

STATE OF TENNESSEE
CHANCERY COURT OF GRUNDY COUNTY

TINSLEY PROPERTIES, LLC, and)
TINSLEY SAND & GRAVEL, LLC,)
)
Plaintiffs,)
)
v.)
)
GRUNDY COUNTY, TENNESSEE,)
)
Defendant.)

Case No. 6846

Emailed
FILED
DATE *Feb 17, 2022*
Patricia Campbell
PATRICIA CAMPBELL
GRUNDY CO. CLERK & MASTER

**PLAINTIFFS' FIRST AMENDED AND RESTATED
COMPLAINT FOR DECLARATORY JUDGMENT**

Come the Plaintiffs, TINSLEY PROPERTIES, LLC and TINSLEY SAND & GRAVEL, LLC, by and through their attorneys of record, pursuant to Tenn. R. Civ. P. 15.01, files this First Amended and Restated Complaint, and brings this action for Declaratory Judgment, pursuant to T.C.A. § 29-14-103, to determine the validity of Resolution No. 19-5-20c and Resolution No. 24-1-22A of the Board of County Commissioners of Grundy County, Tennessee.

PARTIES

1. The Plaintiff, Tinsley Properties, LLC (“Tinsley Properties”), is a limited liability company organized under the laws of the State of Tennessee owning real property in Grundy County, Tennessee.

2. The Plaintiff, Tinsley Sand & Gravel, LLC (“Tinsley Sand”), is a limited liability company organized under the laws of the State of Tennessee with a lease agreement for certain real property owned by Tinsley Properties, LLC in Grundy County, Tennessee for the purpose of

operating a sand quarry. (Tinsley Properties and Tinsley Sand may be collectively referred to herein as “Tinsley”).

3. The Defendant, Grundy County, Tennessee (“Grundy County”), is a governmental entity within the State of Tennessee as defined T.C.A. § 29-20-102(3)(A).

JURISDICTION AND VENUE

4. Jurisdiction and venue are proper with this Court pursuant to T.C.A. § 29-14-102 and §29-30-102.

FACTUAL HISTORY

5. Grundy County does not have a charter form of government.

6. Grundy County has never established a Regional Planning Commission, as required by T.C.A. § 13-7-102.

7. Grundy County has never established a zoning plan, as required by T.C.A. § 13-7-102.

8. Unbeknownst to Tinsley, on May 20, 2019, Grundy County, acting through its duly elected and created Board of County Commissioners (the “Board”), passed Resolution No. 19-5-20c, “A Resolution of the Board of County Commissioners of Grundy County, Tennessee to Regulate Quarries [sic], Rock Crushers and Gravel Pits” (the “2019 Resolution”). The 2019 Resolution is attached as **Exhibit 1** to the original Complaint for Declaratory Judgment and incorporated herein by reference.

9. The purpose of the 2019 Resolution was/is “to regulate the operation and location of rock crushers and/or quarries [sic] and/or gravel pits in the unincorporated areas of Grundy County, Tennessee in order to promote the health, safety, economic development and general welfare of the citizens of the county.” See **Exhibit 1**.

10. Since passing the 2019 Resolution, Grundy County has not enforced the same within the unincorporated areas of Grundy County, Tennessee.

11. On September 10, 2020, Tinsley Properties purchased real property in Grundy County, Tennessee being the real property located at Clouse Hill Road (the "Property"). On March 1, 2021, Tinsley Properties leased the Property to Tinsley Sand for the purpose of operating a quarry.

12. On or about November 29, 2021, Tinsley Sand commenced operations and has continued to operate to the present date.

13. On January 24, 2022, the Board passed Resolution No. 24-1-22A, "A Resolution of the Board of County Commissioners of Grundy County, Tennessee to Amend Resolution No. 19-5-20c Regulating Quarries [sic], Rock Crushers, and Gravel Pits" (the "2022 Resolution"). The 2022 Resolution is attached as Exhibit 2 to the original Complaint for Declaratory Judgment and incorporated herein by reference .

14. The purpose of the 2022 Resolution was to serve as an "Amending Resolution" that made two modifications: (1) it amended Section V(C) to read "the failure to pay the annual renewal fee shall not constitute a forfeiture or ground for revocation of any Permit granted under this Resolution provided such failure is rectified upon notification by the County Mayor," and (2) it amended Section VII to read as follows:

"The distance requirements set forth in Section VIII of this Resolution shall not apply to quarries, rock crushers or gravel pits in existence and in operation on May 20, 2019. Such quarries, rock crushers or gravel pits may continue to operate at the site where they are located on May 20, 2019. The owners of such quarries, rock crushers or gravel pits in existence and in operation on May 20, 2019, will (i) pay the annual fee for a Permit to operate such enterprises as provided in Section V of this Resolution; (ii) continue to maintain such quarry, rock crusher or gravel pit in active operation at the site where it is currently located; and (iii) submit an application to the County Clerk to continue the operation of the quarry, rock crusher, or gravel pit accompanied with a map which shows the physical extent of

the quarry, rock crusher or gravel pit operating as to the area, along with a written description of the current activities being conducted on the property and the location where the current activities are taking place.

The grandfather protection provided in Section VII applies only to the site where the current quarry, rock crusher or gravel pit was in operation on May 20, 2019. The grandfather protection provided by Section VII may not be transferred or used to operate a quarry, rock crusher or gravel pit at any site or location other than the site or location where the quarry, rock crusher or gravel pit is currently in operation. The grandfather protection provided by this Section VII shall be forfeited only for the failure to continue to maintain such quarry, rock crusher or gravel pit in active operation at the site where it is currently located for a period of thirty consecutive days. Failure to pay the annual fee, submit an application, map and/or description of activities shall not constitute a forfeiture of the grandfather protection provided by this Section VII provided such failure is rectified upon notification by the County Mayor. Likewise, failure to pay the annual renewal fee shall not constitute a forfeiture of any Permit granted under this Resolution provided such failure is rectified upon notification by the County Mayor.”

See **Exhibit 2**.

COUNT I: DECLARATORY JUDGMENT
THE 2019 RESOLUTION IS VOID FOR FAILURE TO
COMPLY WITH T.C.A. § 13-7-101 AND -102

15. The Plaintiffs hereby incorporate by reference paragraphs 1 through 14 as if specifically stated herein.

16. T.C.A. § 13-7-101, entitled “Grant of regulatory powers; transfer of development rights,” provides in pertinent part as follows:

(a)(1) The county legislative body of any county is empowered, in accordance with the conditions and the procedure specified in this part, to regulate, in the portions of such county which lie outside of municipal corporations, ... the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes ... Quarrying shall be uniformly defined, for purposes of all county zoning regulations, as the extraction, removal and mechanized processing of stone, gravel, phosphate rock, metallic ore, limestone, marble, chert, sand, dimension stone and any other solid mineral or substance of commercial value ... found in natural deposits in the earth, for barter or sale.

17. Grundy County has attempted, through the 2019 Resolution, to regulate land use in the unincorporated areas of Grundy County, Tennessee.

18. More specifically, Grundy County has attempted, through the 2019 Resolution, “to regulate the operation and location of rock crushers and/or quarrys [sic] and/or gravel pits in the unincorporated areas of Grundy County, Tennessee.” See **Exhibit 1**.

19. In order to exercise the powers granted by the Legislature and regulate land use within the unincorporated portions of the county, Grundy County must comply “with the conditions and the procedure specified in” T.C.A. § 13-7-101 et. seq.

20. T.C.A. § 13-7-102, entitled “Grant of regulatory powers; transfer of development rights,” provides in pertinent part as follows:

From and after the time when the regional planning commission of any planning region defined and created by the state planning office makes and certifies to the legislative body of any county located in whole or part in such region a zoning plan, including both the text of a zoning ordinance and the zoning maps, representing the recommendations of such planning commission for the regulation by districts or zones of ... the use of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes, ... then the county legislative body may, by ordinance, exercise the powers granted in § 13-7-101 and, for the purpose of such exercise, ... may regulate ... the uses of land. All such regulations shall be uniform for each class or kind of buildings throughout any such district, but the regulations in one (1) district may differ from those in other districts. ... any ordinance enacted by the county legislative body may cover and include the whole territory of the county which lies within the region but outside of municipal corporations covered and included in any such single plan or in any such separate and successive plans. **No ordinance covering more or less than the entire area covered by any such certified plan shall be enacted or put into effect until or unless it is first submitted to the regional planning commission and is approved by the commission** or, if disapproved, shall receive the favorable vote of not less than two-thirds (2/3) of the entire membership of the county legislative body.

21. Before Grundy County may exercise the powers granted by the Legislature and regulate land use within the unincorporated portions of the county, a regional planning commission must be “created by the state planning office.” *T.C.A. § 13-7-102(2021)*.

22. Before Grundy County may exercise the powers granted by the Legislature and regulate land use within the unincorporated portions of the county, the regional planning commission must “[make] and [certify] to the legislative body of any county ... a zoning plan, including both the text of a zoning ordinance and the zoning maps, representing the recommendations of such planning commission ...” *T.C.A. § 13-7-102(2021)*.

23. Grundy County failed to comply with the provisions of T.C.A. § 13-7-102.

24. Grundy County has attempted, through the 2019 Resolution, to regulate land use in the unincorporated areas of Grundy County, Tennessee, with no regional planning commission created by the state planning office.

25. Grundy County has attempted, through the 2019 Resolution, to regulate land use in the unincorporated areas of Grundy County, Tennessee, with no zoning plan created by the regional planning commission and certified to the county legislative body.

26. Without a regional planning commission and a zoning plan, there can be no zoning ordinance, such as the 2019 Resolution, to regulate land use in Grundy County, Tennessee, under T.C.A. §13-7-101 and 102.

27. Without a regional planning commission and a zoning plan, the Board is not authorized to regulate land use in the unincorporated portions of the County.

28. The 2019 Resolution is void. Grundy County could not exercise the powers granted by the Legislature in T.C.A. §13- 7-101 because the County failed to create a regional planning commission, a zoning plan, and ordinance giving the county legislative body the powers enumerated in T.C.A. §13- 7-101.

COUNT II: DECLARATORY JUDGMENT
THE 2019 RESOLUTION IS VOID FOR FAILURE TO COMPLY
WITH T.C.A. § 13-7-104

29. The Plaintiffs hereby incorporate by reference paragraphs 1 through 28 as if specifically stated herein.

30. T.C.A. § 13-7-104, entitled "Proceedings following certification by the county legislative body," provides in pertinent part as follows:

After the certification of a zone plan from the regional planning commission and before the enactment of any such zoning ordinance, the county legislative body shall hold a public hearing thereon, the time and place of which at least thirty (30) days' notice shall be given by one (1) publication in a newspaper of general circulation in the county. Such notice shall state the place at which the text and maps as certified by the planning commission may be examined. ... The entire text of a zoning ordinance need not be published in a newspaper. It is sufficient notice if the caption and a complete summary are published at least once in the official newspaper of the county or in a newspaper of general circulation in the county. The summary shall include a statement that a complete copy of the zoning ordinance is available and where such copy may be obtained. The ordinance shall not be in force until the required publication is made. ... (emphasis added)

31. Grundy County failed to comply with T.C.A. § 13-7-104 when enacting the 2019 Resolution.

32. Grundy County has attempted, through the 2019 Resolution, to regulate land use in the unincorporated areas of Grundy County, Tennessee, with no regional planning commission created by the state planning office.

33. Grundy County has attempted, through the 2019 Resolution, to regulate land use in the unincorporated areas of Grundy County, Tennessee, with no zoning plan created by the regional planning commission and certified to the county legislative body.

34. Grundy County failed to publish a notice with any newspaper of general circulation in the county at least thirty (30) days prior to a public hearing on the passage of the 2019 Resolution, as required by T.C.A. §13-7-104.

35. The 2019 Resolution is void. Grundy County failed to publish a notice in compliance with T.C.A. § 13-7-104.

COUNT III: DECLARATORY JUDGMENT
THE 2022 RESOLUTION IS VOID FOR FAILURE TO
COMPLY WITH T.C.A. § 13-7-101 AND -102

36. The Plaintiffs hereby incorporate by reference paragraphs 1 through 35 as if specifically stated herein.

37. T.C.A. § 13-7-101, entitled “Grant of regulatory powers; transfer of development rights,” provides in pertinent part as follows:

(a)(1) The county legislative body of any county is empowered, in accordance with the conditions and the procedure specified in this part, to regulate, in the portions of such county which lie outside of municipal corporations, ... the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes ... Quarrying shall be uniformly defined, for purposes of all county zoning regulations, as the extraction, removal and mechanized processing of stone, gravel, phosphate rock, metallic ore, limestone, marble, chert, sand, dimension stone and any other solid mineral or substance of commercial value ... found in natural deposits in the earth, for barter or sale.

38. Grundy County has attempted, through the 2022 Resolution, to regulate land use in the unincorporated areas of Grundy County, Tennessee.

39. More specifically, Grundy County has attempted, through the 2022 Resolution, “to regulate the operation and location of rock crushers and/or quarrys [sic] and/or gravel pits in the unincorporated areas of Grundy County, Tennessee.” See **Exhibit 2**.

40. In order to exercise the powers granted by the Legislature and regulate land use within the unincorporated portions of the county, Grundy County must comply “with the conditions and the procedure specified in” T.C.A. § 13-7-101 et. seq.

41. T.C.A. § 13-7-102, entitled “Grant of regulatory powers; transfer of development rights,” provides in pertinent part as follows:

From and after the time when the regional planning commission of any planning region defined and created by the state planning office makes and certifies to the legislative body of any county located in whole or part in such region a zoning plan, including both the text of a zoning ordinance and the zoning maps, representing the recommendations of such planning commission for the regulation by districts or zones of ... the use of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes, ... then the county legislative body may, by ordinance, exercise the powers granted in § 13-7-101 and, for the purpose of such exercise, ... may regulate ... the uses of land. All such regulations shall be uniform for each class or kind of buildings throughout any such district, but the regulations in one (1) district may differ from those in other districts. ... any ordinance enacted by the county legislative body may cover and include the whole territory of the county which lies within the region but outside of municipal corporations covered and included in any such single plan or in any such separate and successive plans. No ordinance covering more or less than the entire area covered by any such certified plan shall be enacted or put into effect until or unless it is first submitted to the regional planning commission and is approved by the commission or, if disapproved, shall receive the favorable vote of not less than two-thirds (2/3) of the entire membership of the county legislative body.

42. Before the County may exercise the powers granted by the Legislature and regulate land use within the unincorporated portions of the county, a regional planning commission must be “created by the state planning office.” *T.C.A. § 13-7-102(2021)*.

43. Before the County may exercise the powers granted by the Legislature and regulate land use within the unincorporated portions of the county, the regional planning commission must “[make] and [certify] to the legislative body of any county ... a zoning plan, including both the text of a zoning ordinance and the zoning maps, representing the recommendations of such planning commission ...” *T.C.A. § 13-7-102(2021)*.

44. Grundy County failed to comply with the provisions of T.C.A. § 13-7-102.

45. Grundy County has attempted, through the 2022 Resolution, to regulate land use in the unincorporated areas of Grundy County, Tennessee, with no regional planning commission created by the state planning office.

46. Grundy County has attempted, through the 2022 Resolution, to regulate land use in the unincorporated areas of Grundy County, Tennessee, with no zoning plan created by the regional planning commission and certified to the county legislative body.

47. Without a regional planning commission and a zoning plan, there can be no zoning ordinance, such as the 2022 Resolution, to regulate land use in Grundy County, Tennessee, under T.C.A. §13-7-101 and 102.

48. Without a regional planning commission and a zoning plan, the Board is not authorized to regulate land use in the unincorporated portions of the County.

49. The 2022 Resolution is void. Grundy County could not exercise the powers granted by the Legislature in T.C.A. §13- 7-101 because Grundy County failed to create a regional planning commission, a zoning plan, and ordinance giving the county legislative body the powers enumerated in T.C.A. §13- 7-101.

COUNT IV: DECLARATORY JUDGMENT
THE 2022 RESOLUTION IS VOID FOR FAILURE TO COMPLY
WITH T.C.A. § 13-7-105

50. The Plaintiffs hereby incorporate by reference paragraphs 1 through 49 as if specifically stated herein.

51. T.C.A. § 13-7-105, entitled "Amendment of ordinances," provides in pertinent part as follows:

(a) The county legislative body may, from time to time, amend ... any regulation of or within any district or districts or any other provision of any zoning ordinance; but any such amendment shall not be made or become effective unless

the same be first submitted for approval, disapproval or suggestions to the regional planning commission of the region in which the territory covered by the ordinance is located, and, if such regional planning commission disapproves within thirty (30) days after such submission, such amendment shall require the favorable vote of a majority of the entire membership of the county legislative body.

(b) Prior to adopting an amendment as authorized under subsection (a), the county legislative body shall hold a public hearing on the amendment, with at least fifteen (15) days' notice of the time and place to be given by at least one (1) publication in a newspaper of general circulation in the county. A complete summary of the amendment shall be published at least once in the official newspaper of the county or in a newspaper of general circulation in the county. ... (emphasis added)

52. Grundy County has attempted to amend the 2019 Resolution by and through the attempted enactment of the 2022 Resolution.

53. The 2022 Resolution fails to comply with T.C.A. § 13-7-105(a) and (b).

54. Grundy County failed to submit the proposed amendment to the regional planning commission before its enactment, as required by T.C.A. §13-7-105(a).

55. Grundy County failed to acquire either approval or disapproval by the regional planning commission, as required by T.C.A. §13-7-105(a).

56. Grundy County failed to hold a public hearing on the amendment, “with at least 15 days’ notice of the time and place to be given by at least one (1) publication in a newspaper of general circulation in the county,” as required by T.C.A. §13-7-105(b).

57. The 2022 Resolution is void. Grundy County failed to comply with the procedures set forth in T.C.A. §13-7-105(a) and (b).

WHEREFORE the premises considered, the Plaintiff therefore requests judgment as follows:

1. That this Court enter a judgment declaring Resolution No. 19-5-20c, "A Resolution of the Board of County Commissioners of Grundy County, Tennessee to Regulate Quarries, [sic] Rock Crushers and Gravel Pits" to be void.

2. That this Court enter a judgment declaring Resolution No. 24-1-22A "A Resolution of the Board of County Commissioners of Grundy County, Tennessee to Amend Resolution No. 19-5-20c Regulating Quarries [sic], Rock Crushers and Gravel Pits" to be void.

3. That this Court enter a judgment in favor of the Plaintiff and against the Defendant for attorney's fees and costs incurred by the Plaintiff associated with this matter.

4. For such other further and general relief as the circumstances of this cause might warrant.

Respectfully submitted this 14 day of February, 2022.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have this day forwarded a true and correct copy of the foregoing pleading to the following parties at interest and/or counsel, either by fax, electronic mail, or by placing the same in the United States Mail, postage prepaid:

Bill Rieder
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Hull, Ray, Rieder, Ewell, Layne & Lynch
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this the 16 day of February, 2022

Henry, McCord, Bean, Miller & Gabriel, PLLC

By: 