IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
SEPTEMBER 4, 2008 Session

# HOME BUILDERS ASSOCIATION OF MIDDLE TENNESSEE v. WILLIAMSON COUNTY, ET AL.

**Direct Appeal from the Chancery Court for Williamson County**
**No. 31384 Jeffrey S. Bivins, Chancellor**

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**No. M2008-00835-COA-R3-CV - Filed October 9, 2008**

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Appellants, a group of homebuilders, appeal the trial court's grant of summary judgment in favor of Appellee Williamson County. Homebuilders filed a complaint for declaratory judgment against Williamson County, seeking interpretation of Chapter 118 of the Private Acts of 1987 as amended. Under the alleged authority granted by the Act, Williamson County levied additional adequate facilities taxes on homebuilders based upon its audit of actual square footage built. Builders contend that Williamson County exceeded its authority under the Act by calculating taxes at the time of the issuance of the certificate of occupancy as opposed to the time the building permit was issued. Finding that the Legislature intended to give the County broad authority to levy its tax at the time of the issuance of the building permit or at the time of the issuance of the certificate of occupancy, we affirm.

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

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and HOLLY M. KIRBY, J., joined.

John P. Williams, Nashville, TN for Appellant
Thomas V. White, Nashville, TN for Appellant

Jeffrey D. Moseley, Franklin, TN for Appellee
Lisa M. Carson, Franklin, TN for Appellee

## OPINION

Home Builders Association of Middle Tennessee ("HBAMT") is a Tennessee corporation whose members construct homes in Middle Tennessee, including Williamson County. McLeod Custom Builders ("MCB") is a Tennessee Limited Liability Company that does residential

construction in Williamson County. Turnberry Homes, L.L.C. ("Turnberry," and together with HBAMT and MCB, "Builders" or "Appellants") also builds homes in Williamson County.

In 1987 the Tennessee General Assembly enacted Chapter 118 of the Private Acts of 1987 (the "Act"). This Act was ratified by the Williamson County Board of Commissioners on July 20, 1987 and is known as the Williamson County Adequate Facilities Tax statute. The Act has been amended twice since its enactment. It was amended by Chapter 22 of the Private Acts of 1989 and by Chapter 173 of the Private Acts of 1990. Section 3 of the Private Act as amended provides:

> SECTION 3. It is the intent and purpose of this Act to authorize Williamson County to impose a tax on new development in the county payable at the time of issuance of the building permit or certificate of occupancy so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new expanded public facilities made necessary by such development.

Section 8 of the Private Act (as amended in 1989) provides:

> Section 8. The tax established in this act shall be collected at the time of application for a building permit for development as herein defined by a county official duly authorized by the County Executive. If the building permit is issued by the County, the County Building Official or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the County and as approved by the County Attorney. If the building permit is issued by a city, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the County Building Inspector that the full amount of the tax due the County has been paid. No building permit for development as herein defined shall be issued in Williamson County unless the tax has been paid in full to the County or a negotiable instrument approved by the County Attorney and payable to the County has been received. The issuance of a building permit by any city official, without a certificate from the County that the tax has been paid shall render the city liable to the County for the sum or sums that would have been collected by the County, had the certificate of tax paid been required by the City.

Section 7 of the amended Act authorizes Williamson County to impose a tax on new development not to exceed "one dollar ($1.00) per gross square foot of new residential development." In 2004, Williamson County became aware of apparent discrepancies between the tax paid on certain parcels and the actual square footage constructed. As a result, the County

initiated a review of the adequate facilities tax collections for the period January 1, 1998 through December 31, 2003 as part of a series of "audits" to review and collect amounts due the County from various revenue sources.[1]

In 2005, after receiving the audit report, Williamson County notified developers that it would be seeking payment of alleged deficiencies in the collection of the privilege tax on certain parcels.[2] The Builders were within the group of developers who were charged with additional taxes on homes they had built.[3] Developers who disputed the amount due, as determined by Williamson County, were afforded the opportunity to appeal that determination to the Board of Adjustments and Appeals after payment of the disputed amount. After the hearings, as of April 2007, Williamson County had collected $455,522.00 in underpaid privilege taxes as a result of the audit.

On March 22, 2005, Builders filed a complaint against Rogers Anderson, the mayor of Williamson County, David L. Coleman, the Budget Director of Williamson County, and Williamson County.[4] On September 26, 2005, Builders filed an amended complaint to add the Williamson County Board of Adjustments and Appeals (the "Board," and together with Williamson County and Messrs. Anderson and Coleman, the "County," or "Appellees"). By their Complaint, the Builders sought a declaratory judgment to interpret the relevant sections of the amended act (as set out above). Specifically, the Builders contend that:

> Because Sections 3 and 8 of the Private Act as amended state that the tax shall be paid by the homebuilder and collected by the County at the time of issuance of a building permit, it is clear that the calculation of the tax must be based upon information available at the time the building permit is issued....
>
> This tax is one of the costs of construction of a new home. It is important to the homebuilder to know the correct amount of tax owed

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[1] There is some dispute between the parties as to whether the County's review and comparison of privilege tax revenues to actual square footage built was an "audit" in the accounting sense of the word. Tenn. Code Ann §5-6-108(6) authorizes the mayor to "audit and settle the accounts" of the county trustee and of any other collector or receiver of county revenue. Consequently, the disagreement between the parties is purely semantic. Regardless of whether the action taken by Williamson County was an "audit" within the usual meaning of the word is not material to this appeal because the action taken was clearly authorized by the statute giving the county mayor authority to "settle the accounts" related to collection of the privilege tax.

[2] Variances of less than 10% were not pursued by the County.

[3] McLeod was charged with additional tax in the amount of $11,339.00. Following a hearing before the Board, the County notified McLeod that it intended to refund $2,144.62 of this amount. Turnberry was required to pay additional tax in the amount of $13,497.00. Following a hearing before the Board, Turnberry was notified that the County would refund $12,032.60 of this amount.

[4] Messrs. Anderson and Coleman were sued in their official capacities only.

> at the time it is paid, since it must be paid "on the front end" and then included in the price for which the home is sold.
>
> By requiring that the tax be paid by the homebuilder and collected by the County at the time the homebuilder obtains a building permit, the General Assembly intended that the homebuilder and the County would ascertain the amount of the tax which is owed at the time the homebuilder obtains a building permit.

On October 18, 2005, the County filed its answer to the amended complaint, denying the material allegations of the complaint and specifically asserting that:

> Defendants deny that the calculation of the privilege tax may be based upon inaccurate documentation submitted by the homebuilders or that the homebuilders may insulate themselves from collection of the underpaid tax by providing inaccurate information. Defendants aver that the privilege tax is to be properly based on the gross square footage of the actual structure and not on documentation that contains inaccurate information. Defendants aver that the homebuilders have an obligation to submit accurate information on the gross square footage of the structure.

The parties filed cross-motions for summary judgment. Following a hearing on February 29, 2008, the trial court granted summary judgment in favor of the County by order of March 28, 2008. Builders appeal the dismissal of their complaint and raise one issue for review as stated in their brief:

> Whether the Chancery Court erred by holding that Williamson County has the authority under Chapter 118 of the Private Acts of 1987, as amended, to collect additional privilege tax from homebuilders years after they obtained building permits allowing the construction of certain homes and have built and sold these homes?

It is well settled that a motion for summary judgment should be granted when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. ***See*** Tenn. R. Civ. P. 56.04. The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. ***See Bain v. Wells***, 936 S.W.2d 618, 622 (Tenn.1997). On a motion for summary judgment, the court must take the strongest legitimate view of evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. ***See id***. In ***Byrd v. Hall***, 847 S.W.2d 208 (Tenn.1993), our Supreme Court stated:

> Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by

> affidavits or discovery material, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth specific facts showing that there is a genuine issue of material fact for trial.

***Id***. at 211 (citations omitted).

Summary judgment is only appropriate when the facts and the legal conclusions drawn from the facts reasonably permit only one conclusion. See ***Carvell v. Bottoms***, 900 S.W.2d 23, 26 (Tenn.1995). Here, the material facts are undisputed and the sole issue is one of statutory interpretation. Because only questions of law are involved, there is no presumption of correctness regarding the trial court's grant or denial of summary judgment. ***See Bain***, 926 S.W.2d at 622. Therefore, our review of the trial court's grant of summary judgment is *de novo* on the record before this Court. ***See Warren v. Estate of Kirk***, 954 S.W.2d 722, 723 (Tenn.1997).

In construing statutes, the Court's role is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. ***Sallee v. Barrett***, 171 S.W.3d 822 (Tenn.2005); ***McGee v. Best***, 106 S.W.3d 48 (Tenn. Ct. App. 2002). In ***McGee***, the Court said:

> The rule of statutory construction to which all others must yield is that the intention of the legislature must prevail. ***Mangrum v. Owens***, 917 S.W.2d 244, 246 (Tenn.Ct.App.1995) (citing ***Plough, Inc. v. Premier Pneumatics, Inc.***, 660 S.W.2d 495, 498 (Tenn.Ct.App.1983); ***City of Humboldt v. Morris***, 579 S.W.2d 860, 863 (Tenn.Ct.App.1978)). "[L]egislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, without any forced or subtle construction to limit or extend the import of the language." ***Id***. (citing ***Worrall v. Kroger Co.***, 545 S.W.2d 736, 738 (Tenn.1977)). The Court has a duty to construe a statute so that no part will be inoperative, superfluous, void or insignificant. The Court must give effect to every word, phrase, clause, and sentence of the Act in order to achieve the Legislature's intent, and it must construe a statute so that no section will destroy another. Id. (citing ***City of Caryville v. Campbell County***, 660 S.W.2d 510, 512 (Tenn.Ct.App.1983); ***Tidwell v. Collins***, 522 S.W.2d 674, 676 (Tenn.1975).

***Id.*** at 64.

In this case, the Legislature actually stated its intent in Section 3 of the Act, which reads: "It is the intent and purpose of this Act to authorize Williamson County to impose a tax on new development in the county payable at the time of issuance of the building permit or certificate of occupancy." The use of the word "or" in this section denotes a choice–that is, Williamson County may impose the tax either at the time of the issuance of the building permit or at the time of the issuance of the certificate of occupancy. The overarching goal of the tax is also clearly stated in Section 3 of the Act. The purpose of the tax is "to ensure and require that the persons responsible for new development share in the burdens of growth ***by paying their fair share for the cost of new and expanded public facilities***..." (emphasis added). In order to facilitate the goal of the Act, the tax should necessarily be based upon the actual square footage of the improvement.

In their argument, the Builders rely upon the language of Section 8 of the Act, which states that the tax "shall be collected at the time of application for a building permit for development." Builders contend that this language allows the County to collect the tax **only** at the time of the issuance of the building permit. We disagree. The Builders' argument is myopic in that it disregards Section 3 of the Act. One of the cardinal rules of statutory construction is to give meaning and effect to every part of the statute. If this Court were to adopt the Builders'argument, we would negate the language of Section 3 that allows Williamson County to collect at the time of the issuance of the certificate of occupancy. While we concede that the Act contemplates that the tax will usually be collected at the time of the issuance of the building permit, to effectively support the purpose of the Act (i.e., to collect taxes on the actual square footage built), the Legislature gives Williamson County the option of evaluating square footage at the completion of the construction. This interpretation is consistent with Chapter 118, Section 12 of the Private Acts, which states, in relevant part, that:

> This Act shall be deemed to create an additional and alternative method for Williamson County to impose and collect taxes for the purpose of providing public facilities made necessary by new development in the county.

From this language, it is clear that the Legislature did not intend to limit the County's ability to collect this tax. Rather, in order to ensure that the tax is levied upon the full square footage, Williamson County is given broad discretion to calculate the tax at a time suitable to ascertaining the actual square footage.

The Builders rely upon the case of ***Covington Pike Toyota v. Cardwell***, 829 S.W.2d 132 (Tenn. 1992) for the proposition that tax statutes should not be extended by implication. In ***Covington***, the Commissioner of Revenue sought to extend the retail sales tax revenue to warranty contracts, which were not specifically included in the language of the statute. ***Id.*** In this case, Williamson County does not seek to extend the subject-matter of the tax (i.e., square footage). Rather, the issue in this case concerns the time of the collection of the tax. Consequently, the Builders' reliance upon ***Covington*** is misplaced.

The Builders further contend that the County's adoption of the County Powers Relief Act in 2006, Tenn. Code Ann. §67-4-2901 *et seq.* gives "[t]he County...another option...if it wishes to ensure the absolute accuracy of the square footage upon which the adequate facilities tax...is based." The Builders' argument that adoption of the County Powers Relief Act is the only legal means for it to collect the tax overlooks Section 2913 of the County Powers Relief Act, which states:

> After June 20, 2006, no county shall be authorized to enact an impact fee on development or a local real estate transfer tax by private or public act. In addition, this part shall be the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development. However, ***the provisions of this part shall not be construed to prevent a municipality or county from exercising any authority to levy or collect similar development taxes or impact fees granted by a private act that was in effect prior to June 20, 2006, or from revising the dedicated use and purpose of a tax on new development from public facilities to public school facilities***. A county levying a development tax or impact fee by private act on June 20, 2006, shall be prohibited from using the authority provided in this part so long as the private act is in effect.

Tenn. Code Ann. §67-4-2913 (2008) (emphasis added).

The Private Act at issue in this case was adopted prior to June 20, 2006 and is, therefore, specifically excepted from any limitation on the collection of the privilege tax that might be required under the statutory plan.

In their brief, the Builders include argument concerning the adequacy of the audit (or review) process used by Williamson County in collecting these taxes. Specifically, the Builders contend that the fact that the process resulted in a number of refunds to homebuilders supports its claim that the County was without authority to conduct the review or audit in the first place. We disagree. One could just as easily argue that the fact that the County Board of Adjustments and Appeals found certain overpayments in taxes and refunded these amounts is proof that the process did, in fact, work. Regardless, any challenge to the method of review or audit, and any argument concerning the correctness of the specific findings thereof, would first have to be brought before the Board of Adjustment and Appeals. It is well settled in Tennessee that, when a statute provides an administrative remedy, that remedy must be exhausted before the courts will act. ***See, e.g., Thomas v. Bd. of Equalization***, 940 S.W.2d 563, 566 (Tenn. 1997). Here, Section 2 of the Act provides that appeals are to be heard by the Board of Adjustment and Appeals before being appealed to the courts. The only issue before this Court is whether Williamson County had the authority to conduct the audit or review in the first instance, not whether the process itself was flawed.

For the foregoing reasons, we affirm the order of the trial court. Costs of this appeal are assessed, in equal part, to the Appellants, Home Builders Association of Middle Tennessee, McLeod Custom Builders, LLC, Turnberry Homes, LLC, and their respective sureties.

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J. STEVEN STAFFORD, J.