

STATE OF TENNESSEE
CHANCERY COURT OF GRUNDY COUNTY

TINSLEY PROPERTIES, LLC, and
TINSLEY SAND & GRAVEL, LLC,

Plaintiffs,

v.

GRUNDY COUNTY, TENNESSEE,

Defendant.

FILED

DATE February 8, 2022
Patricia Campbell km
PATRICIA CAMPBELL
GRUNDY CO. CLERK & MASTER

Case No. 10846

COMPLAINT FOR DECLARATORY JUDGMENT

Comes the Plaintiffs, TINSLEY PROPERTIES, LLC & TINSLEY SAND & GRAVEL, LLC, by and through its attorneys of record, 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 quarry. (Tinsley Properties and Tinsley Sand may be collectively referred to herein as "Tinsleys").

3. The Defendant, Grundy County, Tennessee (“Grundy County”), is a governmental entity within the State of Tennessee as defined TCA § 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.

BACKGROUND

5. On September 10, 2020, Tinsley Properties purchased real property in Grundy County, Tennessee being the real property located at Clouse Hill Road (the “Property”).

6. On March 1, 2021, Tinsley Properties leased the Property to Tinsley Sand for the purpose of operating a quarry.

7. Unbeknownst to the Tinsleys, on May 20, 2019, the Defendant, Grundy County, Tennessee, acting through its duly elected and created Board of County Commissions (the “Board”), pursuant TCA § 13-7-201 through -401, passed Resolution No. 19-5-20c, “A Resolution of the Board of County Commissioners of Grundy County, Tennessee to Regulate Quarries, Rock Crushers and Gravel Pits” (the “2019 Resolution”). The 2019 Resolution is attached hereto as **Exhibit 1** and incorporated herein by reference.

8. The purpose of the 2019 Resolution was/is “to regulate the operation and location of rock crushers and/or quarries 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**.

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

10. 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, Rock Crushers, and Gravel Pits" (the "2022 Resolution"). The 2022 Resolution is attached hereto as Exhibit 2 and incorporated herein by reference.

11. 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."

COUNT I: DECLARATORY JUDGMENT
**THE 2019 RESOLUTION AND THE 2022 RESOLUTION ARE VOID FOR FAILURE
TO COMPLY WITH T.C.A. § 13-7-104 and 105(b).**

12. The Plaintiffs hereby incorporate by reference paragraphs 1 through 11 as if specifically stated herein.

13. Grundy County has attempted, through the 2019 Resolution and the 2022 Resolution, to substantially affect land use in the unincorporated areas of Grundy County, Tennessee.

14. Grundy County failed to comply with T.C.A. § 13-7-104 which requires that “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.”

15. Specifically, Grundy County failed to publish a notice with any newspaper of general circulation in the county prior to the passage of the 2019 Resolution.

16. The 2019 Resolution is void due to the failure to publish notice in compliance with T.C.A. § 13-7-104.

17. Grundy County failed to comply with T.C.A. § 13-7-105(b) which requires that “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.”

18. Specifically, Grundy County failed to publish a notice with any newspaper of general circulation in the county prior to the passage the 2022 Resolution.

19. The 2022 Resolution is void due to the failure to publish notice in compliance with T.C.A. § 13-7-105(b).

COUNT II: DECLARATORY JUDGMENT
**THE 2019 RESOLUTION AND THE 2022 RESOLUTION ARE VOID FOR FAILURE
TO COMPLY WITH T.C.A. § 5-1-211.**

20. The Plaintiffs hereby incorporate by reference paragraphs 1 through 17 as if specifically stated herein.

21. Grundy County failed to comply with T.C.A. § 5-1-211(c)(1) which requires that “[e]very ordinance shall be read on three (3) different days in open session of the legislative body before its adoption, and not less than one (1) week shall elapse between first and third readings, and any ordinance not so read shall be null and void.”

22. Grundy County did not read the 2019 Resolution on three (3) different days in open session of the legislative body before its adoption, in accordance with T.C.A. § 5-1-211(c)(1).

23. The 2019 Resolution is void due to the failure to comply with T.C.A. § 5-1-211(c)(1).

24. Grundy County did not read the 2022 Resolution on three (3) different days in open session of the legislative body before its adoption, in accordance with T.C.A. § 5-1-211(c)(1).

25. The 2022 Resolution is void due to the failure to comply with T.C.A. § 5-1-211(c)(1).

26. In the alternative, Grundy County failed to comply with T.C.A. § 5-1-211(c)(2) which requires that “[u]nless prohibited by its charter, the county legislative body of a county that has a charter form of county government may by ordinance require every ordinance to be read on two (2) different days in open session of the legislative body before its adoption, and not less than

one (1) week shall elapse between first and second readings, and any ordinance not so read shall be null and void.”¹

27. Grundy County did not read the 2019 Resolution on two (2) different days in open session of the legislative body before its adoption, in accordance with T.C.A. § 5-1-211(c)(2).

28. The 2019 Resolution is void due to the failure to comply with T.C.A. § 5-1-211(c)(2).

29. Grundy County did not read the 2022 Resolution on two (2) different days in open session of the legislative body before its adoption, in accordance with T.C.A. § 5-1-211(c)(2).

30. The 2022 Resolution is void due to the failure to comply with T.C.A. § 5-1-211(c)(2).

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, 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, 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.

¹ Grundy County has no charter posted on their website to indicate whether section (c)(1) or (c)(2) applies. If Grundy County is a charter form of government, they have failed to comply with T.C.A. § 5-1-127, which requires that any county having a charter form of government shall post their charter on their website.

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

Respectfully submitted this 8th day of February, 2022.

HENRY, McCORD, BEAN, MILLER & GABRIEL, PLLC

By:



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COST BOND

We are sureties for all costs and taxes in this cause in accordance with T.C.A. §20-12-120, not to exceed Five Hundred Dollars (\$500.00).

HENRY, McCORD, BEAN, MILLER & GABRIEL, PLLC

By:



RESOLUTION NO. 19-5-20c**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF GRUNDY COUNTY, TENNESSEE TO REGULATE QUARRYS, ROCK CRUSHERS AND GRAVEL PITS****SECTION I. PURPOSE.**

It is the purpose of this resolution to regulate the operation and location of rock crushers and/or quarrys 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. This resolution shall apply only in the unincorporated areas of Grundy County, Tennessee.

SECTION II. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this Resolution:

- (a) **Blasting.** The term "blasting" shall denote a method of loosening, moving or shattering masses of solid matter by use of explosive compounds to prepare stone for crushing, building stone or other purposes.
- (b) **Clerk** means the County Clerk of Grundy County, Tennessee.
- (c) **Commission** means the Board of County Commissioners of Grundy County, Tennessee, which is the legislative body of Grundy County, Tennessee.
- (d) **County** means Grundy County, Tennessee.
- (e) **Gravel Pit.** The term "gravel pit" shall mean any activity or enterprise, the purpose of which is to remove naturally occurring deposits of sand and gravel from the earth by excavating including topsoil and overburden removal.
- (f) **Person.** The word "person" shall mean any individual, partner, corporation, company, trustee or association, together with the respective servants, agents and employees thereof.
- (g) **Quarry.** The term "quarry" shall mean activity or enterprise, the purpose of which is to remove rock material from the earth by blasting and/or excavating including topsoil and overburden removal.
- (h) **Residence** means a place, in which a person lives or resides; a structure serving as a dwelling or living quarters. Residence includes but is not limited to single-family and multiple family dwelling units including without limitation, houses, apartment buildings, condominiums, dormitories and mobile and modular homes.
- (i) **Rock-Crusher.** A rock crusher shall mean any device, machine, apparatus or equipment used either individually or in conjunction with any other device, machine, apparatus or equipment for the purpose of crushing, grinding, breaking or pulverizing rock or stone.

(j) Rock Crushing. Operation of a rock crusher.

(k) Site. The term "site" shall mean any separately described parcel of land with an individual real property tax, map and parcel number.

SECTION III – APPLICATION FOR LICENSE

No person shall operate a quarry, rock crusher or gravel pit without first obtaining the following from the County Clerk of Grundy County, Tennessee (i) a standard Business License and; (ii) a Permit for the operation of a quarry, rock crusher or gravel pit.

The County Clerk shall not issue a Business License or Permit to operate a quarry, gravel pit, or rock crusher to any applicant who has not obtained all applicable state and/or federal permits required to operate such an enterprise or activity. The applicant's acquisition of all applicable state and/or federal permits necessary to operate a quarry, gravel pit, or rock crusher shall be a prerequisite to obtaining a business license or permit to operate such an enterprise or activity from the County Clerk.

An applicant for a license shall furnish the following to the County Clerk in order to apply for a Permit to operate a quarry, rock crusher or gravel pit:

- (a)** An application for a business license or permit to operate a quarry, gravel pit, or rock crusher;
- (b)** A copy of the Permit issued by the State of Tennessee for the applicant to operate a quarry, gravel pit, or rock crusher at the proposed site of the quarry, gravel pit, or rock crusher for which the applicant is seeking the permit;
- (c)** A copy of the applicant's deed to the property on which the a quarry, gravel pit, or rock crusher is proposed to be operated;
- (d)** A map which shows the physical extent of the quarry or gravel pit operation, as to area and depth, along with a description of the activities to be conducted on the property; and
- (e)** A non-refundable application fee of \$150.00.

Upon receiving the foregoing information, the County Clerk will forward it to the Office of the County Mayor, who will determine whether the site of the proposed quarry, rock crusher or gravel pit meets the location requirements provided for in this Resolution and report his/her findings to the County Clerk within ten (10) days.

SECTION IV - ISSUANCE OF LICENSE.

If the Mayor's findings confirm that the site of the proposed quarry, rock crusher or gravel pit meets the location requirements, the County Clerk shall forthwith issue the standard Business License and Permit to quarry, rock crusher or gravel pit.

If the Mayor's findings reflect that the site of the proposed quarry, rock crusher or gravel pit does not meet the location requirements, the County Clerk shall within ten (10) days notify the applicant that the application must be denied due to the failure of the proposed site to meet the location requirements.

SECTION V - FEES.

(A) **Application Fee for Permit to Operate a Quarry, Rock Crusher or Gravel Pit.** A non-refundable fee of \$150.00 shall be paid to the clerk at the time of filing the application and required accompanying materials.

(B) **Initial Fee for Permit to Operate a Quarry, Rock Crusher or Gravel Pit.** If the license is granted, the applicant shall pay initial license fee of \$100.00.

(C) **Renewal Fee for License to Operate a Quarry, Rock Crusher or Gravel Pit** an annual fee of \$100.00 shall be required to renew a Permit to operate a quarry, gravel pit, or rock crusher.

The foregoing fees shall be in addition to the fees required for a standard Business License.

SECTION VI - ADMINISTRATIVE PROCEDURE AND REVIEW

(A) As used in this section, "application" means: An application for a Permit to operate a quarry, gravel pit, or rock crusher.

(B) Whenever an application is denied, the County Clerk shall notify the applicant in writing of the reasons for such action; such notice shall also advise the applicant of the applicant's right to request a hearing before the County Commission.

(C) If the applicant desires to request a hearing before the County Commission to contest the denial of an application, such request shall be made in writing to the County Mayor within ten (10) days of the applicant's receipt of the notification of the denial of the application. If the applicant timely requests such a hearing, a public hearing shall be before the County Commission at the next regularly scheduled County Commission meeting, which is at least ten (10) days from the date the request for hearing is received in the Mayor's Office.

SECTION VII- APPLICABILITY OF RESOLUTION TO EXISTING BUSINESSES/GRANDFATHER CLAUSE.

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 the effective date of this Resolution. Such quarries, rock crushers or gravel pits may continue to operate at the site where they are located on the effective date of this Resolution provided (i) that the owners of such quarries, rock crushers or gravel pits pay the annual fee for a Permit to operate such enterprises as provided in Section V of this Resolution; (ii) that such quarry, rock crushers or gravel pit remain in active operation at the site when it is currently located; and (iii) the owners of said quarry, rock crusher or gravel pit submit an application to the County Clerk to continue the operation of the quarry, rock crusher or gravel pit within sixty (60) days after the effective date of this Resolution accompanied with a map which shows the physical extent of the quarry, rock crusher or gravel pit operation 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 this Section VII applies only to the site where the current quarry, rock crusher or gravel pit is currently in operation. The grandfather protection provided by this 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 shall be forfeited by any of the following occurrences:

SECTION VIII – PERMITTED LOCATIONS

(A) Except as otherwise proscribed in this Section VIII, quarries, rock crushers and gravel pits may be located in unincorporated areas of Grundy County, Tennessee.

(B) No quarry, rock crusher or gravel pit may be located within five thousand (5,000) feet of a residence, school, licensed daycare facility, park, recreation center, church, retail, commercial, professional or industrial establishment. Measurements shall be taken from the nearest recorded property line of the quarry business to the nearest property line or boundary of the foregoing.

SECTION IX – SEVERABILITY

If any provision of this resolution is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions of this Resolution.

SECTION X – APPLICABILITY

(A) This resolution shall apply only in the unincorporated areas of the county.

(B) Nothing in this resolution may be construed to as prohibiting or in any way impeding any incorporated municipality in the county from exercising any power or authority the municipality may lawfully exercise, including the regulation of sexually oriented businesses.

(C) Nothing in this resolution shall preempt an ordinance, regulation, restriction or license that was lawfully adopted or issued by any incorporated municipality in the county prior to the enactment of this resolution, or prevent or preempt any incorporated municipality in the county from enacting and enforcing in the future other lawful and reasonable restrictions, regulations, licensing, zoning or other civil or administrative provisions concerning the location, configuration, code compliance or other business operations or requirements to operate a quarry, gravel pit, or rock crusher.

This Resolution shall take effect immediately upon its passage by a two-thirds vote of the Commission, the public welfare requiring it.

Duly adopted by the Board of County Commissioners of Grundy County, Tennessee by a two-thirds vote this 20th day of May 2019 with 9 members voting in favor of the adoption of the Resolution and 0 members voting in opposition of the adoption of the Resolution.

APPROVED this 20th day of May 2019.


COUNTY MAYOR


COUNTY COMMISSION CHAIRMAN

Attest


COUNTY CLERK

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 QUARRYS, ROCK
CRUSHERS AND GRAVEL PITS**

It is the purpose of this Resolution is to amend Resolution No. 19-5-20c adopted on May 20, 2019, that regulates the operation and location of rock crushers and/or quarrys and/or gravel pits in the unincorporated areas of Grundy County, Tennessee. This Resolution amending Resolution No. 19-5-20c shall be referred to herein as "Amending Resolution".

The Board of County Commissioners of Grundy County, Tennessee (hereinafter "Commission") finds that the health, safety, economic development and general welfare of the citizens of the County will be promoted by amending Sections V and VII of Resolution No. 19-5-20c to more clearly define the intent of the Commission with respect to the non-forfeiture of Permits granted and Grandfather protections afforded under Resolution No. 19-5-20c at the time of the adoption of Resolution No. 19-5-20c on May 20, 2019,

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

- A. That Section V(C) of Resolution 19-5-20c be and hereby is amended by adding the following sentence at the end of the Section:

"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."

- B. That Section VII of Resolution 19-5-20c be and hereby is amended 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 operation 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 this 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 this 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."

This Amending Resolution shall take effect immediately upon its passage by a two-thirds vote of the Commission and it is the express intention of this Commission that the amendment to Resolution No. 19-5-20c adopted herein shall have retrospective application back to May 20, 2019, the date of the initial adoption of Resolution No. 19-5-20c.

ADOPTED this 24th day of January 2022 with by a two-thirds vote of the County Commission with 9 members voting in favor, 0 members voting in opposition and 0 members abstaining.


MICHAEL BRADY, COUNTY MAYOR


GARY BREWER, COUNTY COMMISSION CHAIRMAN

ATTEST:


TAMMY SHOLEY,
COUNTY CLERK