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Opinion No. 00-022

Effect and Enforcement of Growth Plan

QUESTIONS

Under Tenn. Code Ann. §§ 6-58-101, *et seq.*, the constituent local governments within a county are to develop and approve a countywide growth plan. Once the plan has been approved as required under the statute, "all land use decisions made by the legislative body and the municipality's or county's planning commission shall be consistent with the growth plan." Tenn. Code Ann. § 6-58-107.

1. What is the meaning of the term "land use decisions" in Tenn. Code Ann. § 6-58-107?

2. Would approvals by planning commissions, or elected bodies, where required, or subdivision plats, subdivision concept plans (also referred to as "preliminary plans"), site plans and "uses on review" or "specific use permits" be considered a "land use decision" under Tenn. Code Ann. § 6-58-107 and therefore subject to the requirement that these approvals be consistent with the county's approved growth plan?

3. Does Tenn. Code Ann. § 6-58-107 require that actions on rezoning applications by a planning commission, city council or county commission be consistent with the growth plan?

4. May a property owner in a county that approves a growth plan use his or her land for lawful purposes permitted by zoning designations that were in existence prior to the adoption of the growth plan, regardless of whether those zoning designations are consistent with the classification of such property as a "planned growth area," "rural area," or "urban growth boundary" under the growth plan?

5. Does Tenn. Code Ann. § 6-58-107 bar a property owner from rezoning his or her property to an otherwise lawful zoning designation, if such zoning designation would conflict with the land-type classification under the growth plan (for example, prevent a property owner with land zoned "agricultural" from rezoning it to "industrial" if his or her land were classified as a "rural area" in the growth plan)?

6. Are lawful administrative approvals by city or county administrations or planning commission staffs — which are not technically decisions of a legislative body or a planning commission — subject to Tenn. Code Ann. § 6-58-107? For example, would this statute affect a

city's or county's issuance of a building permit or a planning commission's approval of a lot split or one-lot subdivision?

7. In the event a legislative body or a municipality's or county's planning commission makes a land use decision that is not consistent with the growth plan, what is the legal consequence of such action — that is, what remedies are available to an aggrieved party, and who would have standing to enforce the remedies?

OPINIONS

1. — 3. As a general matter, used in the context of the statutory scheme, the term "land use decisions" includes any decision regarding the use of land within the jurisdiction of the legislative body or the planning commission. Whether any particular decision would be included in this category would depend on the facts and circumstances. Tenn. Code Ann. § 6-58-107 expressly provides that "all" land use decisions by a legislative body and its planning commission must be consistent with the countywide growth plan. All of the examples listed in Questions 2 and 3, as a general matter, would appear to fall within this category.

4. It appears that a property owner may continue to use his or her property in a manner consistent with zoning provisions in effect before the plan was adopted, even if those zoning provisions are inconsistent with the designation of the area under the growth plan. Of course, any such use would be subject to later zoning and planning decisions made by the city or county and the applicable planning commission.

5. Under the statute, any land use decision made by the legislative body and the municipality's or county's planning commission must be consistent with the growth plan. Depending on the facts and circumstances, Tenn. Code Ann. § 6-58-107 would probably prohibit zoning changes by these governmental bodies that are inconsistent with the growth plan.

6. Whether any particular decision by an administrative or staff official would be subject to Tenn. Code Ann. § 6-58-107 could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances.

7. These issues could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances. Inconsistency of a decision with a county growth plan might be a ground for a court to overturn the decision. A court could also conclude that the other local governments who approved the growth plan would have standing to appeal such a decision.

ANALYSIS

This opinion addresses the effect and enforceability of a countywide grown plan adopted under Tenn. Code Ann. §§ 6-58-101, *et seq.* Under that statutory scheme, enacted as part of 1998 Tenn. Pub. Acts Ch. 1101, counties and municipalities are required to develop a growth plan through

a coordinating committee. That statute also sets forth various methods for resolving disputes among counties and cities in the development of a plan.

The purpose of the growth plan is to direct the coordinated, efficient, and orderly development of the local government and its environs that will, based on an analysis of present and future needs, best promote the public health, safety, morals, and general welfare. Tenn. Code Ann. § 6-58-107. After a growth plan is approved, all land use decisions made by the legislative body and the municipality's or county's planning commission must be consistent with the growth plan. *Id.*

Under a local growth plan, territory within a county will be divided into three components: urban growth boundaries, planned growth areas, and rural areas. Generally, the urban growth boundaries of a municipality ultimately included in a growth plan must identify territory contiguous to the existing boundaries of a municipality likely to be developed in the next twenty years and for which the municipality will be able to provide urban services. Tenn. Code Ann. § 6-58-106(a)(1). Generally, the planned growth area of a county is required to identify unincorporated parts of the county that are not within urban growth boundaries but are likely to develop over the next twenty years and that reflect the county's duty to manage natural resources and urban growth. Tenn. Code Ann. § 6-58-106(b)(1). Finally, each rural area must generally identify unincorporated parts of the county that are not within urban growth boundaries or a planned growth area, and are to be preserved for uses other than high density commercial, industrial or residential development. Tenn. Code Ann. § 6-58-106(c)(1).

Once the local growth plan is adopted, a county may provide or contract for the provision of services within a planned growth area and set a separate tax rate specifically for the services provided within a planned growth area. Tenn. Code Ann. § 6-58-112(a)(2). A county may also establish separate zoning regulations within a planned growth area, for territory within an urban growth boundary, or within a rural area. Tenn. Code Ann. § 6-58-112(a)(3).

1. — 3. "Land Use Decisions made by the Legislative Body and the Municipality's or County's Planning Commission"

Tenn. Code Ann. § 6-58-107 provides in relevant part:

> Not later than July 1, 2001, a growth plan for each county shall be submitted to and approved by the local government planning advisory committee in accordance with the provisions of § 6-58-104. *After a growth plan is so approved, all land use decisions made by the legislative body and the municipality's or county's planning commission shall be consistent with the growth plan.*

Tenn. Code Ann. § 6-58-107 (emphasis added). A copy of the plan finally approved must be filed

in the county register's officer. Tenn. Code Ann. § 6-58-104(c)(2).

Questions 1 through 3 concern the scope of the phrase "land use decisions made by the legislative body and the municipality's or county's planning commission" under this statute. This statute should be read together with statutes governing planning, zoning, and other land use decisions. As a general matter, used in the context of the statutory scheme, the term "land use decisions" includes any decision regarding the use of land within the jurisdiction of the legislative body or the planning commission. Whether any particular decision would be included in this category would depend on the particular decision.

Questions 2 and 3 list particular examples of decisions entrusted to city or county legislative bodies and planning commissions. These examples include approvals by planning commissions or elected bodies, where required, of subdivision plats, subdivision concept plans (also referred to as "preliminary plans"), site plans and "uses on review" or "specific use permits," and actions on rezoning applications by a planning commission, city council, or county commission. Tenn. Code Ann. § 6-58-107 expressly provides that "all" land use decisions by a legislative body and its planning commission must be consistent with the countywide growth plan. All of these examples, as a general matter, would appear to fall within this category.

4. Use of Land under Existing Zoning Classifications

The next question is whether a property owner in a county that approves a growth plan may use his or her land for lawful purposes permitted by zoning designations that were in existence prior to the adoption of the growth plan, even if those designations are inconsistent with the classification of the property as a planned growth area, a rural area, or an urban growth boundary under the growth plan. It should be noted that, under the criteria used by the coordinating committee and the local governments in developing the growth plan, an area currently zoned for industrial development is not likely to be included in a rural area. If such an event were to occur, however, we do not think the plan could immediately reverse zoning classifications already in effect. By its terms, the statute provides:

> *After a growth plan is so approved,* all land use decisions made *by the legislative body and the municipality's or county's planning commission* shall be consistent with the growth plan.

Tenn. Code Ann. § 6-58-107 (emphasis added). Thus, by its terms, the statute applies to decisions made after the growth plan is approved and by the legislative body and the planning commission. Zoning classifications in place before the growth plan is approved would not fall within this category. Further, the statute does not address land use decisions made by a property owner. For this reason, it appears that a property owner may continue to use his or her property in a manner consistent with zoning provisions in effect as of the adoption of the growth plan, even if those zoning provisions are inconsistent with the designation of the area under the growth plan. Of course, any such use would be subject to later zoning and planning decisions made by the city or county and the

applicable planning commission.

5. Rezoning after Approval of a Plan

Question 5 is whether, after a countywide growth plan has been approved, a property owner may rezone his or her property to a designation that would conflict with the classification of the land under the growth plan. Under the statute, any land use decision made by the legislative body and the municipality's or county's planning commission must be consistent with the growth plan. Depending on the facts and circumstances, Tenn. Code Ann. § 6-58-107 would prohibit zoning changes by these governmental bodies that are inconsistent with the growth plan.

6. Staff or Administrative Decisions

Question 6 is whether administrative approvals by a city or county administration or a planning staff must also, under Tenn. Code Ann. § 6-58-107, be consistent with a countywide growth plan after it has been approved. The statute does not, by its terms, include administrative decisions. Further, depending on particular facts and circumstances, including the nature of the decision, the terms of the plan, and the ordinance or plan under which the particular official is authorized to act, the official may be required to conform to existing ordinances even if they are inconsistent with the plan. Whether any particular decision by an administrative or staff official would be subject to Tenn. Code Ann. § 6-58-107 could therefore only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances.

7. Challenge to a Land Use Decision

The last question is the legal consequence of a land use decision by a legislative body or a planning commission that is inconsistent with the countywide growth plan. You ask, specifically, the remedies available to an aggrieved party and who would have standing to enforce the remedies. Again, Tenn. Code Ann. §§ 6-58-101, *et seq.*, must be read in conjunction with other statutes governing land use planning. Depending on the particular decision and applicable provisions for appealing it, inconsistency with a growth plan could be a grounds for overturning the decision. The appropriate remedy as well as parties with standing could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances. A court could conclude, for example, that other legislative bodies that approved the plan might have standing to challenge a decision made in conflict with it.

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