S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 03-154

Amending Growth Plan

QUESTIONS

Under Tenn. Code Ann. §§ 6-58-101, *et seq.*, the local governments within a county are authorized to adopt a countywide growth plan. Under Tenn. Code Ann. § 6-58-104(d)(1), after a growth plan has been finally approved, "the plan shall stay in effect for not less than three (3) years absent a showing of extraordinary circumstances. After the expiration of the three-year period, a municipality or county may propose an amendment to the growth plan by filing notice with the county mayor and with the mayor of each municipality in the county. Upon receipt of such notice, such officials shall take appropriate action to promptly reconvene or re-establish the coordinating committee. . . . The procedures for amending the growth plan shall be the same as the procedures in this section for establishing the original plan." Hamblen County's plan was finally approved January 24, 2001.

1. May any part of the amendment process begin before the end of the initial three-year period?

2. Assuming the plan is amended, must the amended plan remain in effect for three years before it may be amended again?

3. What is the definition of "extraordinary circumstances" as used in the statute?

4. If a city proposes an amendment to its urban growth boundaries, is the county required to hold public hearings that identify changes in the rural areas or planned growth areas in the plan that would be caused by the proposed change in urban growth boundaries?

OPINIONS

1. A local government may not file a proposed change until the full three-year period has expired. A city may begin conducting the required research and holding the hearings required under Tenn. Code Ann. § 6-58-106(a)(2) and (3) to develop a proposal before the end of the initial three-year period. But the new coordinating committee may not be formed or begin considering the proposed change until the initial three-year period has expired.

2. An amended plan need not remain in effect for three years from the time the amendment is approved by the Local Government Planning Advisory Committee before it may be amended again.

3. The statute does not define the term "extraordinary circumstances" as used in Tenn. Code Ann. § 6-58-104(d)(1). In the context of the statute, a court would probably conclude that "extraordinary circumstances" mean unusual events or developments that could not have been foreseen when the growth plan was being developed. Whether extraordinary circumstances are present would depend on particular facts and circumstances.

4. If the county wishes to respond formally to the city's proposed change or to submit its own alternative amendment to planned growth areas and rural areas, then it must conduct the research and hold the public hearings required under Tenn. Code Ann. § 6-58-106(b) and (c). It need not meet these requirements, however, if it does not wish to respond to the proposed change or submit an alternative amendment.

ANALYSIS

1. Initiating Amendment Process

This opinion concerns the process for amending a county growth plan. A county growth plan is developed and adopted under the procedures set forth in Tenn. Code Ann. §§ 6-58-101, *et seq.* Under Tenn. Code Ann. § 6-58-104, a growth plan is developed and proposed by a coordinating committee after a series of public hearings, and is then presented to the legislative bodies of all the cities and the county for ratification. If the local governments cannot agree on a plan, the statute provides for a three-member panel to mediate disputes or adopt a plan if the impasse continues. A growth plan becomes effective when it has been approved by the Local Government Planning Advisory Committee. Tenn. Code Ann. § 6-58-104(d)(1) provides:

> After the local government planning advisory committee has approved a growth plan, the plan shall stay in effect for not less than three (3) years absent a showing of extraordinary circumstances. After the expiration of the three-year period, a municipality or county may propose an amendment to the growth plan by filing notice with the county mayor and with the mayor of each municipality in the county. Upon receipt of such notice, such officials shall take appropriate action to promptly reconvene or re-establish the co-ordinating committee. The burden of proving the reasonableness of the proposed amendment shall be upon the party proposing the change. The procedures for amending the growth plan shall be the same as the procedures in this section for establishing the original plan.

The first question is whether any part of the amendment process may begin prior to the expiration of the initial three-year period. The statute expressly provides that "*[a]fter the expiration of the three-year period*," a city or county may propose an amendment to the growth plan by filing notice with the county mayor and each city mayor in the county. Clearly, therefore, a local government may not file a proposed change until the full three-year period has expired. But the statutory scheme allows a city to hold public hearings regarding the change before the end of the three-year period. This conclusion is based on the description of the process for developing the initial plan set forth in Tenn. Code Ann. § 6-58-105 and Tenn. Code Ann. § 6-58-106. Under Tenn. Code Ann. § 6-58-104(a)(1), a coordinating committee is established. Subdivision (2) of this provision states that it is the duty of the coordinating committee to develop a recommended growth plan and submit the plan for ratification by the county legislative body and the governing body of each municipality. The subdivision states that "[i]n developing a recommended growth plan, the coordinating committee shall give due consideration to such urban growth boundaries as may be timely proposed and submitted to the coordinating committee by each municipal governing body." Under Tenn. Code Ann. § 6-58-106(a)(2) and (3), before proposing urban growth boundaries to the coordinating committee, the municipality must review and compile certain information and then conduct at least two public hearings on no less than fifteen days prior notice. Reading these statutes together, therefore, we think a city may begin conducting the required research and holding the required hearings before the end of the initial three-year period. But the new coordinating committee may not be formed or begin considering the proposed change until the initial three-year period has expired.

2. Duration of Newly Amended Plan

The second question is whether, once a new amended plan has been adopted, it must remain in effect for three years from the time it has been approved by the Local Government Planning Advisory Committee before it may be amended again. The statute provides that "[t]he procedures for amending the growth plan shall be the same as the procedures in this section for establishing the original plan." Tenn. Code Ann. § 6-58-104(d)(1). Under the statute, the original plan must remain in effect for three years after it has been approved. But the requirement that the plan remain in effect for three years from the time it has been approved is not part of the procedure for "establishing the original plan" within the meaning of the statute. Once an amended plan has been adopted, therefore, it need not remain in effect for three years from the time the amemdment is approved by the Local Government Planning Advisory Committee before it may be amended again.

3. Definition of "Extraordinary Circumstances" under Tenn. Code Ann. § 6-58-104(d)(1)

The next question is the definition of the term "extraordinary circumstances" that would permit a plan to be amended before the three-year period has expired. The statute contains no definition of this term. The only detailed discussion of the circumstances under which a growth plan might be amended in the legislative history of the act occurred in the Senate State and Local Government Committee meeting, April 7, 1998. The committee was discussing a preliminary version of the act. At that point, the act contained a provision that effectively barred sanitary sewer

service to an area designated as a rural area under a growth plan. John Morgan, at that time Executive Assistant to the Comptroller, who had helped develop the original bill, was explaining it to committee members. The following exchange took place between Senator Gilbert and Mr. Morgan:

> Sen. Gilbert: John, on that one, give me your thinking on, I understand setting that plan for many years in the future, but then development happens, or something occurs, and let's say there's an opportunity to land a substantial project in what is, what has been designated as a rural area. This is a bar. I mean, this says you just can't put a sanitary sewer out there, period, end of discussion. It can be amended. The county can amend that plan . . .
>
> Morgan: You can't do it without amending the plan. But the, the plan is flexible.
>
> Sen. Gilbert: Go through the amendatory process?
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> Morgan: . . . propose an amendment, file an amendment, and, and if a Saturn . . .
>
> Gilbert: And change it to a growth area?
>
> Morgan: Right, Saturn, for example, were to say they want to locate in some area that had been designated as a rural area, then it would be anticipated that the county would be interested in amending that plan as would municipalities there — to, to try to take advantage of that opportunity.

Senate, State and Local Government Committee, April 7, 1998 (remarks of John Morgan and Senator Gilbert). The draftsmen, therefore, anticipated that a growth plan might need to be amended to prepare a site for a large industrial development. But the discussion does not address whether the prospect of this development would be "extraordinary circumstances" allowing an amendment to the plan before the initial three years had expired.

The term "extraordinary circumstances" is defined as "[a] highly unusual set of facts that are not commonly associated with a particular thing or event." *Black's Law Dictionary* 236 (7th Ed. 1999). In the context of the statute, a court would probably conclude that "extraordinary circumstances" are unusual events or developments that could not have been foreseen when the growth plan was being developed. Whether extraordinary circumstances are present would depend on particular facts and circumstances.

4. Requirement for County to Hold Hearings

The last question is whether, where a city has proposed an amendment to its urban growth boundaries, a county must hold public hearings regarding the changes that the proposed amendment would cause to the planned growth areas and the rural areas under the growth plan. The statute provides that, in developing a recommended growth plan, the coordinating committee must give due consideration to such urban growth boundaries as "may" be submitted by each municipal governing body, and to such planned growth areas as "may" be timely proposed and submitted by the county legislative body. Tenn. Code Ann. § 6-58-104(a)(2). Before proposing planned growth areas and rural areas to the coordinating committee, the county must review certain information and hold two public hearings on notice of at least fifteen days. Tenn. Code Ann. § 6-58-106(b)(2) and (c)(2). But the statute does not require a county to submit a proposal. If the county wishes to respond formally to the city's proposed change or to submit its own alternative amendment to planned growth areas and rural areas, then it must conduct the research and hold the public hearings required under Tenn. Code Ann. § 6-58-106(b) and (c). It need not meet these requirements, however, if it does not wish to respond to the proposed change or submit an alternative amendment.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable John Litz
State Representative
20 Legislative Plaza
Nashville, TN 37243-0162