bibb County Planning & Zoning Commission v. Bibb County School District, 222 Ga. App. 264 (3) & (4) (1996).

However, this immunity does not apply to all municipal regulations. "Zoning is to be distinguished from other regulations with which a developer must comply, such as requirements for a building permit." City of Decatur v. DeKalb County, 256 Ga. App. 46, 48 (2002). The court went on to note that Georgia's Constitution places municipal powers related to zoning in an entirely separate section (Georgia Constitution, Article IX, Section II, Paragraph IV) from supplementary powers, such as building codes and stormwater and sewage collection and disposal, found in Article IX, Section II, Paragraph III of the Georgia

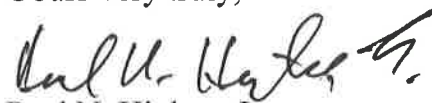
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Constitution.¹ Id.

To reiterate, while a local school district using its property for a governmental purpose would not be subject to municipal zoning regulations, it would be subject to municipal regulations adopted pursuant to constitutional supplementary powers.

If you have any questions, please feel free to contact me.

Yours very truly,



Paul N. Higbee, Jr.
Deputy Legislative Counsel

Approved for release: 

¹ I also note that Code Section 12-7-4(a), which requires each municipality to adopt a comprehensive land-disturbance ordinance, provides that such ordinances shall apply to “property owned by . . . a local school district.”