IN THE SUPERIOR COURT OF HALL COUNTY
STATE OF GEORGIA

MARK DOUGLAS FAUL, et al	)	
	)	
	)	
Petitioners,	)	
	)	**Civil Action File No. 2024CV002062**
	)	
HALL COUNTY AND THE HALL COUNTY BOARD OF COMMISSIONERS, et al,	)	
	)	
Respondents.	)	

ORDER ON RESPONDENT HALL COUNTY AND PROPERTY OWNER RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT

The Motions for Summary Judgment filed by Respondents in this case, as well as the Response of the Petitioners, having been read and considered, the Court finds as follows:

Addressing first the propriety of a Motion for Summary Judgment in the case, Petitioners argue that summary judgment is inappropriate in zoning appeals brought under O.C.G.A. § 36-66-5.1, arguing that it is barred by the statutory appeals process. As stated in O.C.G.A. § 36-66-5.1, "[s]uch challenges shall be by way of a de novo review by the superior court wherein such review brings up the whole record from the local government and all competent evidence shall be admissible in the trial thereof, whether adduced in a local government process or not,…". Therefore, the Court finds that under the zoning procedures law it is sitting in a trial capacity rather than an appellate capacity, and as such can consider summary judgement motions.[1]

As to Respondents' contention that Petitioners have failed to demonstrate a waiver of sovereign immunity, the Court finds that the procedures prescribed in O.C.G.A. § 36-66-5.1 and

[1] Generally, the same procedural rules apply in a de novo review as in any other civil case before the trial court. Brown v. Frachiseur, 247 Ga. 463 (1981).

Ga. Const. Art. I, § 2, ¶ V ("Paragraph V") operate as a waiver of sovereign immunity for purposes of this action. Therefore, the Respondents' Motion for Summary Judgment on the basis of sovereign immunity is DENIED.

Turning to the question of standing: To the extent Petitioners argue that O.C.G.A. § 36-66-5.1 abrogates the substantial-interest-aggrieved citizen test[2] required to establish standing, the Court disagrees. "To hold that such an inconvenience would give to any resident or property holder of an urban area the right to override the decisions of boards of zoning appeals any time such property owner or resident disagreed with such decision would be a dangerous precedent to establish. It would result in materially slowing, if not completely stopping, the inevitable and necessary growth of large modern cities."[3] The Court understands the language of the statute "to ensure that the general public is afforded due process in an orderly way to petition the courts" to address the streamlining of appellate process rather than to expand standing to any and all parties. Having reviewed the pleadings and the entire record in the case, the Court finds that Petitioner William Doucher has not demonstrated sufficient facts from which the Court can find that he has satisfied the substantial-interest-aggrieved citizen test; he has neither pled nor shown damages which are not suffered alike by all property owners similarly situated. Therefore, Petitioner Doucher has not established standing to contest the zoning decision, and his claims are hereby DISMISSED.

In contrast, though Petitioner Arrowquest Services, Inc., does not own any property, it has demonstrated that it is uniquely situated with a substantial interest in the decision.[4] Petitioner

---

[2] Brock v. Hall Cnty., 239 Ga. 160 (1977).

[3] Lindsey Creek Area Civic Ass'n v. Consol. Gov't of Columbus, 249 Ga. 488, 491 (1982).

[4] *See*: Harden v. Banks Cnty., 294 Ga. App. 327, 329 (2008).

has also pled sufficient facts which, if viewed in a light most favorable to Petitioner, could demonstrate that the zoning change would substantially interfere with Petitioner's ability to utilize its leasehold interest in the property so as to constitute a taking. As such, the Court finds that as a preliminary matter, Petitioner Arrowquest has standing to challenge the zoning decision, and as discussed below, to survive summary judgment.

Turning to the motions for summary judgment, the Court notes the disagreement between the parties regarding the appropriate standard in this case. Hall County and Property Owner Respondents argue that "[w]hen 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."[5] However, the plain language of O.C.G.A. § 36-66-5.1 states the Court shall "[employ] the presumption that a governmental zoning decision is valid and can be overcome substantively by a petitioner showing by clear and convincing evidence that the zoning classification is a significant detriment to the petitioner and is insubstantially related to the public health, safety, morality, or general welfare."

The Court finds that in this case the issue is not the merits of the zoning decision but whether the rezoning is in essence a "taking" implicating Petitioners' constitutional rights. As such, the Court finds that the standard articulated in O.C.G.A. § 36-66-5.1 is the appropriate standard to apply. The Court finds that Petitioners Faul and Arrowquest have sufficiently pled facts which, if viewed in the light most favorable to them in this case, could demonstrate that the zoning classification is a significant detriment to Petitioners and that it is insubstantially related to the public health, safety, morality, or general welfare. As such, Hall County and Property

[5] Lindsey Creek Area Civic Ass'n v. Consol. Gov't of Columbus, 249 Ga. 488, 491 (1982).

Owners' Motions for Summary Judgment as to Petitioners' claims for inverse condemnation are DENIED.

So ORDERED this 6 day of November, 2025.

JASON J. DEAL
Judge, Superior Court
Northeastern Judicial Circuit

cc: *All parties of record on PeachCourt*