



ASSOCIATION OF GEORGIA SURVEYORS

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October 3, 2006

VIA CERTIFIED MAIL NO. 7000 0600-0028-5194-2990

RETURN RECEIPT REQUESTED

Kit Dunlap, Chairman, et. al.

Metropolitan North Georgia Water Planning District

40 Courtland Street, N.E.

Atlanta, Georgia 30303

Madam Chairman:

The Association of Georgia Surveyors takes issue with your unlawful ordinance which specifically limits and excludes registered Land Surveyors and the other design professions from their constitutional rights.

Further, AGS is deeply offended and insulted by your failure to notify us of your proceedings, particularly after your receipt of the AGS letter dated August 24, 2005.

Our legal counsel has directed me to inform you of your, obvious, flagrant violation of state general law should you attempt to proceed with the discrimination against design professions other than Professional Engineers.

AGS has been counseled to remind you of the following general laws which the Engineers Legislative Coalition seem intent upon ignoring:

They are:

(1.) O.C.G.A. 12-7-4(b)

(b) Nothing in this chapter shall be construed as to limit or exclude any design professional, including but not limited to any professional engineer or registered land surveyor, or Natural Resource Conservation Service employee, within any county, municipality, or consolidated government in this state from performing such professional services as may be incidental to the practice of his or her profession, including any and all soil erosion and sedimentation control plans, storm water management reports including hydrological studies, and site plans, when such professional has demonstrated competence through such qualifications, education, experience, and licensing as required for practice in this state by applicable provisions of Title 43 related to such profession; provided however, that any such person shall be subject to the requirements of Code Section 12-7-19

(2.) O.C.G.A. 43-15-2(6) (D)

D) The design, platting, layout, incidental to subdivisions of any tract of land by a land surveyor, of:

(i) Grading plans and site plans;

(ii) Erosion and sediment control plans, including detention ponds, provided that no impoundment shall be designed on a live (perennial) stream; provided, further, that such detention ponds:

(I) Contain no more than five acre-feet of water storage at maximum pool (top of dam) or are no more than ten feet in height for a dry storage pond;

(II) Are no more than six feet in height for a permanent (wet) storage pond; or

(III) Contain no more than three acre-feet of water storage at maximum pool (top of dam) if the height is more than ten feet but less than 13 feet for a dry storage pond;

(iii) Storm water management plans and facilities, including hydrologic studies and temporary sediment basins, provided that the contributing drainage area shall not be larger than 100 acres.

(3.) O.C.G.A. 12-7-8.

(a)(1) If a county or municipality has enacted ordinances which meet or exceed the standards, requirements, and provisions of this chapter and the state general permit, *except that the standards, requirements, and provisions of the ordinances for monitoring, reporting, inspections, design standards, turbidity standards, and education and training shall not exceed the state general permit requirements*, and which are enforceable by such county or municipality, and if a county or municipality documents that it employs qualified personnel to implement enacted ordinances, the director may certify such county or municipality as a local issuing authority for the purposes of this chapter.

As you can see from the three general laws, you may not limit or exclude our lawful right to practice in these areas.

If you are intent upon believing that “home rule” powers are sufficient to provide you with specific enabling authority to defy general law, you might want to review O.C.G.A. 36-66-3.

You will see that, while your powers are far reaching, the constitution provides you with no substantive guidance to the local exercise of zoning powers and land subdivision regulations.

The Georgia Constitution specifically provides for “home rule” for counties and municipalities in Georgia. While county home rule is constitutionally prescribed, cities may be granted the same right by the state legislature. *In both cases the county or city is authorized to adopt “clearly reasonable ordinances, resolutions, or regulations ... for which no provision has been made by general law and which is not inconsistent with” the Constitution of Georgia.*

The power granted to municipal corporations in subsections (a) and (b) of O.C.G.A. 36-35-3 shall not be construed to extend to any matter which the General Assembly by general law has preempted or may hereafter preempt.

With another quick look at O.C.G.A. 12-7-19, you will become aware of the fact that, as Level II certified design professionals, general law provides that we are legally entitled to produce Erosion, Sedimentation, and Pollution Control plans.

You may not deny us any portion of the legal right to provide ES&PC plans.

Regardless of any opinion, by former attorney general Michael Bowers, to the contrary, the AGS legal counsel wishes to remind you that; the Supreme Court decision in “Crusselle v. Cobb County” has been rendered inapplicable since O.C.G.A. 12-7-4 was signed into law on May 27, 2003.

The Association of Georgia Surveyors and allies within the landscape architect profession mutually agree that judicial intervention may not be required if MNGWPD will obey the general laws, and the constitution of the State of Georgia.

Regards,



Terry M. Scarborough
President

cc. Hon. Sonny Perdue, Governor
Hon. Cathy Cox, Secretary of State
Hon. Thurbert Baker, Attorney General
The Atlanta Journal and Constitution