

August 25, 2003

Re: tax map, boundary issue

Dear City Attorney,

You have advised me of an issue which has arisen in your city concerning a piece of property located on the city's boundary line. It is my understanding that a tax map held by the county assessor showed the property as being located inside the city in a tax map dated 1972. No one has ever paid city taxes on the property. At some point, the tax map was changed to reflect that the property is located outside the city line, and there is no record of why this change was made. The owner of the property recently placed a mobile home on the parcel, and obtained a county permit to do so. Mobile homes are not permitted in that area under the city's zoning ordinance. You have asked me who prevails. Unfortunately, the answer to that question is unclear.

All court opinions addressing boundary disputes involve parties arguing over archaic boundary descriptions, claiming adverse possession, or boundaries that shift based on a body of water. There is no case that I have found which involves conflicting tax maps, or a change in a tax map without supporting documentation.

The Court of Appeals has stated that "a tax map from a tax assessor's plat does not establish a boundary line." Weaver v. Haley, 1996 WL 97653 (Tenn. App.), citing Whitworth v. Hutchison, 731 S.W.2d 913 (Tenn. App. 1986). What controls the determination of the location of a boundary line is "the intent of the parties, either expressly or implied..." Id. Such issues are primarily determined through jury trial, as the Court of Appeals states:

Generally speaking the determination as to whether or not boundaries exist, and what they are is a matter of law for the court. Their location is a matter of fact for the determination of the trier of facts. McQuillen Municipal Corporations, § 7.05 (3d ed. 1996).

City of Oak Hill v. AAMP, 2002 WL 31769086 (Tenn. App.). In the Oak Hill case, the city sought to enforce its residential zoning restrictions over a parcel of property situated at the city's eastern border, on Franklin Pike. The trial court found that the parcel was located in Metropolitan Government of Nashville, partly within the state right of way. The zoning map and street plan adopted by the city of Oak Hill at the time of incorporation reflected that the parcel was excluded from the city limits, and the tax map of Metro Nashville showed that the parcel was located within that municipality. All maps relied upon by the parties predate a 1977 quit claim deed filed by the state, after completion of construction on Franklin Pike. The city argued that the city boundary extended to the center line of Franklin Pike, which would include the parcel, but the Court was not convinced. The Court relied on the intent of the incorporators of Oak Hill, and ruled the parcel was outside city boundaries due to the descriptions used at the time of incorporation.

Based on this research, in my opinion, the boundary description used at the time of the incorporation of your city will control, or the boundary description used in a later annexation if one occurred at this location. This would reflect the intent of the incorporators, or governing body of your city.

A simple solution to this problem, if the City does not wish to litigate the issue and enforce zoning restrictions on the parcel, is to pass a “de-annexation” ordinance carving this piece of property out of the city boundary. The ordinance would contain a new description of the boundary line to clear up the confusion. The simplest manner in which this may be accomplished is provided in T.C.A. § 6-51-201(b). Under this statute, the governing body may pass an ordinance to de-annex the parcel “when it appears in the best interest of the affected territory.” Such contraction of the city’s boundaries can be stopped if 10% of the voters in the affected area file a petition and force the matter to referendum, but I do not believe that will occur in your city’s situation.

I apologize for the delay in getting this letter to you. I left a message at your office several days ago to discuss my research and recommendation. I have discussed the issue with Sid Hemsley, and he agrees with my analysis.

I hope this information is helpful. Please feel free to contact me should you have any questions or need further assistance in this matter.

Thank you for consulting with MTAS.

Sincerely,

Melissa A. Ashburn
Legal Consultant