

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 00-184

Zoning and Planned Growth Areas under Growth Law

QUESTIONS

1. Under Tenn. Code Ann. §§ 6-58-101, *et seq.* (the “Growth Law”), is Fayette County required to designate a planned growth area for the county?
2. May Tenn. Code Ann. §§ 6-58-101, *et seq.*, be used in any manner to nullify any part of a county’s zoning ordinances?
3. May 1998 Tenn. Pub. Acts Ch. 1101 be used in any manner to nullify a county’s zoning ordinances?
4. May a comprehensive growth plan under Tenn. Code Ann. §§ 6-58-101, *et seq.*, include only municipal boundaries, urban growth boundaries, and rural boundaries?
5. Is it permissible to define the terms “low density” and/or “high density” in a county growth plan?

OPINIONS

1. A final growth plan need not include a planned growth area. Therefore, the county commission need not include one in its proposal to the coordinating committee or in any subsequent proposals.

2. and 3. Under the Growth Law, after a growth 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.” This provision would not apply to a zoning ordinance in place before the plan is adopted. Whether a county zoning ordinance adopted after a plan is approved could be nullified under this statute could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances. A court could conclude that such an ordinance could be nullified if it is inconsistent with the county growth plan.

4. A growth plan may include only municipal boundaries, urban growth boundaries, and rural areas.

5. Under Tenn. Code Ann. § 6-58-107, a growth plan could define the terms “low density” and/or “high density.”

ANALYSIS

1. Requirement that County Designate a Planned Growth Area

This opinion addresses several questions concerning the requirements of a comprehensive growth plan adopted under Tenn. Code Ann. §§ 6-58-101, *et seq.*, the “Growth Law.” Under that statutory scheme, adopted as part of 1998 Tenn. Pub. Acts Ch. 1101, the constituent local governments within a county are to develop and approve a countywide growth plan. A growth plan must include, at a minimum, “documents describing and depicting municipal corporate limits, as well as urban growth boundaries, planned growth areas, *if any*, and rural areas, *if any*, approved in conformance with the provisions of § 6-58-104.” Tenn. Code Ann. § 6-58-107 (emphasis added).

The first question is whether Fayette County must designate a planned growth area for the county. It is not clear whether this question refers to the Fayette County Commission or to the comprehensive growth plan for Fayette County. The language cited above, however, indicates that a growth plan need not include planned growth areas. The Growth Law creates a coordinating committee to develop and propose a growth plan to be approved by the legislative body of each city and the county commission. In developing a recommended growth plan, the coordinating committee must give due consideration to planned growth areas and rural areas as “may” be timely proposed and submitted to the coordinating committee by the county legislative body. Tenn. Code Ann. § 6-58-104(a)(2). Since a final growth plan need not include a planned growth area, the county commission need not include one in its proposal to the coordinating committee or in any subsequent proposals.

2. and 3. Nullification of County Zoning Ordinance

The second question is whether either the Growth Law, or 1998 Tenn. Pub. Acts Ch. 1101, of which the Growth Law was a part, may serve as the basis for nullification of a county zoning ordinance. Under the Growth Law, once a growth 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. This Office has concluded that the term “land use decisions” under this language would not include zoning ordinances that are already in place, but would apply to zoning decisions made after the plan is approved. Op. Tenn. Atty. Gen. 00-022 (February 15, 2000). Whether a county zoning ordinance adopted after a plan is approved could be nullified under this statute could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances. A court could conclude that such an ordinance could be nullified if it is inconsistent with the

county growth plan. No other provision of 1998 Tenn. Pub. Acts Ch. 1101 would appear to provide grounds to nullify a county zoning ordinance.

4. Planned Growth Area in Growth Plan

The next question is whether a comprehensive growth plan may include only municipal boundaries, urban growth boundaries, and rural boundaries. As noted above, under Tenn. Code Ann. § 6-58-107, a growth plan must include “documents describing and depicting municipal corporate limits, as well as urban growth boundaries, planned growth areas, *if any*, and rural areas, *if any*, approved in conformance with the provisions of § 6-58-104.” (Emphasis added). A growth plan may therefore include only municipal boundaries, urban growth areas, and rural areas.

5. Definition of “Low Density” and “High Density” in Growth Plan

The last question is whether a growth plan may include definitions of “low density” and “high density.” Under Tenn. Code Ann. § 6-58-107, a growth plan must include, at a minimum, “documents describing and depicting municipal corporate limits, as well as urban growth boundaries, planned growth areas, if any, and rural areas, if any, approved in conformance with the provisions of § 6-58-104.” Under Tenn. Code Ann. § 6-58-106(a)(1)(C), the urban growth boundaries in a growth plan must “[i]dentify territory that a reasonable and prudent person would project as the likely site of *high density* commercial, industrial and/or residential growth over the next twenty (20) years . . .” (Emphasis added). The concept of high density development is therefore already reflected in the delineation of urban growth boundaries in a growth plan. But Tenn. Code Ann. § 6-58-107 also states that “[a] growth plan may address land-use, transportation, public infrastructure, housing, and economic development.” The statute then lists eight different goals and objectives of a growth plan, including the need to “[e]ncourage a pattern of compact and contiguous high density development to be guided into urban areas or planned growth areas.” Tenn. Code Ann. § 6-58-107(2). Under this statute, it therefore appears that a growth plan may include explicit definitions of “low density” and “high density.”

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