

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

JOHN COOK and HERITAGE LAND)	
DEVELOPMENT PARTNERS, LLC,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	No. 12889
)	
LOUDON COUNTY and LOUDON)	NOTICE OF ENTRY REQUESTED
COUNTY COMMISSION,)	
)	
<i>Defendants.</i>)	

ORDER

On February 21, 2023, Plaintiffs’ Motion for Summary Judgment and Defendants’ Motion for Summary Judgment came on for a hearing before this Honorable Court. Based upon the motions, memoranda, statements of fact (and responses thereto), argument of counsel, and the record as a whole, the Court found and so held that: (1) Plaintiffs’ Motion for Summary Judgment was not well taken and should be **DENIED** and (2) Defendants’ Motion for Summary Judgment was well taken and should be **GRANTED**. A copy of the transcript of the Court’s ruling from February 21, 2023, is attached hereto as **Exhibit A** and incorporated herein as if set forth verbatim. The Court sets forth its findings of fact and conclusions of law with respect to these motions for summary judgment below:

FINDINGS OF FACT

Pursuant to Tenn. R. Civ. P. 56.04, the Court finds that there is no genuine issue of material fact in dispute in this matter. The Court adopts the following facts designated by the parties as “undisputed or” “admitted” as set forth below:

**From Defendants' Response to Plaintiff's Statement of Undisputed
Material Facts:**

1. This case arises from the Loudon County Commission's ("County Commission") handling of Plaintiff's request to rezone property identifiable on Loudon County Tax Map 044 as Parcel 038.00 ("Property") from A-1 to R-1 with a PUD overlay that was submitted on June 28, 2021. *See* Transcript and Record, Bates #0001.

RESPONSE: Admitted.

2. The Plaintiff's request was unanimously approved by the Loudon County Regional Planning Commission ("Planning Commission") by a vote of 11-0 on July 20, 2021. *See* Transcript and Record, Bates #0006-0008.

RESPONSE: Admitted. Further responding, although it is customary for the Planning Commission to allow public comment prior to the Planning Commission voting on a rezoning application, there was no public comment allowed prior to the vote on July 20, 2021. (Satterfield Depo. 48-49; Shaver Depo. 29.)

3. Prior to the County Commission's vote on the Plaintiff's request, the owner of the Property – Jim Russell – met with Commissioners Bill Satterfield and Kelly Littleton Brewster to discuss the Plaintiff's request. *See* (Dep. Jim Russell, P. 13); (Dep. Bill Satterfield, P. 19-20); (Dep. Kelly Littleton Brewster, P. 7).

RESPONSE: Admitted.

4. At this meeting, Commissioner Satterfield indicated to Mr. Russell that the Plaintiffs had so-far complied with all of the County's requirements for obtaining a rezoning with a PUD overlay. *See* (Dep. Of Bill Satterfield, P. 24)

RESPONSE: Admitted.

5. Further, Commissioner Satterfield acknowledged that denying the Plaintiffs' request could result in expensive litigation that the County would be unlikely to win that would ultimately be paid for by the taxpayers of Loudon County. *See* (Dep. Bill Satterfield, P. 26-31). Specifically, Commissioner Satterfield stated that "if [the County Commission] was challenged in court, that I wasn't sure that we would win," and agreed that a frivolous defense of a lawsuit would cost taxpayer dollars. *See* (Dep. Bill Satterfield, P. 26, 31).

RESPONSE: Admitted.

6. Commissioner Satterfield told Mr. Russell that a successful lawsuit against the County "would be the outcome" if he sued the County after they denied the Plaintiff's rezoning request because "[A]t that time, the two things that were required, we thought were required, in order to make that – to build that subdivision were in place." *See* (Dep. Bill Satterfield, P. 31-32).

RESPONSE: Admitted.

7. The County Commission held a public hearing prior to voting on the Plaintiffs' rezoning request on September 7, 2021. *See* Transcript and Record, Bates #0011-0067.

RESPONSE: Admitted.

8. During the public hearing, Commissioners Van Shaver and Adam Waller stated that the lack of a sewer and water connection prevented the approval of the Plaintiffs request, despite comments to the contrary from a representative

from the Planning Commission – Carlie McEachern – including comments that the Plaintiffs’ request was “exemplary” and comments from the Loudon County Director of Codes Enforcement – Jim Jenkins – that there was sewer availability on the Property. *See* Transcript and Record, Bates #0029-0030, 0034; (Dep. Van Shaver, P. 24-25, 36, 40); (Dep. Adam Waller, P. 27-28).

RESPONSE: Admitted.

9. Further, Commissioner Shaver also stated that the Plaintiffs’ request was not “harmonious” with the surrounding property as required by Loudon County Zoning Resolution §4.080, despite comments to the contrary from Mr. Russell, the Plaintiffs, and Mr. Jenkins that there were multiple properties zoned commercial and residential in the surrounding area. *See* Transcript and Record, Bates #0033. 0025, 0027, 0034.

RESPONSE: Admitted.

11. During his deposition, Mr. Jenkins confirmed that it would be important for County Commissioners to review the information provided by his office regarding a rezoning request before making a final decision on the request in order to treat applicants fairly and make an informed decision. *See* (Dep. Jim Jenkins, P. 10-12).

RESPONSE: Admitted. Further answering, the above statement is immaterial to Plaintiffs motion for summary judgment because the “Planning Commission has no authority to actually order the rezoning. The power to make a final decision concerning the rezoning ... rests with the Board [of Commissioners].”

Jack R. Owen Revocable Tr. v. City of Germantown, No. W201801662COAR3CV, 2019 WL 2233886, at *7 (Tenn. Ct. App. May 23, 2019).

12. Mr. Jenkins agreed that Commissioner Shaver acted arbitrarily and capriciously by voting against the Plaintiffs' request due to Commissioner Shaver's perception of sewer availability, and confirmed that he had advised the County Commission that there was sufficient sewer availability to approve the Plaintiffs' request. *See* (Dep. Jim Jenkins, P. 28-29).

RESPONSE: Admitted. Further answering, Defendants state that the "arbitrary and capricious" standard is not the appropriate standard of review as the Commission's action was legislative, rather than administrative. Further answering, Defendants state that Mr. Jenkins' comment that Commissioner Shaver acted "arbitrarily and capriciously" is immaterial as it represents the opinion of an individual who is not a member of the County legislative body.

13. Mr. Jenkins confirmed that Commissioner Waller's decision to vote against the Plaintiffs' request for a lack of sewer availability was also contrary to the information that he provided to the County Commission. *See* (Dep. Jim Jenkins, P. 32).

RESPONSE: Admitted. Further answering, the above statement is immaterial because the "Planning Commission has no authority to actually order the rezoning. The power to make a final decision concerning the rezoning ... rests with the Board [of Commissioners]." *Jack R. Owen Revocable Tr. v. City of*

Germantown, No. W201801662COAR3CV, 2019 WL 2233886, at *7 (Tenn. Ct. App. May 23, 2019).

14. Mr. Jenkins confirmed that the Plaintiffs' rezoning request "met the criteria to be approved," and "should have been approved." *See* (Dep. Jim Jenkins, P. 33).

RESPONSE: Admitted. Further answering, the above statement is immaterial because the "Planning Commission has no authority to actually order the rezoning. The power to make a final decision concerning the rezoning ... rests with the Board [of Commissioners]." *Jack R. Owen Revocable Tr. v. City of Germantown*, No. W201801662COAR3CV, 2019 WL 2233886, at *7 (Tenn. Ct. App. May 23, 2019).

15. After ending the public hearing and dealing with other business, the County Commission took a vote on a "motion to deny" the Plaintiffs' rezoning request offered by Commissioner Satterfield. *See* Transcript and Record, Bated #0041.

RESPONSE: Admitted.

16. The initial "motion to deny" failed by a vote of 6-4, leading Commissioner Satterfield to apologize to his constituents stating: "we lost this battle tonight" and that "development has won out." *See* Transcript and Record, Bated #0042.

RESPONSE: Admitted.

17. After the vote, multiple commissioners expressed confusion as to what has just occurred and began questioning whether someone could change their vote. See Transcript and Record, Bated #0042-43. At one point, Commissioner Shaver stated: “What just happened was a six/four vote to approve the rezoning,” and “Once you approve this, you have given a property right to somebody. If this stands, there’s no coming back.” See Transcript and Record, Bates #0084.

RESPONSE: Admitted.

18. Eventually, Mayor Bradshaw contacted the County Attorney – Bob Bowman – for guidance on how commissioners could change their votes. See Transcript and Record, Bates #0044-45. Mayor Bradshaw returned and notified the commissioners that they could change their vote by passing a “motion to reconsider” and taking a second vote on the rezoning if the motion to reconsider passed. See Transcript and Record, Bates #0045.

RESPONSE: Admitted.

19. Eventually, a motion to reconsider was made by Chairman Henry Cullen, seconded by Commissioner Waller. See Transcript and Record, Bates #0046. The motion to reconsider passed by a vote of 6-4. See Transcript and Record, Bates #0047.

RESPONSE: Admitted.

20. After passage of the motion to reconsider, a commissioner made a “motion to approve” the Plaintiffs’ rezoning request which ultimately resulted in a 5-5 tie. See Transcript and Record, Bates #0047-48.

RESPONSE: Admitted.

**From Plaintiffs' Reply to Defendants'
Additional Statement of Disputed Facts:**

2. Mr. Russell testified that the subject property was not connected to the sewer line that ran along Highway 321. (Russell Dep. 11-12)

RESPONSE: Admitted.

3. John Cook, one of the Plaintiffs in this lawsuit, testified that while there were water and sewer utilities *around* the subject property, neither water or sewer lines were actually connected to the subject property. (Cook Dep. 18-20, Ex. 2)

RESPONSE: Admitted.

4. Commissioner Satterfield met with the property owner, James Russell, and Commissioner Brewster before the September 7 County Commission meeting to discuss the rezoning. (Satterfield Dep. 21-22). At the time of that meeting, Commissioner Satterfield was under the impression that the subject property was connected to water and sewer services. (Satterfield Depo. 31-32)

RESPONSE: Admitted.

5. By the time of the County Commission Meeting on September 7, 2021, Mr. Satterfield had become aware that the sewer line closest to the subject property was not operational and that the property was not connected to a water line. (Satterfield Depo. 47.)

RESPONSE: Admitted.

6. The subject property was not connected to sewer or water utilities on July 20, 2021 or September 7, 2021. (Satterfield Depo. 47; Russell Depo. 12; Shaver Depo. 25)

RESPONSE: Admitted.

7. The sewer line closest to the subject property is maintained by Tellico Area Service Systems (TASS). (Satterfield Depo. 45)

RESPONSE: Admitted.

8. Commissioner Satterfield is a member of the TASS Board of Directors and has served in that capacity for approximately the last four years. (Satterfield Depo. 45-46)

RESPONSE: Admitted.

9. Commissioner Satterfield testified that based on his membership on the TASS Board of Directors, he understood that the sewer lines “has not been hooked up, and it is not usable. We are not sure if and when, at this point, the sewer line will come into use.” (Satterfield Depo. 48.)

RESPONSE: Admitted.

10. Commissioners Shaver and Waller both testified that one reason they did not vote in favor of the rezoning was because the property was not connected to water or sewer services. (Shaver Depo. 36; Waller Depo. 31-32)

RESPONSE: Admitted.

11. Another reason that Commissioners Shaver and Waller voted against the rezoning request was because they did not find the subject property to be

harmonious or compatible with the surrounding area. (Shaver Depo. 40; Waller Depo. 32.)

RESPONSE: Admitted.

12. The Commission had previously denied a rezoning request, even after receiving unanimous approval from the Planning Commission, because the subject property was not connected to sewer services. (Shaver Depo. 24-26 96; Jenkins Depo. 15-16.)

RESPONSE: Admitted.

13. The Commission has voted to rezone property that the Planning Commission did not recommend for rezoning. (Jenkins Depo. 16.)

RESPONSE: Admitted.

14. Commissioner Satterfield denied telling Mr. Russell, the property owner, that “it was a win/win situation in that [Commissioner Satterfield] could get re-elected, and then [Mr. Russell] could sue the County and win his lawsuit.” (Satterfield Depo. 25.)

RESPONSE: Admitted. In further response, the fact that Commissioner Satterfield denied this allegation is admitted, but whether Commissioner Satterfield made these statements to Mr. Russell is disputed, as showcased by the testimony of Mr. Russell and Commissioner Brewster. (Russell Depo. 19-21) (Brewster Depo. 11-12).

17. Commissioner Satterfield voted against the rezoning request due to the “[w]ill of the constituents.” (Satterfield Depo. 27.) He further testified that “[a]s

an elected official, my duty is to represent the people. And by and far, the people that live there, absolutely, did not want to give in and allow a subdivision to be built between two farms.” (Id. at 28.)

RESPONSE: Admitted. In further response, while one of Commissioner Satterfield’s motivations may have been to represent his constituents, Commissioner Satterfield’s ultimate motivation behind his decision is disputed, given his prior belief that a successful lawsuit could potentially be waged against the County if he voted to deny Plaintiffs’ request. (Satterfield Depo. 27.)

18. Commissioner Satterfield denied voting against the rezoning request because he wanted to get re-elected. (Satterfield Depo. 33-34)

RESPONSE: Admitted. In further response, the fact that Commissioner Satterfield denied this allegation is admitted, but whether Commissioner Satterfield’s ultimate motivation was his own personal gain is disputed given the testimony of Mr. Russell and Commissioner Brewster on Commissioner Satterfield’s statements during their initial meeting. (Russell Depo. 19-21) (Brewster 11-12).

19. Commissioner Cullen testified that he voted against the rezoning because “the people” were not in favor of it. He stated: “The bottom line, sir, is the people didn’t want [the rezoning]. And they have a right to speak.” (Cullen Depo. 14-15.)

RESPONSE: Admitted.

20. According to Commissioners Hurley, Shaver, and Waller, before a property can be rezoned from A-1 to R-1 with a PUD overlay, it must be connected

to water and sewer services. (Hurley Depo. 16; Shaver Depo. 25; Waller Depo. 26-27.)

RESPONSE: Admitted.

21. When asked whether “a developer, who is making a request for A1 to R1 PUD, is required to have sewer in place, actually up and running, connected, before the County Commission can approve their rezoning request,” Commissioner Hurley replied: “I believe that is what our current zoning regulations say.” (Hurley Depo. 16-17.)

RESPONSE: Admitted.

23. Plaintiffs propose to construct 172 lots on the subject property, which consists of 69.61 acres, for a density of 2.47 units per acre. (Cook Depo. Ex. 1, Bates No. 0003.)

RESPONSE: Admitted.

**From Defendants’ Response to Plaintiffs’
Statement of Additional Disputed Facts:**

4. Commissioner Meers consistently voted in support of Plaintiffs’ request to rezone the property. (Record 0041-0048.)

RESPONSE: Undisputed.

9. Specifically, Commissioner Satterfield relayed to Russell that: “I just said that we [the County] would—we would not—probably not be able to sustain a lawsuit and win at that time.” (Dep. Satterfield, p.27.)

RESPONSE: Undisputed.

**From Plaintiffs' Response to Defendants'
Statement of Undisputed Material Facts:**

1. On June 28, 2021, Plaintiff Heritage Land Development Partners, LLC filed a request to rezone the subject property from A-1, Agriculture-Forestry District, to R-1, Suburban Residential District, with a PUD overlay. (Cook Depo. Ex. 1, Bates No. 0001.).

RESPONSE: Undisputed.

2. On July 20, 2021, the Planning Commission unanimously recommended that the rezoning request be approved. (Cook Depo. Ex. 1, Bates Nos. 0006-0008.)

RESPONSE: Undisputed.

3. Although it is customary for the Planning Commission to allow public comment prior to the Planning Commission voting on a rezoning application, there was no public comment allowed prior to the vote on July 20, 2021 (Satterfield Depo. 48-49, Shaver Depo. 29).

RESPONSE: Undisputed.

4. Plaintiffs' rezoning request was then put on the agenda for the Commission's September 7, 2021 meeting, which was properly noticed and open to the public. (Cook, Depo. Ex. 1, Bates No. 0011-0017).

RESPONSE: Undisputed.

5. Before the Commission meeting took place, a public planning workshop was held in mid-August 2021, and many members of the public attended to object to the rezoning of the subject property. (Cullen Depo. 18).

RESPONSE: Undisputed.

6. On September 7, 2021, the Plaintiffs' rezoning request was heard before the Commission. (Cook Dep. Ex. 1, Bates No. 0018).

RESPONSE: Undisputed.

7. The Commission heard from Director of Codes Enforcement Jim Jenkins, Mr. Cook, and members of the public for over an hour regarding the rezoning request. (Record, Bates No. 0068).

RESPONSE: Undisputed. Additionally, Commissioners heard from the Chairman of the Planning Commission – Carlie McEachern – who testified that the subject property met all of the requirements to be rezoned and definitively stated that Plaintiffs' request should be approved. (Record, Bates No. 0030).

8. Several members of the public, including citizens Jim Barlowski and Nikki Ramsey, made their opposition to the rezoning request known to the Commission. (Cook Dep. Ex. 1, Bates Nos. 0025-0026).

RESPONSE: Undisputed.

11. The Commission's public deliberations and actions on the rezoning request (not including the public comment period) lasted approximately twenty-five minutes. (Record, Bates No. 0068).

RESPONSE: Undisputed.

12. Commissioner Cullen testified that he "listen[ed] to the people" and "the bottom line [was] the people didn't want it [the rezoning]." (Cullen Depo. 14-15).

RESPONSE: Undisputed.

15. According to Commissioners Hurley, Shaver, and Waller, before a property can be rezoned from A-1 to R-1 with a PUD overlay, it must be connected to water and sewer services. (Hurley Depo. 16; Shaver Depo. 25; Waller Depo. 26-27).

RESPONSE: Undisputed.

16. Commissioner Hurley testified as follows:

Q. Do you believe that a developer, who is making a request for A1 to R1 PUD, is required to have sewer in place, actually up and running, connected, before the County Commission can approve their rezoning request?

A. I believe that that is what our current zoning regulations say. I believe that in the last four years we have approved every single recommendation that the Planning Commission has brought before us except two. And I believe that -- again, the reason I ran for office was to be planning oriented, so making sure that planning rules and regulations match what the County needs.

(Hurley Depo. 16-17.)

RESPONSE: Undisputed. For clarification, Commissioner Hurley consistently voted in favor of Plaintiffs' request. (Record, Bates No. 0041-48.)

17. At the time of the September 7, 2021 meeting, the subject property was not connected to water or sewer services. (Satterfield Depo 47; Russell Depo. 12; Shaver Depo. 25).

RESPONSE: Undisputed.

18. The sewer line closest to the subject property is maintained by Tellico Area Service Systems (TASS). (Satterfield Depo. 45).

RESPONSE: Undisputed.

19. Commissioner Satterfield is a member of the TASS Board of Directors and has served in that capacity for approximately the last four years. (Satterfield Depo. 45-46).

RESPONSE: Undisputed.

20. Commissioner Satterfield testified that based on his membership on the TASS Board of Directors, he understood that the sewer line “has not been hooked up and it is not usable. We are not sure if and when, at this point, the sewer line will come into use.” (Satterfield Depo. 48).

RESPONSE: Undisputed.

21. Commissioners Shaver and Waller both testified that one reason they did not vote in favor of the rezoning was because the property was not connected to water or sewer services. (Shaver Depo. 36; Waller Depo. 31-32.)

RESPONSE: Undisputed.

22. Commissioner Shaver testified that the Commission had previously denied a rezoning request, even after receiving unanimous approval from the Planning Commission, because the subject property was not connected to sewer services. (Shaver Depo. 24-26; 96). This was confirmed by the testimony of Codes Enforcement Director Jim Jenkins. (Jenkins Depo. 15-16).

RESPONSE: Undisputed.

24. Plaintiffs' plan was to construct 172 lots on 69.61 acres, for a density of 2.47 units per acre. (Cook Depo. Ex. 1, Bates No. 0003).

RESPONSE: Undisputed.

25. One reason Commissioners Shaver and Waller voted against the rezoning request [was] because they did not find the subject property be harmonious or compatible with the surrounding area. (Shaver Depo. 40; Waller Depo. 32).

RESPONSE: Undisputed.

CONCLUSIONS OF LAW

Pursuant to Tenn. R. Civ. P. 56.04, the Court makes the following conclusions of law:

1. The Order entered by this Court on January 28, 2022, granting Defendants' Motion to Dismiss and dismissing Plaintiffs' Count II-Petition for Writ of Certiorari controls. Defendants' Motion to Dismiss was premised on the County Commission's action with respect to the rezoning at issue being a legislative, rather than an administrative, action.

2. The County Commission, thus, acted in its legislative capacity with respect to Plaintiffs' rezoning application.

3. The Planning Commission makes recommendations to the County Commission, but the County Commission is not bound by those recommendations.

4. The appropriate standard of review for legislative actions is whether any rational basis exists for the County Commission's decision. If the issue is fairly debatable, the County Commission's decision must be permitted to stand.

5. County Commissioners are citizen legislators, and they are often confronted with complex and difficult issues. Zoning issues may be some of the most complex matters these bodies are asked to consider. County Commissioners are elected by their constituents to speak for them.

6. The first motion before the County Commission with respect to Plaintiffs' rezoning request was to deny the request. The outcome of that vote—regardless of the tally—would not have approved Plaintiffs' rezoning request.

7. Subsequently, the County Commission considered a motion to approve Plaintiffs' rezoning request and amend the zoning map. That motion failed because it did not obtain a majority vote; the tally was five for and five against.

8. The County Commission had a rational basis for its actions. For example, there is ample evidence in the record that there was constituent opposition to Plaintiffs' rezoning request. Moreover, there is evidence in the record that some Commissioners believed that Plaintiffs' request should not be approved because there were issues with sewer provisions.

9. It is not the province of this Court to substitute its judgment that of the legislative body elected by the people, in this case, the Loudon County Commission.

10. Based on the foregoing, Plaintiffs' Declaratory Judgment Act claim to overturn the decision of the County Commission with respect to the rezoning request fails as a matter of law.

11. At the hearing, Plaintiffs' counsel represented to the Court that Plaintiff did not oppose Defendants' Motion for Summary Judgment with respect to Plaintiffs' claim under the Open Meetings Act claim. Accordingly, Plaintiff's Open Meetings Act claim also fails as a matter of law.

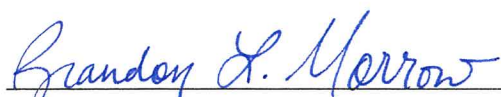
Based on all of the foregoing, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion for Summary Judgment is **DENIED** and Defendants' Motion for Summary Judgment is **GRANTED**. This is a final order pursuant to Tenn. R. Civ. P. 58. Costs are taxed to the Plaintiffs for which execution may issue.

ENTER this ___ day of _____ 2023.

W. THOMAS MCFARLAND
CHANCELLOR

APPROVED FOR ENTRY:



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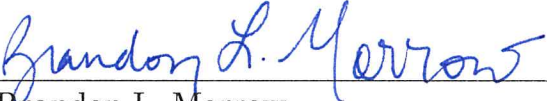
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served via email and U.S. Mail, postage prepaid, upon:

Ellis "Sandy" Sharp, Esq.
STOKES, WILLIAMS, SHARP, COPE & MANN
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I further certify that the foregoing was submitted to the above-listed counsel for Plaintiffs for approval as to form and content, in accordance with Local Rule 103.1(D), and no response was received.

This the 24th day of March 2023.



Brandon L. Morrow

FINDINGS OF FACT AND CONCLUSIONS OF LAW

February 21, 2023

IN THE CHANCERY COURT OF LOUDON COUNTY, TENNESSEE

----- :

JOHN COOK, HERITAGE LAND: :

DEVELOPMENT PARTNERS, : :

LLC, : :

PLAINTIFFS, : :

vs. : No.: 12889

LOUDON COUNTY, LOUDON : :

COUNTY COMMISSION, : :

DEFENDANTS. : :

----- :

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANTS:

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 BRANDON L. MORROW
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1 (BE IT REMEMBERED, The
2 above-entitled cause came on for
3 hearing on this date, 21st day of
4 February, 2023, before the Honorable
5 Tom McFarland, Chancellor of Said
6 Court, when the following
7 proceedings were had, to wit:)

8
9 * * * * *

10
11 THE COURT: Okay. I think everybody
12 is here now. I am going to commend the
13 lawyers on both sides. You really brought
14 up the points for your clients. I don't
15 know how either one of you could have
16 argued any better, honestly. And I know
17 it is a difficult case with a lot on the
18 line. But, you know, I have to make the
19 findings and the conclusions as I see
20 them.

21 So I'm going to begin, again, by
22 finding that the undisputed facts in this
23 matter are accepted as written. I'm not
24 making any findings on issues of
25 credibility. I don't think anyone

1 involved in this matter, I would be able
2 to find, was not credible.

3 The Roberts Rules of Order was not
4 really raised in the pleadings or the
5 motion as something to decide today. And
6 I think even if it was, it would be
7 insignificant.

8 What is significant, in beginning the
9 findings and conclusions of law -- and
10 those undisputed facts will be the first
11 part of my findings -- is the order of
12 January 28th, 2022 controls how I look at
13 this case. That order says this was a
14 legislative decision. There was no motion
15 to set aside that order. It is still
16 valid. And Chancery Court only speaks
17 through its minutes and orders. I wasn't
18 the chancellor that signed that order, but
19 it's the order that controls today.

20 The Court finds amending the zoning
21 map is a legislative act. It further
22 finds the planning commission's function
23 is simply to make recommendations to the
24 legislative body. But the recommendations
25 do not bind the legislative body.

1 The standard set forth in the case law
2 that's relevant today for me to consider
3 is whether any rational basis exists for
4 the legislative action. And if the issue
5 was fairly debatable, it must be permitted
6 to stand.

7 I was county attorney for 16 years.
8 And I very quite possibly sat through many
9 more county commission meetings than
10 anybody in this room. Commissioners are
11 citizen legislators. Very often they are
12 confronted with very complex and difficult
13 issues. Zoning may be the most complex
14 and difficult questions that they are
15 asked to deal with. But they are put
16 there and elected by the people to speak
17 for them.

18 So as complicated and difficult as
19 these issues are, it is understandable
20 that this commission, and sometimes any
21 other county commission, would have some
22 confusion.

23 The first vote was to deny the
24 request. There was not a vote to approve
25 it at that time. So even if the first

1 vote was valid, it would not have approved
2 the amendment. However, the Court finds
3 the problem was rectified by the second
4 vote.

5 The commission and the county mayor,
6 very reasonably, sought legal advice and
7 relied on legal advice. And I will point
8 to some of those admitted facts that does
9 say that the first motion was a motion to
10 deny, the second was a motion to
11 approve. The motion to approve failed
12 because the vote was five to five.

13 In the transcript of the meeting, page
14 25, line 24, the motion was clearly set
15 out as a motion to approve and amend the
16 zoning map. That's the motion that
17 failed.

18 The legislative body had a rational
19 basis for its actions, whether it be
20 constituent opposition or issues regarding
21 sewer provisions. The Court finds the
22 issue was fairly debatable. It is, and it
23 was. That is replete in the record.

24 The Court doesn't feel like it should
25 substitute its judgment for the judgment

1 of a legislative body elected by the
2 people. I've said many times that judges
3 should only enforce the law and not make
4 law.

5 I find the action of the Loudon County
6 Commission should stand given all of the
7 facts that are undisputed. And the
8 defendants' motion for summary judgment is
9 granted as a matter of law.

10 Are there any questions about my
11 findings and conclusions, Mr. Sharp?

12 MR. SHARP: No, Your Honor.

13 THE COURT: Mr. Bowman?

14 MR. BOWMAN: Your Honor, should we,
15 for purposes of the order, address claim
16 three, the open records? That has been
17 conceded and dismissed.

18 THE COURT: Yes. Yes. I think the
19 Court accepted that announcement, or I
20 hope -- I thought I did. But, yes, it
21 should.

22 MR. BOWMAN: Okay.

23 THE COURT: All right. Nothing else?

24 MR. BOWMAN: Nothing else, Your Honor.

25 THE COURT: All right. Thank you.

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MR. BOWMAN: I will prepare the order.
THE COURT: Yes, please.
MR. BOWMAN: Thank you, Your Honor.
(Whereupon, court was adjourned.)

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C E R T I F I C A T E

STATE OF TENNESSEE:

COUNTY OF BLOUNT :

I, Mary T. Patterson, LCR #096, Licensed Court Reporter, do hereby certify that the above hearing was reported by me and that the foregoing pages, 1 through 8, are a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not related to, nor an employee of, counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

Mary T. Patterson

Mary T. Patterson, LCR #097
Expiration Date: 06/30/2024

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