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## **ZONING & PLANNING - GEORGIA**

### [Dawson County Board of Commissioners v. Dawson Forest Holdings, LLC](#)

**Court of Appeals of Georgia - October 29, 2020 - S.E.2d - 2020 WL 6336058**

Landowner brought two actions against county board of commissioners and board's commissioners in both their official and individual capacities, after board denied landowner's zoning requests, asserting that the current zoning classification was unconstitutional and seeking prospective relief to prevent its enforcement.

The Superior Court granted defendants' motion to dismiss actions against the board and its commissioners in their official capacities, but declined to dismiss the actions against the commissioners in their individual capacities. The parties cross-appealed.

The Court of Appeals held that:

- Sovereign immunity barred landowner's claims against county board of commissioners and its commissioners in their official capacities;
- Legislative immunity did not bar landowner's claims against commissioners, in their individual capacities; and
- Landowner plausibly stated claims against commissioners in their individual capacities.

Sovereign immunity barred landowner's claims for declaratory and injunctive relief against county board of commissioners and its commissioners in their official capacities; the claims sought injunctive and declaratory relief from the enforcement of an allegedly unconstitutional ordinance, i.e., zoning classification as applied to the properties, against the board and its commissioners in their official capacities, Supreme Court decision laying out sovereign immunity rule did not exempt zoning cases, and landowner identified no constitutional or statutory authority waiving sovereign immunity on the ground that an action was a zoning case.

Legislative immunity did not bar landowner's claims against commissioners on county board of commissioners, in their individual capacities, in which landowner challenged current zoning classification and sought prospective relief to prevent its enforcement; even assuming commissioners' votes against rezoning the properties were legislative acts, landowners claims did not arise from commissioners' past votes on the properties' zoning classifications, but instead, their claims for declaratory and injunctive relief arose from commissioners' anticipated future enforcement of allegedly unconstitutional zoning classifications.

Landowner plausibly stated claims against commissioners on county board of commissioners, in their individual capacities, in which landowner challenged current zoning classification and sought prospective relief to prevent its enforcement; complaints claimed that commissioners were empowered to enforce the current, allegedly unconstitutional zoning classifications on the properties, and the allegations of the complaints did not disclose with certainty that landowner would not be entitled to relief under any state of provable facts asserted in support.

