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Office of the County Attorney

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MEMORANDUM

TO: Steering, Legislative & Governmental Committee

FROM: Josh A. McCreary

DATE: September 17, 2012

RE: Board of Zoning Appeals

During the August 30, 2012 meeting there was a request for legal information about the composition and term limits associated with Board of Zoning Appeals (BZA) members. Responses to the questions raised are below:

1. The creation and composition of a County Board of Zoning Appeals is controlled by T.C.A. §13-7-106. The statute provides, in part, the following:

a. The legislative body of any County that enacts zoning regulations must create a County Board of Zoning Appeals of three (3) or five (5) members.

b. The County legislative body has the appointing power of the members of the BZA and may fix their compensation and terms.

c. The terms of the BZA members shall be of such length and so arranged that the term of one member will expire each year.¹

d. A County legislative body may remove any BZA member for cause upon written charges and after a public hearing.

e. Vacancies on the BZA are to be filled for the unexpired term(s) in the same manner as original appointment(s).

f. The County legislative body may appoint associate members of the Board, and in the event that any regular member is temporarily unable to act because of an absence from the County, illness, an interest in a case before the Board, or other cause, the associate member may take his/her place during the temporary disability.

¹ As to items (a) and (c), there are some differing provisions for any County that has adopted a charter form of government as provided in the Constitution of Tennessee, Art. VII, §1, and by §5-1-201, and which has a population of less than 600,000, according to the 1980 Federal Census or any subsequent federal census.

2. The question was raised whether or not County Commission members can also serve on the BZA. As stated above, T.C.A. §13-7-106 that provides for the creation of the BZA does not offer any information about who should serve on the BZA. Thus, it cannot be said that this statute prohibits a County Commissioner from serving on the BZA. However, CTAS has written on the issue and concluded that a County Commissioner cannot serve simultaneously on the BZA. Specifically, they have determined that a County Commissioner may not serve on any board that is elected by the Board of County Commissioners unless the statute authorizing the particular Board authorizes County Commissioners to serve on it.² The Tennessee Supreme Court in State ex rel. v. Thompson, 193 Tenn. 395, 246 S.W.2d 59 (1952) held that a local legislative body could not elect or appoint one of its own members to an office over which it has the power of election or appointment as a matter of public policy. See also Attorney General Opinion 04-070. Under Tennessee Code Annotated §13-7-106, the County legislative body is the appointing authority for BZA members and has the authority to set compensation and to fix the length of the terms of BZA members. The statute does not expressly provide or allow for County Commissioners to be members of the BZA.

Based on the above information, it does not appear that County Commissioners can simultaneously serve as members of the BZA.

We hope this is helpful. Please let us know if we can be of further assistance or you would like further information.

cc: Mayor Ernest Burgess
Doug Demosi

² For example, T.C.A. §13-3-101 dealing with the creation of the Planning Commission specifically allows County Commissioners to be members.