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

April 18, 2013

Opinion No. 13-31

Regional Planning Commission's Authority in Urban Growth Areas

QUESTIONS

1. Is a municipality, whose planning commission has been designated a regional planning commission with extraterritorial authority in the municipality's urban growth boundaries, authorized to enforce subdivision regulations, including requiring a developer to provide a bond or letter of credit and requiring municipal inspection of work performed on the property, for property located within the municipality's urban growth boundaries?

2. Can a municipal planning commission divest itself of its authority as a regional planning commission with respect to areas within the municipality's urban growth boundaries?

OPINIONS

1. Yes, where the municipal planning commission acts as the regional planning commission with respect to territory within the municipality's urban growth boundaries, the planning commission is authorized to adopt and enforce subdivision regulations under Tenn. Code Ann. §§ 13-3-401 to -413. These regulations may require a developer to provide a bond or letter of credit in favor of the municipality and also require municipal inspection of work performed on the property.

2. Any request by a municipal planning commission to remove its authority as a regional planning commission would have to be reviewed and approved by the Commissioner of the Tennessee Department of Economic and Community Development and the Local Government Planning Advisory Committee before the request could become effective.

ANALYSIS

1. A municipal planning commission is created by the municipal legislative body under Tenn. Code Ann. §§ 13-4-101 to -105. Members of a municipal planning commission must generally include the mayor of the municipality, or a person designated by the mayor, as well as a member of the chief legislative body of the municipality selected by that body. Tenn. Code Ann. § 13-4-101(a)(1). Municipal planning commissions adopt and enforce regulations governing the subdivision of land within the municipality. Tenn. Code Ann. §§ 13-4-301 to -310.

The Department of Economic and Community Development ("the Department") has the authority under Tennessee law to create and establish planning regions and regional planning commissions. Tenn. Code Ann. § 13-3-101. Regional planning commissions generally adopt and enforce regulations governing the subdivision of land within the region other than land located within the boundaries of a municipal corporation. *Compare* Tenn. Code Ann. §§ 13-3-401 to -413 (setting forth regional planning commissions' platting and regulatory authority) *with* Tenn. Code Ann. §§ 13-4-101 to -310 (authorizing the creation by a municipality of a municipal planning commission and defining the powers of the commission). *See also* Tenn. Code Ann. § 13-3-104 (stating that one of the duties of a regional planning commission is "to promote the mutual cooperation of the planning commissions of municipalities within the region, and the coordination of the plans of such municipalities with the plan of the region").

The Department, acting under this authority, could provide a municipal planning commission designated as a regional planning commission extraterritorial jurisdiction over property located within the municipality's "urban growth boundaries." *See* Tenn. Code Ann. § 13-3-102. Such "urban growth boundaries," which are outside the municipality's territorial limits, are contiguous to the existing boundaries of the municipality and have been designated and approved as part of a growth plan for the municipality. *See* Tenn. Code Ann. §§ 6-58-101(a), -104 & -106(a). Thus, under Tenn. Code Ann. § 13-3-102, where the Department creates a planning region composed of the territory of a single municipality together with territory adjoining but outside the municipality and within the municipality's urban growth boundaries, the Department, with the approval of the Local Government Planning Advisory Committee, may designate the municipal planning commission as the regional planning commission of the region. When so designated, the commission, when acting as a regional commission for such region, has all the powers and is governed by the provisions in Tenn. Code Ann. §§ 13-3-101 to -304, "or in any other statutory provision relating to regional planning commissions." Tenn. Code Ann. § 13-3-102. The membership requirements for such a planning commission are set forth at Tenn. Code Ann. § 13-3-102.

With respect to property in the urban growth boundaries outside the territorial limits of the municipality, the municipal planning commission designated as a regional planning commission would exercise the subdivision authority given to regional planning commissions under Tenn. Code Ann. §§ 13-3-401 to -413.[1] Under Tenn. Code Ann. § 13-3-402(a)(1), once a regional planning commission has adopted a regional plan, no plat of a subdivision of land within such region, other than land located within city boundaries, may be filed or recorded until it has been approved by the regional planning commission. In exercising the powers granted under this statute, the regional planning commission must adopt regulations governing the

[1] Municipal and regional planning commissions also play an important role in developing county and municipal zoning plans, but zoning authority is ultimately exercised by the municipal or county legislative body. Tenn. Code Ann. §§ 13-7-101 to -119 (counties); Tenn. Code Ann. §§ 13-7-201 to -212 (municipalities). For this reason, Tenn. Code Ann. § 13-7-302, which addresses the extraterritorial zoning authority of a municipality whose planning commission has been designated a regional planning commission under Tenn. Code Ann. § 13-3-102, is not relevant to the issue addressed in this request. Tenn. Code Ann. § 6-58-106(d) also addresses a municipality's extraterritorial planning and zoning authority after the adoption of a growth plan. This Office has concluded that notwithstanding this provision, a municipality whose planning commission has been designated a regional planning commission may exercise planning authority within its urban growth areas without the county's consent. Tenn. Att'y Gen. Op. 99-281 (Nov. 4, 1999).

subdivision of land within its jurisdiction. Tenn. Code Ann. § 13-3-403(a). The scope of these regulations is described as follows:

> Such regulations may include requirements as to the extent to which and the manner in which roads shall be graded and improved, and water, sewer and other utility mains, piping, connections or other facilities shall be installed as a condition precedent to the approval of the plat. . . .Such regulations may provide that, in lieu of the completion of such work and installations previous to the final approval of a subdivision plat, *the commission may accept a bond, in form and amount and with conditions and surety satisfactory to it*, providing for and securing to the public the actual construction and installations of such improvements and utilities within a period specified by the commission and expressed in the bond. *The attorney for the county in which the subdivision is located is hereby granted the power and duty to enforce any such bond by all appropriate legal and equitable remedies*, and moneys collected on such bond shall be paid into the state treasury and, upon the order of the regional planning commission, shall be applied to the construction and installation of the improvements and utilities. The regulations may provide, in lieu of the completion of the work previous to the final approval of a plat, *for an assessment or other method* whereby the county, *municipality* or metropolitan government *served by the regional planning commission at the location of the platted property* is put in an assured position to do the work and make the installations at the cost of the owners of the property within the subdivision.

Tenn. Code Ann. § 13-3-403(b) (emphasis added).

The broad regulatory authority granted by these statutory provisions allows a municipal planning commission designated as a regional planning commission to, within the urban growth area, enforce its subdivision requirements, require a developer to provide a bond or letter of credit and conduct municipal inspections on work performed on property located within the urban growth area. The authority granted specifically includes adopting various road and utility requirements, accepting a bond satisfactory to the commission and taking all necessary steps to ensure the property being developed complies with the commission's regulations. *See* Tenn. Code Ann. § 13-3-403(b). For property located within the territorial limits of the municipality, the municipal planning commission would exercise the planning and platting authority granted by Tenn. Code Ann. §§ 13-4-301 to -310.

This analysis is supported by the provisions of Tenn. Code Ann. § 13-3-41-(a). which prescribes penalties if an owner or agent of an owner transfers lots in unrecorded subdivisions. This statute provides:

> Whoever, being the owner or agent of the owner of any land, transfers or sells or agrees to sell or negotiates to sell such land by reference to or exhibition of or by other use of a plat of subdivision of such land *without having submitted a plat of such subdivision to the regional planning commission and obtained its approval as required by this part* and before such plat is recorded in the office of the appropriate county register, or who falsely represents to a prospective purchaser

> of real estate that roads or streets will be built or constructed by a county or other political subdivision, commits a Class C misdemeanor. . . .*The owner or agent shall post bond in form and amount and with conditions and surety satisfactory to the regional planning commission, providing for and securing to the public the actual construction and installation of such improvements and utilities within a period specified by the regional planning commission and expressed in the bond. The county, through its county attorney or other official designated by the county legislative body, may enjoin such transfer or sale or agreement by action or injunction.*

Tenn. Code Ann. § 13-3-410(a) (emphasis added). *See also* Tenn. Att'y Gen. Op. 81-71 (Feb. 2, 1981) (this Office opining that a municipality whose planning commission has been designated a regional planning commission can bring suit to enjoin the sale or transfer of land outside its boundaries where the sale or transfer is in violation of Tenn. Code Ann. § 13-3-401 if the county fails to bring suit).

2. The Commissioner of the Tennessee Department of Economic and Community Development, with the approval of the Local Planning Development Advisory Committee, confers the authority for a municipal planning commission to act as a regional planning commission. Tenn. Code Ann. § 13-3-102. Thus, once such authority is granted, any request by a municipal planning commission to remove its authority as a regional planning commission would have to be reviewed and approved by the Commissioner and the Committee before that request could become effective. *See generally Law Guarantee & Trust Co. v. Jones*, 103 Tenn. 245, 251-52, 58 S.W. 219, 220 (1900) (observing that "every power of appointment is, strictly speaking, a power of revocation").

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

The Honorable Sheila Butt
State Representative
106 War Memorial Building
Nashville, Tennessee 37243