IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
NOVEMBER 17, 2005 Session

HARDING ACADEMY v. THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, acting by and through the BOARD OF FIRE AND BUILDING CODE APPEALS

Direct Appeal from the Chancery Court for Davidson County
No. 03-1717-II Carol L. McCoy, Chancellor

No. M2004-02118-COA-R3-CV - Filed March 14, 2006

Harding Academy, a private elementary and middle school located in Nashville, Tennessee, acquired neighboring real property with the intention of constructing athletic fields for use by its student body. The local neighborhood association began to voice its disagreement with the planned use of the property. On April 10, 2003, the councilwoman representing the district filed an application with the planning commission seeking to have a historic conservation overlay imposed on the area. On May 6, 2003, Harding Academy received nine permits to demolish the houses occupying the property it acquired. On May 8, 2003, the Metropolitan Government of Nashville and Davidson County, through its codes department, informed Harding Academy that its permits were being revoked. In revoking the permits, the local government relied on the "pending ordinance doctrine," citing the councilwoman's pending application. Harding Academy appealed to the Board of Fire and Building Code Appeals, which affirmed the revocation. Thereafter, Harding Academy filed for a writ of common law certiorari in the Chancery Court of Davidson County. The chancellor reversed the board's decision, holding that the local government could not rely on the "pending ordinance doctrine" to revoke the permits because the historic conservation overlay was not sufficiently "pending" at the time of the revocation. Accordingly, the chancellor ordered the codes department to re-issue the permits. The local government appealed the chancellor's decision to this Court. We affirm the chancellor's ruling, but for reasons different from those set forth by the chancery court.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and DAVID R. FARMER, J., joined.

J. Brooks Fox, John Kennedy, Nashville, TN, for Appellant

Robert J. Walker, John C. Hayworth, John L. Farringer, IV, Nashville, TN, for Appellee

OPINION

I.
FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Harding Academy, located in Nashville, Tennessee, is a private K-8 elementary and middle school founded in 1972. Beginning in 1991, Harding Academy undertook an effort to purchase private property in the Belle Meade Links area of Nashville, which surrounds the school, for future construction of athletic facilities for use by its student body. By January of 2003, Harding Academy had acquired eleven contiguous lots near the school at a total cost of over $3 million dollars. Nine single family homes occupy the eleven lots.

According to the Metropolitan Government of Nashville and Davidson County ("Metro" or "Appellant"), its Historic Zoning Commission, pursuant to the "1994 Subarea 7 Plan," reviewed the Belle Meade Links area in 1993 and deemed it worthy of conservation for historical reasons. In June of 2002, a public informational meeting was held in the neighborhood, but the record does not establish the subject matter of the meeting or who organized it. In September of 2002, a second public informational meeting was held at Harding Academy, however, this meeting was apparently organized by Harding Academy in order for the school to present its plans for the property it acquired to the neighbors and local government officials in more detail.

On January 30, 2003, Harding Academy applied to the Metro Board of Zoning Appeals (the "Zoning Board") to have the property designated as capable of supporting a recreational center.[1] At some point, the local neighborhood association began expressing its disapproval of Harding Academy's planned use of the property. Councilwoman Lynn Williams ("Councilwoman Williams"), the representative for the district, encouraged Harding Academy to withdraw its application and work with the neighborhood association toward an amicable resolution of the dispute. In March of 2003, Harding Academy withdrew its application and met with representatives of the neighborhood association in an effort to resolve their differences, however, these efforts proved futile.

According to Metro, the Historic Zoning Commission decided in the later part of March 2003 to schedule a meeting to be held on May 14, 2003 to discuss whether it should recommend to the Metro City Council that a historic conservation overlay be imposed on the Belle Meade Links area. On April 10, 2003, Councilwoman Williams filed an application with the Metro Planning Commission seeking to have the Belle Meade Links area, including the property purchased by

[1] The property at issue is apparently zoned for residential uses only. Harding Academy apparently undertook efforts to obtain permission from Metro to use the property as a park. After Harding Academy obtained a park permit, the Zoning Board apparently overturned the issuance of the permit. This dispute is the subject of a separate lawsuit filed in the Chancery Court of Davidson County, which is not at issue on appeal.

Harding Academy, deemed an historic overlay district.[2] On April 22, 2003, notices were sent to property owners subject to the proposed historic conservation overlay informing them of a hearing before the Historic Zoning Commission set for May 14, 2003 to discuss the proposal.

On May 1, 2003, Harding Academy applied to the Metro Department of Codes ("Codes Department") for nine demolition permits to raze the unoccupied houses situated on the property it acquired. Five of the nine permits requests were forwarded to the Historic Zoning Commission for review. Pursuant to Metro's application tracking system, the Historic Zoning Commission had three options: approve the permits, disapprove of the permits, or ignore them. The Historic Zoning Commission apparently ignored the permit requests, therefore, they were released for issuance pursuant to Metro's policy. On May 6, 2003, the Director of the Codes Department issued the nine demolition permits to Harding Academy. The Director of the Codes Department subsequently stated that "[w]e believed when we issued them they were issued appropriately."

On May 8, 2003, the Director of the Codes Department sent a letter to Harding Academy informing it of the revocation of the permits, stating:

> Pursuant to advice received from the Department of Law of the Metropolitan Government [(hereinafter "Metro Legal Department")], I am hereby revoking the above referenced demolition permits, which you obtained on May 6, 2003. I am informed that the revocation of these permits is consistent with the "pending legislation doctrine" established by the Tennessee Supreme Court in [*State ex rel. SCA Chemical Waste Services, Inc. v. Konigsberg*, 636 S.W.2d 430 (Tenn. 1982)] . . . , as legislation is pending in Metro Council placing a historic conservation overlay on the subject property. You are therefore notified to stop work immediately under these permits.

The Director of the Codes Department subsequently stated that the Metro Legal Department advised him to revoke the permits pursuant to section 16.04.120 of the Metro Code as they were issued in error. Thereafter, Harding Academy appealed the revocation of its permits to the Metro Board of Fire and Building Code Appeals ("Appeals Board"). On May 12, 2003, Councilwoman Williams' proposed historic conservation overlay was filed with the Metro clerk's office. On May 14, 2003, the Historic Zoning Commission approved the historic conservation overlay for the Belle Meade Links area. On May 20, 2003, the Metro City Council adopted the historic conservation overlay proposed by Councilwoman Williams on its first reading.

---

[2] The Metro Code provides for three classifications of historic overlay districts, one of which is a Neighborhood Conservation District. METRO. GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENN., CODE § 17.36.110 (1997) (hereinafter "METRO CODE"). A Neighborhood Conservation District is defined as "geographical areas which possess a significant concentration, linkage or continuity of sites, buildings, structures or objects which are united by past events or aesthetically by plan or physical development," and meet one of five historical criteria. METRO CODE § 17.36.120.

The Appeals Board conducted a hearing on Harding Academy's appeal on June 10, 2003. At the hearing, Metro argued that Councilwoman Williams' application for an historic overlay constituted sufficient "pending legislation" to warrant the revocation of Harding Academy's permits. Of course, Harding Academy contended that it did not. Ultimately, the Appeals Board found that the permits were issued in error, therefore, section 16.04.120 of the Metro Code granted the Director of the Codes Department the authority to revoke the permits. Accordingly, the Appeals Board upheld the revocation of the permits and denied Harding Academy's appeal.

On June 17, 2003, Harding Academy filed a "Petition for Writ of Certiorari" in the Chancery Court of Davidson County against Metro acting through the Appeals Board. Therein, Harding Academy alleged that the Appeals Board acted in excess of its jurisdiction, illegally, and/or arbitrarily and capriciously in denying its permits. The chancery court subsequently entered a writ directing the Appeals Board to transmit the record to the chancery court for review. The proposed historic overlay apparently survived its second and third readings before the Metro City Council and went into effect on July 19, 2003. After the parties submitted their briefs to the chancery court and the court conducted oral argument, the chancellor entered an order on July 29, 2004 reversing the decision of the Appeals Board. In its well reasoned and thorough opinion, the chancery court concluded that the historic overlay legislation was not sufficiently "pending" when Harding Academy applied for its permits, therefore, the Director of the Codes Department acted arbitrarily and capriciously in revoking the permits. Further, the chancellor found that Metro failed to utilize the "pending ordinance doctrine" in a uniform and objective manner. As a result, the chancery court ordered the Director of the Codes Department to re-issue the permits.

Metro filed a timely notice of appeal to this Court presenting the following issue for our review: Whether the chancery court erred when it reversed the decision of the Appeals Board and ordered the reinstatement of the permits. For the reasons set forth more fully herein, we affirm the decision of the chancery court.

II.
STANDARD OF REVIEW

"In determining whether or not a zoning or building permit should be revoked, the authorities act in a quasi-judicial capacity . . . ." 101A C.J.S. *Zoning and Land Planning* § 295 (2005). Thus, review of the decisions of the Appeals Board is by common law writ of certiorari, which the legislature provides for in the following instances:

> The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.

TENN. CODE ANN. § 27-8-101 (2000); ***see also Davison v. Carr***, 659 S.W.2d 361, 363 (Tenn. 1983) ("Common law certiorari is available where the court reviews an administrative decision in which that agency is acting in a judicial or quasi-judicial capacity."). The procedural framework for reviewing cases filed pursuant to the common law writ of certiorari is set forth in Title 27, Chapter 9 of the Tennessee Code. TENN. CODE ANN. § 27-9-101 (2000) ("Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have the order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided in this chapter."); ***see also Fairhaven Corp. v. Tenn. Health Facilities Comm'n***, 566 S.W.2d 885, 886 (Tenn. Ct. App. 1976).

The chancery court's review of the actions of the Appeals Board is limited to ascertaining whether the board "exceeded its jurisdiction; followed an unlawful procedure; acted illegally, arbitrarily, or fraudulently; or acted without material evidence to support its decision." ***Lafferty v. City of Winchester***, 46 S.W.3d 752, 758–59 (Tenn. Ct. App. 2000) (citations omitted); ***see also Watts v. Civil Serv. Bd. for Columbia***, 606 S.W.2d 274, 277 (Tenn. 1980). In performing this function, the reviewing court is generally confined to the record before the administrative body. ***Davison***, 659 S.W.2d at 363. The court is not permitted to re-weigh the evidence presented to the administrative body. ***Lafferty***, 46 S.W.3d at 759. New evidence may be received, however, in order to ascertain whether the administrative body exceeded its jurisdiction or acted illegally, capriciously, or arbitrarily. ***Davison***, 659 S.W.2d at 363. Thus, "[s]uch review is actually a question of law and not of fact." ***Goodwin v. Metro. Bd. of Health***, 656 S.W.2d 383, 386–87 (Tenn. Ct. App. 1983). "The scope of review by the appellate courts is no broader or more comprehensive than that of the trial court with respect to evidence presented before the Board." ***Watts***, 606 S.W.2d at 277; ***see also Goodwin***, 656 S.W.2d at 387.

III.
ANALYSIS

"Local governments lack the inherent power to control the use of private property within their boundaries." ***Lafferty***, 46 S.W.3d at 757; ***see also 421 Corp. v. Metro. Gov't of Nashville & Davidson County***, 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000). Such power belongs to the state, ***State ex rel. Lightman v. City of Nashville***, 60 S.W.2d 161, 162 (Tenn. 1933), and local governments, including municipalities, derive their zoning authority from the state, ***Cherokee Country Club, Inc. v. City of Knoxville***, 152 S.W.3d 466, 471 (Tenn. 2004); ***State ex rel. SCA Chem. Servs., Inc. v. Sanidas***, 681 S.W.2d 557, 562 (Tenn. Ct. App. 1984). The legislature of this state has granted the legislative bodies of the local governments the power to enact and amend zoning regulations. TENN. CODE ANN. § 13-7-201(a)(1) (Supp. 2005). Title 13, Chapter 7, Parts 2 and 3 of the Tennessee Code define the parameters of that power. ***Id.***; ***see also 421 Corp.***, 36 S.W.3d at 475 ("Thus, local governments must exercise their delegated power consistently with the delegation statutes from which they derive their power.").

On appeal, Metro argues that the record before the Appeals Board contains sufficient evidence to support the decision of the Appeals Board. Metro asserts that it had the authority to

revoke Harding Academy's permits because Harding Academy had no vested rights in those permits. As the basis for revoking the permits, Metro relies on the "pending ordinance doctrine." In turn, Harding Academy argues that we should affirm the chancery court's reversal of the decision of the Appeals Board because its decision was arbitrary, illegal, beyond its statutory powers, and not supported by material evidence. Harding Academy asserts that this Court should ignore Metro's vested rights argument as nothing more than a "straw man" since Harding Academy concedes that it never had vested rights in the permits. Further, Harding Academy asserts that the "pending ordinance doctrine" is inapplicable for two reasons: (1) Metro could only revoke the permits pursuant to the Metro Code, and the record establishes that the permits were not issued "in error," and (2) pursuant to our supreme court's decision in *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466 (Tenn. 2004), Metro could not revoke the permits as a matter of law. Alternatively, Harding Academy asserts that, should this Court determine that the "pending ordinance doctrine" is applicable to the facts of this case, Metro could not rely on the doctrine to revoke the permits because the zoning legislation at issue was not sufficiently "pending" when Harding Academy applied for and received its permits. Even if the zoning legislation is found to be sufficiently "pending," Harding Academy argues that Metro utilized the "pending ordinance doctrine" in an arbitrary and capricious manner.

We disagree with Harding Academy's assertion that the "vested rights doctrine" has no bearing on the present appeal. Municipalities may, and generally do, require that permits be obtained prior to, among other things, the demolition of structures. ***See*** 101A C.J.S. *Zoning and Land Planning* § 252 (2005). Pursuant to the Metro Code, Harding Academy was required to obtain a permit prior to demolishing the structures located on the lots it purchased. ***See*** METRO CODE §§ 16.04.020, 16.28.010. A municipal building official, such as the Director of the Codes Department in this case, is a mere administrative agent of the local government bound by the zoning ordinances adopted by the local legislative body. ***See McCallen v. City of Memphis***, 786 S.W.2d 633, 639 (Tenn. 1990); 2 E.C. Yokley, ZONING LAW AND PRACTICE § 14-3 (4th ed. 2001) [hereinafter "Yokley"]. As is the usual practice among municipalities, Metro vests the Director of the Codes Department with the authority to issue permits for, among other things, the demolition of buildings. ***See*** METRO CODE § 16.04.070; ***see also*** Yokley § 14-3. Such officials do not, however, have carte blanche to arbitrarily refuse to issue permits based on personal speculation about how certain real property may be used. ***See*** Yokley § 14-3; ***see also*** 101A C.J.S. *Zoning and Land Planning* § 254 (2005). Of course, there are instances when a building official can and should refuse to issue a permit, such as when an applicant has failed to comply with certain formalities or when the intended use would violate an existing ordinance. Yokley § 14-4.

Regarding the issuance of permits, Tennessee adheres to the following general proposition of law:

> It is generally held that neither the filing of an application for a building permit nor the issuance of a building permit, although valid and issued in conformity with the provisions of the zoning ordinance, alone confers any right in the applicant or permittee against a change

> in the zoning ordinance which imposes further limitations upon the use or structure proposed. 2 Rathcopf, The Law of Zoning and Planning § 57-2 (1964).

Schneider v. Lazarov, 390 S.W.2d 197, 200 (Tenn. 1965); ***accord*** 101A C.J.S. *Zoning and Land Planning* § 72, at 126 (2005) ("[T]he mere issuance of a building permit does not per se protect against a zoning change subsequently adopted."). "The general rule is that a building permit has none of the elements of a contract and may be changed or entirely revoked even though based on a valuable consideration, if it becomes necessary to change or revoke it in the exercise of police power." ***Schneider***, 390 S.W.2d at 201 (citing Yokley § 102 (1953)); ***see also Haymon v. City of Chattanooga***, 513 S.W.2d 185, 188 (Tenn. Ct. App. 1973); ***Moore v. Memphis Stone & Gravel Co.***, 339 S.W.2d 29, 33 (Tenn. Ct. App. 1959).

"One common reason local governments seek to revoke or dishonor existing building permits is that they have amended the zoning ordinance governing the subject property." Yokley § 14-5. When a municipality's attempt to amend the zoning ordinances conflicts with the property owner's intended use of the property under the zoning ordinance in existence when the permit was issued, "[t]he vested rights concept has long been recognized in Tennessee as an appropriate means with which to balance private property interests with those of a public nature." ***PEP Props. v. Town of Farragut***, No. 1399, 1991 Tenn. App. LEXIS 238, at *4 (Tenn. Ct. App. Apr. 10, 1991), *appeal denied*, 1991 Tenn. LEXIS 360, at *1 (Tenn. Sept. 9, 1991). The general rule is that "[p]roperty owners acquire no vested rights under zoning ordinances, and hence they are deprived of no legal rights by the lawful amendment or repeal of such ordinances." 8 Eugene McQuillin, THE LAW OF MUNICIPAL CORPORATIONS § 25.66, at 204 (3rd ed. 2000) [hereinafter "McQuillin"]; ***accord*** 101A C.J.S. *Zoning and Land Planning* § 262 (2005) ("Property is not exempt from subsequent regulations with respect to permits unless the owner has acquired a vested right to use the property in a particular manner."). A permit holder does, however, acquire a vested property right in the permit when he or she expends substantial construction costs in good faith reliance on the permit or enters into contracts in reliance on the permit. ***See Schneider***, 390 S.W.2d at 201; ***Howe Realty Co. v. City of Nashville***, 141 S.W.2d 904, 906 (Tenn. 1940); ***Chickering Ventures, Inc. v. Metro. Gov't of Nashville & Davidson County***, 1988 Tenn. App. LEXIS 817, at *7 (Tenn. Ct. App. Dec. 16, 1988).[3] Thus, "the doctrine of vested rights permits a landowner to complete a project in the face of a new law purporting to prohibit the development of the project where the landowner in reliance upon the governmental action has in good faith suffered substantial detriment thereby acquiring a vested right to proceed to develop the property." McQuillin § 25.133, at 509; ***see also*** Yokley §§ 14-5, 14-6.

[3] Some states hold that a permit holder's rights vest under the zoning ordinance in effect when the permit is issued as long as the project conforms to those ordinances, and a subsequent amendment of the zoning ordinance cannot operate to deprive the landowner of this vested right. ***See*** 101A C.J.S. *Zoning and Land Planning* § 263 (2005); McQuillin § 25.155, at 571; Roland F. Chase, Annotation, *Retroactive Effect of Zoning Regulation, in Absence of Saving Clause, on Validly Issued Building Permit*, 49 A.L.R.3d 13 (1973) (discussing the minority approach which states that a building permit cannot be revoked when a zoning ordinance is amended after the issuance of the permit).

As Harding Academy readily concedes, the record does not indicate that it expended any sums in reliance on the permits, therefore, it never acquired any vested rights in the permits. It is readily apparent to this Court, however, that Harding Academy is essentially asserting that, since Metro could not properly revoke its permits, it should be entitled to go forward with the demolition of the structures despite the fact that the zoning amendment adopted by Metro after it obtained those permits would preclude Harding Academy's intended use of the property. Stated differently, Harding Academy's position on appeal presupposes that it has some vested right in the permits at issue.

While Harding Academy obtained no vested right in its permits under the aforementioned authorities, such permits could only be revoked "if it [became] necessary to change or revoke [them] in the exercise of [Metro's] police power." ***Schneider***, 390 S.W.2d at 201. Harding Academy does not contend that Metro lacked the authority or exceeded its authority to amend the zoning ordinance at issue to impose a historic overlay on the Belle Meade Links area. ***See Family Golf of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County***, 964 S.W.2d 254, 257–58 (Tenn. Ct. App. 1997) (noting that the power to amend zoning is delegated to the local governments as an inherent police power, but it must be done in accordance with the statutes conveying such authority); McQuillin § 25.67, at 207 ("The power of a municipal corporation to amend the provisions of a zoning ordinance, like the power to enact a zoning ordinance, is limited to that conferred by the enabling statutes and laws.").

"Where an ordinance or regulation or the permit itself provides for revocation under certain circumstances, the necessary circumstances or causes must be shown to exist in order to warrant revocation of the permit." 101A C.J.S. *Zoning and Land Planning* § 292 (2005). The Metro Code vests the Director of the Codes Department with the authority to revoke permits previously issued in the following instances:

> The director of codes administration may revoke a permit or approval, issued under the provisions of Chapters 16.04 and 16.28 through 16.56, in case there has been any false statement or misrepresentation as to a material fact in the application or plans on which such permit or approval was based, or when it is determined that a permit has been issued in error.

METRO CODE § 16.04.120. It is undisputed that Harding Academy did not make a false statement or misrepresentation on its permit application. Metro contends that, since the legislature has delegated to it the authority to enact zoning legislation pursuant to its police powers and the legislation to impose a historic conservation overlay was pending when Harding Academy received the permits, the "pending ordinance doctrine" permitted it to revoke the permits as issued in error. Harding Academy argues that the "pending ordinance doctrine" is inapplicable to this case for the following reasons: (1) Pursuant to the Tennessee Supreme Court's decision in *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466 (Tenn. 2004), the "pending ordinance doctrine" does not apply to this case as a matter of law; (2) Harding Academy attempts to argue that "in error"

should be interpreted to mean that it only serves as a basis for revocation when an applicant has failed to take all steps necessary for the issuance of a permit, but the permit is nonetheless issued; and (3) Metro fails to cite to any authority to support its contention that the "pending ordinance doctrine" qualifies as an "error" justifying revocation of its permits.

It is true that Metro cites to no authority to support its contention that the "pending ordinance doctrine" qualifies as an "error" warranting the revocation of Harding Academy's permits in this case. A general statement of the "pending ordinance doctrine" is as follows:

> [O]rdinarily an application for a permit made before a zoning ordinance becomes effective gives in itself no right to a use excluded by the ordinance. Indeed, generally speaking, no preliminary proceedings to the obtaining of a permit give rise to any vested right to pursue a use in a zoned district. Rights of parties in this respect are to be determined under zoning laws in effect as of the time the use is undertaken rather than the zoning laws in effect at the time when the application for the permit was made. . . .
>
> A municipality may properly refuse a building permit for a land use repugnant to a pending zoning ordinance, even though application is made when the intended use conforms to existing regulations, and even though the application is made a considerable time before the enactment of the pending ordinance, provided the municipality has not unreasonably or arbitrarily refused or delayed the issuance of a permit, and provided the ordinance was legally "pending" on the date of the permit application. . . .
>
> The governing body of a city in a proper exercise of its police power is authorized, pending litigation relative to a permit, to enact or amend a zoning ordinance to prevent a use, since the applicant, absent a statute designed to protect developers from zoning changes, acquires no vested right by filing an application for a permit. Indeed, the fact that an application for a particular use provides an incentive to amend the zoning ordinances does not limit the municipal zoning power, nor confer any additional rights on the applicant.

McQuillin § 25.155, at 567–70. Our supreme court, in the only Tennessee case squarely addressing the "pending ordinance doctrine," has adopted the doctrine for application in this state by approving the following quotation:

> "'We hold that a municipality may properly refuse a building permit for a land use in a newly annexed area when such use is repugnant to a pending and later enacted zoning ordinance.
>
> This holding, which is followed by numerous jurisdictions, is supported by sound reasoning. *See, generally,* Annot., 50 A.L.R. (3d)

596, 623-32 (1973). As stated in *Chicago Title & Trust Company v. Village of Palatine*, 22 Ill.App.2d 274, 160 N.E.2d 697, 700 (1959):

> It would be utterly illogical to hold that, after a zoning commission had prepared a comprehensive zoning ordinance or an amendment thereto, which was on file and open to public inspection and upon which public hearings had been held, and while the ordinance was under consideration, any person could by merely filing an application compel the municipality to issue a permit which would allow him to establish a use which he either knew or could have known would be forbidden by the proposed ordinance, and by so doing nullify the entire work of the municipality in endeavoring to carry out the purpose for which the zoning law was enacted.'"

State ex rel. SCA Chem. Waste Servs., Inc. v. Konigsberg, 636 S.W.2d 430, 436 (Tenn. 1982) (quoting ***Sherman v. Reavis***, 257 S.E.2d 735, 737 (S.C. 1979)).

In *Konigsberg*, our supreme court offered the following justification for the "pending ordinance doctrine:"

> courts may take judicial notice of the fact that it takes much time to work out the details of a comprehensive zoning plan and it would be destructive of the plan if, during the period of its incubation and consideration, persons seeking to evade its operation should be permitted to enter upon a course of construction that would progress so far as to defeat, in whole or in part, the ultimate execution of the plan.

Id. at 435. As another court has stated:

> Our holding in this case should not be construed so as to authorize a city's carte blanche denial of building permits anytime it contemplates changing the zoning in a given area. However, when as here, a city has placed its zoning machinery in operation before the permit is applied for and the impetus of the proposed new zoning is directed at and brought about by concern over the future general welfare of a particular area, . . . then we do not feel that the city's action in maintaining the status quo for a reasonable time until the rezoning can be completed can be considered as an arbitrary or

> capricious or unreasonable exercise of its police power. This particular police power function must be exercised reasonably.

City of Dallas v. Crownrich, 506 S.W.2d 654, 660 (Tex. Civ. App. 1974) (citations omitted); ***accord*** 101A C.J.S. *Zoning and Land Planning* § 262, at 336 (2005) ("[A] permit may be properly refused in situations under the pending ordinance doctrine only when the governing body acts initially in good faith to achieve permissible ends and thereafter proceeds with reasonable dispatch in considering the proposed zoning."). "The authorization of any other rule would . . . frequently sanction a race of diligence to the city hall by property owners attempting to place structures upon their land that would be out of accord with the surrounding property under the new zoning laws." ***Id.***

While *Konigsberg* stands for the proposition that a municipality may refuse to issue a permit in the face of a pending ordinance, we find no Tennessee case standing for the proposition that a municipality may invoke the "pending ordinance doctrine" to revoke a permit previously issued. However, we cannot agree with Harding Academy's contention that the doctrine does not apply to the instant case as a matter of law. In *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 469 (Tenn. 2004), in July of 1999, the country club purchased certain real property which included an unoccupied house with the intent of demolishing the structure to expand its facilities. At the time, the property was zoned residential, and no legislation was pending to preserve the area for historic reasons. ***Id.*** In April of 2000, the city enacted an emergency demolition ordinance which provided that no demolition permit could be issued for a period of 180 days for any property under review for a potential historic overlay, and the 180 day period could be extended "as necessary." ***Id.*** The city passed the emergency ordinance in an effort to bypass the notice and hearing requirements mandated by traditional zoning and historical zoning statutes. ***Id.*** In January of 2002, the mayor filed an application with the city's planning commission seeking to have the property purchased by the country club re-zoned as a historic district. ***Id.*** In February of 2002, the country club applied for a demolition permit to raze the unoccupied house situated on the property. ***Id.*** The building official denied the permit citing the pending application for historic re-zoning and the emergency demolition ordinance. ***Id.***

The country club subsequently filed a complaint in the circuit court seeking a declaratory judgment and writ of mandamus directing the building official to issue the permit. ***Id.*** Therein, the country club asserted that the emergency ordinance had been passed in violation of the statutory procedures requiring notice and a hearing before enacting traditional and historic zoning ordinances. ***Id.*** at 469–70. The trial court concluded that the emergency ordinance had been enacted in violation of the applicable statutes, and it issued a writ of mandamus ordering the building official to issue the permit. ***Id.*** at 470. On appeal, this Court concluded that the emergency ordinance did not violate the applicable statutes because it constituted a building regulation and was not subject to the statutes at issue. ***Id.*** Although not addressed in our opinion, the city argued that the emergency ordinance was proper under the "pending ordinance doctrine." ***Id.*** at 470–71. The supreme court disagreed, stating:

> In *Konigsberg*, this Court upheld a county resolution prohibiting the issuance of construction permits. The Court explained that the resolution was an "interim ordinance" that preserved the status quo pending the effective date of a comprehensive zoning ordinance that had already been properly enacted by the county. Unlike *Konigsberg*, however, emergency demolition ordinance No. 0-119-00 does not seek to impose a temporary moratorium, nor does it seek to preserve the status quo pending the implementation or consideration of a comprehensive zoning plan. As a result, *Konigsberg* is not applicable.

Id. at 471 (citations omitted). The supreme court went on to address whether the emergency ordinance constituted a zoning ordinance or a building regulation, which the court determined was an issue of first impression in this state. ***Id.*** at 473. Utilizing the "substantial effect" analysis adopted by other jurisdictions, the supreme court held that the emergency ordinance substantially affected the country club's use of its property, and the ordinance was not related to temporarily enforcing the status quo pending the enactment of a comprehensive zoning plan or amendment. ***Id.*** at 474. "[I]nstead, the ordinance permanently prohibited a use of property pending an *application to consider* a historic overlay designation without undertaking the appropriate planning, providing notice to the affected landowners, or conducting public hearings." ***Id.*** (emphasis in original).

Despite Harding Academy's arguments to the contrary, the supreme court's decision in *Cherokee Country Club, Inc.* does not stand for the proposition that Metro is precluded from relying on the "pending ordinance doctrine" as a matter of law. In discussing the "pending ordinance doctrine" in that case, the supreme court expressly noted that it was dealing with an emergency ordinance empowering the building official with the authority to deny applications for demolition permits which, instead of constituting a temporary moratorium or a measure designed to preserve the status quo, acted to permanently prohibit use of the property at issue. In the instant case, the record does not indicate that Metro enacted a similar ordinance. Further, Harding Academy does not contend that, in enacting the historic zoning change at issue in this case, Metro did not comply with the applicable statutes. Moreover, whereas the city in *Cherokee Country Club, Inc.* sought to single out a single parcel for the imposition of a historic overlay, the proposed historic overlay in the present case is a comprehensive undertaking encompassing the entire Belle Meade Links area. Accordingly, we cannot subscribe to Harding Academy's interpretation of our supreme court's decision in *Cherokee Country Club, Inc*. as standing for the proposition that the "pending ordinance doctrine" cannot be used to revoke a permit, as that case is readily distinguishable from the present case.

Nor can we agree with Harding Academy's contention that the authority of the Director of the Codes Department to revoke a permit issued "in error" is limited to instances where an applicant has failed to take all steps necessary for the issuance of a permit, but the permit is nevertheless issued. In support of this assertion, Harding Academy points to the testimony of the Director of the Codes Department before the Appeals Board where he stated that, in his opinion, the permits were

properly issued at the time of issuance. Further, Harding Academy notes that the record contains no evidence showing that the issuance of the permits was in violation of any existing ordinances.[4] While these facts are undisputed, we cannot agree with Harding Academy's interpretation of the Metro Code provision permitting the revocation of permits, as it is too narrow and would preclude Metro from revoking a permit on the basis of a legal error.

We hold that, based upon the facts in the present case, Metro could properly rely on the "pending ordinance doctrine" to revoke the permits issued to Harding Academy. Our holding is supported by the following:

> The general rule is that permits for buildings and businesses are not per se protected against revocation by subsequent enactment or amendment of zoning laws prohibiting the building, business or use for which the permits were issued. That is to say, a municipality may revoke a permit where zoning is enacted or changed to prohibit the use and where the permittee has not materially changed his or her position in reliance on the permit. Otherwise stated, the legality of a use is determined by the zoning law governing at the time of its commencement, not by the zoning law prevailing when a permit issues.

McQuillin § 25.156, at 573–74. "Permits, certificates of occupancy and the like, issued under zoning laws, may be revoked by municipal authorities for good cause." ***Id.*** § 25.158, at 581. "Generally, it is ground for revocation of a permit that, before substantial action or change of position in reliance on the permit, zoning restrictions are amended to exclude the use." ***Id.*** § 25.158, at 582–83. Thus, when a permit holder has not obtained a vested property right in the use allowed by the permit and a municipality is in the process of amending its zoning so that the use permitted by the permit would no longer be valid, the municipality may, in proper circumstances, utilize the "pending ordinance doctrine" to revoke that permit.

Our analysis of this case cannot end at this point. In order for a municipality to avail itself of the "pending ordinance doctrine" to revoke a permit previously issued, the ordinance must be legally "pending" when the applicant first obtained the permit. ***See*** McQuillin § 25.155, at 569. The chancery court ruled that the historic conservation overlay ordinance was not sufficiently pending, as a matter of law, to warrant application of the "pending ordinance doctrine." Accordingly, the

---

[4] In its reply brief, Metro asserts that Harding Academy did not have the authority to build athletic fields on the property because, at the time Harding Academy received the permits, the area was zoned for residential use only. This dispute is apparently the subject of another lawsuit which is not the subject of this appeal. Moreover, that portion of the record which Metro cites to in support of this assertion does not establish this fact, nor do we find anything in the record before the Appeals Board to establish this fact. As previously stated, our inquiry is limited to the record before the Appeals Board, ***Davison v. Carr***, 659 S.W.2d 361, 363 (Tenn. 1983), therefore, Metro's argument in this regard is without merit.

chancellor found the action of the Appeals Board in upholding the revocation of the permits to be arbitrary and capricious.

Our independent research has revealed no Tennessee case expounding upon the meaning of the term "pending." On appeal, Metro argues that the chancery court's ruling is in error and cites to the following:

> For a zoning change to be "pending" withing the pending ordinance rule, the change need not be before the city council, but the appropriate administrative department of the city must be actively pursuing it. Mere thoughts or comments by city employees concerning the desirability of a change are not enough, rather there must be active and documented efforts on the part of those authorized to do the work which, in the normal course of municipal action, culminate in the requisite zoning change.

Id. § 25.155, at 569–70.[5] Metro contends that, in order for an ordinance to be "pending," it is not necessary that the ordinance be before the city council awaiting a vote. Instead, Metro maintains that, pursuant to the process enumerated in the Metro Code, the filing of an application with the planning commission qualifies as "pending" for purposes of the "pending ordinance doctrine." Conversely, Harding Academy urges this Court to affirm the chancery court's ruling and argues that an ordinance is not "pending" until it has been presented to the city council for a vote. In support of this position, Harding Academy cites to our supreme court's decision in *State ex rel. SCA Chem. Waste Servs., Inc. v. Konigsberg*, 636 S.W.2d 430, 432–33 (Tenn. 1982), where the court upheld the application of the "pending ordinance doctrine" when the facts demonstrated that the ordinance at issue in that case was pending before the city council when the applicant sought the permit.

The legislature provides that, before a municipal legislative body may enact any ordinance or amendment to a zoning ordinance, that body must hold public hearings and advertise notice of such hearings to the public. Tenn. Code Ann. § 13-7-203 (1999 & Supp. 2005). Any proposed amendments to an existing zoning ordinance cannot become effective unless it is "submitted to and approved by the planning commission, or, if disapproved, receives the favorable vote of a majority

---

[5] Other states have adopted a similar definition of "pending" for purposes of the "pending ordinance doctrine." ***See***, ***e.g.***, ***Villa at Greeley, Inc. v. Hopper***, 917 P.2d 350, 357 (Colo. Ct. App. 1996) ("For an ordinance to be 'pending,' the proposed change need not be before the governing body, but the appropriate department of the city must be actively pursuing it."); ***Borough of Edgewood v. Lamanti's Pizzeria***, 556 A.2d 22, 23 (Pa. Commw. Ct. 1989) ("Amendments to ordinances are pending when the legislative body resolves to consider a particular scheme of rezoning and not only advertises its intention to hold public hearings on the proposed amendment but also invites public inspection thereof."); ***Sherman v. Reavis***, 257 S.E.2d 735, 737–38 (S.C. 1979) ("An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning."); ***see also*** 101A C.J.S. *Zoning and Land Planning* § 262 (2005) ("For the purposes of the doctrine of pending ordinance, an ordinance is pending when the governing body proposes a new zoning ordinance, makes the proposal open to public inspection, and advertises that the proposal will be discussed at a forthcoming public meeting.").

of the entire membership of the chief legislative body." ***Id.*** § 13-7-204. Moreover, the legislature has empowered municipalities to establish historic districts or zones. ***Id.*** § 13-7-402(a). If the local legislative body desires to create such zones, it must create a historic zoning commission. ***Id.*** § 13-7-403(a). The historic zoning commission is vested with the authority to submit recommendations to the local legislative body regarding the creation of historic districts or zones, and the local legislative body, prior to establishing such zones, must refer any proposal to the historic zoning commission for its written recommendation. ***Id.*** § 13-7-405(a). Once the historic zoning commission receives the proposal for review, it must adopt review guidelines to apply in evaluating the proposal, and it is required to provide public notice and an opportunity for public debate on the proposal before it adopts the guidelines. ***Id.*** § 13-7-406.

In accordance with these legislative directives, the Metro City Council promulgated zoning legislation allowing for the creation of historic overlay districts. METRO CODE § 17.36.100 *et seq*. One such overlay is the historic conservation overlay at issue in this case. METRO CODE § 17.36.110. Regarding amendments to existing zoning ordinances, the Metro Code provides as follows:

> An application to amend the official zoning map to apply a planned unit development or urban design overlay district shall be filed with the metropolitan planning commission. *All other applications* to amend the official zoning map or these zoning regulations shall be filed either with the planning commission or the metropolitan clerk. An application may be initiated by the property owner, the metropolitan planning commission, or a member of the metropolitan council.

METRO CODE § 17.40.060 (emphasis added). Upon receipt of the application, the Metro Planning Commission must review the application and make its recommendation to the Metro City Council as to whether an amendment to the existing zoning ordinance is in order. METRO CODE § 17.04.070. Further, Metro established the Historic Zoning Commission to review all applications for the imposition of a historic overlay district in accordance with section 13-7-406 of the Tennessee Code. METRO CODE § 17.40.410.

On April 10, 2003, Councilwoman Williams filed her application with the Metro Planning Commission seeking the imposition of a historic conservation overlay in the Belle Meade Links area, which included the property acquired by Harding Academy. On April 22, 2003, notices were sent to the property owners in the neighborhood informing them of a hearing to be held on May 14, 2003 before the Historic Zoning Commission. There is nothing in the record before the Board to indicate that Harding Academy did not receive notice of this hearing, nor does Harding Academy make any argument to that effect on appeal.[6] On May 1, 2003, Harding Academy applied for the demolition

[6] "A number of cases have held that a holder of a building permit who receives actual or constructive notice of a contemplated change in zoning, which would have the effect of prohibiting the construction authorized by the permit, (continued...)

permits at issue. On May 6, 2003, the Director of the Codes Department issued nine demolition permits to Harding Academy. On May 8, 2003, the Director of the Codes Department informed Harding Academy that he was revoking the permits. On May 14, 2003, the Historic Zoning Commission approved the historic conservation overlay. On May 20, 2003, the Metro City Council adopted the historic conservation overlay on its first reading. After the historic conservation overlay survived its second and third readings before the Metro City Council, it went into effect on June 19, 2003.

We cannot agree with the chancery court's determination that the Appeals Board acted arbitrarily and capriciously when it found that the "pending ordinance doctrine" permitted Metro to revoke Harding Academy's permits. Under the generally accepted definition of the term "pending" as it relates to the "pending ordinance doctrine," the historic conservation overlay did not have to be before the Metro City Council awaiting final approval as Harding Academy suggests. McQuillin § 25.155, at 569. The Historic Zoning Committee began reviewing the Belle Meade Links area in 1993 pursuant to the "1994 Subarea 7 Plan" and deemed the area worthy of historical conservation. Councilwoman Williams engaged in more than mere "thoughts or comments" concerning the need for a change in zoning. Pursuant to the Metro Code, proposed amendments to the zoning ordinances are instituted by the filing of an application with the planning commission. Thus, Councilwoman Williams' application began the legislative process necessary for amending the zoning ordinance.[7] Moreover, notices were sent to property owners effected by the change in zoning on April 22, 2003, before Harding Academy applied for its permits, informing them of a hearing before the Historic Zoning Commission on May 14, 2003. These actions constitute sufficient "active and documented efforts on the part of those authorized to do the work which, in the normal course of municipal action, culminate in the requisite zoning change." McQuillin § 25.155, at 570. Accordingly, we find that Metro could rely on the "pending ordinance doctrine" to revoke Harding Academy's permits.

In the alternative, Harding Academy argues that, even if Metro could rely on the "pending ordinance doctrine" to revoke its permits, Metro acted arbitrarily and capriciously in implementing the doctrine. Harding Academy raised this argument in a reply brief filed in the chancery court. Therein, in an effort to show Metro's arbitrary application of the doctrine, Harding Academy included exhibits proving that Metro, while denying Harding Academy's permits, did not revoke the

---

[6](...continued)
may not thereafter incur substantial liabilities in reliance on the permit and claim vested rights therein, if the proposed zoning change is subsequently enacted into law." Roland F. Chase, Annotation, *Retroactive Effect of Zoning Regulation, in Absence of Saving Clause, on Validly Issued Building Permit*, 49 A.L.R.3d 13, 47–48 (1973); ***see also*** Yokley § 14-7 ("Where a permit has been issued, actual or even constructive knowledge of an impending ordinance change may be sufficient to impair rights under the permit.").

[7] Metro, in an attempt to bolster its position, argues that the legislative process to amend the zoning ordinance began much earlier. Metro references the public informational meetings on June 5, 2002 and September 19, 2002, asserting that such meetings were held to discuss the need for a historic conservation overlay. However, the record before the Board does not establish who organized the June 5, 2002 meeting or the subject matter of that meeting. As for the September 19, 2002 meeting, it appears that Harding Academy planned the meeting to present its position to the local residents and government officials. Thus, we cannot subscribe to Metro's position regarding these meetings.

permits of other residents in the same area. These exhibits demonstrated that, while they were not for the demolition of a structure, they were permits issued for the construction of additions or minor alterations to homes. In response, Metro sought to introduce the affidavit of the Executive Director of the Historic Zoning Commission, who stated that two of the building permits were for additions and new construction while the other two permits were for interior alterations. Regarding the permits for additions and new construction, the Executive Director stated that they were in keeping with the design guidelines for the pending historic conservation overlay. As for the permits for interior alterations, the Executive Director stated that, as they were interior modifications, they had no bearing on the pending ordinance. The trial court permitted the additional evidence pursuant to an agreed order.[8]

During the hearing before the Appeals Board, one board member asked the representative of the Metro Legal Department about future application of the "pending ordinance doctrine," to which the representative replied:

> Well, this is — this is going to always be analyzed on a case-by-case basis. If there's a situation where there's really going to be potential irreparable harm, you know, cutting some hundred-year-old trees or demolishing some — some homes that may be historic, if there's really that kind of potential, then perhaps the Metropolitan government needs to scrutinize those very closely. And I'm with the Department of Law, I'm not going anywhere, so I'll help you scrutinize them.

In reversing the decision of the Appeals Board as arbitrary and capricious, the chancery court relied on this statement and Metro's failure to revoke other permits during the same period to conclude that Metro had no objective standard for revoking or denying permits under the doctrine.

While we find that the chancellor erred as a matter of law in holding that Metro could not rely on the "pending ordinance doctrine" to revoke Harding Academy's permits, we agree with the chancellor's conclusion that Metro has exercised such authority in an arbitrary and capricious manner. Once a city has set in motion its zoning machinery, "a city may act to maintain the status quo for a reasonable time until the rezoning can be completed." Yokley §14-7; ***accord City of Dallas v. Crownrich***, 506 S.W.2d 654, 660 (Tex. Civ. App. 1974). However, a building official is not permitted to refuse to issue building permits or to revoke such permits in an arbitrary manner. ***See*** McQuillin § 25.158, at 582; Yokley § 14-3. The following properly sets forth the parameters of a municipality's authority to invoke the "pending ordinance doctrine":

---

[8] When reviewing a case under a common law writ of certiorari, the reviewing court may entertain additional proof not contained in the record before the lower tribunal for the limited purpose of determining whether the lower tribunal acted arbitrarily or capriciously. ***Hemontolor v. Wilson County Bd. of Zoning Appeals***, 883 S.W.2d 613, 618 (Tenn. Ct. App. 1994); ***Massey v. Shelby County Ret. Bd.***, 813 S.W.2d 462, 465 (Tenn. Ct. App. 1991).

> Often, however, the issuance of permits or approval or disapproval of uses under zoning laws rests in the discretion of boards or officials, *subject to the standards operating uniformly*. In this connection, a zoning ordinance may commit a question of fact to the discretion of an official or board. However, *zoning permits are governed by the fundamental rule that they cannot be made subject to the unrestricted and arbitrary discretion of any official or board, they must be made to depend on a legal rule that operates uniformly in all cases*.

McQuillin § 25.147, at 543–44 (emphasis added).

We find Metro's argument that the permits issued during the pendency of the historic conservation overlay were in keeping with the design guidelines for the pending overlay to be without merit. The two permits for interior modifications naturally could be deemed permissible under any version of the historic conservation overlay adopted by the Metro Council. The two permits for the construction of additions, however, demonstrate the arbitrary nature of Metro's decision making process in invoking the "pending ordinance doctrine" in this case. Neither the Director of the Codes Department or the Metro Legal Department could know the final language to be utilized in the historic conservation overlay until it had been adopted by the Metro City Council. Nor could they ascertain which property within the Belle Meade Links area the Metro City Council would choose to include in the historic conservation overlay.[9] An official vested with the authority to grant, deny, or revoke permits cannot exercise such discretion by arbitrarily determining, in his or her own judgment, what is best for the community or which uses comply with a *pending* ordinance. ***See*** Yokley § 14-3. Accordingly, we affirm the decision of the trial court, albeit for different reasons.[10] ***Duck v. Howell***, 729 S.W.2d 110, 113 (Tenn. Ct. App. 1986) ("Where a trial

---

[9] Granted, the language proposed in the historic conservation overlay apparently ended up being the same language adopted by the Metro City Council. However, we are constrained to ascertaining whether the decision of the Appeals Board was arbitrary and capricious given the facts before that body. ***Davison v. Carr***, 659 S.W.2d 361, 363 (Tenn. 1983). When the Appeals Board reviewed the actions of the Director of the Codes Department, the historic conservation overlay was pending and had not been enacted by the Metro City Council.

[10] Even though we affirm the ruling of the chancery court, our holding should not be construed to mean that Harding Academy is now permitted to carry out its planned demolition of the structures on the property at issue. Pursuant to the chancery court's ruling, and our affirmance of that ruling, Harding Academy is entitled to nothing more than the re-issuance of the permits Metro improperly deprived it of. As we have previously discussed, Harding Academy has not obtained any vested right in the use of the property under the permits. McQuillin § 25.155, at 567 ("[O]rdinarily an application for a permit made before a zoning ordinance becomes effective gives in itself no right to a use excluded by the ordinance."); ***accord Schneider v. Lazarov***, 390 S.W.2d 197, 200 (Tenn. 1965) ("Where the landowner has done nothing subsequent to obtaining a permit, he is usually held to be bound by any change in the zoning ordinance, even if its effect is to nullify the permit."). "Otherwise stated, the legality of a use is determined by the zoning law governing at the time of its commencement, not by the zoning law prevailing when a permit issues." McQuillin § 25.156, at 574. As previously noted, the Metro City Council passed the historic conservation overlay and it went into effect on July 19, 2003, therefore, the historic conservation overlay quite possibly will govern Harding Academy's future use of the property.

(continued...)

court rules correctly but upon an erroneous reason, the appellate court will sustain the ruling upon what it conceives to be the correct theory.").

IV.
CONCLUSION

We hold that, based on the facts in the present case, the Appellant could rely on the "pending ordinance doctrine" to revoke a permit previously issued to the Appellee. However, the Appellant wielded that power in an arbitrary and capricious manner, therefore, we affirm the ruling of the chancery court. Costs of this appeal are to be taxed to the Appellant, Metropolitan Government of Nashville and Davidson County, for which execution may issue if necessary.

_____

ALAN E. HIGHERS, JUDGE

[10](...continued)

In its brief, Harding Academy acknowledges this reality, stating: "The Codes Director and Board should have issued Harding its permits; then, if Metro wanted to challenge the permits, Metro lawyers could have gone to court and sought an injunction or other relief." (Appellee's Br. at 42). When use of land or a structure thereon would constitute a violation of a duly enacted zoning ordinance, the municipality may seek an injunction to prevent such use. Tenn. Code Ann. § 13-7-208(a)(2) (Supp. 2005). In this case, our review is limited to whether the Appeals Board acted correctly in upholding the revocation of Harding Academy's permits. Beyond that, we may not consider and respond to eventualities which may or may not occur between the parties. To do so would violate the well established rule that the appellate courts of this state do not render advisory opinions. ***See City of Memphis v. Shelby County Election Comm'n***, 146 S.W.3d 531, 539 (Tenn. 2004).