IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 22, 2014 Session

THE METROPOLITAN GOVERNMENT OF NASHVILLE-DAVIDSON COUNTY, TN v. THE BOARD OF ZONING APPEALS OF NASHVILLE AND DAVIDSON COUNTY, TN, ET AL.

Appeal from the Chancery Court for Davidson County
No. 12910II Carol L. McCoy, Chancellor

No. M2013-01283-COA-R3-CV - Filed September 3, 2014

Company which builds and manages billboards applied to the Metropolitan Department of Codes and Building Safety for permits to convert two static billboards to digital billboards. When the applications were denied by the Zoning Administrator, the company appealed to the Metropolitan Board of Zoning Appeals, which reversed the administrator's decision and granted the permits. The Metropolitan Government of Nashville and Davidson County then filed a petition for a writ of certiorari seeking review of the Board's decision; the trial court dismissed the petition on the ground that the Metropolitan Government did not have standing to bring the proceeding. We reverse the decision and remand for further proceedings.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and LAURENCE M. MCMILLAN, JR., SP. J., joined.

Saul Solomon, Lora Barkenbus Fox, and Emily Herring Lamb, Nashville, Tennessee, for the appellant, Metropolitan Government of Nashville and Davidson County, Tennessee.

Garrett E. Asher, Nashville, Tennessee, for the appellees, CBS Outdoor, Inc. and Felix Z. Wilson, II, Revocable Living Trust, and Equitable Trust Company.

OPINION

On March 7, 2012, CBS Outdoor Inc. ("CBS"), a company which builds and manages billboards, applied to the Metropolitan Department of Codes and Building Safety for permits

to replace static billboards with digital billboards at two locations;[1] the application was denied by the Zoning Administrator. CBS appealed the denial to the Metropolitan Board of Zoning Appeals ("BZA") and, on April 19, the BZA reversed the Administrator's decision and granted the permits.

On June 25, 2012, the Metropolitan Government of Nashville and Davidson County ("Metro") filed a petition for a writ of certiorari seeking review of the BZA's action; CBS, the Wilson Trust, Equitable Trust Company, and the BZA were listed as Respondents. CBS, the Wilson Trust and Equitable Trust Company answered the petition; in their answer they asserted as an affirmative defense that Metro did not have standing to challenge the decision. Those respondents subsequently filed a Tenn. Rule Civ. P. 12.02(6) motion to dismiss the petition for failure to state a claim, contending that Metro "does not have standing to bring suit seeking to review the final order of [Metro's] own Board." The court granted the motion and dismissed Metro's petition on May 13, 2013.

On appeal, Metro raises the following issue:

> Did the trial court err in dismissing this case on the basis that the Metropolitan Government did not have standing to appeal a Metro Board of Zoning Appeals decision that violates the Metro Code.

DISCUSSION

I. STANDARD OF REVIEW

A Tenn. R. Civ. P. 12.02(6) motion seeks to determine whether the pleadings state a claim upon which relief may be granted; the motion challenges the legal sufficiency of the complaint. *Highwoods Properties, Inc. v. City of Memphis*, 297 S.W.3d 695, 700 (Tenn. 2009). The resolution of a Rule 12.02(6) motion is determined by an examination of the pleadings alone, *Leggett v. Duke Energy Corp*., 308 S.W.3d 843, 851 (Tenn. 2010); the motion should be granted "only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002).

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[1] According to the affidavit of Randy Smith, Real Estate Manager for CBS Outdoor, Inc., the billboards on Locust Street were originally built in 1971 and were permitted as a back to back structure by the Metropolitan Government as well as the Tennessee Department of Transportation. The property on which the billboards are located is owned by the Felix Z. Wilson II Revocable Living Trust and is in the "IDW" - Industrial Warehouse Distribution - district. The billboard on Clinton Street was built in 1972 and was permitted by the Tennessee Department of Transportation. The property on which the billboard is located is owned by the Equitable Trust Company and is in the "CF" - Commercial Core Frame - district.

A defendant who files a motion to dismiss "'admits the truth of all of the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action.'" *Brown v. Tenn. Title Loans, Inc.*, 328 S.W.3d 850, 854 (Tenn. 2010) (quoting *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005)). In considering a motion to dismiss, courts "'must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.'" *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31–32 (Tenn. 2007) (quoting *Trau–Med of America, Inc. v. Allstate Ins. Co.,* 71 S.W.3d 691, 696 (Tenn.2002)). On appeal, we review the trial court's legal conclusions regarding the adequacy of the complaint *de novo*. *Brown v. Tennessee Title Loans, Inc.*, 328 S.W.3d 850, 855 (Tenn. 2010).

II. ANALYSIS

Metro contends that the trial court erred in holding that it did not have standing to bring this certiorari matter. Metro asserts that it has standing because (1) it is an "aggrieved party" within the meaning of Tenn. Code Ann. §27-9-101 and (2) Tenn. Code Ann. §13-7-208(a)(2) permits it to institute this certiorari proceeding.

A. Does Tenn. Code Ann. § 27-9-101 give Metro standing to seek certiorari review of the BZA's decision?

The doctrine of standing was discussed in *Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville & Davidson Cnty*:

> Standing is a judge-made doctrine used to determine whether a party is entitled to judicial relief. *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn.1976). It requires the court to decide whether the party has a sufficiently personal stake in the outcome of the controversy to warrant the exercise of the court's power on its behalf. *Browning–Ferris Indus., Inc. v. City of Oak Ridge*, 644 S.W.2d 400, 402 (Tenn.Ct.App.1982). To establish standing, a party must demonstrate (1) that it sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is apt to be redressed by a remedy that the court is prepared to give. *Allen v. Wright*, 468 U.S. 737, 752, 104 S.Ct. 3315, 3325, 82 L.Ed.2d 556 (1984); *Morristown Emergency & Rescue Squad, Inc. v. Volunteer Dev. Co.*, 793 S.W.2d 262, 263 (Tenn.Ct.App.1990) ("Standing requires not only a distinct and palpable injury but also a causal connection between the claimed injury and the challenged conduct."); 13 Charles A. Wright, et al. *Federal Practice and Procedure* § 3531.4, at 418 (2d ed. 1984) ("Wright").

> The primary focus of a standing inquiry is on the party, not on the merits of the claim. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 484, 102 S.Ct. 752, 765, 70 L.Ed.2d 700 (1982); *Flast v. Cohen*, 392 U.S. 83, 99, 88 S.Ct. 1942, 1952, 20 L.Ed.2d 947 (1968); *City Communications, Inc. v. City of Detroit*, 888 F.2d 1081, 1086 (6th Cir.1989); *National Fed'n of Fed. Employees v. Cheney,* 883 F.2d 1038, 1041 (D.C.Cir.1989). Thus, a party's standing does not depend on the likelihood of success of its claim on the merits. *Hill v. City of Houston*, 764 F.2d 1156, 1159–60 (5th Cir.1985).
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> Even though standing does not depend on the merits, it often turns on the nature and source of the claim asserted. Thus, the inquiry requires a "careful judicial examination of the complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted." *Allen v. Wright*, 468 U.S. at 752, 104 S.Ct. at 3325; *Curve Elementary Sch. Parent and Teacher's Org. v. Lauderdale County Sch. Bd.*, 608 S.W.2d 855, 858 (Tenn.Ct.App.1980) ("[I]t is both appropriate and necessary to look to the substantive issues ..." (quoting *Flast v. Cohen*, 392 U.S. at 101–02, 88 S.Ct. at 1953)).

842 S.W.2d 611, 615 (Tenn. Ct. App. 1992).

In *City of Brentwood* v. *Metropolitan Bd. of Zoning Appeals*, 149 S.W.3d 49, 53 (Tenn. Ct. App. 2004), we addressed the issue of whether the City of Brentwood had standing to seek certiorari review of a decision of the Metropolitan Board of Zoning Appeals to issue a permit to construct a billboard. Brentwood asserted that it had the right, interest and duty to protect its Franklin Road corridor program and that construction of the billboard would "'hurt[ ] the image of the City and its attractiveness to future residents, businesses, tourists and other visitors.'" *Id.* at 58–59. We held that "[i]n land use cases . . . , the concept of 'aggrievement' supplies the distinct and palpable injury needed to have standing," and that "[w]hen applied to local governments, aggrievement encompasses interference with a local government's ability to fulfill its statutory obligations, or substantial, direct, and adverse effects on the local government in its corporate capacity." *Id.* at 58 (citations omitted).[2] We determined that the allegations in the city's petition "adequately articulate[d]

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[2] We noted that:

> The courts have found aggrievement when the actions of one local government cause (1) reduction in another local government's revenue due to decreased property values, (2) depreciation in the value of another local government's property, (3) interference with

substantial, direct and adverse effects on Brentwood in its corporate capacity" and, that accordingly the city was an "aggrieved person" for the purpose of seeking judicial review of the decision." *Id.* at 59.

In *Trosper v. Cheatham County Planning Comm'n*, we further discussed aggrievement for the purpose of seeking certiorari review under Tenn. Code Ann. 27-9-101:

> Tenn.Code Ann. § 27-9-101 authorizes any person who is "aggrieved" to seek judicial review of appeal "any final order or judgment of any board or commission functioning under the laws of this state" in the courts. Tenn. Code Ann. § 27-9-101; *see also Roberts v. State Bd. of Equalization*, 557 S.W.2d 502 (Tenn. 1977). For purposes of Tenn. Code Ann. § 27-9-101, "to be 'aggrieved,' a party must be able to show a special interest in the agency's final decision or that it is subject to a special injury not common to the public generally." *Wood v. Metro. Nashville & Davidson Cty.* Gov't, 196 S.W.3d 152, 158 (Tenn. Ct. App. 2006) (citing *Buford v. State Bd. of Elections,* 206 Tenn. 480, 484, 334 S.W.2d 726, 728 (1960); *League Cent. Credit Union v. Mottern*, 660 S.W.2d 787, 791-92 (Tenn. Ct. App. 1983)); *McRae v. Knox Cty*, No. E2003-01990-COA-R3-CV, 2004 WL 1056669, at *3-4 (Tenn. Ct. App. May 07, 2004) (citing *Town of East Ridge v. City of Chattanooga*, 191 Tenn. 551, 235 S.W.2d 30 (Tenn.1950)). This court has held that the extension of the authority to appeal and seek judicial review to all persons who are "aggrieved" reflects a legislative intention to ease the strict application of the customary standing principles. *City of Brentwood*, 149 S.W.3d at 57 (citing *Federal Election Comm'n v. Akins*, 524 U.S. 11, 19, 118 S.Ct. 1777, 1783, 141 L.Ed.2d 10 (1998)). Consequently, Tenn. Code Ann. § 27-9-101 should be interpreted broadly rather than narrowly. *Id.* (citing 8A Julie Rozadowski & James Solheim, *The Law of Municipal Corporations* § 25.318, at 666 (3d ed.,rev. vol.1994)); *Roten v. City of Spring Hill*, No. M2008-02087-COA-R3-CV, 2009 WL 2632778, at *3 (Tenn. Ct. App. Aug. 26, 2009).

> another local government's ability to provide police and fire protection, (4) increased safety hazards on roads, (5) interference with another local government's construction of court-ordered improvements to a sewer and water system, (6) interference with another local government's urban development plan, (7) use of the property inconsistent with the character of the adjoining area, and (8) general impairment to the health, safety, or welfare of the residents of another local government.

City of Brentwood, 149 S.W.3d at 58 (citations omitted).

No. M2009-01262-COA-R3-CV, 2010 WL 175094, at *3 (Tenn. Ct. App. Jan. 19, 2010).

In *City of Knoxville v. City of Knoxville Pension Board, et al.*, No. E2012-00703-COA-R3-CV, 2012 WL 6477024, (Tenn. Ct. App. Dec. 14, 2012), this court addressed the issue of the City's standing pursuant to Tenn. Code Ann. § 27-9-101 to seek certiorari review of a decision by its pension board which the city alleged exceeded the authority of the board and violated a city ordinance.[3] We held that the City was impacted by the pension board's decision and aggrieved as a result of the long-term costs associated with allowing the employees to switch their retirement plans; this was sufficient to seek certiorari review.[4] *Id.* at *6

As we resolve the issue of Metro's standing to seek review of the BZA decision, it is appropriate to consider the roles of both entities in zoning matters.

Chapter 7 of Title 13 of the Tennessee Code governs zoning. Part 1 of Chapter 7, Tenn. Code Ann. § 13-7-101–119, vests zoning power in county legislative bodies with respect to property lying outside the boundaries of municipalities; § 13-7-201–212 grants zoning power to the chief legislative body of any municipality.[5] Pursuant to § 2.01 of the

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[3] The city had passed an ordinance granting employees the one-time opportunity to select one of two retirement options after ten years of service to the city; the city subsequently made changes to the retirement options and enhanced one of the options. Employees who had not selected the more attractive plan asked the pension board for the right to make a new selection for their retirement plan. The pension board voted to allow these employees to select the option despite the provision in the ordinance which stated that the selection of the retirement option was to be a one-time opportunity.

[4] We held that "[t]he City's next available and logical step upon being aggrieved by the decision of the Pension Board was the step it actually took: filing a petition for common law writ of certiorari in the Trial Court." *City of Knoxville*, 2012 WL 6477024, at *7.

[5] Section 2.02 of the Charter of the Metropolitan Government sets forth general powers exercised by Metro:

> In addition to other powers herein granted, the metropolitan government shall be vested with (1) any and all powers which cities are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the State of Tennessee, as fully and completely as though the powers were specifically enumerated herein, except only for such limitations and restrictions as are provided in Tennessee Code Annotated, section 7-1-101 et seq., as amended, or in this Charter; and (2) any and all powers which counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the State of Tennessee, as fully and completely as though the powers were specifically enumerated herein, except only for such limitations and restrictions as are provided in Tennessee Code Annotated, section 7-1-101 et seq., as amended, or in this Charter; and (3)

Metropolitan Charter, Metro is vested with the power, *inter alia*, to regulate zoning, to create various boards and commissions, and to pass ordinances "necessary for the health, convenience, safety and general welfare" of the citizens. The zoning code for Metro is codified at Title 17 of the Metropolitan Code and establishes "those rules and procedures deemed necessary and appropriate to administer and enforce the provisions of this title, so as to protect the public health, safety, morals, convenience, order, prosperity and general welfare of the . . . inhabitants of Metropolitan Nashville." Metropolitan Code § 17.04.010 B.

Metro's Board of Zoning Appeals was created pursuant to authority granted at Tenn. Code Ann. § 13-7-205. Pursuant to § 13-7-206 appeals to the Board:

> may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any grant or refusal of a building permit or other act or decision of the building commissioner of the municipality or other administrative official based in whole or in part upon the provisions of this ordinance enacted under this part [2].

The specific powers of the Board of Zoning Appeals are set forth at Metropolitan Code § 17.40.180 and include the following, pertinent to the facts of this case:

> Administrative Appeals. Pursuant to Section 13-7-207(1), Tennessee Code Annotated, the board shall hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator or the urban forester in carrying out the enforcement of this zoning code, whereby it is alleged in writing that the zoning administrator or the urban forester is in error or acted arbitrarily.

Metropolitan Code § 17.40.180 A.[6] Thus, the statutory construct gives Metro broad powers to pass zoning ordinances and otherwise regulate zoning; within that construct the BZA has a specifically limited role.

> any and all powers possessed by the County of Davidson or the City of Nashville immediately prior to the effective date of this Charter.

[6] The BZA is also given the power to hear and act on applications for variances from the zoning code, special use exception permits, and changes to non-conforming uses or structures. Metropolitan Code § 17.40.180 B-D.

In the petition for writ of certiorari Metro made the following allegations:

14. The BZA's decisions are contrary to law and should be reversed, or, in the alternative, the case should be remanded to the BZA for a correct consideration of the issues.

15. The BZA's decisions of April 26, 2012 would allow for a permit for billboards in violation of the Metropolitan Government's zoning code, specifically the distance requirements of M.C.L. §17.32.050(G)[7] and M.C.L. §17.32.150(B)[8].

16. CBS Outdoor, Inc. did not present (and cannot present) a proper justification under the local zoning code or under state law (e.g. T.C.A. §13-7-208 or other law) for its position that it is not subject to the distance requirements of the Metropolitan Code.

17. The Metropolitan Government is an aggrieved party as contemplated under T.C.A. Section 27-9-101 because the BZA's April 26, 2012 decision now interferes with the Metropolitan Government's ability to fulfill its obligations under the local zoning code (which, in turn, is authorized by the state enabling statutes as well as the Metro Charter), in that the distance requirements cannot be enforced at these sites.

18. For the same reasons, the BZA's decision, if left in place, will have a substantial, direct, and adverse effect on the Metropolitan Government in its corporate capacity.

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[7] Pertinent to the issues in this appeal, Metropolitan Zoning Code, Section 17.32.050(G)(2) permits "[s]igns with any copy, graphics, or digital displays that change messages by electronic or mechanical means" only if the signs are a certain distance from agriculturally or residentially zoned property; Section 17.32.050(G)(4) prohibits "[f]ree-standing and wall-mounted digital display billboards, including the conversion of existing billboards to digital billboards less than two thousand feet apart." Section 17.32.050(G)(5) prohibits any digital billboards not in compliance with Section 17.32.150.

[8] Metropolitan Zoning Code, Section 17.32.150(B) imposes certain regulations on billboards permitted under the Code. The regulations at issue in this case are primary those pertaining to distance requirements for billboards near property which is zoned residential and the requirements relative to "spacing between billboards located on the same side of a public street or controlled access highway." Section 17.32.150 (B)(14) states that billboards "are subject to the provisions contained in Section 17.32.050."

Taking these allegations as true, as we are required to do in considering a motion to dismiss, we conclude that Metro has standing to seek review of the BZA's decision.

The allegation that the BZA's decision violates the distance provisions of the code relative to billboards at Sections 17.32.050(G) and 17.32.150(B) invokes Metro's authority and responsibility to fulfill its obligation under state law and the Metropolitan Code to enforce the specific provisions of the zoning code. The allegation that the effect of the decision is to interfere with Metro's ability to fulfill its obligations is sufficient to show that Metro is aggrieved. *City of Brentwood*, 149 S.W.3d at 58. In addition, Metro's duty to protect the "public health, safety, morals, convenience, order, prosperity and general welfare" creates a special interest in the BZA's decision; this duty is unique to Metro. *See Trosper*, 2010 WL 175094, at *3.

The BZA's decision to issue the permits allows CBS to convert static billboards to digital; Metro alleges that this decision violates the zoning code and adversely impacts its ability to enforce the code. This allegation is sufficient to satisfy the second element necessary for standing, that there be a causal connection between the challenged act and the injury.

With respect the last element of standing, certiorari pursuant to Tenn. Code Ann. §§ 27-8-101 and 27-9-101 is the appropriate vehicle for reviewing decisions of the BZA. *See Hoover*, *Inc. v. Metro. Bd. of Zoning Appeals of Davidson Cnty.*, 955 S.W.2d 52, 54 (Tenn. Ct. App. 1997); *see also City of Knoxville*, 2012 WL 6477024, at *4.

B. Does Tenn. Code Ann. § 13-7-208(a)(2) provide Metro with standing to seek certiorari review of the BZA's decision?

Metro asserts that Tenn. Code Ann. §13-7-208 (a)(2) provides it with express authority to institute a certiorari proceeding in order to prevent a violation of the local zoning code.

Tenn. Code Ann. 13-7-208(a)(2) provides that:

> In case any . . . structure . . . is proposed to be used in violation of any ordinance enacted under this part and part 3 of this chapter, the building commissioner, municipal counsel or other appropriate authority of the municipality, . . . may, in addition to other remedies, institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation. . . .

We agree that the statute gives Metro standing to initiate an "appropriate action" when there is a violation of the zoning code; under the facts of this case, that action is a petition for a writ of certiorari.

C. Other Issues

In reliance on certain language in *Cheatham County v. Cheatham County Board of Zoning Appeal et al.*, No. M2012-00930-COA-R3-CV, 2012 WL 5993757 (Tenn. Ct. App. Nov. 30, 2012), CBS contends that "[t]he only Tennessee appellate decision addressing this issue directly holds that a local government does not have standing to sue its own Board of Zoning Appeals." We respectfully disagree with CBS' argument in this regard.

In that case, Cheatham County filed a petition for writ of certiorari naming the Board of Zoning Appeals and Randall and Margaret Mooneyhans, the property owners, as respondents; the County sought to reverse the action of the Board of Zoning Appeals in granting a variance from the minimum lot size requirements in order to allow the Mooneyhans to locate a mobile home on their property.[9] *Id*. In response to the petition, the Mooneyhans asserted, *inter alia*, that the revocation of the permit violated their due process rights, thereby entitling them to relief under 42 U.S.C. § 1983 and attorneys fees under 42 U.S.C. § 1988. *Id*. The trial court dismissed the petition as well as the Mooneyhans federal claims. *Id*. The County and the Mooneyhans appealed; in the course of the appeal, the County dismissed its appeal and the sole issue before this court was whether the Mooneyhans were entitled to attorney fees as a result of the county's revocation of the permit. *Id*. at *2. We held that "[t]he revocation of the permit, the County's pursuit of certiorari review in the manner presented in this case, and the lack of any basis for the county's action in revoking the permit, violated the Mooneyhans' rights to procedural and substantive due process and, under applicable law, entitle[d] [the Mooneyhans] to reasonable attorney fees under 42 U.S.C. § 1988." *Id.* at *5.[10]

We disagree with CBS' contention that *Cheatham County* held that a local government does not have standing to seek certiorari review of its own BZA; that issue was

[9] The County Building Commissioner revoked a building permit on the ground that the Commissioner subsequently discovered that the property did not meet the minimum lot size requirements; the Moonyhans appealed to the Board of Zoning Appeals, which granted the variance.

[10] In a footnote in the quoted text, we stated stating "[w]e are aware of no authority or precedent whereby a county may sue one of its constituent boards". *Cheatham County*, 2012 WL 5993757, at *5 (fn. 5).

not before the court and any language which might be construed as passing on that specific issue is dicta.[11]

CBS also contends that Metro cannot be allowed to sue its own BZA because it is in effect suing itself. CBS supports this contention by stating that the BZA was created by Metro and is "an arm of the local government with no independent legal existence" and that the BZA has no independent source of funding. We do not consider Metro's seeking certiorari review of the decision of the BZA to be "the same party [ ]suing itself." Rather, in seeking such review, Metro seeks to perform its statutory obligations, which are larger than the limited role assigned to the BZA; as well, Metro acts in its corporate capacity in lieu of other citizens.

For the same reasons, we respectfully disagree with respondents' contention that the General Assembly has vested exclusive authority in the BZA with respect to "determining land use issues" and, specifically, the power at Tenn. Code Ann. § 13-7-109(1) to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the County Building Commissioner or any other administrative official in the carrying out or enforcement of any ordinance enacted pursuant to this part." Pursuant to state law and municipal ordinance, Metro has broad powers in zoning and other land use matters; where the board's action is alleged to be contrary to law and where there is no other party seeking certiorari review, it is entirely appropriate for Metro to initiate such review.

CONCLUSION

For the foregoing reasons, we reverse the order dismissing the petition for writ of certiorari and remand the case for further proceedings consistent with this opinion.

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RICHARD H. DINKINS, JUDGE

[11] We also respectfully disagree with the statement in the concurring opinion in *Cheatham County*, also cited by CBS in its argument, that "[a] county cannot be aggrieved by a decision of its own board of zoning appeals." *Cheatham County*, 2012 WL 5993757, at *6.