Agricultural Zoning Exemption Statute
TENN. CODE ANN. § 13-7-114

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From the very beginning of zoning and land use planning in the state of Tennessee, the General Assembly has been very careful to protect the agricultural use of land. The initial proposal for zoning and planning legislation in Tennessee was drafted by an extraordinarily important figure in American land use planning law, Alfred Bettman, an attorney from Cincinnati who specialized in land use issues.[1] He omitted any special protection for agricultural properties when the proposal went to the legislature in 1935; however, it did not emerge from the legislative process without it. As codified today, TENN. CODE ANN. § 13-7-114 provides:

> This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise. Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.

This statutory provision breaks down into two separate sections, each of which is interesting and instructive as regards the legal issue central to this case.

The first sentence essentially declares that no building permit can be

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[1] Bettman is remembered, among other things, for winning the landmark zoning case, *Euclid v. Ambler Realty*, 272 US 365 (1926).

required by virtue of this zoning enabling provision and further, that the zoning enabling acts do not provide for "any regulation of the erection, construction, or reconstruction of any building or other structure on lands devoted to agricultural uses or which may hereafter be used for agricultural purposes . . ." The building or structure must be "incidental" or as most zoning officials would say, accessory, to the agricultural use.

This first section of the statute is pretty clear: the zoning enabling statutes do not give any local government[2] the authority to require a building permit or to regulate the erection, construction, or reconstruction of any agricultural building.[3]

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[2] While this issue is unnecessary to deal with here, the text of TENN. CODE ANN. § 13-7-114 does not limit its application to counties, much like the Tennessee Court of Appeals held with regard to the Tennessee Non-Conforming Property Act, TENN. CODE ANN. § 13-7-208, in Chadwell v. City of Knoxville, 980 SW 2d 378 (Tenn. Ct. App., March 25, 1998). While much of the language of the municipal and county zoning enabling legislation is identical, the language of § 208 (b), (c), (d), and (e), is not mirrored in the county provisions. Nevertheless, the Court of Appeals held that language applicable to the counties because the statute did not limit its applicability to municipalities. The same is true here, except in reverse: the agricultural protection extended in § 114 is not mirrored in any municipal provision, but the language of that section is not limited and should be construed to apply with equal force to municipal and county zoning. Of course, since Metro Nashville is both a county and a municipality, its applicability here, especially since this property is located in the General Services district (the old county of Davidson), is assured.

[3] This provision likely does not preclude the application of the Standard Building Code (as adopted by Metro) to agricultural buildings. Zoning regulates the uses of property, and location of structures; the building code controls the manner of construction itself. While § 114 cannot be the source of any regulation concerning construction of agricultural buildings, the county building code could be. However, that would not control where the building could be placed or where agricultural uses could be located: those objectives are beyond the provisions of any building code.

Put more simply, there is no authority to regulate, from a zoning perspective, agricultural buildings.

It is important to remember that in the absence of enabling legislation, local governments in Tennessee, as in the vast majority of other states, have no power to act at all. This doctrine is known as Dillon's Rule. *Southern Constructors, Inc. v. Loudon County Board of Education*, 58 S. W.3d 706 (Tenn. 2001).[4] Ordinarily, Dillon's Rule is contested over a general grant of authority and what that grant contains by way of power for the local government. *Southern Constructors* is a good example. Did the power to enter into contracts include the power to arbitrate disputes? The statute at issue here, however, is an express reservation of rights; this statutory provision clearly and unequivocally withholds the power of zoning agricultural buildings from local governments. In that sense, this case is much easier than the typical Dillon's Rule case. The General Assembly has made known its feelings in the statute. The local governments have not power over agricultural buildings.

The second part of the statute, more significantly involved in this case, provides that "this chapter"[5] shall not be construed as "limiting or affecting in any

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[4] As the Supreme Court stated in *Southern Constructors*, "Plainly stated then, without some form of constitutional authorization, local governments in Tennessee possess only those powers and authority as the General Assembly has deemed appropriate to confer upon them." 58 S.W. 3d at 712.

[5] Significantly, the chapter is Chapter 7, which includes both county and municipal zoning enabling provisions.

way or *controlling the agricultural uses of land*." The last section of the statute clearly provides that the local government may not control the agricultural uses of land. The General Assembly of Tennessee simply has forbidden it. The local government may not even "affect" in any way agricultural uses. There is no way to interpret this provision as other than a very broad prohibition of regulation of agricultural properties in the state of Tennessee.

From a policy perspective of course, this makes perfect sense. Tennessee is and has always been a state heavily involved in agriculture. The Great Seal of the State of Tennessee features the word "AGRICULTURE" right in the center of the seal itself.[6] The state, as of 1997, had over 11 million acres of land in farm operations, representing just over 42% of the total land area of the state. Some 24% of employment outside the urban centers is farm or farm related.[7] Small wonder the protection given agricultural uses within that state.

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"The Roman numerals XVI signify that Tennessee was the 16th state to enter the Union. ***The plow, the sheaf of wheat and a cotton stalk symbolize the importance of agriculture***, while the riverboat attests to the importance of river traffic to commerce."
From the State Web Site: http://www.state.tn.us/education/websymbs.htm

[7] From the Department of Agriculture's Web Site: http://www.ers.usda.gov/StateFacts/TN.htm

This is also consistent with the “SmartGrowth Initiative” which has spread across the United States in the last 20 years or so. The emphasis here is to curb urban sprawl, mainly by permitting a multiplicity of uses in the urban centers. The idea is to draw people together rather than spread them out, requiring longer commuting distances, and larger expenses for urban infrastructure such as utility mains, water systems, and so on. Tennessee has adopted an aggressive statutory scheme (which Metro Nashville opted out of).[8]

Farming operations then are essentially exempt from the provisions of any local zoning ordinance, including the one at issue here, Metro’s MetZo.[9] The only question remaining is whether this is an agricultural operation. Certainly it must be.

The term “agriculture” is not defined in the zoning enabling provisions, but is defined by the American Heritage Dictionary as meaning “the science, art, and business of cultivating the soil, producing crops, and raising livestock; farming.” Tennessee has a Right to Farm Act, TENN. CODE ANN. § 43-26-101, et seq., which defines farming as:[10]

> (1) "Farm" means the land, buildings, and machinery used in the commercial production of farm products;

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[8] TENN. CODE ANN. § 6-58-101 et seq.

[9] A copy of the zoning ordinance is on the web at: http://www.bpcnet.com/codes/nashvill.htm

[10] The definitions were amended to expressly include nursery stock in 2002. 2002 Tennessee Public Laws, Chapter 592, adopted April 9, 2002.

> (2) "Farm operation" means a condition or activity which occurs on a farm in connection with the commercial production of farm products, and includes, but is not limited to: marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor; and
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> (3) "Farm product" means those plants and animals useful to man and includes, but is not limited to, forages and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; trees; fish; apiaries; equine and other similar products; or any other product which incorporates the use of food, feed, fiber or fur.

The definition of "farm operation" within the act expressly includes, noise, odors, dust, fumes, operation of machinery and irrigation pumps, as well as the application of fertilizers and conditions. Again, the definition here is very broad.

While there have been no reported cases concerning TENN. CODE ANN. § 13-7-114, the Attorney General has written several opinions with regard to its interpretation, emphasizing its very broad base for definition. The most recent opinion had to do with agribusiness enterprises with large numbers of animals being fattened for slaughter, sometimes called concentrated animal feeding operations (CAFOs). The Attorney General concluded:

> The clear weight of authority establishes that large scale feed operations like CAFOs are regarded as "agricultural uses" by the courts when a statute similar to Tenn.Code Ann. § 13-7-114 prohibits a county from regulating such uses under its zoning authority. Therefore, it is likely that a Tennessee court would interpret Tenn.Code Ann. § 13-7-114 to prohibit a county from using its zoning authority to regulate CAFOs, the more so because the subsequently enacted Tenn.Code Ann. § 69-3-108(7) gives regulatory authority over

> CAFOs only to the Department of Environment and Conservation, thereby evincing the legislature's continuing intent to withhold such authority from a county.

Opinion of the State Attorney General, 99-071.

In another opinion, a little closer to the facts of this case, 94-103, the AG declared that clear-cut tree harvesting was also outside the scope of the county's power to regulate via zoning. This conclusion seems to be supported by case law from other states.

For example, in State of Ohio v. Spithaler, 2000 WL 263817 (Ohio App. 11th District, March 3, 2000), the Court concluded that its state agricultural exemption statute[11] precluded local regulation of a tree cutting operation. Similarly, in Town of Natick v. Modern Continental Construction, 1998 WL 517698 (Mass. Super. March 27, 1998), the court permitted a virtual grocery store under an unusual

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[11] Ohio Revised Code § 519.21 which provides:
"(A) . . . sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, * * * and no zoning certificate shall be required for any such building or structure.
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"(C) Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit in a district zoned for agricultural * * * uses, the use of any land for a farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year.

Massachusetts agriculture exemption statute.[12] In Kuehl v Cass County, 555 NW 2d 686 (Iowa 1996), another CAFO was approved pursuant to Iowa's agricultural zoning exemption provision.[13] Counsel has been unable to find a case which is on all fours factually with this case.

However, there is one important Tennessee case, analyzing a similar issue. In *Brunetti v Williamson County*, 1999 WL 802725 (Tenn. Ct. App. Oct. 7, 1999), the Court, relying on the exemption provisions of § 114, ruled that two oversized grain bins, built on residential property, but with only about 3/4 of an acre devoted to "farming," was subject to the exemption. The Court considered the bins accessory to the farming operation notwithstanding that they were much larger than necessary for the crops grown on-site. The Court held that:

> Even if the storing and drying of grain is not considered as an agricultural use by itself, Mr. Sanders's parcel clearly meets the definition of farm in the Ordinance since he lives on it, grows crops on

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[12] Massachusetts General Law 40A § 3 provides:
No zoning ordinance or by-law shall ... prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture, floriculture or viticulture; nor prohibit or unreasonably regulate, or require a special permit for the use, expansion or reconstruction of existing structures thereon for the primary use of agriculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce and wine and dairy products, provided that during the months of June, July, August, and September of every year, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land on which the facility is located....

[13] Iowa Code § 335.2 which provides:
No ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used.

it, and stores grain on it.

1999 WL 802725, *7. Clearly, the exemption statute not only protects agricultural uses but also other types of uses which are accessory to the agricultural use itself.