

Section 11.6.4. Proposed Edits – Removal of Beneficial Use Determination Process

Sec. 11.6.4. – ~~Reserved~~ [Remove the section in its entirety] ~~Beneficial Use Determination~~

- ~~A. — **Purpose** The intent of the City is that all landowners in the City enjoy an economically beneficial use of their land. The procedures in this Section are intended to permit landowners who believe they have been deprived of economically beneficial use of their land to apply to the City for relief from application of this Development Code sufficient to provide an economically beneficial use of the land.~~
- ~~B. — **Applicability**~~
- ~~1. — This procedure applies to lots with an unbuild zoning or site approval originally approved by Fulton County or the City of Sandy Springs, but eliminated by adoption of this Development Code and the new Official Zoning Map.~~
 - ~~2. — If a landowner is of the opinion that the lot's designation on the Official Zoning Map and the regulations of this Development Code have denied economically beneficial use of that landowner's land, then the procedures of this Section must be used prior to seeking relief from the courts in order that any denial of economically beneficial use of land may be remedied through a non-judicial forum.~~
- ~~C. — **Authority** The City Council will make determinations of beneficial use following a public hearing on the application at issue.~~
- ~~D. — **Findings** In determining if a landowner is deprived of an economically beneficial use of land, the following factors must be taken into account:~~
- ~~1. — **Economically Beneficial Use** The uses of the land as provided by this Development Code, and in relation to the uses allowed on similarly situated lands. For the purposes of this Section, "economically beneficial use" means the opportunity to make a return equivalent to that which would have been received from a conservative financial investment. Transitory economic issues are not relevant to this determination.~~
 - ~~2. — **Diminution in Value**~~
 - ~~a. — The market value of the land, as established by the comparable sales approach, prior to adoption of the regulations that caused the landowner to apply for relief must be compared to the market value of the land, as established by the comparable sales approach, with the regulations as applied.~~
 - ~~b. — Market value of the land prior to the adoption of the regulations that caused the landowner to apply for relief must constitute its highest and best use one day prior to the effective date of the regulations that caused the landowner to apply for relief, or the date of purchase of the land, whichever is later; and any other land value/appraisal information that the applicant would like considered.~~
 - ~~c. — All appraisals must be prepared by qualified licensed appraisers and follow the best professional practices as established by the profession.~~
 - ~~d. — A mere diminution in market value is not sufficient to support a determination of denial of economically beneficial use.~~
 - ~~3. — **External Costs** The amount or nature of any subsidy that may be required by the City, neighbors, purchasers, tenants, or the public at large if the development allowed under this Development Code is modified; and any other adverse effects on the City and its residents created by the modification of the standards of this Development Code.~~
 - ~~4. — **Current State of the Law** The state of the law established by the United States Supreme Court, the 11th Circuit Federal Court of Appeals, and the Georgia Supreme Court relevant to these standards.~~
- ~~E. — **Granting of Relief** If the City Council finds that a landowner has been deprived economically beneficial use of land or is otherwise entitled to relief in accordance with the standards of this Section, relief must be granted.~~

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- ~~1. **General** In granting relief, any legally available incentive or measure reasonably necessary to offset any substantial economic hardship may be adopted, and such incentives may be conditioned upon approval of specific development plans. If there is a finding that the denial of the application would create a substantial economic hardship, additional relief to provide an appropriate increase in market value or other benefit or return to the applicant sufficient to offset the substantial economic hardship may be considered. The types of incentives include, but are not limited to:
 - ~~a. Grant of a beneficial use approval. Such approval must occur in the form of a conceptual master plan and associated development program for the allowed beneficial use. The grant of a beneficial use approval will amend the Comprehensive Plan, if necessary, and create a site-specific designation on the Official Zoning Map linking the conceptual master plan and associated development program with the land.~~
 - ~~b. An amendment of the Official Zoning Map to a more appropriate zoning classification, issuance of an administrative variance, issuance of a conditional use permit, issuance of a variance, or other appropriate development regulatory action that will enable the applicant to realize a reasonable return on the land;~~
 - ~~c. A waiver of permit fees;~~
 - ~~d. Development finance assistance;~~
 - ~~e. Approval of development on some portion of the land; or~~
 - ~~f. Acquisition of all or a portion of the land at market value.~~~~
- ~~2. **Minimum Increase**
 - ~~a. In granting relief, the landowner must be given the minimum increase in use, intensity, or other possible concessions from this Development Code in order to permit an economically beneficial use of the land, or a use that is determined to be required by law.~~
 - ~~b. The highest use, or even an average or generally reasonable expectation, is not required or intended as the appropriate remedy.~~~~
- ~~3. **Guidelines** The following guidelines must be used for determining the minimum economically beneficial use of land and, therefore, the amount of relief to be granted a landowner in order to reach that minimum.
 - ~~a. **No Governmental Subsidy** A minimum economically beneficial use of the land should be one that does not have any governmental subsidy attached to the long-term safe occupation of the land. If such a subsidy is needed, then that should be reflected by lowering the use or intensity that is considered a minimum economically beneficial use on a market valuation basis.~~
 - ~~b. **Common Use** A use common to the City, although it may not involve further development of the land, is considered an economically beneficial use. Attention must also be given to land uses that are considered to be the lowest intensity in the City, but which still provide for occupation and living within the City. These land uses, as well, must be considered economically beneficial uses.~~
 - ~~c. **Actual Condition of Land Considered** The actual condition of the land must be considered. The reality of limited development potential, given the natural condition of the land, must not be attributed to the regulations applied to the land. If the land is such that it must not safely accommodate development with normal grading and clearing practices, this fact will lower the intensity of use that is considered a minimum economically beneficial use.~~
 - ~~d. **Potential for Damages** The potential for damages to either residents or land must be assessed in determining economically beneficial use. The need for a governmental subsidy to future landowners must be considered, and the cost of such subsidies must be deducted from the otherwise established minimum economically beneficial use.~~~~

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- e. ~~**Only Investment-Backed Expectations Considered**~~ Expectations must, in general, not be considered. Only reasonable expectations backed by investments as recognized by the current state of the law will be considered.
- f. ~~**Current State of the Law**~~ The current state of law established by the United States Supreme Court, the 11th Circuit Federal Court of Appeals, and the Georgia Supreme Court, relevant to the granting of relief.
- F. ~~**Effect**~~ The beneficial use determination does not permit any physical development, use or subdivision that has not been approved pursuant to this Development Code and will not ensure approval of any future application.