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Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 28, 2023 Session

**WILLIAM FOEHRING, ET AL. v. TOWN OF MONTEAGLE, TENNESSEE,
ET AL.**

**Appeal from the Chancery Court for Marion County
No. 8197 Melissa Thomas Willis, Chancellor**

No. M2022-00917-COA-R3-CV

This appeal concerns whether a municipality must have a general plan for development before it can exercise its zoning power. William Foehring, Janice Foehring, William Best, Mary Beth Best, Ron Terrill, and Sandra Terrill (collectively, “Plaintiffs”) sued the Town of Monteagle, Tennessee (“the Town”) and RBT Enterprises, LLC (“RBT”)¹ (collectively, “Defendants”) for declaratory judgment in the Chancery Court for Marion County (“the Trial Court”). Plaintiffs challenged the rezoning of a certain parcel which allowed for the development of a truck stop near their homes. Plaintiffs argued that the zoning ordinances at issue, 05-21 and 12-21, were invalid because the Town had no comprehensive or general plan in effect. The Trial Court ruled in favor of Defendants. Plaintiffs appeal. We hold, *inter alia*, that no comprehensive or general plan was required before the Town could exercise its zoning powers. It was sufficient that the Monteagle Regional Planning Commission (“the Commission”) transmitted to the Town Board of Mayor and Aldermen (“the Board”), the Town’s chief legislative body, the text of a zoning ordinance and zoning maps, which comprised the zoning plan. We affirm the judgment of the Trial Court.

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

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Douglas Berry, Nashville, Tennessee, for the appellants, William Foehring, Janice Foehring, William Best, Mary Beth Best, Ron Terrill, and Sandra Terrill.

¹ RBT adopted the Town’s brief on appeal.

Philip Aaron Wells, Chattanooga, Tennessee, for the appellee, the Town of Monteagle.

Russell L. Leonard, Monteagle, Tennessee, for the appellee, RBT Enterprises, LLC.

OPINION

Background

In August 2021, Plaintiffs filed suit against Defendants in the Trial Court seeking declaratory judgment. Plaintiffs challenged the rezoning of a certain parcel which allowed for the development of a truck stop near their homes. The disputed parcel was rezoned from residential to commercial. Plaintiffs argued (1) that contrary to Tennessee law and the Town’s own zoning ordinance, the amendment was not adopted in accordance with a general plan; (2) that neither the Board nor the Commission made the necessary findings pursuant to the zoning ordinance that the amendment agreed with the general plan; and (3) that there was no evidence that rezoning would not have adverse effects on neighboring property owners. The Town and RBT filed answers in opposition. We proceed to review the pertinent history of this zoning dispute.

In 1984, the Town passed a zoning ordinance, which provided that the zoning “districts and regulations have been made in accordance with a comprehensive plan” and in accordance with “Sections 13-7-201 through 13-7-401 of the Tennessee Code Annotated.” In 1988, the Commission approved the “Existing Land Use & And Future Land Use Plan—2010.” Beginning in 2010, the Board and the Commission discussed adopting an updated comprehensive plan, but none was ever adopted. In 2018, the Town passed an ordinance that made comprehensive changes to the zoning ordinance and zoning map. In 2019, the Town passed Ordinance 04-19, further amending the zoning map.

On March 27, 2020, RBT, a Tennessee limited liability company, bought parcels Tax Map 0022K, Parcels ##002.01, 002.02, 002.07, 003.00, 004.00, 005.00, 006.00, 007.00, 014.01, and 014.02, with the aim of uniting them and building a truck stop. All appeared to be zoned C-3 (interstate commercial), but Tax Map 022K, Parcel 014.01 was still zoned R-3 (high density residential). In June 2020, RBT applied to the Commission for approval of a site plan for the truck stop. In July and August of 2020, RBT appeared before the Commission seeking approval of a site plan, but was deferred or denied. In September 2020, RBT appeared before the Commission again and was denied again pending resolution of issues concerning the adequacy of public notice of the 2018 zoning ordinance.

On January 5, 2021, the Commission met and considered a proposed amendment to the 2018 zoning ordinance. The Commission voted to recommend Ordinances 02-21 and 03-21, regarding the zoning map and 2018 zoning ordinance respectively, to the Board. On January 18, 2021, the Board approved Ordinances 02-21 and 03-21 on first reading. On January 19, 2021, RBT applied to have the disputed parcel rezoned from R-3 to C-3. On January 25, 2021, the Board passed Ordinance 02-21 and Ordinance 03-21 on second and final reading. Ordinance 03-21 expressly repealed all previous zoning ordinances. The Board also requested that the Commission review and recommend a zoning map amendment to rezone the parcel at issue. On February 2, 2021, the Commission met and recommended an ordinance, Ordinance 05-21, which would rezone the disputed parcel from R-3 to C-3. On April 26, 2021, the Board approved Ordinance 05-21 on second and final reading. On May 10, 2021, the Commission met in a special session to make further recommendations concerning the 2021 zoning ordinance. In support of RBT's bid for rezoning, counsel for RBT asserted, among other things, that the company's new business would bring jobs and income to the area. The Commission recommended approval of an ordinance rezoning the disputed parcel from R-3 to C-3. Toward that end, the Commission recommended Ordinance 12-21, which amended Ordinance 05-21 to include findings required under §1207(C) of the 2021 zoning ordinance.

On May 24, 2021, the Board approved Ordinance 12-21 on first reading. On June 14, 2021, the Board passed Ordinance 12-21 on second and final reading. At a public hearing held prior to the vote, a number of Monteagle residents expressed their concerns about the proposed truck stop. Their concerns included traffic, pollution, and noise from the truck stop. On the other hand, an RBT member and RBT's attorney spoke in favor of the truck stop. Ordinance 12-21 states, as relevant:

Section 1: The Board hereby amends Ordinance 05-21 to make the following findings pursuant to Zoning Ordinance Section 1207(c):

1. There is no general plan for the affected area.
2. The amendment does not violate the legal grounds for zoning provisions.
3. The overwhelming public good or welfare justifies any adverse effects upon adjoining or adjacent property owners.
4. No one property owner or small group of property owners will benefit material[ly] from the change to the detriment of the general public.
5. There is no general plan for the affected area.

It is Plaintiffs' position that a municipality must adopt a general plan before it can exercise zoning power. Plaintiffs point to multiple provisions in the 2021 zoning ordinance referring to a comprehensive or general plan, including language in the "Purpose" section saying that "[t]hese zoning regulations and districts contained in this ordinance have been carefully prepared and defined in accordance with a comprehensive plan...." (Emphasis added). Additionally, the amendment provision in section 1207 includes among the necessary grounds for consideration the following: "The planning commission, in its review and recommendation, and the city commission in its deliberations, shall make their findings with regard to ALL of the following grounds for an amendment: 1. The amendment is in agreement with the general plan for the area" and "5. It has been determined that conditions affecting the area have changed to a sufficient extent to warrant an amendment to the area's general plan." (Emphasis added).

In April 2022, the Trial Court heard Plaintiffs' lawsuit. In June 2022, the Trial Court entered its final order, in which it ruled in favor of Defendants. The Trial Court stated, in relevant part:

This case is a declaratory judgment action wherein the Plaintiffs, who are each full or part-time residents of the Town of Monteagle, Tennessee (the "Town"), seek to invalidate an amendment to the Town's zoning ordinance (Ordinances 05-21 and 12-21) which rezoned certain property located in the Town from a high density residential ("R-3") zone to an interchange commercial ("C-3") zone at the application of RBT Enterprises, LLC ("RBT").

1. The Town was not required to maintain a general plan in order to exercise its zoning powers under Tennessee law.

The Court finds that the Town was not required to have a general plan, as that term is defined by T.C.A. §13-4-201, in order to exercise its zoning powers. The Town's power to zone is established by statute in Tennessee. See T.C.A. §13-7-201 *et seq.* In contrast, planning is an administrative function, and while a planning commission may make recommendations, zoning power is squarely a function of the local legislative body. *Id.* The Town may exercise its zoning powers so long as its zoning decisions do not conflict with Tennessee law.

The Court further finds that T.C.A. §13-4-201 did not require the Town to maintain a general plan or wait until one was adopted by the

Planning Commission in order for the Town to exercise its zoning powers. This holding is dictated by the plain language of the T.C.A. §13-4-201, which provides generally that a general plan may consist of a zoning plan, among other things. Accordingly, a general plan is not a zoning plan, and vice versa.

Here, in January 2021, the Planning Commission, pursuant to T.C.A. §13-7-202, certified a zoning plan, which consisted of the text of an ordinance and maps, among other things, to the Town. The Town subsequently adopted the zoning plan, which became the Zoning Ordinance and Zoning Map. Accordingly, pursuant to T.C.A. §§13-7-201 and 202, the Town was vested with powers under Tennessee law to exercise its zoning power.

In sum, there was no requirement that the Town maintain a general plan, as that term is defined by T.C.A. §13-4-201. In addition, in accordance with T.C.A. §13-7-202 the Planning Commission certified a zoning plan in January 2021, which was subsequently passed by the Town and became the Zoning Ordinance and Zoning Map. Therefore, the passage of Ordinances 05-21 and 12-21 was in accordance with Tennessee law and was rationally-based.

2. The Town's conclusions in Ordinance 12-21 that it had no general plan was rationally-based and supported by material evidence.

The Court finds further the Town correctly concluded it had no general plan at the time Ordinances 05-21 and 12-21 were passed. In fact, the parties stipulated that the Town did not have a general plan, as that term is defined by T.C.A. §13-4-201, at the time Ordinances 05-21 and 12-21 were passed. Accordingly, there was a rational basis for the Town to find in Ordinance 12-21 that it had no general plan. Therefore, Count One is dismissed. For these reasons, Count Two is dismissed.

3. The Town's findings in Ordinance 12-21 were rationally-based and fairly debatable.

At the public hearing held prior to second and final reading on Ordinances 05-21 and 12-21, the Town Board of Mayor and Aldermen considered an overwhelming amount of evidence and arguments from those who supported the re-zoning and those who were opposed regarding the effect on surrounding property owners and the financial impact of the development, among other issues. Significantly, the Town considered evidence regarding the revenue the truck stop development would bring to the Town in the form of sales and other tax revenue. The Town does not

assess a property tax and relies primarily upon sales tax for its operations and infrastructure which members of the Town council noted would benefit the Town and its residents as a whole. In addition, the Town found the issues raised by Plaintiffs and others opposed to the rezoning were not as significant as they were portrayed. The Town weighed the evidence, and decided the evidence weighed in favor of rezoning the disputed parcel.

In sum, the passage of Ordinances 05-21 and 12-21 was rationally-based, fairly debatable and not in conflict with Tennessee law. Therefore, each and every claim in the Complaint is hereby dismissed.

Plaintiffs timely appealed to this Court.

Discussion

Although not stated exactly as such, Plaintiffs raise the following issues on appeal: 1) whether the Trial Court erred in holding that the Town had the power to enact a zoning ordinance amendment when it did not have a general plan; 2) whether the Trial Court erred in holding that the Board acted rationally or legally when it ignored the provision of its own zoning ordinance requiring an express finding that any amendment had to be in agreement with the general plan; and 3) whether the Trial Court erred in holding that the Board acted with a rational basis when it ignored or misapplied the zoning ordinance requirements of balancing the interests of the party seeking the rezoning and those of neighboring property owners.

Declaratory judgment is an appropriate method by which to challenge the validity of an ordinance. *State ex rel. Moore & Assocs., Inc. v. West*, 246 S.W.3d 569, 581 (Tenn. Ct. App. 2005). Our Supreme Court has discussed the relevant standard of review as follows:

Inasmuch as zoning laws are in derogation of the common law and operate to deprive a property owner of a use of land that would otherwise be lawful, such laws are to be strictly construed in favor of the property owner. *State ex rel. Wright v. City of Oak Hill*, 204 Tenn. 353, 321 S.W.2d 557, 559 (1959). “Legislative classification in a zoning law, ordinance or resolution is valid if any possible reason can be conceived to justify it.” *State ex rel. SCA Chem. Waste Servs., Inc. v. Konigsberg*, 636 S.W.2d 430, 437 (Tenn. 1982). As we found in *McCallen v. City of Memphis*, “the court’s primary resolve is to refrain from substituting its judgment for that of the local governmental body. An action will be invalidated only if it constitutes an abuse of

discretion. If ‘any possible reason’ exists justifying the action, it will be upheld.” 786 S.W.2d 633, 641 (Tenn. 1990).

Edwards v. Allen, 216 S.W.3d 278, 284-85 (Tenn. 2007). Our Supreme Court further set out the limited nature of review in zoning matters as follows:

Zoning is a legislative matter, and, as a general proposition, the exercise of the zoning power should not be subjected to judicial interference unless clearly necessary. In enacting or amending zoning legislation, the local authorities are vested with broad discretion and, in cases where the validity of a zoning ordinance is fairly debatable, the court cannot substitute its judgment for that of the legislative authority. If there is a rational or justifiable basis for the enactment and it does not violate any state statute or positive constitutional guaranty, the wisdom of the zoning regulation is a matter exclusively for legislative determination.

In accordance with these principles, it has been stated that the courts should not interfere with the exercise of the zoning power and hold a zoning enactment invalid, unless the enactment, in whole or in relation to any particular property, is shown to be clearly arbitrary, capricious, or unreasonable, having no substantial relation to the public health, safety, or welfare, or is plainly contrary to the zoning laws.

Fallin v. Knox Cnty. Bd. of Comm’rs, 656 S.W.2d 338, 342-43 (Tenn. 1983) (quoting 82 Am.Jur.2d *Zoning and Planning* § 338 (1976) at 913-14) (quotation marks omitted).

The first of Plaintiffs’ issues that we address is whether the Trial Court erred in holding that the Town had the power to enact a zoning ordinance amendment when it did not have a general plan. Plaintiffs argue that a valid, active general plan is a prerequisite to the Town’s lawful exercise of its zoning power. Plaintiffs note that Tennessee law provides that “[i]t is the function and duty of the commission to make and adopt an official general plan for the physical development of the municipality....” Tenn. Code Ann. § 13-4-201 (West eff. June 13, 2008). They point out that a general plan may include “a zoning plan for the regulation of the height, area, bulk, location and use of private and public structures and premises and of population density....” *Id.* Plaintiffs further cite Tenn. Code Ann. § 13-7-202 for the proposition that a zoning plan is a mandatory condition to a municipality’s exercise of its zoning powers. In response, the Town argues that “all T.C.A. §13-7-202 required, as a prerequisite to the Town’s exercise of its zoning powers, is that the Planning Commission first certify to the Board a zoning plan, that by definition consists of the text of a zoning ordinance and zoning maps.” The Town says that this prerequisite

was fulfilled in this matter by the Commission’s 2021 transmission to the Board of the text of a comprehensive zoning ordinance and zoning maps.² For their part, Plaintiffs assert that under Tenn. Code Ann. § 13-4-201, a “zoning plan” is a component of the general plan for the municipality, and that nowhere does the zoning statute say that a “zoning plan” is synonymous with the “zoning ordinance and zoning maps.”

Both parties contend with *Family Golf of Nashville, Inc. v. Metro. Gov’t of Nashville*, 964 S.W.2d 254 (Tenn. Ct. App. 1997), a case in which this Court addressed the related but distinct responsibilities of zoning and planning. In *Family Golf*, we stated in part:

Zoning and planning are complementary pursuits that are largely concerned with the same subject matter. They are not, however, identical fields of municipal endeavor. See 1 E.C. Yokley, *Zoning Law and Practice* §§ 1-2, at 2 (4th ed. 1978) (“Yokley”). Planning involves coordinating the orderly development of all interrelated aspects of a community’s physical environment as well as all the community’s closely associated social and economic activities. See 1 Norman Williams, Jr. & John M. Taylor, *American Land Planning Law* § 1.05, at 13 (rev. ed. 1988) (“American Land Planning Law”); Robert W. Phair, *Planning and Zoning: Principles and Practice*, 29 Tenn. L.Rev. 514, 514 (1962). It is a continuous process carried out indefinitely through time. Common sense and reality dictate that a general plan “is not like the law of the Medes and the Persians; it must be

² Tenn. Code Ann. § 13-7-202 (West eff. June 13, 2008) provides:

Whenever the planning commission of the municipality makes and certifies to the chief legislative body a zoning plan, including both the full text of a zoning ordinance and the maps, representing the recommendations of the planning commission for the regulation by districts or zones of the location, height, bulk, number of stories and size of buildings and other structures, the percentage of the lot which may be occupied, the size of yards, courts and other open spaces, the density of population, and the uses of buildings, structures and land for trade, industry, residence, recreation, public activities and other purposes, and identify areas where there are inadequate or nonexistent publicly or privately owned and maintained services and facilities when the planning commission has determined the services are necessary in order for development to occur, then the chief legislative body may exercise the powers granted and for the purposes mentioned in § 13-7-201, and may divide the municipality into districts or zones of such number, shape and areas it may determine, and, for such purposes, may regulate the erection, construction, reconstruction, alteration and uses of buildings and structures and the uses of land.

subject to reasonable change from time to time” as conditions in the community change. *Furniss v. Lower Merion*, 412 Pa. 404, 194 A.2d 926, 927 (1963).

Zoning, on the other hand, involves the territorial division of land into districts according to the character of the land and buildings, their suitability for particular uses, and the uniformity of these uses. See 1 Kenneth H. Young, *Anderson’s American Law of Zoning* § 1.13, at 19 (4th ed. 1996) (“Young”) (citing *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319, 1330 (1981)). Zoning ordinances are now the most important and prevalent type of American land use control. See *American Land Planning Law* § 16.01, at 434. These ordinances focus primarily on the use of property and the structural and architectural designs of the buildings. See *In re Sundance Mountain Ranches, Inc.*, 107 N.M. 192, 754 P.2d 1211, 1213 (1988); *Kaufman v. Planning & Zoning Comm’n*, 171 W.Va. 174, 298 S.E.2d 148, 153 (1982); *Yokley* §§ 1-2, at 14-15.

The state enabling legislation places the authority to plan and the authority to zone with different local governmental entities. Planning is entrusted to appointed municipal or regional planning commissions. See *Tenn. Code Ann.* §§ 13-3-101, 13-4-101 (1992 & Supp. 1996). In contrast, the zoning power is squarely placed in the hands of the local legislative bodies because the power to zone is viewed as essentially a legislative exercise of the government’s police power. See *Holdredge v. City of Cleveland*, 218 Tenn. 239, 247-48, 402 S.W.2d 709, 712 (1966); *Brooks v. City of Memphis*, 192 Tenn. 371, 375, 241 S.W.2d 432, 434 (1951). Local legislative bodies may enact zoning plans recommended by planning commissions, but they are not obligated to. See *Tenn. Code Ann.* §§ 13-7-102, 13-7-202. Local legislative bodies may also amend zoning ordinances; however, they must submit proposed changes to the planning commission for review. If the planning commission disapproves of a proposed change, a majority of the “entire membership” of the local legislative body must approve the proposed change in order for it to be valid. See *Tenn. Code Ann.* §§ 13-7-105(a), 13-7-203(b), 13-7-204. Accordingly, the state enabling legislation vests the local legislative bodies with the prerogative to make final decisions on all zoning matters. See *State ex rel. SCA Chem. Servs., Inc. v. Sanidas*, 681 S.W.2d [557,] 564 [(Tenn. Ct. App. 1984)]; E.C. Yokley, *The Place of the Planning Commission and the Board of Zoning Appeals in Community Life*, 8 *Vand. L.Rev.* 794, 795 (1955).

Local governments may decide for themselves how best to exercise the land use control powers delegated by the General Assembly as long as their decisions do not conflict with state law.

Family Golf, 964 S.W.2d at 257-58. In their reply brief, Plaintiffs assert that “[e]ven though, under *Family Golf*, the Town’s 2021 Ordinance cannot be read as mandating compliance with the comprehensive plan, the ordinance does require that the plan be referenced and cited.” Plaintiffs also cite our Supreme Court in *Edwards*, which quoted from a Court of Appeals decision as follows: “The procedural steps which the legislatures have put in place in the form of enabling statutes governing the enactment of zoning ordinances usually are regarded as mandatory, and a failure substantially to comply with such requirements renders ... the zoning ordinance invalid.” 216 S.W.3d at 285 (quoting *Hutcherson v. Criner*, 11 S.W.3d 126, 134 (Tenn. Ct. App. 1999)). In addition, the *Edwards* court stated: “[D]etermining whether a zoning ordinance exists requires a consideration of the substance of its provision and terms, and its relation to the general plan of zoning....” 216 S.W.3d at 285-86 (internal quotation marks and citations omitted).

Our research has yielded no Tennessee case directly addressing whether a comprehensive or general plan is a prerequisite for a municipality’s exercise of its zoning power. However, several scholarly articles address the subject. Many zoning and planning statutes originate from the Standard State Zoning Enabling Act (SZEA) and the Standard City Planning Enabling Act (SCPEA), model acts drafted in the 1920s. Stuart Meck, *The Legislative Requirement that Zoning and Land Use Controls be Consistent with an Independently Adopted Comprehensive Plan: A Model Statute*, 3 Wash. U. J.L. & Pol’y 295, 296-297 (2000). Section 3 of the SZEA provided that zoning regulations were to be made in accordance with a comprehensive plan. *Id.* at 298. Indeed, a number of jurisdictions have treated a comprehensive or general plan as a prerequisite for the enactment of a zoning ordinance. A California Court has written: “‘Since consistency with the general plan is required, absence of a valid general plan, or valid relevant elements or components thereof, precludes enactment of zoning ordinances and the like.’” *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1182, 56 Cal.Rptr.3d 374 (quoting *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806, 184 Cal.Rptr. 371). That position accords with Plaintiffs’ position herein. Nevertheless, there have been different approaches in other jurisdictions. Under the unitary approach, a separate comprehensive plan is not required to assess the validity of zoning regulations. Edward J. Sullivan & Jennifer M. Bragar, *Recent Developments in Comprehensive Planning*, 48 Urb. Law. 615, 616-18 (2016). In another approach, the comprehensive plan is at least one factor in a judicial analysis. *Id.* at 618-20. A third approach has ascribed “quasi-constitutional” status to comprehensive plans, with closer judicial scrutiny to assure

consistency with the plan. *Id.* at 620-622. There has been “an increasing regard for the comprehensive plan” such that “there is an increase in the number of cases involving plan amendments and interpretations, an indicator of growing judicial respect for plans and planners.” *Id.* at 626. With regard to our own state, one piece has observed: “Tennessee is generally considered to be a state that takes a unitary approach to planning as it relates to zoning, meaning that the zoning map may act as the general plan in the absence of such a plan.”³ Steve Barlow, Tommy Pacello, & Josh Whitehead, *Regulatory Created Blight in a Legacy City: What Is It and What Can We Do About It?*, 46 U. Mem. L. Rev. 857, 870 (2016) (footnote in original but renumbered).

Plaintiffs’ position that a general plan is a necessary foundation to a town’s exercise of its zoning power is the law in some jurisdictions. Tennessee is not among them. Our research has uncovered no Tennessee statute, court opinion, charter provision, or otherwise requiring that a municipality adopt a general plan before it can exercise its zoning power. As argued correctly by the Town, all that was required under Tenn. Code Ann. § 13-7-202 for the Town to exercise its zoning power was that the Commission certify to the Board a zoning plan. The terms “general plan” or “comprehensive plan” do not appear in Tenn. Code Ann. § 13-7-202. If the General Assembly had intended to make a town’s exercise of its zoning power contingent upon its having adopted a comprehensive or general plan, it simply could have said that in the zoning statutes. It did not. Instead, a zoning plan is required. A zoning plan and a general plan are not synonymous. While the Town acknowledges that the zoning maps and the text of a comprehensive zoning ordinance which the Commission transmitted to the Board were not specifically called a “zoning plan,” it nevertheless contained those items listed in Tenn. Code Ann. § 13-7-202 as coming within a zoning plan. We agree with the Town that the text of the zoning ordinance and the zoning maps adequately constituted a zoning plan, in substance if not title. At a minimum, the Town substantially complied with the procedural steps of the zoning enabling statutes. Whatever other implications stem from the Commission’s ostensible failure to do its duty and make and adopt a general plan, the Town’s exercise of its zoning power was unhindered by it as it was not dependent upon the existence of a general plan. The Town had a sufficient basis upon which to exercise its zoning power.

In addition to an absence of legal authority in Tennessee for the proposition that a municipality cannot exercise its zoning power without a general plan in effect, we note the division of roles between planning and zoning as articulated in the *Family Golf* case. To be sure, it remains “the function and duty of the commission to make and adopt an official general plan for the physical development of the municipality....” Tenn. Code Ann. § 13-

³ Edward J. Sullivan & Matthew J. Michel, *Ramapo Plus Thirty: The Changing Role of the Plan in Land Use Regulation*, 35 URB. LAW 75, 98 (2003).

4-201 (West eff. June 13, 2008). The Commission's ostensible failure to do its duty is not before us, though. In this lawsuit, we are addressing the Town's power to zone. Though related, planning and zoning are distinct responsibilities. Zoning is an exercise of police power that is entrusted to local legislative bodies. A planning commission's failure to do its duty and craft a general plan of development does not deprive a municipality of its power to zone. We affirm the Trial Court's holding that no general plan was required before the Town could exercise its zoning powers.

We next address whether the Trial Court erred in holding that the Board acted rationally or legally when it allegedly ignored the provision of its own zoning ordinance requiring an express finding that any amendment had to be in agreement with the general plan. Plaintiffs state that even if a general plan were not required, Ordinance 12-21 is internally inconsistent and therefore invalid. Plaintiffs are correct in that the reference to a general plan when there is no general plan poses a discrepancy. It is at least superfluous. Nevertheless, while the ordinance requires agreement with a general plan, it does not require the existence of such a plan. Furthermore, we have determined that no general plan was needed for the Town to exercise its zoning powers. That determination is dispositive of this issue. The language concerning a general plan which does not exist simply is non-applicable; it does not invalidate the ordinance.⁴ We affirm on this issue as well.

The final issue we address is whether the Trial Court erred in holding that the Board acted with a rational basis when it ignored or misapplied zoning ordinance requirements of balancing the interests of the party seeking the rezoning and those of neighboring property owners. Plaintiffs argue that there was no evidence to support the findings of the Commission and the Board that rezoning the disputed parcel would not have "adverse effects upon adjoining property owners that cannot be justified by the overwhelming public good or welfare," one of the grounds for amendment. They argue further that there was no evidence to support the findings of the Commission and the Board that rezoning the disputed parcel would meet the test that "no one property owner or a small group of property owners will benefit materially from the change to the detriment of the general public," another ground for amendment. Plaintiffs cite remarks by RBT representatives from a public hearing that RBT did not even need the disputed parcel for its truck stop. They further argue that "[t]he disputed parcel lies between areas zoned C-3 to the south and west, but R-3 (high density residential) to the north and R-1 (low density residential) to the east. The disputed parcel is perfectly located to provide a buffer between the high intensity commercial uses along Dixie Lee Highway and the above-mentioned residential zones." The Town says that rezoning the disputed parcel is absolutely necessary to support

⁴ An alternative scenario whereby an active, valid general plan is in effect, and the issue is whether the ordinance is at odds with that general plan, is not before us.

development of the larger contiguous tract and, citing an RBT representative's statement, that failure to do so would "kill" the truck stop. The Town also points to evidence which the Board heard as to the Town's need for a truck stop, including evidence of already-existing truck traffic and the tax revenue that would be brought in from the truck stop.

Plaintiffs' arguments against a truck stop were suitable arguments to put before the Board in the first instance. However, the applicable standard of review in this matter is narrow. From our review of the record, we find that the Board had sufficient evidence before it to reach the result it did, balancing the interests of the party seeking the rezoning, those of neighboring property owners, and of the general public. That the Board might have reached a different result under the same evidence is, under our limited standard of review, not dispositive. The point is that it was fairly debatable. We find that passage of Ordinances 05-21 and 12-21 was rationally based, fairly debatable, and supported by material evidence. We affirm the judgment of the Trial Court in its entirety.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellants, William Foehring, Janice Foehring, William Best, Mary Beth Best, Ron Terrill, and Sandra Terrill, and their surety, if any.

D. MICHAEL SWINEY, CHIEF JUDGE