



Tennessee Law and Resources Pertaining to the Definition of Agriculture

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1. Agriculture is defined in Tennessee Law in two different places: 1-3-105 & 43-1-113:

1-3-105. Definition of terms used in code.

As used in this code, unless the context otherwise requires:

(2) (A) "**Agriculture**" means:

- (i) The land, buildings and machinery used in the commercial production of farm products and nursery stock;
- (ii) The activity carried on in connection with the commercial production of farm products and nursery stock;
- (iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock; and
- (iv) Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock;

(B) As used in this definition of agriculture, the term "farm products" means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur;

(C) As used in this definition of agriculture, the term "nursery stock" means all trees, shrubs, or other plants, or parts of such trees, shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis;

43-1-113. Definition of agriculture.

(a) The definition of agriculture as set forth in subsection (b) shall be applicable to the term wherever it appears in the code, unless a different definition is specifically made applicable to the part, chapter, or section in which the term appears.

(b) (1) "**Agriculture**" means:

- (A) The land, buildings and machinery used in the commercial production of farm products and nursery stock;
- (B) The activity carried on in connection with the commercial production of farm products and nursery stock;
- (C) Recreational and educational activities on land used for the commercial production of farm products and nursery stock; and.
- (D) Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock.

(2) As used in this definition of agriculture, the term "farm products" means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur.

(3) As used in this definition of agriculture, the term "nursery stock" means all trees, shrubs, or other plants, or parts of trees, shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis.

2. Tennessee's Right to Farm Law

43-26-101: This chapter shall be known and may be cited as the "Tennessee Right to Farm Act."

43-26-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

- (1)** "Farm" means the land, buildings, and machinery used in the commercial production of farm products and nursery stock as defined in § 70-8-303;
- (2)** "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of farm products or nursery stock as defined in § 70-8-303, and includes, but is not limited to: marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; the employment and use of labor; marketing of farm products in conjunction with the production of farm products thereof; and any other form of agriculture as defined in § 43-1-113;
- (3)** "Farm product" means those plants and animals useful to man and includes, but is not limited to, forages and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; industrial hemp; trees; fish; apiaries; equine and other similar products; or any other product that incorporates the use of food, feed, fiber or fur; and
- (4)** "Industrial hemp":
 - (A)** Means the plants, plant parts, or whole plant extract, whether in manufacturing process or reconstituted, of the genera cannabis that do not contain a delta-9 tetrahydrocannabinol (THC) concentration more than three-tenths of one percent (0.3%) on a dry mass basis and that are grown:
 - (i)** From seed or propagules from seed certified by a certifying agency, as defined in § 43-10-103;
 - (ii)** From seed or propagules derived from landrace varieties of industrial hemp; or
 - (iii)** By an institution of higher education in this state that offers a baccalaureate or post-graduate level program of study in agricultural sciences; and
 - (B)** Includes any industrial hemp-derived products that do not contain more than three-tenths of one percent (0.3%) of delta-9 tetrahydrocannabinol (THC) in a topical or ingestible consumer product.

43-26-103. Farms presumed not nuisances -- Licensing of hemp growers.

(a) It is a rebuttable presumption that a farm or farm operation is not a public or private nuisance. The presumption created by this subsection (a) may be overcome only if the person claiming a public or private nuisance establishes by a preponderance of the evidence that either:

- (1)** The farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or
- (2)** The farm or farm operation alleged to cause the nuisance does not comply with any applicable statute or rule, including without limitation statutes and rules administered by the department of agriculture or the department of environment and conservation.

(b) Any person who grows or processes industrial hemp in this state must obtain an annual license from the department of agriculture. In order to obtain and maintain an industrial hemp license, the grower or processor must consent to reasonable inspection by the department of agriculture of the person's industrial hemp crop and inventory.

(c) Viable industrial hemp in the possession or control of a person licensed by the department as a grower or processor shall not be considered marijuana under § 39-17-415. Non-viable industrial hemp or any product made from non-viable industrial hemp procured through a grower or processor licensed by the department, or otherwise procured in accordance with the department's rules, shall not be considered marijuana under § 39-17-415.

(d) The department of agriculture shall register landrace varieties of industrial hemp for the purpose of providing notice to licensed growers and processors of which landrace varieties of hemp are industrial hemp.

(e) The department of agriculture shall promulgate rules, including rules establishing reasonable fees for industrial hemp licenses, necessary to implement and administer an industrial hemp program in this state on an ongoing basis. All revenue collected from fees established pursuant to this subsection (e) shall be used exclusively for administration of the industrial hemp program and regulation of industrial hemp.

43-26-104. Applicability of chapter -- Construction.

This chapter does not affect any rights or duties that exist or mature under title 44, chapter 18. This chapter shall be broadly construed to effectuate its purposes.

3. Tennessee Law explicitly prohibits counties from regulating agricultural activities in 5-1-118:

5-1-118. County powers shared with municipalities.

(a) Counties, by resolution of their respective legislative bodies, in addition to other powers authorized by general law or private act, may exercise the following powers granted to all or certain municipalities by the following code sections:

- (1) Section 6-2-201(3)-(8), (10)-(13), (18), (19), (26) and (28);
- (2) Section 6-54-103;
- (3) Section 6-54-110;
- (4) Section 6-54-307; and
- (5) Sections 6-54-601 -- 6-54-603.

(b) Nothing in this part shall be construed as granting counties the power to prohibit or regulate normal agricultural activities.

- (c) (1) In addition to those powers granted to counties pursuant to subsection (a), any county may, by adoption of a resolution by a two-thirds (2/3) vote of their respective legislative bodies, exercise those powers granted to all or certain municipalities by § 6-2-201(22) and (23), except as provided in subsection (b) and subdivisions (c)(2) and (3). Any such regulations shall be enacted by a resolution passed by a two-thirds (2/3) vote of the county legislative body. The powers granted to counties in this subdivision (c)(1) apply only within the unincorporated areas. Nothing in this subdivision (c)(1) may be construed to allow any county to prohibit or in any way impede any municipality in exercising any power or authority the municipality may lawfully exercise. If, prior to April 17, 2002, a county has adopted a resolution by a two-thirds (2/3) vote, pursuant to previous acts enacted by the general assembly, to exercise the powers granted in accordance with this subdivision (c)(1), no further action by the legislative body of such county is necessary to continue exercising such powers.
- (2) The powers granted by § 6-2-201(22) and (23) shall not apply to those activities, businesses, or uses of property and business occupations and practices that are subject to regulation pursuant to title 57, chapters 5 and 6; title 59, chapter 8; title 60, chapter 1; title 68, chapters 201-221; or title 69, chapters 3, 7, 10 and 11.
- (3) All court decisions and statutory laws relating to variances and nonconforming uses applicable to zoning ordinances and land use controls shall apply to the enforcement and exercise of those powers granted pursuant to subdivision (c)(1).

See Supporting Documents:

- Attorney General Opinion No. 94-103 (Page 12)
Inability to Regulate Tree-Harvesting Through County Zoning Resolutions
- Attorney General Opinion No. 99-071 (Page 14)
County Zoning Authority to Regulate CAFOs
- Attorney General Opinion No. 08-145 (Page 17)
County Powers to Regulate a Sawmill on Land Zoned for Agriculture
- Excerpt from: *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. 2013). (Page 26)
- Attorney General Opinion No. 18-30 (Page 27)
County Regulation of Concentrated Animal Feeding Operations

4. Tennessee Law explicitly prohibits counties from regulating agricultural buildings in 5-1-122:

5-1-122. Exclusion of agricultural buildings.

The powers granted to counties by this part do not include the regulation of buildings used primarily for agricultural purposes; it being the intent of the general assembly that the powers granted to counties by this part should not be used to inhibit normal agricultural activities.

See Supporting Documents:

- Excerpt from: *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. 2013). (Page 26)

5. Tennessee Law explicitly prohibits counties from requiring building permits for buildings used for agricultural purposes in 13-7-114:

13-7-114. Construction -- Building permits -- Agricultural use of land -- Land located in special flood hazard area.

(a) This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise. Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.

(b) For purposes of this section, buildings used as residences by farmers and farm workers are "incidental to the agricultural enterprise".

(c) (1) Notwithstanding subsection (a) or any other law to the contrary, a county participating in the national flood insurance program shall regulate buildings and development on land located in a special flood hazard area identified on the flood insurance rate map adopted by the county for purposes of participating in the national flood insurance program, but only to the minimum extent necessary to comply with the national flood insurance program.

(2) Subdivision (c)(1) shall apply only to the regulation of buildings and development on land located within the one hundred-year floodplain.

See Supporting Documents:

- Attorney General Opinion No. 13-80 (Page 35)
County Zoning of Residential Structures on Land Used for Agricultural Purposes
- Attorney General Opinion No. 14-79 (Page 39)
County Zoning of Buildings Used as Residences by Farmers and Farm Workers
- Excerpt from: *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. 2013). (Page 26)

6. Municipalities are prohibited from regulating agricultural land in Tennessee Law in 6-54-126.

6-54-126. Cities and Towns – Municipal Powers Generally – Zoning limitations on agricultural land.

For any land that is used for agricultural purposes as of May 10, 1998, a municipality may not use its zoning power to interfere in any way with the use of such land for agricultural purposes as long as the land is used for agricultural purposes. *

*The Attorney General opined that this law is only concerned with a municipality's power to regulate the use of land and not with that municipality's ability to require building permits.

See Supporting Documents:

- Attorney General Opinion No. 10-12 (Page 43)
Ability of Municipalities to Charge a Fee for Building Permits Agricultural Land
- Excerpt from: *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. 2013). (Page 26)

7. Farm Property for property tax purposes is defined in Tennessee Law in 67-5-501 (3):

67-5-501 (3). Taxes and Licenses—Property Taxes--Definitions--Farm Property

(3) "Farm property" includes all real property that is used, or held for use, in agriculture as defined in §§ 1-3-105 and 43-1-113*, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs, including golf course playing hole improvements;

*Legislation passed in 2017 explicitly references the definition of agriculture. The Attorney General opined on April 17, 2017 that the definition of agriculture in 1-3-105 and 43-1-113 already applied.

See Supporting Documents:

- Public Chapter No. 351 of the 110th General Assembly (Page 46)
Farm Property Agriculture Definition
- Attorney General Opinion: No. 17-30 (Page 48)
Definition of "Agriculture" for Property Taxation

8. Multiple-Use Subclassification cannot be used on agricultural property if the operation is within the definition of “agriculture.”

**RULES OF TENNESSEE STATE BOARD OF EQUALIZATION
CHAPTER 0600-12
MULTIPLE-USE SUBCLASSIFICATION**

0600-12-.04 DETERMINING WHEN MULTIPLE-USE SUBCLASSIFICATION IS APPROPRIATE.

(3) Below are examples of when multiple-use subclassification is appropriate:

(e) Properties used in the commercial production of farm products and nursery stock but which also have uses not within the definition of “agriculture” otherwise provided by law. As used in the rules, “commercial production of farm products and nursery stock” means the production is consistent with a farm operating for profit for federal income tax purposes. Examples requiring a split subclassification of agricultural property would include portions of a farm that generate regular annual income (as opposed to sporadic and de minimis income) from regular rental of space set aside for parking or camping, or portions of a horse farm devoted to uses such as a shop engaged in the retail sale of tack. Boarding of animals integral to breeding, raising and development of horses and other livestock at the property is not considered a commercial use for purposes of these rules;

(f) Portions of farms with commercial activities unrelated to production of farm products or livestock, except commercial activities constituting “agriculture” as defined by law. Improvements and structures on, and land that is part of, a farm engaged in the commercial production of farm products or nursery stock that are used for “agriculture” may be classified as farm property, provided the land improvement or structure in question is used for one or more of the following: (1) recreational or educational activities; (2) retail sales of products produced on the farm, but only if a majority of the products sold are produced on the farm; or (3) entertainment activities conducted in conjunction with, but secondary to, the commercial production of farm products or nursery stock. Commercial subclassification of those portions of a farm used for events unrelated to agriculture shall be limited to the actual land and structures dedicated to the unrelated uses.

See Supporting Documents:

- Rules of Tennessee State Board of Equalization (Page 53)
Chapter 0600-12 Multiple-Use Subclassification

*Tennessee Law and Resources Pertaining to the
Definition of Agriculture*

Supporting Documents

Tenn. Op. Atty. Gen. No. 94-103 (Tenn.A.G.), 1994 WL 509448

Office of the Attorney General

State of Tennessee
Opinion No. 94-103
September 9, 1994

***1 Inability to Regulate Tree-Harvesting Through County Zoning Resolutions**

Representative David L. Coffey
115 War Memorial Bldg.
Nashville, TN 37243-0133

QUESTION

Does Anderson County have the authority to regulate the clear-cut method of harvesting trees by adding such regulations as amendments to its zoning resolution?

OPINION

Because **forestry** is an “agricultural use” under [Tenn. Code Ann. § 13-7-114](#), Anderson County cannot use its zoning authority to regulate the clear-cut method of harvesting trees.

ANALYSIS

The enactment of zoning laws is considered part of the state's police power and is delegated to cities and counties by statute. [Holdredge v. City of Cleveland](#), 402 S.W.2d 709, 712, 218 Tenn. 239 (Tenn. 1966). [Tenn. Code Ann. § 13-7-101](#) grants all counties the power to regulate the location, height and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, agriculture, **forestry**, soil conservation, water supply conservation or other purposes.

This authority may only be used in furtherance of certain specified purposes as listed in [Tenn. Code Ann. § 13-7-103](#). These purposes include promoting the health, safety, morals, convenience, order, prosperity and welfare of the people living in the state. *Id.*

These statutes have been construed to vest the county commissions with broad powers to enact and to amend zoning regulations governing the use of land. [Fallin v. Knox County Bd. of Comm'rs](#), 656 S.W.2d 338, 342 (Tenn. 1983). A county is generally authorized to protect its natural resources in order to assure such things as controlled levels of development and clean air and water within its boundaries. It is therefore reasonable to conclude that a county may use zoning ordinances to protect woodlands as a natural resource.

However, a county's zoning power is limited by its statutory grant of authority. [Tenn. Code Ann. § 13-7-114](#) precludes the regulation of agricultural uses of land through zoning ordinances. Specifically, the statute reads, “Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.” Consequently, once

a county has zoned an area for agricultural use, it may not use its zoning authority to regulate the type or method of agriculture in which the landowner participates. The issue therefore becomes whether tree-harvesting is an agricultural use and subsequently excluded from county regulation.

“Agriculture” is not defined in the zoning laws of the Tennessee Code. However, the term “agricultural land” is defined in the greenbelt laws for property tax purposes. This definition is not directly applicable here, but it should be noted that it includes “woodlands” as agricultural land. [Tenn. Code Ann. § 67-5-1004](#). In addition, based upon the review of several other authorities, it is likely that a court would interpret the term “agriculture” to include **forestry**. Looking first to the dictionary, the definition of agriculture is very expansive and concludes with the following statement: “In this broad use [agriculture] includes farming, horticulture, **forestry**, dairying, sugar making, etc.” Webster's New International Dictionary 52 (2d ed. 1953).

*2 Agriculture is also given a broad interpretation in legal contexts. Corpus Juris Secundum states, “In modern usage, agriculture is a wide and comprehensive term, and statutes using it must be given an equally comprehensive meaning.” 3 C.J.S. Agriculture § 2 (1973). Case law likewise supports the conclusion that agriculture encompasses **forestry**. [Sancho v. Bowie](#), 93 F.2d 323, 324 (1st Cir.), cert. denied, 58 S.Ct. 1038 (1937)(stating agriculture would include **forestry**); [Forsythe v. Village of Cooksville](#), 190 N.E. 421, 422 (Ill. 1934)(stating agriculture would include **forestry**). See also [Nielsen v. Erickson](#), 277 N.W.2d 82, 85 (S.D. 1978) (quoting 3 C.J.S. Agriculture § 2).

Environmental concerns may appropriately be considered when enacting zoning regulations. [Tenn. Code Ann. § 13-7-103](#). See [Crow-New Jersey Ltd. v. Clinton](#), 718 F.Supp. 378, 383 (D.N.J. 1989), and [Southern Burlington Co. v. Mt. Laurel](#), 336 A.2d 713, 731 (N.J. 1975). However, because the enabling statute specifically precludes a county from regulating how agricultural property is used, it is the opinion of this office that tree-harvesting cannot be regulated through Anderson County's zoning authority.

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Tenn. Op. Atty. Gen. No. 94-103 (Tenn.A.G.), 1994 WL 509448

Tenn. Op. Atty. Gen. No. 99-071 (Tenn.A.G.), 1999 WL 238975

Office of the Attorney General

State of Tennessee

Opinion No.

99

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071

March 22, 1999

County Zoning Authority to Regulate Concentrated Animal Feeding Operations

*1 Honorable Gary Odom
State Representative
55th Legislative District
Suite 22, Legislative Plaza
Nashville, TN 37243-0155

QUESTION

Does [Tenn.Code Ann. § 13-7-114](#) prohibit a county from using its zoning authority to regulate a “concentrated animal feeding operation” because a “concentrated animal feeding operation” is an “agricultural use of land?”

OPINION

Given the broad definition accorded to the term “agricultural use” in other jurisdictions deciding that operations similar to concentrated animal feeding operations are agricultural uses statutorily removed from local zoning authority, it is likely that a Tennessee court would find that concentrated animal feeding operations are removed from local zoning authority by [Tenn.Code Ann. § 13-7-114](#).

ANALYSIS

In Tennessee, a county is prohibited from using its zoning authority to regulate buildings “used for agricultural purposes” as well as “the agricultural uses of land.” [Tenn.Code Ann. § 13-7-114](#) (enacted 1935). Therefore, whether a county may use its zoning authority to regulate a “concentrated animal feeding operation” (CAFO) depends on whether a CAFO is an “agricultural use of land.” It is necessary to define the relevant terms in order to answer both questions.

The legal definition of a CAFO does not answer whether a CAFO is an “agricultural use” under zoning law. By statute, Tennessee currently accepts Environmental Protection Agency's (EPA's) definition of the term “CAFO.” [Tenn.Code Ann. § 69-3-103\(34\)](#). EPA defines a CAFO to be an animal feeding operation that confines more than a specific number of various animals depending upon certain conditions not relevant to this discussion. 40 C.F.R. pt. 122 app. B (1999). Tennessee requires CAFOs to be permitted only by the Department of Environment and Conservation. [Tenn.Code Ann. § 69-3-108\(b\)\(7\)](#) (enacted 1998).

In case law, CAFOs generally appear to be agricultural in nature. *See, e.g., Concerned Area Residents for the Environment v. Southview Farm*, 34 F.3d 114 (2d Cir.1994) (dairy farm a CAFO); *Carr v. Alta Verde Industries, Inc.*, 931 F.2d 1055 (5th Cir.1991) (cattle feedlot a CAFO). Nevertheless, a CAFO may be fairly broadly defined to include many animal

confinement operations. See *Weber v. Trinity Meadows Raceway, Inc.*, No. 4:92-CV-267-Y, 1996 WL 477049 at *10 (N.D.Tex. June 20, 1996) (horsebarn at a racetrack a CAFO). Because neither the statutes and regulations nor the cases answer whether a CAFO is an “agricultural use,” it is necessary to ask next whether the term “agricultural use” is defined to include CAFOs.

The term “agricultural use” is not defined in the Tennessee Code. We have previously noted, however, that the term “agriculture” has traditionally been broadly defined elsewhere. Op.Tenn. Att’y Gen. No. 94-103 (September 9, 1994) (opining that [Tenn.Code Ann. § 13-7-114](#) prevents a county from using its zoning authority to regulate the clear-cutting of trees because forestry is “agriculture.”). The broad definition of the term “agriculture” has generally been extended to the term “agricultural use” and like terms in zoning cases involving statutory interpretation. See, e.g., *Steege v. Board of Appeals of Stow*, 527 N.E.2d 1176 (Mass.App.Ct.1988) (boarding stable and riding academy incidentally selling an average of ten horses a year is “agricultural use” protected by statute from local zoning regulation); *Town of Southampton v. Equus Associates, Ltd.*, 615 N.Y.S.2d 714 (N.Y.App.Div.1994) (raising, training and selling polo ponies is “agricultural production” under the relevant statute).

*2 While it is clear that the terms “CAFO” and “agricultural use” are both defined broadly, we discovered no cases in Tennessee or elsewhere deciding whether a CAFO is an “agricultural use” exempted by statute from local zoning authority. Nevertheless, several cases from other jurisdictions decided that CAFO-like enterprises were “agricultural uses” protected by statutes exempting such uses from local zoning authority. In *Masterson v. The Highlands, L.L.C.*, 705 N.E.2d 128, 131-133 (Ill.App.Ct.1998), the court held that a zoning statute that prohibited a county from regulating land used for “agricultural purposes” foreclosed a county from using its zoning authority to regulate a large scale hog feeding operation. The *Masterson* court noted that a separate 1996 statute gave regulatory power over such operations to the Illinois Department of Agriculture and the Environmental Protection Agency, thus evincing the legislature's continuing intent to withhold from counties regulatory power over such operations. *Id.* at 132-133. In *County of Lake v. Cushman*, 353 N.E.2d 399, 401-405 (Ill.App.Ct.1976), the court held that a 40# x 40# poultry hatchery hatching 5000 eggs into young chicks constituted an “agricultural use.” In *Premium Standard Farms v. Lincoln Township of Putnam County*, 946 S.W.2d 234, 239 (Mo.1997), the court held that 96 hog confinement facilities attached to 12 sewage lagoons were “farm structures” protected by a statute prohibiting local governments from using their zoning powers to regulate such structures. In *Fields v. Anderson Cattle Co.*, 396 P.2d 276, 281 (Kan.1964), the court held that animal feed lots holding up to 15,000 head of cattle and 12,000 head of sheep were for “agricultural purposes.” In *Carp v. Board of County Commissioners of the County of Sedgwick*, 373 P.2d 153, 154-155 (Kan.1962), the court held that a hog feeding operation handling up to 2500 hogs on 160 acres of land constituted an “agricultural purpose.” Finally, in *Kuehl v. Cass County*, 555 N.W.2d 686, 688-689 (Iowa 1996), the court held that two proposed confinement buildings intended to feed 2000 hogs apiece on a five acre site constituted an “agricultural use.” Notably, the *Kuehl* court overruled its previous decision in *Farmegg Products, Inc. v. Humboldt County*, 190 N.W.2d 454 (Iowa 1971). The court in *Farmegg* had concluded, over a strong dissent, that a proposed operation of two buildings confining about 40,000 chicks apiece was not an “agricultural purpose” because it was to be “organized and carried on as an independent productive activity and not as part of an agricultural function.” *Farmegg*, 190 N.W.2d at 459. In *Kuehl*, the court noted that *Farmegg* had drawn much criticism and reversed *Farmegg's* “view that an exempt agricultural use must be in conjunction with a traditional agricultural use otherwise in existence.” With *Farmegg's* reversal, we discovered no remaining cases holding that a CAFO-like operation was not an “agricultural use” when a statute prohibited a local government from using its zoning authority to regulate an “agricultural use.”

*3 The clear weight of authority establishes that large scale feed operations like CAFOs are regarded as “agricultural uses” by the courts when a statute similar to [Tenn.Code Ann. § 13-7-114](#) prohibits a county from regulating such uses under its zoning authority. Therefore, it is likely that a Tennessee court would interpret [Tenn.Code Ann. § 13-7-114](#) to prohibit a county from using its zoning authority to regulate CAFOs, the more so because the subsequently enacted [Tenn.Code Ann. § 69-3-108\(7\)](#) gives regulatory authority over CAFOs only to the Department of Environment and Conservation, thereby evincing the legislature's continuing intent to withhold such authority from a county.

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Tenn. Op. Atty. Gen. No. 99-071 (Tenn.A.G.), 1999 WL 238975

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September 10, 2008

Opinion No. 08-145

County Powers to Regulate a Sawmill on Land Zoned for Agriculture

QUESTIONS

1. Whether a County legislative body has the power or authority under State law to regulate, through the adoption of one or more resolutions, the operation of a lumber sawmill located on property zoned A-1 Agricultural in the following areas:

- (a) Hours of operation;
- (b) Noise levels;
- (c) Noxious odors, fumes, and smoke emitted from the property;
- (d) Burning of wood;
- (e) Size and number of the physical building(s) used as a sawmill on the property;
- (f) Minimum number of acres on which a sawmill may be located;
- (g) The setback requirements in locating a sawmill operation and related structures on a given tract or parcel of real property;
- (h) Minimum number of feet a sawmill operation must be located from residential structures;
- (i) Minimum percentage of the sawmill's total operations that must be derived from trees harvested from real property owned by the owner(s) of the property on which the sawmill is located; and
- (j) Volume of business that may be conducted by a sawmill from such property.

2. Whether the operation of a sawmill in which trees are harvested from land other than where the sawmill is located, delivered to the sawmill, cut into boards, and sold commercially is considered:

- a. An "agricultural use" or for an "agricultural purpose" as such terms are used in Tenn. Code Ann. § 13-7-114 and/or Tenn. Code Ann. § 6-54-126;
- b. "Incidental to the [an] agricultural enterprise" as such terms are used in Tenn. Code Ann. § 13-7-114;
- c. An "agricultural enterprise" as such terms are used in Tenn. Code Ann. § 13-7-114 and/or Tenn. Code Ann. § 4-31-102(2); or
- d. A "farm operation" as such terms are used in Tenn. Code Ann. § 43-26-102.

3. If the answer to any of the items listed in paragraph 2 above is yes, what impact, if any, will such statutes have on a County legislative body's power and authority to regulate certain activities or conditions as listed in paragraph 1 above?

OPINIONS

1. Based on the information provided in the request, a Tennessee court would likely determine that a county, under its general police powers, may regulate the activities listed in subparts (a), (b), (d), (i), and (j), which include hours of operation, noise levels, the burning of wood, percentage of the sawmill's total operations that must be derived from trees harvested from real property owned by the owner(s) of the property on which the sawmill is located, and the volume of business that may be conducted by a sawmill from such property. While the state generally retains authority to regulate environmental concerns involving air quality, a county may regulate the activities listed in subpart (c), relating to emission of noxious odors, fumes, and smoke from the property, provided the county regulations are no less stringent than the state standards and the county has been granted a certificate of exemption from the Pollution Control Board of the Tennessee Department of Environment and Conservation.

A county may regulate under its zoning authority the matters listed in subparts (e), (f), (g), and (h), concerning the size and number of the physical building(s), minimum number of acres on which a sawmill may be located, setback requirements, and minimum number of feet a sawmill operation must be located from residential structures.

2. No. Given the definition accorded to the terms "agricultural use" and "agricultural purpose" in Tennessee law, and considering the conclusions of other jurisdictions that have already addressed this specific issue, it is likely that a Tennessee court would find that the operation of a sawmill in which trees are harvested from land other than where the mill is located is not an agricultural use.

3. Because the answer to all items listed in paragraph 2 is "no," question 3 does not require an answer.

ANALYSIS

(1) While counties lack inherent power to control the use of private property within their boundaries, they have been delegated certain express authority to enact zoning ordinances and general police power regulations by the state legislature. *421 Corp. v. Metro Gov. of Nashville*, 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000). The two specific delegations of authority relevant to the questions posed in this Opinion request are County zoning authority granted in Tenn. Code Ann. § 13-7-101 et seq., and the general regulatory power granted to counties pursuant to Tenn. Code Ann. § 5-1-118.

Pursuant to a County's delegated zoning authority,

[t]he county legislative body of any county is empowered, in accordance with the conditions and the procedure specified in this part, to regulate, in the portions of such county which lie outside of municipal corporations, the location, height and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes.

Tenn. Code Ann. § 13-7-101(a)(1).

Additionally, Tenn. Code Ann. § 5-1-118(c) states that “any county may¹ . . . exercise those powers granted to all or certain municipalities by § 6-2-201(22) and (23),” thereby effectively granting counties the authority to:

(22) Define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, businesses, occupations, callings, trades, uses of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers;

(23) Prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained.

Tenn. Code Ann. § 6-2-201(22) and (23).

The Tennessee Supreme Court has noted that the local government's authority to exercise the police power of the sovereign is necessarily broad so as to meet the needs of our “complex civilization.” *City of Norris v. Bradford*, 321 S.W.2d 543, 546 (Tenn. 1958). Likewise, the court has also stated that county legislative bodies are granted “broad powers to enact and amend zoning regulations governing the use of land.” *Fallin v. Knox County*, 656 S.W.2d 338, 342 (Tenn. 1983). This broad authority notwithstanding, there are also several significant limitations to local government regulatory power, the most basic of which is that a local government may not exceed the power expressly granted to it in the delegation statutes. *421 Corp*, 36 S.W.2d at 475. Thus, while granted “considerable discretion” in the exercise of their delegated regulatory authority, local

¹Before a county may exercise these regulatory powers it must first go through a local adoption process whereby the regulatory powers are formally adopted by a resolution passed by a two-thirds majority of the county legislative body. Tenn. Code Ann. § 5-1-118(c)(1). Any subsequent exercise of these powers must also be approved by a two-thirds vote. *Id.*

government zoning and police power regulations may not conflict with state laws. *Id.* Additionally, the exercise of delegated regulatory authority is also subject to limitations imposed by preemptive federal legislation and state and federal constitutional provisions. *See Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997).

This Opinion request poses ten separate suggested regulations of a sawmill operation and inquires whether a county legislative body has the “power or authority” to impose such regulations. As counties have been delegated broad zoning and police powers, the answer as to each of the ten proposed regulations depends on whether any zoning or general police power authority limitations are applicable. The applicability of county regulatory power and authority limitations is necessarily heavily dependant upon the specific facts of each individual case. Based on the information provided in the Opinion request, it is the opinion of this Office that the regulation of: (a) hours of operation, (b) noise levels, and (d) burning of wood, are all legitimate exercises of a county’s general police power. Such restrictions relate to the legitimate purpose of ensuring the safety, health, morals, comfort and welfare of a county’s citizens. This conclusion presumes that there are no complications pertaining to the scope or jurisdiction of the county’s delegated authority.² Also, as addressed below in the analysis of Question 2, this conclusion also assumes that the operation of the sawmill does not qualify for the “agricultural use” exemption from county zoning and regulatory authority.

In addition, the suggested regulations limiting the (i) minimum percentage of the sawmill’s total operations that must be derived from trees harvested from real property owned by the owner(s) of the property on which the sawmill is located, and regulating the (j) volume of business that may be conducted by a sawmill from such property likely fall within the general police power authority delegated to counties. These restrictions impose a limitation on the size of a sawmill’s operations commensurate with the property on which the sawmill is located and an absolute operation size restriction, respectively. Both embody reasonable efforts to limit potential nuisances associated with the operation of a sawmill while balancing these concerns with a landowner’s right to process the produce of his or her own land. The Tennessee Supreme Court has stated that when no fundamental right is involved,³ a land use restriction need only meet the “rational basis” test to survive a constitutional due process challenge;⁴ thus a restriction that is “reasonably related to a legitimate legislative purpose” is permissible. *Riggs*, 921 S.W.2d at 51. In this instance, the two regulations

²As discussed above, a county may not exceed the scope of authority expressly granted to it by the state under the delegation statutes. Also, county regulatory authority is limited to its effective jurisdiction. *See* Tenn. Code Ann. § 13-7-101(a)(1) (county zoning authority is limited to unincorporated areas of the county), and Tenn. Code Ann. § 5-1-118(c)(1) (county general police powers limited to unincorporated areas and cannot interfere with local municipality authority).

³The right to operate a sawmill is not a “fundamental right” under state or federal law.

⁴The Tennessee Supreme Court has determined that the “law of the land” provision of article I, section 8 of the Tennessee Constitution is synonymous with the due process clause of the U.S. Constitution. *Newton v. Cox*, 878 S.W.2d 105, 110 (Tenn. 1994). Accordingly, the “rational basis” due process standard for non-fundamental rights is the same standard applicable for a Tennessee constitutional challenge.

targeting sawmills would likely meet the burden of being “rationally related” to the legitimate purpose of ensuring the health and safety of the public by limiting or prohibiting large-scale sawmills of a commercial nature in areas zoned for agricultural use.

County regulation of (c) “noxious odors, fumes, and smoke emitted from a property” is permissible if it conforms to certain provisions of the Tennessee Air Quality Act. Tenn Code Ann. § 5-1-118(c)(2) provides that the grant of county police power “shall not apply to those activities, businesses, or uses of property and business occupations and practices that are subject to regulation pursuant to . . . title 68, chapters 201-221.” Tenn. Code Ann. Title 68, chapters 202 to 221 constitute the “Tennessee Air Quality Act,” which expressly reserves regulation of Tennessee air quality to the state Department of Environment and Conservation with limited, statutorily enumerated exceptions. The Tennessee Air Quality Act does provide for municipal ordinances or county regulations addressing air quality standards in two specific circumstances. First, any city or county with a population of over 600,000 may establish its own air quality ordinances in addition to the state regulations as long as the local regulations are not less stringent than the state standards.⁵ See Tenn. Code Ann. § 68-201-202(a). Second, any county or municipality, regardless of population, may enact its own air quality regulations to serve in place of the state regulations as long as: 1) such regulations are not less stringent than the state standards, and 2) the local governing body applies for and receives a “certificate of exemption” from the Pollution Control Board of the Tennessee Department of Environment and Conservation. Tenn. Code Ann. § 68-201-115. The requisite certificate of exemption will be issued only if the Pollution Control Board determines that the proposed county regulations are not less stringent than state regulations and the county will adequately enforce its air quality regulations. Tenn. Code Ann. § 68-201-115(b)(3). Moreover, the Department of Environment and Conservation will “frequently” monitor the county and determine if the county is in fact complying with the terms of the certificate of exemption. Noncompliance may lead to suspension of the certificate of exemption. Tenn. Code Ann. § 68-201-115(b)(7). In short, the police power authority of a county with a population under 600,000 to regulate air quality is limited in that its regulation and enforcement are subject to state approval and oversight, and its regulations may never apply standards less stringent than the established state standards. However, none of the requirements of the Tennessee Air Quality Act apply to emissions from the burning of wood waste “solely for the disposition of such wood waste.” Tenn. Code Ann. § 68-201-115(c)(1).

The four proposed land use restrictions itemized in this opinion request as (e), (f), (g), and (h), that address building size and number, minimum acre requirements, setback requirements, and distance from residential structures, all appear to be legitimate land use restrictions permissible under a county’s zoning power and authority, assuming there are no conflicts involving preexisting

⁵A county or municipality with a population of over 600,000 that elects to establish its own local air quality regulations pursuant to Tenn. Code Ann. § 68-201-202(a) must also comply with the certificate of exemption requirements of Tenn. Code Ann. § 68-201-115 before its local regulations will serve in lieu of the state regulations.

use.⁶ Additionally, while this Opinion addresses whether a county has the authority under state law to impose the ten proposed areas of regulation, it should be noted that the designation of property as “A-1 Agricultural” as stated in the request is a purely county-level designation. As such, one would be wise to also consult existing county zoning regulations before imposing new or amended land use restrictions. For example, what may constitute an acceptable use of land zoned by a county as “A-1 Agricultural” depends in large part on what that county’s zoning regulations define as acceptable use. While our research has not discovered any Tennessee case law pertaining directly to the operation of a sawmill on land zoned A-1 Agricultural, we note that many Tennessee counties expressly allow a variety of patently non-agricultural uses on land zoned for agricultural use.⁷ It is also worthy of note that outside of Tennessee, for example, Frederick County, Maryland,⁸ Eau Clair County, Wisconsin,⁹ and St. Charles County, Missouri,¹⁰ all have county zoning regulations that expressly allow, at least on a conditional basis, the operation of sawmills on land zoned for agricultural use. Accordingly, the necessity of consulting local zoning ordinances is readily apparent.

(2) The request next inquires whether a sawmill that obtains trees harvested off-site would qualify as an operation termed “agricultural use,” “agricultural purpose,” “[a]gricultural enterprise,” or a “farm operation” as those terms are used in four specific sections of the Tennessee Code.¹¹ The implied question is whether such a sawmill operation qualifies for the agricultural use limitations on a county’s zoning and police power authority, thereby exempting such use from

⁶Tennessee statutes and case law clearly limit county authority to prohibit preexisting land uses. *See* Tenn. Code Ann. § 13-7-208(b)(1) and *Chadwell v. Knox County*, 980 S.W.2d 378, 382 (Tenn. Ct. App. 1998) (allowing preexisting land uses to continue in the event of a zoning change), and Tenn. Code Ann. § 5-1-118(c)(3) (incorporating the zoning statute’s preexisting use “grandfather clause” restriction to county police power authority).

⁷*Rutherford County v. Murray*, 2004 WL 1870066, at *1 (Tenn. Ct. App. 2004) (Rutherford County allowed auto repair shops); *Parker v. Roane County*, 2000 WL 134911, at *1 (Tenn. Ct. App. 2000) (Roane County allowed exotic pet displays); and *Wilson County Youth Emergency Shelter v. Wilson County*, 13 S.W.3d 338, 340 (Tenn. Ct. App. 1999) (Wilson County allowed a variety of activities on land zoned for agricultural use, ranging from hospitals and golf courses to bicycle service and repair businesses).

⁸*Singley v. County Com’rs of Frederick*, _A.2d_, 2008 WL 565315 (Md. App. 2008).

⁹*Horlacher v. Eau Claire County Bd. of Land Use*, 650 N.W.2d 560 (Wis. Ct. App. 2002).

¹⁰*State ex rel. St. Charles County v. Samuelson*, 730 S.W.2d 607 (Mo. Ct. App. 1987).

¹¹The term “agricultural purposes” in Tenn. Code Ann. § 6-54-126, as referenced in subpart (a) of the question, applies only to municipal government zoning authority, not county zoning authority, and is therefore not relevant to the issue raised in this Opinion request. The term “agricultural enterprise” in Tenn. Code Ann. § 4-31-102(2), as referenced in subpart (c) of the question, applies only to the “Tennessee Local Development Authority Act,” which provides local governments with development assistance and loans, and is therefore not directly relevant to the issue raised in this Opinion request. The term “farm operation” in Tenn. Code Ann. § 43-31-102(2), as referenced in subpart (d) of the question, applies only to the “Tennessee Right to Farm Act,” a very narrowly tailored statutory provision guiding Tennessee tort law with regard to nuisance claims, and is therefore not relevant to the issue raised in this Opinion request. The agricultural terms found in Tenn. Code Ann. § 13-7-114 are applicable to the issue raised in this Opinion request and are addressed in detail below.

county regulations. This latter question is addressed in detail below.

As addressed above, counties have broad zoning authority granted pursuant to Tenn. Code Ann. § 13-7-101 et seq., and equally broad general regulatory power granted pursuant to Tenn. Code Ann. § 5-1-118. However, both of these authority-delegating statutory provisions also expressly prohibit the county from restricting agricultural pursuits. County authority to restrict land use through zoning regulations does not extend to “agricultural uses of land” or to the placement of restrictions on buildings “incidental to an agricultural enterprise.” Tenn. Code Ann. § 13-7-114. Thus, a county may not restrict through a zoning ordinance any land use deemed “agricultural” nor place restrictions on buildings deemed “incidental” to agriculture. Likewise, a county’s delegated authority to exercise general police powers does not extend “the power to prohibit or regulate normal agricultural activities,” Tenn. Code Ann. § 5-1-118(b), nor the power to regulate “buildings used primarily for agricultural purposes” or “to inhibit normal agricultural activities.” Tenn. Code Ann. § 5-1-122. Unfortunately, neither the zoning nor general police power agricultural exemption provisions define what constitutes agricultural use or purpose.

The Tennessee legislature has, in other contexts, provided definitions for what it considers agricultural pursuits. For example, for purposes of qualifying for the agricultural development loan program, an “agricultural enterprise” is defined as property “necessary or suitable for use in farming, ranching, the production of agricultural commodities, including products of agriculture and silviculture, or necessary and suitable for treating, processing, storing or transporting raw agricultural commodities.” Tenn. Code Ann. § 4-31-102. In the context of fuel tax, “agricultural purposes” includes “plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse; or operating farm irrigation systems.” Tenn. Code Ann. § 67-3-103(1). For purposes of sales and use tax the definition is the same but adds “or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees.” Tenn. Code Ann. § 67-6-102(1). Thus, while the Tennessee legislature has in certain situations adopted an expansive view of the activities considered “agricultural purposes,” including silviculture and the cutting and harvesting of trees, it is the opinion of this Office that a sawmill that imports trees harvested off-site is not “processing” agricultural commodities, but rather manufacturing lumber for commercial sale.¹²

As further evidence to support the conclusion that the operation of a commercial sawmill does not constitute an “agricultural use” or “purpose,” we note that the Tennessee legislature has defined “[a]gricultural work” as “the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations,” Tenn. Code Ann. § 50-5-102(1). While Tennessee labor

¹²This conclusion is limited to the facts presented in the Opinion request, specifically that the sawmill in question obtains trees “harvested from land other than where the sawmill is located.” The conclusion of this Opinion, that land used to operate a sawmill which obtains trees from off-site is not an “agricultural” use or purpose, does not necessarily extend to other fact scenarios, such as a portable sawmill used to process trees grown on the same tract of land.

laws generally restrict the employment of minors in most occupations, the Tennessee Code expressly exempts “agricultural work” from these restrictions, Tenn. Code Ann. § 50-5-107(3). Thus, minors are allowed to be employed in “agricultural work,” but are expressly prohibited from working in “occupations in the operation of any sawmill.” Tenn. Code Ann. § 50-5-106(4). Accordingly, in the labor law context, the legislature clearly has not equated the operation of a sawmill with “agricultural” work.

It is also worthy of note that other jurisdictions that have directly addressed the issue of whether a sawmill that obtains logs from off-site constitutes an “agricultural purpose” for land use restriction purposes have also concluded that such operations are not agricultural use. For example, courts in Massachusetts,¹³ Vermont,¹⁴ and Pennsylvania¹⁵ have all determined that a sawmill operation does not qualify as “agricultural purposes” when logs are brought in from off-site. Ohio has determined that because a sawmill operation is “manufacturing in nature,” land used primarily for operating a sawmill could not qualify for an agricultural use exemption.¹⁶

Based on analogous definitions of agricultural activities provided by the Tennessee legislature in other areas of Tennessee law, as well as the sound reasoning of other jurisdictions that have addressed this same issue, this Office concludes that the operation of a commercial sawmill that obtains timber from off-site is not an agricultural use of land nor an activity that qualifies as an agricultural purpose. We consider the manufacturing of boards through the operation of such a sawmill to be an “independent productive activity” from the harvesting and processing of trees.¹⁷ Accordingly, such a sawmill operation does not qualify for an agricultural exemption from county zoning and police power authority.

¹³*Town of Rowley v. Kovalchuk*, 735 N.E.2d 1269 (Mass. Ct. App. 2000) (stating that the “operation of a sawmill to process lumber which is imported to the site from other locations does not constitute an activity which is incidental to an agricultural use of the site.”).

¹⁴*In re Charlotte Farm & Mills*, 779 A.2d 684, 686 (Vt. 2001) (upholding the lower court’s determination that “agricultural and forestry uses did not authorize the operation of a portable sawmill on the property to process logs and other materials brought in from off-site.”).

¹⁵*Younker v. Berks County*, 83 P. D. & C.4th 258, 264-65 (Pa. Com. Pl. 2007) (holding that a “landowner’s sawmill use in not an agricultural use” because the “agricultural commodity produced must be produced directly from the land” and not, as the case was, imported from off-site).

¹⁶*Columbia Township Trustees v. French*, 1994 WL 117115, at *2 (Ohio App. 1994). *But cf. State v. Spithaler*, 2000 WL 263817, at *3 (Ohio App. 2000) (holding that where a portable sawmill “processed” timber from only on-site, such land use was “agricultural use” and qualified for the land use regulation exemption).

¹⁷ “[W]hether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity” is determinative of whether the activity is “agricultural.” *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 761 (1949).

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SHORE v. MAPLE LANE FARMS, LLC
411 S.W.3d 405 (Tenn. 2013)

Excerpt from: *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. 2013)

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[34] In 1935, the General Assembly delegated to counties the power to enact zoning restrictions governing the use of the land under the jurisdiction of the county.³³ *Tenn.Code Ann. § 13-7-101(a)(1)* explicitly empowers county legislative bodies to enact zoning restrictions governing property “in the portions of such county which lie outside of municipal corporations.” This statute grants county legislative bodies broad zoning power, *Fallin v. Knox Cnty. Bd. of Comm’rs*, 656 S.W.2d 338, 342 (Tenn.1983), and this power has now become firmly established. *Lafferty v. City of Winchester*, 46 S.W.3d at 757-58.

However, even the 1935 legislation limited the power of county governments to regulate agricultural uses of property.³⁴ As it is presently codified in *Tenn.Code Ann. § 13-7-114*, this limitation states that:

This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise. Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.

In 1995, the General Assembly reaffirmed this principle when it granted counties certain powers that had previously been granted to municipalities.³⁵ Thus, *Tenn.Code Ann. § 5-1-122* (2011) provides that:

The powers granted to counties by this part do not include the regulation of buildings used primarily for agricultural purposes; it being the intent of the general assembly that the powers granted to counties by this part should not be used to inhibit normal agricultural activities.

While local governments have considerable discretion to act within the scope of their delegated power, they cannot effectively nullify state law on the same subject by enacting ordinances that ignore applicable state laws, that grant rights that state law denies, or that deny rights that state law grants. *421 Corp. v. Metropolitan Gov’t of Nashville & Davidson Cnty.*, 36 S.W.3d 469, 475 (Tenn.Ct.App.2000). In other words, local governments cannot wield their land use control powers in a way that conflicts with state law. *421 Corp. v. Metropolitan Gov’t of Nashville & Davidson Cnty.*, 36 S.W.3d at 476.

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 6, 2018

Opinion No. 18-30

County Regulation of Concentrated Animal Feeding Operations

Question 1

Do Tennessee's zoning statutes authorize counties to regulate concentrated animal feeding operations?

Opinion 1

No.

Question 2

Does Tenn. Code Ann. § 44-18-104 authorize counties to regulate concentrated animal feeding operations?

Opinion 2

No. Tennessee Code Annotated § 44-18-104 is not an independent source of authority for a county to enact zoning requirements or regulations; it merely states which zoning requirements and regulations are applicable in determining whether a feedlot, dairy farm, or poultry production house can be afforded absolute immunity from a nuisance claim.

Question 3

If counties may regulate concentrated animal feeding operations pursuant to Tenn. Code Ann. § 44-18-104, must the regulations have been in effect as of April 12, 1979?

Opinion 3

As stated in Opinion 2, Tenn. Code Ann. § 44-18-104 is not an independent source of authority for a county to enact zoning requirements or regulations. It merely states which zoning requirements and regulations are applicable in determining whether a feedlot, dairy farm, or poultry production house can be afforded absolute immunity from a nuisance claim. Generally, feedlots, dairy farms, and poultry production houses established prior to April 12, 1979, must comply with zoning requirements and regulations in effect on that date. But later zoning requirements and regulations can apply when the feedlot, dairy farm, or poultry production house has an "established date of operation" subsequent to the effective date of a zoning requirement or regulation.

Question 4

Does Tenn. Code Ann. § 13-7-114 affect the reservation of local regulatory authority found in Tenn. Code Ann. § 44-18-104?

Opinion 4

No. As stated in Opinion 2, Tenn. Code Ann. § 44-18-104 is not an independent source of authority for a county to enact zoning requirements or regulations. Therefore, there is no conflict between Tenn. Code Ann. § 13-7-114 and Tenn. Code Ann. § 44-18-104.

Question 5

What is the effect of Tenn. Code Ann. § 44-18-104(b) and (d), which direct compliance with the section when no zoning requirements or regulations exist?

Opinion 5

Tennessee Code Annotated § 44-18-104(b) and (d) do not direct compliance with the section when no zoning requirements or regulations exist. When no zoning requirements or regulations exist, these provisions convey that a person's compliance with the section is deemed to be established as a matter of law.

ANALYSIS

This opinion addresses local government regulation of “concentrated animal feeding operations.” This term has its origin in the federal Clean Water Act of 1972, 33 U.S.C. §§ 1251-1387. Congress passed this Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve this goal, the Act established a permitting system that prohibits the discharge of pollutants from “point sources” into navigable waters except as authorized by a National Pollution Discharge Elimination System (NPDES) permit. 33 U.S.C. §§ 1311, 1342(a). The Act defines “point source” as including “concentrated animal feeding operations (CAFOs).”¹ 33 U.S.C. § 1362(14). CAFOs with more than a defined number of animals require NPDES permits. 40 C.F.R. § 122.23.

¹ Federal regulations initially define an “animal feeding operation” as follows:

Animal feeding operation (“AFO”) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
- (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

40 C.F.R. § 122.23(b)(1). The regulations then classify the AFOs as large, medium, or small “concentrated animal feeding operations” based on the type and number of animals and the manner in which pollutants of the operations are discharged into the waters of the United States. 40 C.F.R. § 122.23(b)(4),(6) and (9).

Under the Act, NPDES permits may be issued by the Environmental Protection Agency (EPA) or by an EPA-approved state permit program. 33 U.S.C. § 1342; *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992). In conformance with the Act, Tennessee has had an EPA-approved NPDES permitting program since 1977. 51 Fed. Reg. 32834-03 (1986); 46 Fed. Reg. 51644-02 (1981). This program is currently codified as the Tennessee Water Quality Control Act of 1977 at Tenn. Code Ann. §§ 69-3-101 to -148. The Tennessee Department of Environment and Conservation (TDEC) implements the program, *see id.*, and TDEC's Division of Water Resources issues NPDES permits in Tennessee. *See* Tenn. Comp. R. & Regs. 0400-40-05-.02(63).

In sum, CAFOs in Tennessee that require NPDES permits receive those permits through TDEC. *See* Tenn. Code Ann. § 69-3-108(b). *See, e.g., Tennessee Env'tl. Council v. Tennessee Water Quality Control Bd.*, 254 S.W.3d 396, 400 (Tenn. Ct. App. 2007). The questions posed concern the authority that *counties* might have to also regulate CAFOs.

County Control of Private Property Through Zoning Laws and General Powers

Since the power to control private property belongs to the State, *see Ready Mix, USA, LLC v. Jefferson Cnty.*, 380 S.W.3d 52, 64 n. 17 (Tenn. 2012); *Lafferty v. City of Winchester*, 46 S.W.3d 752, 757 (Tenn. Ct. App. 2000), a county lacks the inherent authority to control the use of private property within its boundaries. *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 425 (Tenn. 2013); *Lafferty*, 46 S.W.3d at 757. A county's power to control private property must derive from the State through specific delegation by the General Assembly. *Shore*, 411 S.W.3d at 426; *Edwards v. Allen*, 216 S.W.3d 278, 284 (Tenn. 2007). Accordingly, the validity of any county regulation of CAFOs must be measured against the statutes that authorize local governments to act. *KLN Assocs. v. Metro Dev. & Hous. Agency*, 797 S.W.2d 898, 902 (Tenn. Ct. App. 1990).

1. Since 1935, the General Assembly has empowered counties to adopt zoning ordinances. *Id. See Shore*, 411 S.W.3d at 426. Tennessee's zoning statutes empower counties to regulate the use of real property and the structure and design of buildings within their boundaries. *Lafferty*, 46 S.W.3d at 758. *See* Tenn. Code Ann. §§ 13-7-101 to -119.

The grants of power in these statutes are broad, *Fallin v. Knox Cnty. Bd. of Comm'rs*, 656 S.W.2d 338, 342 (Tenn. 1983), but not without limit. *421 Corp. v. Metropolitan Gov't of Nashville and Davidson Cnty.*, 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000). Ever since county zoning statutes were enacted, counties have not been authorized to regulate "agricultural uses" of property:

This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise. Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.

Tenn. Code Ann. § 13-7-114(a) (emphasis added). *See Shore*, 411 S.W.3d at 426.

These statutory prohibitions on county regulation of buildings and other structures devoted to agricultural uses and on county regulation of agricultural uses of land are reaffirmed in Chapter 1 of Title 5 of the Code, which governs the powers of counties generally. In 1995, the General Assembly granted counties certain powers that previously had been granted to municipalities but made clear that it was not granting counties “the power to prohibit or regulate normal agricultural activities.” *See* 1995 Tenn. Pub. Acts ch. 264 (codified at Tenn. Code Ann. § 5-1-118(b)). Furthermore, the General Assembly reiterated: “The powers granted to counties by this part do not include the regulation of buildings used primarily for agricultural purposes; it being the intent of the general assembly that the powers granted to counties by this part should not be used to inhibit normal agricultural activities.” *See id.* (codified at Tenn. Code Ann. § 5-1-122).

In sum, Tenn. Code Ann. § 13-7-114(a), § 5-1-118(b), and § 5-1-122 prevent counties from regulating buildings and other structures devoted to agricultural uses or purposes and from regulating normal agricultural activities and the agricultural uses of land.

Neither “agriculture” nor its adjectival form, “agricultural,” is defined in any of these provisions, but the definition of “agriculture” provided in Tenn. Code Ann. § 43-1-113(b)(1) applies “unless a different definition is specifically made applicable to the part, chapter, or section in which the term appears,” Tenn. Code Ann. § 43-1-113(a), just as the identical definition of “agriculture” in Tenn. Code Ann. § 1-3-105(a)(2)(A) applies wherever “agriculture” is used in the Code “unless the context otherwise requires.” Tenn. Code Ann. § 1-3-105(a)(2)(A). Thus, by applicable statutory definition “agriculture” means:

- (A) The land, buildings and machinery used in the commercial production of farm products and nursery stock;
- (B) The activity carried on in connection with the commercial production of farm products and nursery stock;
- (C) Recreational and educational activities on land used for the commercial production of farm products and nursery stock; and
- (D) Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock.

Tenn. Code Ann. § 1-3-105(a)(2)(A) and § 43-1-113(b)(1). And because the natural and ordinary meaning of “agricultural” is “of or relating to agriculture,” this definition of “agriculture” applies as well to define “agricultural” as used in Tenn. Code Ann. § 13-7-114(a), § 5-1-118(b), and § 5-1-122. *See* Tenn. Att’y Gen. Op. 17-35 (July 26, 2017).

Based on the applicable definitions of “agriculture” and “agricultural,” CAFOs clearly involve “agricultural” activities and the “agricultural” use of land and structures. Thus, a county is not authorized to regulate CAFOs under its zoning powers or its general powers under Chapter 1 of Title 5 of the Code.

Tennessee Code Annotated §§ 44-18-101 to -104

2. - 4. Tennessee Code Annotated §§ 44-18-101 to -104 is a right-to-farm law² that protects “feedlots, dairy farms, and poultry production houses” from nuisance suits. Margaret Rosso Grossman & Thomas G. Fisher, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 Wis. L. Rev. 95, 118 n. 108 (1983). Right-to-farm laws became prevalent throughout the United States in the late 1970s as a means to curtail the conversion of farmland to nonagricultural uses. *Id.* at 97, 117-118. These laws were designed to stem farmland conversion by insulating farming operations from nuisance liability. *Id.* at 117-118. While the States differ in their approach to providing this insulation, right-to-farm laws generally codify the common-law concept of “coming to a nuisance.” *Id.* at 118.

Tennessee’s law embodies the “coming to a nuisance” doctrine in Tenn. Code Ann. § 44-18-102. Subsections (a) and (b) of this statute shield feedlots, dairy farms, and poultry production houses from nuisance claims when they are in compliance with applicable rules and regulations. Subsections (a) and (b) specify that when conditions or circumstances alleged to constitute a nuisance are subject to the rules and regulations in § 44-18-103 or § 44-18-104, proof of compliance with those rules and regulations is an “absolute defense” to a nuisance action when the plaintiff’s date of ownership of realty is subsequent to the defendant’s “established date of operation”³ or when the plaintiff’s actual or proposed use of realty for residential or commercial purposes is subsequent to the defendant’s established date of operation. Subsection (c) states that the “normal” noises, odors, and appearance of feedlots, dairy farms, and poultry production houses are not grounds for a nuisance action if the plaintiff’s date of ownership is subsequent to the established date of operation.

The statutory provision in question – Tenn. Code Ann. § 44-18-104 – addresses the “applicability of zoning requirements and regulations.”⁴ As explained above, compliance with

² Tennessee has two right-to-farm laws. 4 Am. Law Zoning § 33:5 n. 7 (5th ed). The other is codified at Tenn. Code Ann. §§ 43-26-101 to -104. *Id.* See *Shore*, 411 S.W.3d at 421-424.

³ “‘Established date of operation’ means the date on which a feedlot, dairy farm or poultry production house commenced operating.” Tenn. Code Ann. § 44-18-101(3). The date of a subsequent expansion is “deemed to be a separate and independent ‘established date of operation,’” but does not divest the feedlot, dairy farm, or poultry production house of its previously established date of operation. *Id.*

⁴ Tennessee Code Annotated § 44-18-104 provides:

(a) The applicability of zoning requirements is as follows:

- (1) A zoning requirement shall apply to a feedlot, dairy farm or poultry production house with an established date of operation subsequent to the effective date of the zoning requirements;
- (2) A zoning requirement shall not apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to the effective date of the zoning requirement;
- (3) A zoning requirement that is in effect on April 12, 1979, shall apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to April 12, 1979; and

§ 44-18-103 and § 44-18-104 can afford a feedlot, dairy farm, or poultry production house with absolute immunity from a nuisance action. Accordingly, § 44-18-103 sets forth the TDEC rules that are “applicabl[e]” and § 44-18-104 sets forth the “zoning requirements”⁵ and “regulations”⁶ that are “applicabl[e]” for the purpose of determining whether absolute immunity is to be afforded to a feedlot, dairy farm, or poultry production house under Tenn. Code Ann. § 44-18-102.

The applicable zoning requirements and regulations under § 44-18-104 are generally as follows: Feedlots, dairy farms, and poultry production houses established prior to April 12, 1979, must comply with zoning requirements and regulations in effect on that date; and later zoning requirements and regulations can apply when the established date of operation of the feedlot, dairy farm, or poultry production house is subsequent to the effective date of a zoning requirement or regulation.⁷

In sum, § 44-18-104 merely sets forth *which* zoning requirements and regulations apply when determining whether a feedlot, dairy farm, or poultry production house is to be afforded absolute immunity from a nuisance claim. But § 44-18-104 does not provide *authority* for a county

(4) A zoning requirement adopted by a city shall not apply to a feedlot, dairy farm or poultry production house that becomes located within an incorporated or unincorporated area subject to regulation by that city by virtue of an incorporation or annexation that takes effect after April 12, 1979.

(b) A person shall comply with this section as a matter of law where no zoning requirement exists.

(c) The applicability of regulations shall be as follows:

(1) A regulation shall apply to a feedlot, dairy farm or poultry production house with an established date of operation subsequent to the effective date of such regulation;

(2) A regulation shall not apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to the effective date of the regulation;

(3) A regulation that is in effect on April 12, 1979, shall apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to April 12, 1979; and

(4) A regulation adopted by a city shall not apply to a feedlot, dairy farm or poultry production house that becomes located within an incorporated or unincorporated area subject to regulation by such city by virtue of an incorporation or annexation that takes effect after April 12, 1979.

(d) A person shall comply with this section as a matter of law where no regulation exists.

⁵ “‘Zoning requirement’ means a regulation or ordinance that has been adopted by a city, county, township, school district, or any special-purpose district or authority, that materially affects the operation of a feedlot, dairy farm or poultry production house. . . .” Tenn. Code Ann. § 44-18-101(14).

⁶ “‘Regulations’ means a resolution by the county legislative body or an ordinance by the governing body of any municipality regulating or prohibiting the normal noises of animals or fowls, the noises in the operation of the equipment, the odors normally associated with any feedlot, dairy farm, or poultry production house, or the preclusion of any animals or fowls from within the city or from within a defined area of the county.” Tenn. Code Ann. § 44-18-101(12).

⁷ See note 4 *supra*.

to enact zoning requirements or regulations. *See Howard v. Willocks*, 525 S.W.2d 132, 135 (Tenn. 1975) (counties have no authority other than that expressly given by statute or necessarily implied from the provisions of such statute).

Moreover, the General Assembly specifically provided in its definition of “zoning requirement” that “[n]othing in this chapter shall be deemed to empower any agency described in this definition to make any regulation or ordinance.” Tenn. Code Ann. § 44-18-101(14). Consequently, Tenn. Code Ann. § 13-7-114, which prevents counties from using their zoning power to regulate structures and land used for agricultural purposes, is not in conflict with Tenn. Code Ann. § 44-18-104 because there is no independent source of zoning power bestowed upon any local entity under this right-to-farm law.

5. The last question concerns the effect of subsections (b) and (d) of Tenn. Code Ann. § 44-18-104 when no zoning requirements or regulations exist. Subsection (b) states that “[a] person *shall* comply with this section *as a matter of law* where no zoning requirement exists,” and subsection (d) similarly states that “[a] person *shall* comply with this section *as matter of law* where no regulation exists.” (Emphasis added.)

When the word “shall” appears in a statute, it is normally construed as a mandatory, *Home Builders Ass’n of Middle Tennessee v. Williamson Cnty*, 304 S.W.3d 812, 819 (Tenn. 2010), and means “must.” *Bateman v. Smith*, 183 Tenn. 541, 543, 194 S.W.2d 336, 336 (1946). Such a construction here, however, would lead to an absurd result: a person would be commanded to comply with zoning requirements and regulations that do not exist. A statute is not to be interpreted in a manner that yields an absurd result. *State v. Fleming*, 19 S.W.3d 195, 197 (Tenn. 2000). To avoid an absurd result in this instance, the most reasonable construction is that a person is deemed “as a matter of law” to have complied with the section when no zoning requirements or regulations exist. *See State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995) (“We must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning.”).

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October 22, 2013

Opinion No. 13-80

County Zoning of Residential Structures on Land Used for Agricultural Purposes

QUESTION

Does Tenn. Code Ann. § 13-7-114 exempt from county zoning regulation buildings used as residences by farmers and farm workers?

OPINION

Because buildings used as residences by farmers and farm workers are “incidental to the agricultural enterprise,” the provisions of Tenn. Code Ann. § 13-7-114 exempt such buildings located on farm property from county zoning regulation, unless the buildings are located on farm property “adjacent or in proximity to state federal-aid highways, public airports or public parks.”

ANALYSIS

The statute in question, which is part of the Tennessee statutory provisions governing zoning in Tennessee counties codified at Tenn. Code Ann. §§ 13-7-101 to -119, provides that

[t]his part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise.

Tenn. Code Ann. § 13-7-114. This provision applies to counties only and has no application to municipalities. *See* Tenn. Att’y Gen. Op. 10-12, at 2, n. 1 (Jan. 28, 2010).

By its plain language, this statute provides that the general zoning powers given to county legislative bodies generally do not authorize the counties to require building permits or otherwise regulate buildings or other structures on lands devoted to agricultural purposes, provided such buildings or structures are incidental to those agricultural purposes. Thus, in deciding whether buildings or structures are excepted from the county’s zoning powers, the question becomes

whether those buildings or structures are “incidental to the agricultural enterprise.” Tenn. Code Ann. § 13-7-114.

Courts construing the meaning of “agricultural enterprise” have generally given the term a broad definition. In *Brunetti v. Williamson County Bd. of Zoning Appeals*, No. 01A01-9803-CV-00120, 1999 WL 802725, at *8 (Tenn. Ct. App. Oct. 7, 1999), the Tennessee Court of Appeals observed that the statute in question prohibited county “zoning regulations and officials from regulating a structure which is incidental to an agricultural enterprise.” The issue in that case was whether the county could regulate two grain bins used to treat and store grain grown by the farmer on leased acreage nearby. When a neighboring landowner objected to the operation of the two grain bins, the farmer began cultivating wheat on his own property as well. The court held that the grain bins were not subject to county regulation, reasoning that “[s]ince the storing and treating of crops is accessory to cultivation, the buildings used for such purposes are, within the meaning of the statute, incidental to an agricultural enterprise.” *Id.*

In construing a similar provision, the Arizona Court of Appeals held that on-site dwellings for farm workers were incidental to farming or agriculture and, thus, were exempt from local building codes. *Braden Trust v. Yuma County*, 69 P.3d 510, 513 (Ariz. Ct. App. 2003). An Arizona statute provided that building codes “shall not be construed to apply to . . . [c]onstruction or operation incidental to . . . farming . . . [or] agriculture.” *Id.* at 513 (citing Ariz. Rev. Stat. § 11-865(A)(1)). The court reasoned as follows:

“Incidental” is generally defined as “[s]ubordinate to something of greater importance; having a minor role,” *Black’s Law Dictionary* 765 (7th ed. 1990), “happening in fortuitous or subordinate conjunction with something else,” *The Random House Dictionary* 444 (1980), and “being likely to ensue as a chance or minor consequence,” *Webster’s Ninth New Collegiate Dictionary* 609 (1987).

Thus, “construction or operation” that is “incidental” to farming or agriculture does not necessarily involve the primary functions of the farm but, instead, may concern functions that are tangentially related to the principal activity of the farm. On-site housing for full-time farm workers can be said to be “incidental” to farming because housing the workers on the farm is a subordinate accommodation to their primary role as employees and because free, on-site housing arguably benefits both the employer and the workers in terms of safety and productivity.

Id. at 513.

Similarly, in *Blauvelt v. Bd. of County Comm’rs of Leavenworth*, 605 P.2d 132, 134 (Kan. 1980), the Kansas Supreme Court held that a farmhouse occupied by the farmer-owner was exempt from county zoning regulations. The Kansas statute at issue exempted “the use of land

for agricultural purposes” and “the erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes and not otherwise.” *Id.* at 133 (citing Kan. Stat. Ann. § 19-2921). As the court explained:

The pertinent provisions of the statute have been in effect since 1939. . . . The obvious purpose of the proviso in Kan. Stat. Ann. § 19-2921 was to favor agricultural uses and farmers. Since this state’s economy is based largely on the family farm it would appear the intent of the legislature was to spare the farmer from more governmental regulation and not to discourage the development of this state’s farm industry.

Id. at 135 (citation omitted).

In previous opinions, this Office has likewise recognized that the terms “agriculture” and “agricultural use” traditionally have been broadly defined. *See* Tenn. Att’y Gen. Op. 99-071, at 2 (Mar. 22, 1999); Tenn. Att’y Gen. Op. 94-103, at 1-2 (Sept. 9, 1994). In light of the generally expansive definition given agricultural uses in Tennessee, buildings located on farm property that are used as residences by farmers and farm workers would be considered exempt from county zoning regulations, provided that the farm property is not “adjacent or in proximity to state federal-aid highways, public airports or public parks.” Tenn. Code Ann. § 13-7-114. On-site housing for farmers and farm workers directly facilitates the operation of the farm itself. Farmers and farm workers who live onsite may be more productive and responsive than other workers who do not live on the premises. The around-the-clock presence of farmers and farm workers may be crucial to tending to livestock or to performing urgent tasks during planting and harvesting seasons. Thus, onsite housing for farmers and farm workers is incidental to the agricultural enterprise, and Tenn. Code Ann. § 13-7-114 prohibits a county from using its zoning power to regulate buildings or structures used as farm housing subject to the limited exceptions set forth in this statute.

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**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

September 4, 2014

Opinion No. 14-79

County Zoning of Buildings Used as Residences by Farmers and Farm Workers

QUESTIONS

1. What qualifies as a building that would be “incidental to the agricultural enterprise” under Tenn. Code Ann. § 13-7-114? What impact does this provision have on local ordinances regulating the type of construction, cost of construction, placement of construction, etc.?

2. Does Tenn. Code Ann. § 13-7-114, as recently amended, conflict with other laws relative to the definition of “buildings used as residences by farms and farm workers,” such as Tenn. Code Ann. § 43-1-113 and § 43-26-102?

3. What is the definition of what constitutes a farm? Will a farm be defined by acreage or by gross or net amount of agricultural product produced, and will a family garden qualify?

4. If a building is deemed “incidental to the agricultural enterprise,” what effect will Tenn. Code Ann. § 13-7-114 have on a community’s Adequate Facilities Tax program?

OPINIONS

1. A building qualifies as “incidental to the agricultural enterprise” when it is subordinate or tangentially related to the enterprise. Any such building would be exempt from county zoning regulation.

2. No.

3. Tennessee Law defines a “farm” as “a tract of land of at least fifteen (15) acres . . . engaged in the production of growing crops, plants, animals, nursery, or floral products . . . [that] produce[s] gross agricultural income averaging at least one thousand five hundred dollars (\$1,500) per year over a three-year period” and “the land, buildings, and machinery used in the commercial production of farm products and nursery stock.” Tenn. Code Ann. §§ 2-2-122, 43-26-102.

4. Tenn. Code Ann. § 13-7-114 could impact upon a county’s collection of its adequate-facilities tax.

ANALYSIS

1. The General Assembly has delegated zoning authority to the county governments. *See* Tenn. Code Ann. §§ 13-7-101 to -119. But counties may not apply their zoning laws to buildings or structures on lands used for agricultural purposes if the buildings or structures are “incidental to the agricultural enterprise.” Tenn. Code Ann. § 13-7-114.¹ Similarly, while counties have been delegated general police powers under Tenn. Code Ann. § 5-1-118, that authority does not include the regulation of “buildings used primarily for agricultural purposes,” *id.* § 5-1-122.

The term “agricultural enterprise” as used in Tenn. Code Ann. § 13-7-114 is not defined within Title 13, but this Office has previously observed that the terms “agriculture” and “agricultural use” have traditionally been broadly defined and that “[c]ourts construing the meaning of ‘agricultural enterprise’ have generally given the term a broad definition.” Tenn. Att’y Gen. Op. 13-80, at 2, 3 (Oct. 22, 2013). Title 1 of the Tennessee Code defines the term “agriculture” to mean:

- (i) The land, buildings and machinery used in the commercial production of farm products and nursery stock;
- (ii) The activity carried on in connection with the commercial production of farm products and nursery stock;
- (iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock; and
- (iv) Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock.

Tenn. Code Ann. § 1-3-105(2)(A); *see also id.* § 43-1-113(b)(1) (same). The ordinary meaning of “incidental” includes “subordinate to something of greater importance” and “functions that are tangentially related to the principal activity” of the enterprise. Tenn. Att’y Gen. Op. 13-80, at 2 (quoting *Braden Trust v. Cnty. of Yuma*, 69 P.3d 510, 513 (Ariz. Ct. App. 2003)).

This Office cannot of course identify every possible building or structure that would qualify as “incidental to the agricultural enterprise,” but in Tenn. Att’y Gen. Op. 13-80, this Office opined that buildings used as residences by farmers and farm workers are incidental to the agricultural enterprise under Tenn. Code Ann. § 13-7-114. In 2014 Tenn. Pub. Acts, ch. 524, the statute was amended to expressly so provide. Such a building or structure would be exempt from county zoning regulation.

¹ Tenn. Code Ann. § 13-7-114 applies only to county governments. Tenn. Att’y Gen. Op. 10-12, at 2 & n.1 (Jan. 28, 2010). *See Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 426 (Tenn. 2013).

2. Tenn. Code Ann. § 13-7-114, as amended, does not create a conflict with other statutes; it stands merely as a narrow exception to a county's broad zoning authority. See *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 425-26 (Tenn. 2013). Tenn. Code Ann. § 43-1-113, which defines the term "agriculture," makes commerce an essential element. See, e.g., *id.* § 43-1-113(b)(1)(A) ("land, buildings and machinery used in the *commercial* production of farm products and nursery stock") (emphasis added). The same is true of Tenn. Code Ann. § 43-26-102's definitions of "farm" and "farm operation." See *id.* § 43-26-102(1), (2). But this commerce element is necessarily also part of Tenn. Code Ann. § 13-7-114, since it applies to buildings and structures on lands used for *agricultural* purposes, so long as the building or structure is incidental to the *agricultural* enterprise.

3. While Title 13 does not expressly define a "farm," the Tennessee Code defines "farm" in two other titles. Tenn. Code Ann. § 43-26-102(1) defines a "farm" under the Right to Farm Act as "the land, buildings, and machinery used in the commercial production of farm products or nursery stock." Tenn. Code Ann. § 2-2-122(c)(2) defines a "farm" for voter-registration purposes as "a tract of land of at least fifteen (15) acres constituting a farm unit engaged in the production of growing crops, plants, animals, nursery or floral products. Such farm shall produce gross agricultural income averaging at least one thousand five hundred dollars (\$1,500) per year over a three-year period." A family garden is unlikely to qualify as a "farm" under either definition.

4. The County Powers Relief Act, Tenn. Code Ann. §§ 67-4-2901 to -2913, "authorize[s] counties to levy a privilege tax on persons and entities engaged in the residential development of property." Tenn. Code Ann. § 67-4-2902. Except as discussed below, it is the "exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development." *Id.* § 67-4-2913. "Development" under this statute means "the construction, building, erection, or improvement to land by providing a new building or structure that provides floor area for residential use," and "residential development" means "the development of any property for a dwelling unit or units." *Id.* § 67-4-2903(6), (13). The term "building" expressly does not mean "any structures used primarily for agricultural purposes." *Id.* § 67-4-2903(1). See also *id.* § 67-4-2906 ("This part shall not apply to development of: . . . "[b]arns or other outbuildings used for agricultural purposes.").

Tenn. Code Ann. § 13-7-114 could have an impact on a county's collection of its adequate-facilities tax, because there is not complete overlap between the buildings exempted by § 67-4-2903 and those exempted by § 13-7-114. For example, a building used as a farm residence is "incidental to the agricultural enterprise" and thus exempt from any building-permit requirement under § 13-7-114, as discussed above. But such a residence is likely not "used *primarily* for agricultural purposes" (emphasis added), and thus would not be exempt from the adequate-facilities tax under § 67-4-2903(1). Collection of that tax, however, is initiated at the time of

application for a building permit. Tenn. Code Ann. § 67-4-2910(a)(1). Without the requirement for a building permit, there would be no mechanism for collecting the tax.

A county may, however, continue to exercise the authority granted by any private act in effect prior to June 20, 2006, to levy or collect similar development taxes. *Id.* § 67-4-2913. Whether a county’s collection of such taxes may be similarly hampered by § 13-7-114 will depend on the specific provisions of the private act and any local implementing laws. *See, e.g.*, 2003 Tenn. Priv. Acts, ch. 21, § 9 (providing that land-development privilege tax in Hickman County “shall be collected at the time of application for a certificate of occupancy”); *see also id.* § 2(e) (defining “certificate of occupancy” as “a license for occupancy of a building or structure issued in Hickman County” and providing that “[s]uch certificate shall not indicate compliance with any federal, state or local building codes”).

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January 28, 2010

Opinion No. 10-12

Ability of Municipalities to Charge a Fee for Building Permits for Agricultural Land

QUESTION

Does Tenn. Code Ann. § 6-54-126 prohibit a municipality from charging for a building permit for land being used for agricultural purposes?

OPINION

No. Tenn. Code Ann. § 6-54-126 is concerned only with a municipality's power to regulate the use of land and not with that municipality's ability to require building permits. Accordingly, a municipality has the power to charge a fee for a building permit on agricultural land. Furthermore, the definition of "agriculture" in Tenn. Code Ann. § 1-3-105(2) does not broaden Tenn. Code Ann. § 6-54-126 so that a municipality is prohibited from charging a fee for a building permit on agricultural land.

ANALYSIS

The General Assembly enacted Chapter 1101 of the Public Acts of 1998 (the "Act") "to establish a comprehensive growth policy for" municipalities and counties in Tennessee. Ch. 1101, § 3, 1998 Tenn. Pub. Acts (codified as amended at Tenn. Code Ann. § 6-58-102 (2005)). The Act required the establishment of a growth plan within each county that sets forth, among other things, "urban growth boundaries, planned growth areas, . . . and rural areas" within that county. Ch. 1101, § 8, 1998 Tenn. Pub. Acts (codified as amended at Tenn. Code Ann. § 6-58-107 (2005)). The Act affected the manner in which a municipality annexes territory located inside or outside of the "urban growth boundary" of that municipality. Ch. 1101, § 12, 1998 Tenn. Pub. Acts (codified as amended at Tenn. Code Ann. § 6-58-111 (Supp. 2009)). Section 22 of the Act also placed a limitation on the zoning power of a municipality with regard to the use of agricultural land. Ch. 1101, § 22, 1998 Tenn. Pub. Acts (codified as amended at Tenn. Code Ann. § 6-54-126 (2005)). Tenn. Code Ann. § 6-54-126 (2005) provides that

[f]or any land that is used for agricultural purposes as of May 10, 1998, a municipality may not use its zoning power to interfere in any way with *the use of such land for agricultural purposes* as long as the land is used for agricultural purposes.

(emphasis added). This statute is a limitation on Tenn. Code Ann. § 13-7-201(a)(1) (Supp. 2009), which empowers municipalities

to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of the lot which may be occupied, the sizes 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***.

(emphasis added). The language of Tenn. Code Ann. § 13-7-201(a)(1) (Supp. 2009) indicates that there is a difference between regulating “the location, height, bulk, number of stories and size of buildings” and regulating “the uses . . . of land.” This distinction also is present in Tenn. Code Ann. § 13-7-114 (1999).

This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise. ***Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.***

(emphasis added).¹

By focusing on “the use of [the] land for agricultural purposes,” Tenn. Code Ann. § 6-54-126 (2005) is concerned only with a municipality’s power to regulate the use of land and not with that municipality’s ability to regulate the location, height, bulk, number of stories and size of buildings or to require building permits. Accordingly, because Tenn. Code Ann. § 6-54-126 (2005) does not prohibit the regulation of buildings or the requirement of building permits, the statute cannot be read as prohibiting a municipality from charging a fee for a building permit for agricultural land.

Finally, the definition of “agriculture” in Tenn. Code Ann. § 1-3-105(2) (Supp. 2009), does not broaden Tenn. Code Ann. § 6-54-126 (2005) so that a municipality is prohibited from requiring or charging for building permits on agricultural land.

¹ As codified, the first sentence of Tenn. Code Ann. § 13-7-114 (1999) may be read as applying to counties only, with the second sentence applying to counties and municipalities. The phrase “[t]his part” refers to title 13, chapter 7, part 1 (county zoning), and the phrase “this chapter” refers to title 13, chapter 7, which includes part 1 (county zoning) and part 2 (municipal zoning). However, the application of the second sentence to municipalities appears to be the result of section 114’s being miscodified. Both the first and second sentences of section 114, as originally enacted in 1935, only applied to counties, Ch. 33, § 11, 1935 Tenn. Pub. Acts, and the only amendment to this section did not warrant the application of the second sentence to municipalities. Ch. 86, § 1, 1941 Tenn. Pub. Acts.

1-3-105. Definition of terms used in code. —

As used in this code, *unless the context otherwise requires*:

(1) . . .

(2)(A) “Agriculture” means:

(i) *The land, buildings and machinery* used in the commercial production of farm products and nursery stock;

(ii) The activity carried on in connection with the commercial production of farm products and nursery stock; and

(iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock[.]

Tenn. Code Ann. § 1-3-105(2) (Supp. 2009) (emphasis added). While the term “agriculture” includes “land, buildings and machinery,” the language of Tenn. Code Ann. § 6-54-126 (2005) limits municipalities only with regard to the use of land. Furthermore, the context of Tenn. Code Ann. § 6-54-126 (2005) requires that the statute be read as a limitation on a municipality’s power to regulate the use of agricultural land and not on its power to require or charge for building permits. As discussed above, other statutes evidence a distinction between such powers, and Tenn. Code Ann. § 6-54-126 (2005) focuses solely on the former.

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Requested by:

The Honorable Jim Hackworth
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State of Tennessee

PUBLIC CHAPTER NO. 351

SENATE BILL NO. 904

By Bell, Yager, Bowling, Crowe, Niceley, Stevens

Substituted for: House Bill No. 912

By Wirgau, Ramsey, Kevin Brooks, Swann, Eldridge, Halford, Holsclaw, Carter, McDaniel, Whitson, Gant, Crawford, Lamberth

AN ACT to amend Tennessee Code Annotated, Title 1; Title 43 and Title 67, Chapter 5, relative to property taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-5-501(3), is amended by deleting the word "agriculture" and substituting instead the phrase "agriculture as defined in §§ 1-3-105(2) and 43-1-113".

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.

SENATE BILL NO. 904

PASSED: May 3, 2017

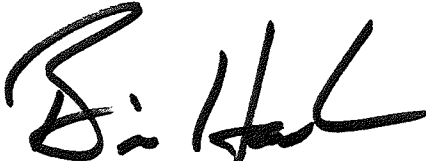


RANDY McNALLY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of May 2017



BILL HASLAM, GOVERNOR

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 17, 2017

Opinion No. 17-30

Definition of “Agriculture” for Property Taxation

Question

Is the definition for “agriculture” at Tenn. Code Ann. §§ 1-3-105(2)(A) and 43-1-113(b)(1) applicable to the word “agriculture” as used in the definition of “Farm Property” in Tenn. Code Ann. § 67-5-501(3)?

Opinion

Yes.

ANALYSIS

“As used in [the Tennessee Code], unless the context otherwise requires,” “agriculture” is defined as

- (i) The land, buildings and machinery used in the commercial production of farm products and nursery stock;
- (ii) The activity carried on in connection with the commercial production of farm products and nursery stock;
- (iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock; and
- (iv) Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock;

Tenn. Code Ann. § 1-3-105(2)(A).

Tennessee Code Annotated § 43-1-113(b)(1) also defines “agriculture,” and that definition, like the definition in § 1-3-105(2)(A), is “applicable to the term wherever it appears in the code, unless a different definition is specifically made applicable to the part, chapter, or section in which the term appears.” Tenn. Code Ann. § 43-1-113(a). The definitions of “agriculture” in § 1-3-105(2)(A) and § 43-1-113(b)(1) are substantively identical.

For purposes of taxation, the Tennessee Constitution separates real property into four subclassifications: “Public Utility Property,” “Industrial and Commercial Property,” “Residential Property,” and “Farm Property.” Article II, Section 28, of the Constitution gives the General Assembly authority to determine “the value and definition of property in each class or subclass.” The Legislature has exercised that authority to define “Farm Property” as “all real property that is used, or held for use, in *agriculture*” Tenn. Code Ann. § 67-5-501(3) (emphasis added).

The word “agriculture” is used in Tenn. Code Ann. § 67-5-501(3), is not specifically defined in connection with its use in § 67-5-501(3), and is not used in a context that requires diverging from the definition of “agriculture” in Tenn. Code Ann. § 1-3-105. Therefore, the definition of “agriculture” in Tenn. Code Ann. § 1-3-105(2)(A) applies to define “agriculture” as it is used in the statutory definition of “Farm Property” in § 67-5-501(3). And because no “different definition is specifically made applicable” to the word “agriculture” in the definition of “Farm Property” in Tenn. Code Ann. § 67-5-501(3), the definition of “agriculture” in Tenn. Code Ann. § 43-1-113(b)(1) would also apply. Since the two applicable definitions are identical, there is no difficulty or conflict in applying them both, and it is unnecessary to determine which of the two code sections, if either, takes precedence over the other.

The property subclassifications in Article II, Section 28, of the Constitution would of course control any statutory definition. *See Williams v. Carr*, 218 Tenn. 564, 404 S.W.2d 522, 529 (1966) (“[T]he Constitution is the superior law”). While the General Assembly has broad power to define the property that falls within each class or subclass, it may not craft a definition that is inconsistent with the inherent meaning of the words used in the Constitution.

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**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 26, 2017

Opinion No. 17-35

Application of the Statutory Definition of “Agriculture” to the Word “Agricultural”

Question

Does the definition of “agriculture” in Tenn. Code Ann. §§ 1-3-105(a)(2)(A) and 43-1-113(b)(1) apply in determining the meaning of “agricultural” as used in Tenn. Code Ann. § 5-1-118(b), Tenn. Code Ann. § 5-1-122, and Tenn. Code Ann. § 13-7-114?

Opinion

Yes.

ANALYSIS

Tennessee Code Annotated §§ 1-3-105(a)(2)(A) and 43-1-113(b)(1) identically define the noun “agriculture.” That definition applies wherever “agriculture” appears in the Code, unless either “the context otherwise requires” (Tenn. Code Ann. § 1-3-105(a)) or “a different definition is specifically made applicable to the part, chapter, or section in which the term appears” (Tenn. Code Ann. § 43-1-113(a)). *See* Op. Tenn. Att’y Gen. No. 17-30 (Apr. 17, 2017). The Code provides no separate definition of “agricultural,” the adjectival form of the noun.

Undefined words in the Code must “be given their natural and ordinary meaning, without forced or subtle construction that would limit or extend the meaning of the language, except when a contrary intention is clearly manifest.” Tenn. Code Ann. § 1-3-105(b). Thus, the undefined adjective “agricultural” must be given its natural and ordinary meaning wherever it appears in the Code, unless the context requires otherwise.

The natural and ordinary meaning of “agricultural” is “of or relating to agriculture.” New Oxford American Dictionary, 3rd ed. Since the meaning of “agricultural” is tied to the meaning of “agriculture,” one must then look to the applicable definition of “agriculture” to determine to what, precisely, the adjective relates as it is used in the Code. The source for the applicable definition of “agriculture” here is the generally applicable definition of “agriculture” in Tenn. Code Ann. §§ 1-3-105(a)(2)(A) and 43-1-113(b)(1). That definition applies to determine the meaning of “agricultural” wherever “agricultural” appears in the Code, including Title 5 and Title 13. *See Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 427–31 (Tenn. 2013) (applying a previous statutory definition of “agriculture” to the term “agricultural uses” in Tenn. Code Ann. § 13-7-114); Op. Tenn. Att’y Gen. No. 14-79 (Sept. 4, 2014) (discussing the current definition of “agricultural” in Tenn. Code Ann. §§ 1-3-105(a)(2)(A) and 43-1-113(b)(1) in relation to the term “agricultural enterprise” in Tenn. Code Ann. § 13-7-114).

In short, the definition of “agriculture” in Tenn. Code Ann. §§ 1-3-105(a)(2)(A) and 43-1-113(b)(1) applies in determining the meaning of “agricultural” as used in Tenn. Code Ann. § 5-1-118(b), Tenn. Code Ann. § 5-1-122, and Tenn. Code Ann. § 13-7-114.

HERBERT H. SLATERY III
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Requested by:

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**RULES
OF
TENNESSEE STATE BOARD OF EQUALIZATION**

**CHAPTER 0600-12
MULTIPLE-USE SUBCLASSIFICATION**

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0600-12-.01 PURPOSE.

The purpose of these rules is to implement the provision of T.C.A. § 67-5-801(b) concerning the establishment of guidelines for apportionment among subclasses where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages.

Authority: T.C.A. §§ 4-3-5103, 67-1-305, and 67-5-801(b). **Administrative History:** Original rules filed August 23, 2017; effective November 21, 2017.

0600-12-.02 APPLICABILITY.

These rules apply to those situations where a parcel of real property is used for more than one purpose and it is necessary to assign different subclassifications and assessment percentages to each use.

Authority: T.C.A. §§ 4-3-5103, 67-1-305, and 67-5-801(b). **Administrative History:** Original rules filed August 23, 2017; effective November 21, 2017.

0600-12-.03 DEFINITIONS.

As used in these rules, unless the context otherwise requires:

- (1) "Assessment percentage" means the rate of assessment set forth in T.C.A. § 67-5-801(a) for 'public utility property,' 'industrial and commercial property,' 'residential property,' and 'farm property.'
- (2) "Farm property" is defined as in T.C.A. § 67-5-501(3).
- (3) "Industrial and commercial property" is defined as in T.C.A. § 67-5-501(4).
- (4) "Mobile home" is any movable structure and appurtenance that is attached to real property by virtue of being on a foundation, or being underpinned, or connected with any one (1) utility service, such as electricity, natural gas, water, or telephone.
- (5) "Multiple-use subclassification" means the apportionment of different assessment percentages among subclasses when a parcel of real property is used for more than one purpose which would result in different subclassifications.
- (6) "Public utility property" is defined as in T.C.A. § 67-5-501(8).

- (7) "Residential property" is defined as in T.C.A. § 67-5-501(10).
- (8) "Subclass" and "Subclassification" mean the classification of real property as public utility property, industrial and commercial property, residential property or farm property in accordance with T.C.A. §§ 67-5-501 and 67-5-801(a).

Authority: T.C.A. §§ 4-3-5103, 67-1-305, and 67-5-801(b). **Administrative History:** Original rules filed August 23, 2017; effective November 21, 2017.

0600-12-04 DETERMINING WHEN MULTIPLE-USE SUBCLASSIFICATION IS APPROPRIATE.

- (1) Many properties are used for more than one purpose simultaneously. Where the uses of a property fall into two (2) or more subclasses, the assessor shall determine the share of the market value of the property attributable to each subclass and assess the property according to the proportion each share constitutes of the total market value.
- (2) Multiple-use subclassification is appropriate only where each of the uses recognized for subclassification is distinct and ongoing. Where a parcel is used predominantly for one purpose and another use is sporadic and generates de minimis annual income, the parcel should be assessed in accordance with the predominant use. Where a parcel is used predominantly for one purpose and another use as described above is sporadic but generates regular annual income that is not de minimis, the parcel should be assessed using multiple-parcel subclassification.
- (3) Below are examples of when multiple-use subclassification is appropriate:
 - (a) Home businesses run from a residential property to carry on a trade or business such as a beauty salon, small day care, or car repair service (portion used in business to be subclassified commercial);
 - (b) A building with a retail store on the first floor and an owner-occupied residence on the second floor (portion used in business to be subclassified commercial);
 - (c) A manufacturing facility with excess land used for farming (portion farmed to be subclassified farm);
 - (d) Mobile home parks with on-site privately owned mobile homes (portions rented to be subclassified commercial, owner-occupied mobile home to be subclassified residential);
 - (e) Properties used in the commercial production of farm products and nursery stock but which also have uses not within the definition of "agriculture" otherwise provided by law. As used in the rules, "commercial production of farm products and nursery stock" means the production is consistent with a farm operating for profit for federal income tax purposes. Examples requiring a split subclassification of agricultural property would include portions of a farm that generate regular annual income (as opposed to sporadic and de minimis income) from regular rental of space set aside for parking or camping, or portions of a horse farm devoted to uses such as a shop engaged in the retail sale of tack. Boarding of animals integral to breeding, raising and development of horses and other livestock at the property is not considered a commercial use for purposes of these rules;
 - (f) Portions of farms with commercial activities unrelated to production of farm products or livestock, except commercial activities constituting "agriculture" as defined by law. Improvements and structures on, and land that is part of, a farm engaged in the commercial production of farm products or nursery stock that are used for "agriculture"

may be classified as farm property, provided the land improvement or structure in question is used for one or more of the following: (1) recreational or educational activities; (2) retail sales of products produced on the farm, but only if a majority of the products sold are produced on the farm; or (3) entertainment activities conducted in conjunction with, but secondary to, the commercial production of farm products or nursery stock. Commercial subclassification of those portions of a farm used for events unrelated to agriculture shall be limited to the actual land and structures dedicated to the unrelated uses.

The foregoing are only examples and do not represent all situations where multiple-use subclassification is appropriate.

Authority: T.C.A. §§ 4-3-5103, 67-1-305, and 67-5-801(b). **Administrative History:** Original rules filed August 23, 2017; effective November 21, 2017.

0600-12-.05 APPORTIONING ASSESSMENT PERCENTAGES AMONG SUBCLASSES.

Where the uses of a property include two (2) or more subclasses, the assessor shall apply the appropriate assessment percentage to each subclass. In order to determine the appropriate assessment percentage for each subclass, the assessor shall first determine the share of the total market value attributable to each subclass.

Authority: T.C.A. §§ 4-3-5103, 67-1-305, and 67-5-801(b). **Administrative History:** Original rules filed August 23, 2017; effective November 21, 2017.

0600-12-.06 APPORTIONING VALUE AMONG MULTIPLE SUBCLASSES.

- (1) Where the uses of a property include two (2) or more subclasses, the assessor shall determine the share of the market value of the property attributable to each subclass and value the property according to the proportion each share constitutes of the total market value.
- (2) In determining the market value of the property, the assessor shall determine the highest and best use of the property.
 - (a) In certain instances, the predominant use of the property constitutes the highest and best use and the assessor must apportion the total value of the property among the subclasses based upon the predominant use. An example of such a situation is a residence with a home business that does not increase the overall market value of the property, such as a small hair salon. In this example, the assessor should value the property as a single family residence and apportion the total value between the residential and commercial uses.
 - (b) In certain instances, the highest and best use of the property is for multiple purposes. An example of such a situation is a manufacturing facility with excess acreage utilized for farming. In this example, the highest and best use of the acreage is for two distinct purposes: farming and manufacturing. The assessor must value the acreage and buildings used for farming separately from the acreage and buildings utilized in conjunction with manufacturing. The two resulting values would then be added together to determine the total value of the property.
- (3) The assessor shall apportion the total market value of the property by assigning separate values to each subclass. The apportionment shall reflect the land and improvement values assigned to each subclass. In those instances where the land or improvements has insignificant value for one of the uses, the assessor may properly assign a separate value to only the component having a measurable value.

- (4) The assessor may utilize whatever appraisal methodology appears most appropriate in a particular situation so long as it is reasonably designed to arrive at the market value of the respective subclasses and/or total value of the parcel.

Authority: T.C.A. §§ 4-3-5103, 67-1-305, and 67-5-801(b). **Administrative History:** Original rules filed August 23, 2017; effective November 21, 2017.

0600-12-.07 EXAMPLES OF APPORTIONING AMONG SUBCLASSES.

EXAMPLE A

The Taxpayer owns a 2,000-square-foot single residence situated on a one (1) acre lot with a total market value of \$110,000. The assessor has appraised the home at \$100,000 and the land at \$10,000. The Taxpayer utilizes 500 square feet of her home as a hair salon. Customers park in her gravel driveway. The market value of the Taxpayer's parcel is \$110,000 with or without the hair salon. The assessor should value the property at \$110,000 since the predominant use of the property as a residence constitutes the highest and best use and the hair salon does not increase the overall value of the property. The assessor should subclassify the 500 square feet used for the hair salon as "industrial and commercial property." The assessor would subclassify the remaining 1,500 square feet as "residential property." Since there is no dedicated parking area and the use of the driveway by customers is insignificant, there is no need to assess any of the land as "industrial and commercial property."

EXAMPLE B

Suppose the facts are the same as in Example A except that the Taxpayer has gone ahead and created a designated parking area by paving and setting aside a 0.1 acre portion of the driveway. In this example, the assessor would subclassify the 0.1 acre portion of the driveway designated for customer parking as "industrial and commercial property" because the predominant use of that portion of the driveway is for customer parking.

EXAMPLE C

A Corporation purchased a 100-acre parcel of land and constructed a manufacturing facility. Although the manufacturing operation only requires 25 acres of land, the corporation purchased 100 acres in the event it ever decides to expand. Presently, the corporation has no use for 75 acres and leases it to a farmer who raises soybeans. In this example, the assessor should subclassify 25 acres and the associated buildings and improvements as "industrial and commercial property." The remaining 75 acres is properly subclassified as "farm property."

EXAMPLE D

A farmer has been operating a 100-acre horse farm which the assessor has historically subclassified as "farm property." The farmer decides to open a tack shop and utilizes two (2) acres for a retail store and associated parking. In addition, the farmer accepted the local public utility's offer to lease five (5) acres for its operations. In this example, the assessor should subclassify the 93 acres and associated buildings and improvements used for the horse farm as "farm property." The two (2) acres and building used for the tack shop should be subclassified as "industrial and commercial property." The five (5) acres leased to the public utility should be subclassified as "public utility property."

EXAMPLE E

A mobile home park owner owns the land and multiple homes located on the land within the mobile home park, and he leases out the mobile homes to tenants. All of the property (land, improvements, and mobile homes) should be subclassified as "industrial and commercial property". On the other hand, if a mobile home park owner owns the land within the mobile home park but leases the land out to multiple tenants who own their own mobile homes situated on the land, then the land and any improvements rented with the land should be subclassified as "industrial and commercial property" but each mobile home that is used for residential purposes by the mobile home owner or owner's lessee should be subclassified as "residential property" unless it is part of multiple rental units under common ownership.

Authority: *Tennessee Constitution, Article II, § 28; T.C.A. §§ 4-3-5103, 67-1-305, 67-5-502(a)(1), 67-5-501, 67-5-502(a)(1), 67-5-801(b), and 67-5-802(a)(1).* **Administrative History:** *Original rules filed August 23, 2017; effective November 21, 2017.*

0600-12-.08 ASSESSOR'S RECORDS.

The assessor shall note on the property record card all instances wherein multiple-use subclassification has been used. Although no particular format must be utilized due to the various assessment systems employed throughout Tennessee, two acceptable formats are the creation of special interest cards or listing the multiple subclasses on different pages of the property record cards. Regardless of the format used, the property record card shall reflect both the value and assessment percentage assigned to each subclass.

Authority: *T.C.A. §§ 4-3-5103, 67-1-305, 67-5-801(b), and 67-5-804.* **Administrative History:** *Original rules filed August 23, 2017; effective November 21, 2017.*