

April 13, 2004

Dear Sir:

Your question is: Can the city enforce Article IV, Section 4.240 of the county's zoning ordinance under its power to zone property in the county under Tennessee Code Annotated, 13-7-301 et seq.

This question arises from a resolution proposed by the County, under the authority of Tennessee Code Annotated, ' 13-7-301 et seq. That statute authorizes the legislative body of a municipality whose planning commission has been designated a regional planning commission to zone outside municipal boundaries following the county's approval. The County's resolution would give the City such approval, but also includes the authority to:

....extend extra-territorial zoning jurisdiction and enforcement, and the enforcement of the International Building Construction codes to coincide with the newly formed and approved Planning Regions and Urban Growth Boundaries, *subject to the Provisions of Article IV of the Tiptoe County Zoning Resolution.* [My emphasis]

Article IV of the County Zoning Resolution contains "Supplementary Regulations Applying to Specific Districts." Section 4.240 contains a list of litter, refuse, junk and debris control regulations that apply to all zoning districts, which the zoning resolution says are "promulgated under authority of Tennessee Code Annotated, Section 5-1-115." Tennessee Code Annotated, ' 5-1-115 authorizes counties to give property owners and occupants notice of, and to clean-up overgrown and dirty lots.

In my opinion, the answer to your question is no. The reason is that the regulations contained in Article IV, Section 4.240 are not proper subjects for zoning regulations. In Footnote 1 of Robertson County v. Browning-Ferris Industries, 799 S.W.2d 662 (Tenn. App. 1990), it is said that:

Zoning is the "division of a municipality or other local community into districts and the regulation of building and structures according to their construction and the nature and extent of their use, or the regulation of land according to its nature and use. 'Zoning' has also been defined as the legislative division of a community into areas in each of which only certain designated uses of land are permitted so that the community may develop in an orderly manner in accordance with a comprehensive plan." 82 Am.Jur.2d Zoning and Planning ' 2 (1976). [At 666]

It is also said in Lafferty v. City of Winchester, 46 S.W.3d 752 (Tenn. Ct. App. 2003), that:

Zoning ordinances are now the most prevalent types of local land use control. 1 American Law of Zoning ' 1.14. In the most general terms, zoning involves the territorial division of land into districts according to the character of the land and buildings, their suitability for particular purposes, and the uniformity of these uses. Family Golf of Nashville, Inc. v. Metropolitan Gov't of Nashville, 964 S.W.2d 254, 258 (Tenn. Ct. App. 1997). Zoning regulations focus primarily on the use of the property and the architectural and structural designs of the buildings. In re Sundance Mountain Ranches, Inc., 107 N.M. 192, 754 P.2d 1211, 1213 (App. 1988); Kaufman v. Panning & Zoning Comm'n, 171 W.Va. 174, 298 S.E.2d 148, 153 (1982); 1 E.C. Yokley, Zoning Law and Practice " 1-2 (4th ed. 1978). [At 758]

Tennessee Code Annotated, ' 13-7-302 itself defines what extraterritorial zoning means within the context of Tennessee Code Annotated, ' 13-7-301 et seq.:

....Within such zones or districts, the municipality may, by ordinance regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot occupancy, the required open spaces, the density of population and the uses of land buildings and structures.

Indeed, if one looks at the grant of zoning power given counties and cities in Tennessee Code Annotated, title 13, including the purpose of those grants, nothing in them pertains to property maintenance in any sense in which that subject is treated either in Tennessee Code Annotated, ' 5-1-115, or Article IV, ' 4.240 of the County Zoning Ordinance. [With respect to county zoning, see Tennessee Code Annotated, " 13-7-101, 13-7-102, 13-7-103. With respect to municipal zoning, see Tennessee Code Annotated, ' 13-7-201, 13-7-202].

It is difficult to believe that those definitions of zoning in the statutes and the case law contemplate overgrown and dirty lot clean-up. That is not to say that counties are not entitled to require the clean-up of overgrown and dirty lots. However, the method by which they are entitled to perform that function is prescribed by the statutory scheme found in Tennessee Code Annotated, ' 5-1-115. It is said with respect to the exercise of the police power by municipalities that where a statute prescribes how such powers are to be exercised, municipalities are bound by that statute. [Nichols v. Tullahoma Open Door, 640 S.W.2d (Tenn. Ct. App. 1982)] There appears no reason that a similar rule would not apply to the exercise of similar powers by

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counties.

Because the County itself has no authority to enforce Article IV, ' 4.240 as a part of its zoning ordinance, it cannot delegate to the City the authority to enforce that provision as a part of the city's extra-territorial zoning authority under Tennessee Code Annotated, ' 13-7-301 et seq.

There may be other problems with the delegation of authority by the County to the City. I will be glad to go into those possible problems if it is the city's desire that I do so.

Sincerely,

Sidney D. Hemsley
Senior Law Consultant

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