

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

WAYNE & JANIS WAGGONER, JOHN &
DONNA BOHAN, BILL & JANIE EMMERT,
KENT & DEBBIE FAWVER, DONALD &
KIMBERLY KENNEDY, JOHN & DEBBIE
GIFFORD, MARTIE & CINDY PRATT,
NANCY HOLBERT, BRYON & LESLIE
MAYES, MIKE & SANDY LEWIS,
ROBERT BROWN, GRACE BROOKS,
SUZANNE TOWNSEND, DR. ROBERT
WHITTLE AND JO WHITTLE, CARROLL
L. SMITH, CAROLYN SMITH, KARA
WILSON, TRAVIS WILSON, KYLE &
TONI SMITH,

Plaintiffs,

Vs.

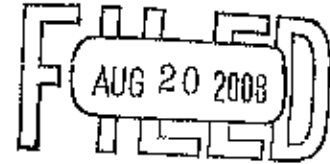
No. 167896-3

KNOX COUNTY, TENNESSEE, THE
KNOXVILLE-KNOX COUNTY
METROPOLITAN PLANNING
COMMISSION, AND THE DEVELOPMENT
CORPORATION OF KNOX COUNTY,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held on June 2, 2008 to determine if, when, and by whom the East Knox Sector Plan was amended. The ordinance states that the plan may "be amended,



HOWARD G. HOGAN

supplemented, revised or repealed from time to time as conditions warrant" *provided certain standards are met* for the amendment(s). Knox County Zoning Ordinances §6.30.

There is no dispute that it is the MPC that adopts the official plan and it is the MPC that adopts any parts, amendments or additions to the plan.

A regional planning commission may adopt the regional plan as a whole by a single resolution, or, as the work of making the plan progresses, may from time to time adopt a part or parts thereof. The commission may from time to time amend, extend or add to the plan or carry any part of the plan into greater detail. The adoption of the plan or any part, amendment or addition shall be by resolution carried by the affirmative votes of not less than a majority of the membership of the commission.

Tenn. Code Ann. §13-3-303 (1999)

The plan was set out in an MPC staff recommendation dated July 6, 2006. Based upon the staff recommendation and the representations before the Commission, the MPC voted to recommend amending the Sector Plan and rezoning of the subject property on July 13, 2006. On August 28, 2006, the Knox County Commission voted to amend the East Knox County Sector Plan and to re-zone properties therein.

Defendants admit, "MPC believed its recommendations would be considered by the Knox County Commission. Ans. of Knox County and MPC ¶ 17. As further answer, the MPC asserted that "its July 13, 2006 decision was not a 'final order or judgment' within the meaning of T.C.A. §27-9-101 *et. seq.* such as would be appropriate for judicial review..." ¶ 17.

In a Memorandum filed in support of its Motion for Judgment on the Pleadings, defendant Knoxville-MPC stated, "The Metropolitan Planning Commission's action ... was the making of a *mere recommendation only*. It was not a 'final order'. It was not a 'final

judgment'. It re-zoned nothing. It changed no zoning plans. It was merely a recommendation." Def.'s Mem. July 5, 2007 at 3.

This Court finds the Knox County Sector Plan was not amended by the MPC as required. "Knox County's *East County Sector Plan* was amended by the Knox County Commission on August 28, 2006." Def's Mem. June 2, 2008 at 2. This Court finds that the authority to amend a sector plan rest solely with the Planning Commission.

The Knox County Commission cannot create or amend a sector plan though it can rezone. The County Commission passed a resolution amending the sector plan when only the Planning Commission has the authority to do so.

A regional planning commission may adopt the regional plan as a whole by a single resolution, or, as the work of making the plan progresses, may from time to time adopt a part or parts thereof. The commission may from time to time amend, extend or add to the plan or carry any part of the plan into greater detail. The adoption of the plan or any part, amendment or addition shall be by resolution carried by the affirmative votes of not less than a majority of the membership of the commission.

T.C.A. §13-3-303 (1999).

The Tennessee General Assembly has empowered county and municipal legislative bodies to zone property. See Tenn. Code Ann. §§13-7-101 to 13-7-210 (1999 & Supp. 2007). It has delegated the land use planning function to local and regional planning commissions. See Tenn. Code Ann. §§13-3-101 to 13-4-309 (1999 & Supp. 2007). "The power to zone must be distinguished from the power to plan". Family Golf of Nashville, Inc. v. Metropolitan Government of Nashville, 964 S.W.2d 254, 257 (Tenn. Ct. App. 1997). The County Commission cannot create or amend the sector plan, though they do the authority to rezone.

Based on the Family Golf case and the Tennessee statutes, the amendment should have been adopted by the Planning Commission because it was an amendment to the Knox County Sector Plan. The Planning Commission must first adopt the amendment and then pass it on to the County Commission for approval.

The parties stipulated to the fact that the County Commission took the action. The facts indicate that the MPC merely voted to make and made a recommendation. The MPC did not actually amend the sector plan.

This Court finds the MPC did not take any action and therefore cannot find that they acted arbitrarily or capriciously. A mere recommendation does not constitute a decision reviewable by this Court by way of Tenn. Code Ann. §27-9-101 petition of certiorari.

Despite repeated assertions by MPC that it did not amend the East Knox Sector Plan by its actions on July 13, 2006, counsel for the defendants nevertheless urged the Court to consider the matter as if MPC had done so. It is urged that this practice has been followed for years and it was MPC's intent to amend the Sector Plan by its vote of July 13, 2006.

This may be the procedure historically followed by MPC. There is no evidence before this Court regarding the historical practices of the Commission. The Court cannot discern from the evidence before it whether MPC in prior actions did or did not intend to "amend" the sector plans by merely making recommendations to the Knox County Board of Commissioners.

As previously outlined both in this document and in the bench opinion rendered on June 2, 2008, MPC has repeatedly argued that in this case it did not intend to amend the East Knox County Sector Plan but only made a recommendation for the County Commission to do

so. In view of these strong assertions the Court declines to construe MPC's actions in a contrary manner.

However, even if MPC did intend to amend the East Knox County Sector Plan then its actions in doing so were arbitrary, capricious and/or illegal. §6.30 of the Knox County Code clearly sets forth the standards to be considered on any proposed amendment. §6.30.01(A) provides as follows:

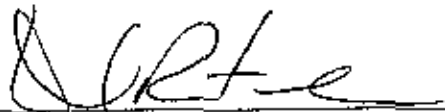
The proposed amendment shall be necessary because of substantially changed or changing conditions in the area and zones affected, or in the county generally.

In spite of the clear directive of the aforementioned code section, counsel suggests that this is only to be used as a "guide" for considering proposed amendments. Regardless of whether the section creates a mandate or is merely a guide it is clear that MPC considered no evidence regarding substantially changed or changing conditions in the area and zones affected or in the county generally. The record reveals no consideration of these factors by MPC prior to its vote on July 13, 2006.

The Memorandum Opinion issued from the bench on June 2, 2008, is incorporated herein as if set forth verbatim.


Counsel for plaintiff is to prepare a judgment dismissing this petition for *writ of certiorari* taxing costs to the defendants.

Entered this 20th day of August, 2008.


Chancellor

Certificate of Service

I, the undersigned, hereby certify that I have placed a true and accurate copy of the foregoing Findings of Fact and Conclusions of Law in the U. S. Mail, postage prepaid, to the parties listed below this 21st day of August, 2008.


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