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Training for a Fast-Changing World

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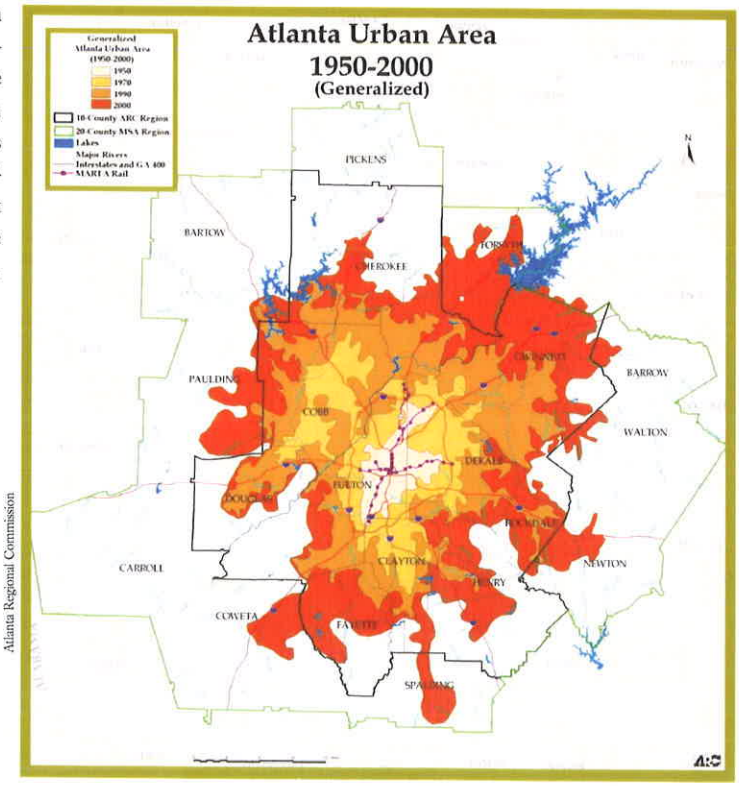
For planning commissioners in the Atlanta region, more than two decades of explosive growth means that there is little time for learning the ropes before their decisions have an impact on the community. A basic understanding of planning principles is needed from the moment they take their seat on the commission.

To meet that need, the Atlanta Regional Commission (ARC) introduced a program known as the Community Planning Academy in 2001. The flagship course in this program, *Training for Planning Officials*, is based on the principle that the planning commission is the arena where theory meets practice.



Atlanta Regional Commission

The Atlanta Regional Commission's training course explores the explosive growth in and around Atlanta and how planning is responding.

Training for Planning Officials provides an opportunity for planning commissioners and staff, elected officials, and other community members to interact with leading names in the urban planning field. If ARC can expose planning commissioners in the region to new ideas and fundamental concepts in planning, then growth in the region will be held to a higher standard. To date, the course has trained over 450 participants.

Each speaker who contributes to the course leaves participants with knowledge of a different aspect of planning. Some speakers focus on long-term trends and fundamental skills.

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What Planning Commissioners Need to Know About RLUIPA

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In 2000, Congress enacted the federal Religious Land Use and Institutionalized Persons Act (RLUIPA),[1] to "change the rules" when churches[2] challenged land-use regulations. To date, more than 80 RLUIPA lawsuits have been filed challenging regulations that plaintiffs claim unlawfully restrict development or use of their properties. While some are unjustified, others pose serious questions about how we balance the goals of land-use regulation and the religious mission of churches in the context of a society experiencing rapid cultural and demographic change.

This is an overview to how RLUIPA has changed the rules regarding land-use regulation of religious uses and how best to respond to the change.

How Has RLUIPA Changed the Rules?

RLUIPA makes it far more likely that a church challenging local land-use regulations will be successful. How? First, RLUIPA allows courts, under certain circumstances, to subject regulations to the most demanding form of judicial review: the "least restrictive means" version of "strict scrutiny." Without RLUIPA, that possibility would normally not exist because the Supreme Court in 1990 ruled that when a church challenges a "neutral law of general application"–such as a zoning regulation–courts should apply the least demanding form of judicial review, the "rational basis" test.

RLUIPA mandates strict scrutiny whenever a court finds that a regulation imposes a "substantial burden" on "religious exercise" of a person, religious assembly, or institution. Further, RLUIPA defines what constitutes a protected "exercise of religion" far more broadly than for a challenge brought under the federal constitution. If a "substantial burden" is found, the regulation will be invalidated unless the government can demonstrate that imposition of the burden is both in furtherance of a "compelling governmental interest" and is the "least restrictive means of furthering" that interest.

RLUIPA further mandates that local land-use regulations: grant "equal treatment" to a religious assembly or institution; not discriminate against any assembly or institution on the basis of religion or religious denomination; and not impose or implement a land-use regulation that totally excludes religious assemblies from a jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction. Finally, RLUIPA authorizes plaintiffs to sue under the federal Civil Rights statute, 42 U.S.C. §1983, which provides for the recovery of attorneys' fees by a prevailing plaintiff under 42 U.S.C. §1988.

What Types of Challenges Have Been Brought Under RLUIPA?

RLUIPA challenges fall into a few broad categories. One of the most common challenges is to enforcement actions or permit denials where government claims that a church or "social service" religious use is not permitted in a given zoning district; a claim that has been made for districts ranging from residential to industrial. Such challenges often claim that the code prohibits "religious uses" while allowing similar, but secular, uses. Other common claims include: challenges to limits on attendees at home-based prayer or study groups; claims that regulations effectively ban religious uses; and, most generally, challenges to the denial of a zoning or historic preservation permit for expansion or alteration.

How Are the Courts Treating RLUIPA Challenges?

To date, RLUIPA challenges have fared somewhat better at trial in the federal district courts than on appeal to the federal circuit courts. There have already been several instances where successful district court plaintiffs were disappointed on appeal. Some of these cases, however, involved circuit court rulings on essentially procedural matters that leave the ultimate outcome of the litigation still in doubt. Substantively, RLUIPA plaintiffs have found it difficult to convince a court that land-use regulations impose a "substantial burden," but have enjoyed greater success with challenges alleging "unequal treatment."

The majority of courts that have ruled on RLUIPA's constitutionality have upheld the statute, including the only federal circuit court to rule on the issue. That said, it is not unusual for the Supreme Court to strike down a statute that was previously upheld by a lower court, which is precisely what occurred in 1997 with RLUIPA's predecessor, the Religious Freedom Restoration Act (RFRA).

How Should Planning Commissions Respond to RLUIPA?

Commissions need to respond to RLUIPA proactively by determining if their land-use regulations comport with RLUIPA. At minimum, zoning ordinances should provide reasonable locational options for new or expanding churches and accessory religious uses such as schools, plus church-operated "social service" uses such as shelters for the homeless or victims of domestic abuse and facilities to feed the indigent. Given the complexity of the statute, the creativity that may be required to meet its requirements, and the rapidly evolving case law, both planning staff and legal counsel who are knowledgeable about RLUIPA should be involved in that effort. Finally, commissions also need to know that a number of states have enacted their own "religious freedom" laws, which may impose other requirements on land-use regulation of churches. [3]

1 Pub. L. No. 106-274, codified at 42 U.S.C. § 2000cc (2000).

2 This article uses the term "church" as shorthand for any house of worship or other religious institution.

3 In mid-2005 these were: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Missouri, New Mexico, Oklahoma, Rhode Island, South Carolina, and Texas.