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Opinion No. 10-12

Ability of Municipalities to Charge a Fee for Building Permits for Agricultural Land

QUESTION

Does Tenn. Code Ann. § 6-54-126 prohibit a municipality from charging for a building permit for land being used for agricultural purposes?

OPINION

No. Tenn. Code Ann. § 6-54-126 is concerned only with a municipality's power to regulate the use of land and not with that municipality's ability to require building permits. Accordingly, a municipality has the power to charge a fee for a building permit on agricultural land. Furthermore, the definition of "agriculture" in Tenn. Code Ann. § 1-3-105(2) does not broaden Tenn. Code Ann. § 6-54-126 so that a municipality is prohibited from charging a fee for a building permit on agricultural land.

ANALYSIS

The General Assembly enacted Chapter 1101 of the Public Acts of 1998 (the "Act") "to establish a comprehensive growth policy for" municipalities and counties in Tennessee. Ch. 1101, § 3, 1998 Tenn. Pub. Acts (codified as amended at Tenn. Code Ann. § 6-58-102 (2005)). The Act required the establishment of a growth plan within each county that sets forth, among other things, "urban growth boundaries, planned growth areas, . . . and rural areas" within that county. Ch. 1101, § 8, 1998 Tenn. Pub. Acts (codified as amended at Tenn. Code Ann. § 6-58-107 (2005)). The Act affected the manner in which a municipality annexes territory located inside or outside of the "urban growth boundary" of that municipality. Ch. 1101, § 12, 1998 Tenn. Pub. Acts (codified as amended at Tenn. Code Ann. § 6-58-111 (Supp. 2009)). Section 22 of the Act also placed a limitation on the zoning power of a municipality with regard to the use of agricultural land. Ch. 1101, § 22, 1998 Tenn. Pub. Acts (codified as amended at Tenn. Code Ann. § 6-54-126 (2005)). Tenn. Code Ann. § 6-54-126 (2005) provides that

[f]or any land that is used for agricultural purposes as of May 10, 1998, a municipality may not use its zoning power to interfere in any way with *the use of such land for agricultural purposes* as long as the land is used for agricultural purposes.

(emphasis added). This statute is a limitation on Tenn. Code Ann. § 13-7-201(a)(1) (Supp. 2009), which empowers municipalities

to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of the lot which may be occupied, the sizes of yards, courts and other open spaces, the density of population, ***and the uses of buildings, structures and land for trade, industry, residence, recreation, public activities and other purposes***.

(emphasis added). The language of Tenn. Code Ann. § 13-7-201(a)(1) (Supp. 2009) indicates that there is a difference between regulating “the location, height, bulk, number of stories and size of buildings” and regulating “the uses . . . of land.” This distinction also is present in Tenn. Code Ann. § 13-7-114 (1999).

This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise. ***Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.***

(emphasis added).¹

By focusing on “the use of [the] land for agricultural purposes,” Tenn. Code Ann. § 6-54-126 (2005) is concerned only with a municipality’s power to regulate the use of land and not with that municipality’s ability to regulate the location, height, bulk, number of stories and size of buildings or to require building permits. Accordingly, because Tenn. Code Ann. § 6-54-126 (2005) does not prohibit the regulation of buildings or the requirement of building permits, the statute cannot be read as prohibiting a municipality from charging a fee for a building permit for agricultural land.

Finally, the definition of “agriculture” in Tenn. Code Ann. § 1-3-105(2) (Supp. 2009), does not broaden Tenn. Code Ann. § 6-54-126 (2005) so that a municipality is prohibited from requiring or charging for building permits on agricultural land.

¹ As codified, the first sentence of Tenn. Code Ann. § 13-7-114 (1999) may be read as applying to counties only, with the second sentence applying to counties and municipalities. The phrase “[t]his part” refers to title 13, chapter 7, part 1 (county zoning), and the phrase “this chapter” refers to title 13, chapter 7, which includes part 1 (county zoning) and part 2 (municipal zoning). However, the application of the second sentence to municipalities appears to be the result of section 114’s being miscodified. Both the first and second sentences of section 114, as originally enacted in 1935, only applied to counties, Ch. 33, § 11, 1935 Tenn. Pub. Acts, and the only amendment to this section did not warrant the application of the second sentence to municipalities. Ch. 86, § 1, 1941 Tenn. Pub. Acts.

1-3-105. Definition of terms used in code. —

As used in this code, *unless the context otherwise requires*:

(1) . . .

(2)(A) “Agriculture” means:

(i) *The land, buildings and machinery* used in the commercial production of farm products and nursery stock;

(ii) The activity carried on in connection with the commercial production of farm products and nursery stock; and

(iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock[.]

Tenn. Code Ann. § 1-3-105(2) (Supp. 2009) (emphasis added). While the term “agriculture” includes “land, buildings and machinery,” the language of Tenn. Code Ann. § 6-54-126 (2005) limits municipalities only with regard to the use of land. Furthermore, the context of Tenn. Code Ann. § 6-54-126 (2005) requires that the statute be read as a limitation on a municipality’s power to regulate the use of agricultural land and not on its power to require or charge for building permits. As discussed above, other statutes evidence a distinction between such powers, and Tenn. Code Ann. § 6-54-126 (2005) focuses solely on the former.

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