

OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL
STATE OF ALABAMA

FEB 8 1983

ADMINISTRATIVE BUILDING
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City Attorney for Vestavia Hills
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1312 City Federal Building
Birmingham, Alabama 35203

Municipalities - Zoning -
Landscaping

If City of Vestavia Hills rezones to require buffer zones, the rezoning requirements can be applied only prospectively.

Dear Mr. Boone:

Reference is made to the request by the City of Vestavia Hills for the opinion of the Attorney General regarding the rezoning of a certain district in that City.

You specifically asked the following question:

"If the City of Vestavia Hills rezones all of the 45 acres to an O-2 zoning classification, may it legally and constitutionally require the owner to provide landscaped buffers, even though such buffers are not required under the City or County zoning ordinance?"

Honorable Patrick H. Boone
City Attorney for Vestavia Hills
Page 2.

In your letter you stated that the forty-five (45) acres in question was part of an area recently annexed to the City on which office buildings have been constructed. The O-2 classification allows office park districts but does not require buffer zones.

Your question is to be answered in the negative.

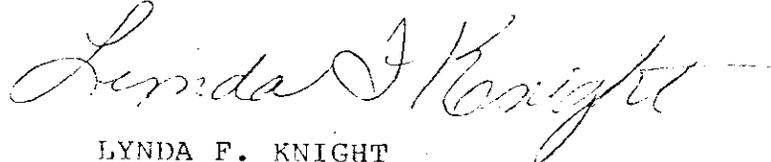
While a buffer zone requirement in zoning ordinances has been upheld as constitutional, the city cannot require buffers unless they are required as part of the city's zoning ordinance. In other words, unless your city's ordinance relating to O-2 zones requires buffers, buffers may not be required in areas zoned O-2 without amendment of the ordinance. Further if the ordinance were amended and the area in question rezoned O-2, buffers could not be required where buildings already exist in the "buffer" area. The amendments could not be applied retroactively against owners of pre-existing non-conforming property unless non-conformance is abandoned, discontinued or relinquished by the owners or otherwise substantially destroyed. See McQuillin, Municipal Corporations Zoning §25.191 et seq.

If our office can be of further assistance, please let us know.

Sincerely,

CHARLES A. GRADDICK
Attorney General

BY-



LYNDA F. KNIGHT
Assistant Attorney General