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Opinion No. 13-61

Mandatory Sprinkler Requirement for Residential Dwellings

QUESTIONS

1. Does a proposed regulation by a Regional Planning Commissioner (hereinafter "Commission") constitute a "mandatory sprinkler requirement" under Tenn. Code Ann. § 68-120-101, where the regulation would allow the Commission to waive a requirement that a lot in a residential subdivision be located within 1,000 feet of a fire hydrant in situations where the water lines in the subdivision cannot support the placement of a fire hydrant within 1,000 feet of that lot and the developer installs a sprinkler system in the residential development on the lot?

2. If so, does the Commission have the authority pursuant to Tenn. Code Ann. § 68-120-101 to impose a "mandatory sprinkler requirement"?

3. If the Commission is authorized to impose a "mandatory sprinkler requirement," then what procedural requirements must the Commission follow to establish this requirement?

4. If the Commission's actions do not conform with the aforementioned procedural requirements, what remedies, if any, are available to residential developers?

OPINIONS

1. Yes. A proposed regulation that requires the installation of sprinklers in all dwellings that are not within 1,000 feet of a fire hydrant is a "mandatory sprinkler requirement."

2. Yes.

3. Any regulation adopting a mandatory sprinkler requirement established by a Commission must conform with the procedures set forth in Tenn. Code Ann. § 68-120-101(a)(8)(B)(i).

4. If a Commission's actions do not conform with the procedures set forth in Tenn. Code Ann. § 68-120-101, residential developers aggrieved by the regulation may commence litigation to have the regulation declared void.

ANALYSIS

1 & 2. Building construction safety standards are governed by Tenn. Code Ann. § 68-120-101. This statute directs the state fire marshal to promulgate rules "establishing minimum statewide building construction safety standards . . . [which] shall be designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration and repair of buildings or structures." Tenn. Code Ann. § 68-120-101(a). *See also* Tenn. Comp. R. & Regs. 0780-02-01 to -23.

These standards do "not include mandatory sprinkler requirements for one-family and two-family dwellings." Tenn. Code Ann. § 68-120-101(a)(8)(A). However, "local governments may adopt more stringent requirements for one-family and two-family dwellings." *Id.* Specifically, local governments may adopt mandatory sprinkler requirements. Tenn. Code Ann. § 68-120-101(a)(8)(B)(i).

The regulation in question, provided to this Office with this opinion request, addresses fire protection. *See Draft Rutherford County Subdivision Regulations*, Article III, Rule D.3 (Feb. 25, 2013) (hereinafter "Draft Regulations").[1] According to the proposed regulation, developers shall provide fire hydrants in all subdivisions, and all subdivision lots must be within 1,000 feet of a hydrant. *Id*. In the event water lines cannot support a fire hydrant, the Commission may grant a waiver from the hydrant requirement but "[t]he granting of a waiver from the fire hydrant requirement *shall* require any residential development in a subdivision to install a sprinkler system." *Id*. at D.3.c.ii (emphasis added).

Tennessee courts have recognized that "[w]hen 'shall' is used in a statute or rule, the requirement is mandatory." *Bellamy v. Cracker Barrel Old Country Store, Inc.*, 302 S.W.3d 278, 281 (Tenn. 2009) (citing *Stubbs v. State*, 393 S.W.2d 150, 154 (Tenn. 1965)). Thus, use of the word "shall" in the proposed regulation creates a mandatory requirement. The regulation requires the installation of sprinkler systems; therefore, the proposed regulation is a "mandatory sprinkler requirement" as contemplated by statute. *See* Tenn. Code Ann. § 68-120-101(a)(8). The Commission is authorized to impose a mandatory sprinkler requirement pursuant to Tenn. Code Ann. § 68-120-101(a)(8)(B)(i).

3. To impose a mandatory sprinkler requirement for one-family and two-family dwellings, the Commission must follow the process established by Tenn. Code Ann. § 68-120-101(a)(8)(B)(i). The statute provides in pertinent part:

> [i]f a local government seeks to adopt mandatory sprinkler requirements for one-family and two-family dwellings . . . then the local government may only adopt such requirements, by either ordinance or resolution, as appropriate, upon an affirmative two-thirds (⅔) vote on final reading; provided, that if passage of such ordinance or resolution requires two (2) readings, then such requirements may

[1] These Draft Regulations are located at http://www.rutherfordcountytn.gov/planning/documents/SubRegs22513.pdf.

> only be adopted after reading such ordinance or resolution in open session of the legislative body at meetings specially called on two (2) different days that are no less than two (2) weeks apart; and if passage requires three (3) readings, then the last two (2) readings shall occur on two (2) different days that are no less than two (2) weeks apart. Mandatory sprinkler requirements shall be voted on in an ordinance or resolution separate from any other ordinance or resolution addressing building construction safety standards.

Tenn. Code Ann. § 68-120-101(a)(8)(B)(i).

The Draft Regulations provided to the Office contain the proposed mandatory sprinkler requirement but that regulation is just one regulation among fifty-five pages of proposed regulations. The applicable Tennessee statute mandates that any such proposal for a mandatory sprinkler "*shall* be voted on . . . *separate* from any other ordinance or resolution addressing building construction standards." *Id.* (emphasis added). Accordingly, the Commission must present the mandatory sprinkler requirement separate from its other subdivision regulations, and the Commission must vote on the regulation separately. *Id.* The Commission must also follow the statutory process for reading and voting upon this regulation, including that the regulation to pass must receive "an affirmative two-thirds (2/3) vote on final reading." *Id.*

4. The general rule is that an ordinance or regulation is considered invalid if its passage violates its authorizing statute. *See, e.g., Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 475-77 (Tenn. 2004) (concluding that a city ordinance was invalid because the ordinance was not enacted in accordance with the applicable procedural statute); *Town of Surgoinsville v. Sandidge*, 866 S.W.2d 553, 557 (Tenn. Ct. App. 1993) (holding that failure to pass a zoning amendment according to the procedural statute renders the amendment void). One remedy available to aggrieved residential developers in such circumstances is to seek to have a court declare the regulation void by means of a declaratory judgment action. *See Ready Mix, USA, LLC v. Jefferson County*, 380 S.W.3d 52, 64-65 (Tenn. 2012); *State ex rel. Moore & Associates, Inc. v. West*, 246 S.W.3d 569, 581 (Tenn. Ct. App. 2005); *B.F. Nashville, Inc. v City of Franklin*, No. M2003-00180-COA-R3-CV, 2005 WL 127082, at * 5-8 (Tenn. Ct. App. Jan. 21, 2005) (courts observing that a declaratory judgment may be commenced without exhausting administrative remedies where a party challenges the validity of an ordinance).

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