

IN THE CHANCERY COURT OF WILLIAMSON COUNTY
AT FRANKLIN

THOMAS E. BOLTON

Petitioner,

v

WILLIAMSON COUNTY, acting by
and through the WILLIAMSON
COUNTY PLANNING COMMISSION

Respondents

DOCKET # 29567

**MEMORANDUM OF LAW
SUBMITTED ON BEHALF OF THE PETITIONER**

Introduction

The petitioner hereby submits this Memorandum of Law on Behalf of the Petitioner in support of the writ of certiorari, asking that this Court overturn the decision of the Williamson County Planning Commission denying his application for site plan review; all the zoning requirements are met, but the Planning Commission based its decision on an illegal, invalid and fundamentally unsound reason. The respondent has filed an administrative record; however, the petitioner obtained a copy of the record and is filing contemporaneously with this brief, a paginated and bound copy of the record to make references simple. As a result, references in this

brief will be to the bound and paginated record filed by the petitioner.¹

Factual Background

The petitioner, THOMAS E. BOLTON, is the owner of property located on Valley Ridge Road in Williamson County, Tennessee, more particularly described as Parcel 36 and 36.09 on Williamson County Tax Map 105. The property is zoned SE (Suburban Estates), which permits, in general, single family residential development. It is important to note that SE zoning expressly permits single family uses in a planned conservation development; it is not a prohibited or conditional; it is permitted. The obvious intent here is to provide an incentive to the property owner to protect natural resources.

The petitioner applied to the Williamson County Planning Commission for site plan approval so as to permit the development of 94 single family homes on 120 acres of land (Case # 2002-204).

The project was first considered by the Planning Commission at its meeting on June 13, 2002. The staff recommended approval, with conditions. Record at 144. The Planning Commission ultimately deferred the application. Record at 10.3. The application was also deferred at the request of the owner on July 11, 2002. A copy of

¹ Unfortunately, several pages of importance were left out of the bound copy. Attached by staple to the filed copy and also to this brief as an addendum, are pages 10.1, 10.2, and 10.3 which are pages 4-6 from the June 13, 2002 minutes of the Planning Commission.

the minutes is attached.²

The project was again considered by the Planning Commission on August 8, 2002. Many of the comments expressed at the June meeting had been addressed by the property owner and the staff again recommended conditional approval of the project. Record at 64 and 152. Nevertheless, the Planning Commission denied approval concluding that the slopes on which the sewer treatment facility would be located were too great. Record at 18 (minutes) and 82 (transcript).

After the decision in August, Mr. Bolton retained another engineering firm and the project was changed significantly. In particular, the proposed layout of the lots was changed and another 20 acres was added to the development site, although no additional homes were proposed. Furthermore, the sewer treatment facility was relocated further to the west on the property to take advantage of more level land in that area. Record at 188. In November of 2002, a new application was submitted by the petitioner.³ The Planning Commission heard the application on December 12, 2002. Greg Langeliers, the Planning Department member who presented the material to the Commission, was specifically asked if the project met the County's regulations. He replied that "It would be my opinion that the specific criteria requirements of the ordinance have been met." Transcript at 101.

However, one of the members of the Board of Commissioners spoke against

² The County did not include these minutes as a part of the record; there is no controversy about the action taken, however, at this meeting.

³ Case # 2002-209.

the application, specifically arguing that the development was not in keeping with the character of the neighborhood. Record at 91-2. Notwithstanding a recommendation of the staff for approval, the Planning Commission voted down a motion to approve, 2 votes in favor, 5 votes against, and 1 abstention. Record at 29-30 (minutes); 108-9 (transcript).

The application was considered again by the Planning Commission at its February 13, 2003 meeting. The staff position remained unchanged, recommending approval of the project as meeting all of the zoning requirements. Record at 249. Once again, a member of the Board of Commissioners appeared in spoke in opposition to the request. Record at 128. Essentially, the speaker made two points: first, that the Suburban Estates (SE) zoning district required a minimum lot size one acre and that the lots involved here would be smaller than one acre. Record at 128-9. In addition, the speaker emphasized that the sewer treatment facility was not so much the objection has the use of the land itself. Record at 130-1. Several other speakers made similar points. Record at 135 (“This is not in keeping [with] the character of the existing development.”); Record at 138 (“It is out of complete character with the area, even if the septic system will work.”). As had been true at each of the prior Planning Commission meetings, numerous petitions, e-mails, and other documents were submitted in opposition. In fact, over 150 signatures were submitted on petitions in opposition to the site plan. Record at 257-270.

In the face of this opposition, it is surely not surprising that the Planning Commission disapproved, as expressed in the minutes: “Commissioner Murdic

made a motion to deny this development for failure to maintain the character of the surrounding suburban estate zone. Commissioner Randolph seconded the motion, which passed by voice vote 5 - 2 - 1, with Commissioners Cain and Mosley voting no and Commissioner Moon abstaining.” Record at 38 (minutes) and 140-1.

Issues

1. Whether the Planning Commission must approve a site plan where all the requirements have been met by the applicant?
2. Whether the denial of a site plan based on incompetent proof or reasoning is arbitrary, capricious, illegal, or beyond the jurisdiction of the Board and subject to reversal under the common law writ of certiorari?
3. Whether the petitioner is entitled to its attorneys’ fees under the Federal Attorneys’ Fees Award Statute?

Legal Argument

1. Site plan approval must be granted when all of the conditions of the ordinance are met.

There is now a veritable cornucopia, an alphabet soup of planning and zoning terms. There are PUDs, PRCDs, CUPs, FARs, ISPs, variances, special exceptions, subdivisions and so forth. This case presents issues concerning yet another zoning technique, this one known as site plan review.

As its name implies, site plan review is concerned with the review of the

details of how any particular development site will be laid out and actually developed. One major obstacle in Tennessee is the lack of any specific enabling legislation which even permits site plan review. While the petitioner here does not raise that issue, it makes it much more difficult to sustain a decision of a local governmental entity denying site plan review when there are no Tennessee statutory provisions guiding that determination or even indicating that it is an appropriate local governmental function.⁴

Ultimately, site plan review is simply a glorified building permit process. If the applicant meets the requirements of the ordinance, the permit may not be denied.

Daniel Mandelker, in his treatise, *Land Use Law*, § 6.68, says:

Site plan review is a zoning technique that allows municipalities to exercise control over the site details of the development. In the typical site plan review procedure, the applicant for [zoning] amendment, conditional use, variances, or building permit submits a detailed site plan to the plan[ning] commission, zoning board, or administrative staff. Approval of the site plan is required before development may proceed. Site plan review usually applies to nonresidential and multi-family development on individual lots. It is a useful supplement to subdivision controls which do not usually apply to this type of

⁴ As the Court knows, local governments of themselves have no right to adopt legislation except for that specifically authorized by the Tennessee General Assembly. This rule, usually referred to as Dillon's Rule of Municipalities, has recently be reaffirmed by the Tennessee Supreme Court in *Southern Constructors, Inc. v. Loudon County Board of Education*, 58 SW 3d 706 (Tenn. 2001). Without enabling legislation, there are a number of interesting issues, such as: how much and what type of notice must be given; must there be a hearing and who may participate; may bonds be required; and how quickly must the case be considered are all difficult issues without guidance from the legislature. Many communities opt to treat site plan review as similar to subdivision applications.

development because it does not require the subdivision of land.

In fact, inasmuch as this development will necessarily require subdivision approval anyway, it is extremely difficult to understand why Williamson County requires site plan review on such a project. Again, the petitioner does not challenge the requirement of site plan review but it seems a bit strange to require both site plan review and subdivision approval for the same project. To a great extent, they amount to the very same thing.

Furthermore, Mandelker notes that:

If a site plan complies with site plan review requirements and if the proposed use is authorized by the zoning ordinance, the reviewing agency may not disapprove the site plan because it finds the proposed use objectionable.

Id. In this case, as with so many other cases involving land use planning decisions across the state of Tennessee, it is clear that the Williamson County Planning Commission simply did not believe that the use of this property was appropriate; what it is attempting to do is rezone the property.

The zoning on the property involved in this case is Suburban Estates. The Table of Uses in the Williamson County Zoning Ordinance (Section 4002) permits a number of different kinds of uses in this zoning district. There are many types of agricultural uses which are permitted (Tennessee Code Annotated § 13-7-114 generally permits all agricultural uses in counties anyway), several different types of residential uses, and even some institutional uses are permitted.

In this case, the proposed development is something called a Planned

Residential Conservation Development or PRCD, which may be (and is in this case) a specific type of single-family residential use which is, of course, also permitted in this zoning district. See Section 4002 at p. IV-3. A PRCD "includes all residential subdivisions comprised of one or more of the following housing types: conventional single-family houses, zero lot-line houses, village houses, twin houses, patio houses, atrium houses, townhouses, weak-link townhouses, multiplexes, and apartments. Such developments shall be planned as a unit, provide common open space, and meet all the provisions of Section 5110." WCZO § 4102 (D); p. IV-8.

Under the terms of Section 4002, a PRCD is permitted by right in a Suburban Estates zoning district in Williamson County if the density of the development is restricted by the presence of natural resources pursuant to §§ 5210 and 7100. See Key to Table of Permitted Uses, at p. IV-5. Permitted by right clearly indicates that no zoning amendment is necessary, no conditional use or special exception is necessary; the developer is entitled to proceed provided, of course, that the project complies with the zoning requirements. As the planning staff mentioned in its first overview of the project, the developer seeks approval as a PRCD; development of the property is restricted by the presence of natural resources and the developer is attempting to preserve those natural resources for the benefit of the community. Record at 144.

Generally speaking, this is in the nature of an incentive: the local government will many times in the terms of its zoning ordinance encourage a property owner to preserve or protect certain types of properties and in return will

allow the property owner to utilize lot sizes which may be somewhat smaller than ordinarily required because of the total open space which will ultimately result. This is certainly true here: in return for preservation of important natural resources, the Williamson County Zoning Ordinance allows the property owner to reduce the lot sizes so that development is economically feasible and yet the open space is nevertheless protected.

This is certainly true in the case of a specific type of zoning known as performance zoning, and the Williamson County Zoning Ordinance is a modified version of that type of zoning. One commentator defines it this way:⁵

Performance zoning--land use regulation based upon the application of specific performance standards--represents another alternative to traditional zoning. Performance zoning provides for greater flexibility, avoiding the detailed specification of acceptable uses for specific parcels inherent in traditional zoning.

In fact, the Williamson County Ordinance was developed under the direction of Lane Kendig, a nationally recognized expert on performance zoning.

Performance zoning dispenses with the large numbers of narrowly-defined and highly-specific use districts typical of traditional zoning. In its purest form, performance zoning may allow all possible uses and establish a uniform system of performance standards throughout a jurisdiction. Some systems of performance zoning, however, do provide for the specification of a relatively small number of more generalized zones, with some broad restrictions on types of use

⁵ John R. Ottensmann, Market-Based Exchanges of Rights within a System of Performance Zoning §IV, Planning & Markets (http://www-pam.usc.edu/volume1/v1i1a4s1.html#ottensmann_contents), University of Southern California, 2000.

and different performance standards in the different zones.⁶

The latter description would seem appropriate to Williamson County's regulations.

This type of regulation enables the local government to rather precisely preserve and protect important features such as natural resources on any property which may be developed by the owner.⁷

From the perspective of trying to achieve public objectives relating to land use, performance zoning is more flexible and ultimately more powerful than traditional zoning. Performance standards can potentially be established to achieve virtually any legitimate public objective. This is in contrast to traditional zoning, where the tools of specifying use and use intensity in zoning districts are relatively crude tools for assuring land uses that meet certain public objectives.

Another author has said: "performance zoning is more effective in the preservation of natural features, since it evaluates directly the impact, rather than indirectly through listing permitted and denied uses."⁸ This is precisely why a planner like Lane Kendig might choose to use performance zoning in the context of the preservation of natural resources.

Consistent with this perspective on performance zoning, and the Mandelker view of site plan administration, the Williamson County Zoning Ordinance, § 9501, sets out a detailed procedure for filing an application for site plan review. It is

⁶ Id.

⁷ Id.

⁸ Department of Urban and Regional Planning, University of Eastern Michigan Web Site, at <http://www.emich.edu/public/geo/557book/c232.perfzoning.html>

perhaps worthy to note that § 9500 specifically provides that this site plan procedure shall be followed by all applicants, including planned resource conservation development. As the court will see, § 9501 is extremely detailed requiring specific drainage, grading, and other requirements. The site plan which has been submitted by the petitioner complies with each of these requirements. It is perhaps important that the vast majority of these requirements concern conditions relating to the site itself.

Section 9503 establishes the rules under which both preliminary and final site development plans will be considered by the planning commission. Section 9504 contains the standards for site plan review and reads as follows:

- A. Planning Commission Review. The Planning Commission shall examine all plans, documents, and exhibits pertaining to proposed structures for general conformity with the style and design of surrounding structures to ensure that the project is conducive to the proper architectural development of the County. This development review shall be based on information provided by the developer as required in § 9501 and shall be examined for appropriate project timing relative to initiation and completion of all construction.

- B. Reasons for Denial. The Planning Commission shall deny site plan approval if the plan:
 - 1. Fails to meet the standards of this ordinance;
 - 2. Substantially increases traffic hazards and congestion due to the location or

- orientation of curb cuts were the layout of internal circulation;
3. Contains a layout of buildings, parking, roads, and utilities that substantially increase fire, health, or other public safety hazards;
 4. Contains landscaping that subverts the intended buffering and character values of the screening uses from roads or neighbors;
 5. Causes storm water drainage or pollution to be substantially increased.

The motion to deny site plan review relied on none of these reasons. The Commissioner moved to "deny this development for failure to maintain the character of the surrounding Suburban Estates zoning." Record at 140. That motion was adopted by the Planning Commission. That is simply not a valid reason for denying site plan review.

In fact, the motion fundamentally misunderstands site plan review in the first place. It is clear that the planning commission members who voted in the majority felt it was inappropriate to reduce the lot sizes and increase open space, the very essence of planned residential conservation development. This is not the job of the planning commission. The job of the planning commission is to apply the rules as they are set out by the local legislative body; the local legislative body gets to choose what is in what is not compatible interns opt types of development. In the case here, the local legislative body specifically provided that planned residential conservation development was entirely appropriate in a Suburban Estates zoning district. In fact, the local legislative body could have entirely precluded planned residential conservation development in the Suburban Estates district; this it did not do. It could have made planned residential conservation development a conditional use or a special use at all times with no exceptions. This would have

had the effect of allowing a board of zoning appeals to consider whether this particular use at this particular location was appropriate -- the essence of conditional use procedures.

But the Williamson County local legislative body did more than that by allowing under the circumstances here presented⁹ that a planned residential conservation development is permitted by right. The planning commission does not get to pick and choose which use it thinks is best and disallow others under the guise of site plan review. That is not what site plan review is all about. Site plan review concerns the way the actual site will be laid out, not its impact on other areas. The local legislative body considered the impact at the time it approved the terms of the zoning ordinance. The planning commission has no jurisdiction to second-guess the legislative judgment made at the time of the adoption of the zoning ordinance. That in fact is what the Williamson County Planning Commission has attempted to do here.

Tennessee courts have rarely considered site plan review, again, most likely for the reason that it is not specifically enabled by any legislation in the state of Tennessee. However, there are certainly other techniques which are reasonably similar including planned unit developments (which are remarkably similar to the planned residential development which is an issue here). In the case which is most similar to this one, *Davis v. Metropolitan Government*, 912 SW 2d 178 (Tenn. App.

⁹ That is, where density is restricted by the presence of natural resources; Section 4003.

1997), the decision-maker itself was the Metro Council, a local legislative body which ordinarily would get considerable deference from the courts. Not in this case however. For what happened here is that the Council ignored its own regulations when considering a planned unit development and deny the development even though it clearly met all of the design guidelines. Much like the motion adopted by the Planning Commission in this case, the Metro Council in that case clearly felt that the proposed development, a restaurant combined with a dinner/dance theater, was incompatible with surrounding land uses, which Metro characterized residential in nature. Both the trial court and the Tennessee Court of Appeals concluded that Metro acted arbitrarily and capriciously in denying the permit, finding that in fact the use of the property as a restaurant dinner/dance theater was permitted under the zoning regulations and that the Metro Council was bound to apply the law as written.

This case is very much the same. It is certainly clear that the only reason for the denial of this site plan review was because the majority of the Planning Commission believed that the planned residential conservation development of the property was inconsistent with the other uses surrounding that location. But once again, is not for the planning commission to make that decision. The local legislative body for Williamson County has already made the decision and specifically permitted a planned residential conservation development to be located in that zoning district by absolute right. The planning commission cannot turn it down because it fails to maintain the character of the surrounding zoning district.

First, it's hard to understand what “the character of the surrounding zoning district” means anyway, but secondly, since planned residential conservation development is in fact specifically permitted as of right in a Suburban Estates zoning district, it cannot by definition fail to maintain the character of such a district. It is permitted there by the action of the local legislative body, and the Planning Commission may not overturn such a decision by disapproving a site plan.

Tennessee courts have ruled similarly in many other similar situations as well. In *Sexton v Anderson County*, 587 SW 2d 653 (Tenn. App. 1979) and *Merritt v Wilson County*, 656 SW 2d 846 (Tenn. App. 1983), clearly the only reason for denying the approvals was the influence of neighbors objecting to the use.¹⁰

Various members of the community expressed beliefs and opinions that the presence of a landfill would create noxious odors and result in falling property values; they also thought that trucks delivering refuse to the site of the fill would cause additional damage to the local roads. These statements were offered on the issue of whether the intended use is “potentially dangerous, noxious, or offensive.” None rises to the dignity of being material evidence on the issue. In each instance, the statement amounts to the expression of opinion on the ultimate issue, unsubstantiated by factual premises. Speculations, expressions of fears, and considerations of an aesthetic or political nature do not form a basis to support a decision made by an administrative body charged with adjudicatory responsibility.

Sexton v Anderson County, 587 SW 2d 663, 666 (Tenn. App. 1979)(emphasis added).

In a similar manner here, the statements and petitions of the opponents lack any

¹⁰ In these cases, the zoning process was a conditional use permit, where arguably there would be some greater deference than in site plan review where the use is absolutely permitted. But both courts had no trouble overruling the administrative body.

factual basis, except that neither they nor the majority of the members of the Planning Commission wanted to allow a use absolutely permitted in this zoning district.

The decision of the Planning Commission must be overturned.

2. The Planning Commission may be reversed where it acts arbitrarily and capriciously in denying a permit which meets all zoning requirements.

This case is before this Honorable Court on a common law writ of certiorari, as per Tenn. Code Ann. § 27-8-101 et seq. The court can therefore reverse the Board's decision if it is illegal, arbitrary, fraudulent or beyond its jurisdiction. Hoover Motor Express Company v. Railroad and Public Utilities Commission, 195 Tenn. 592, 604-5, 261 SW 2d 233, 238 (1953). The petitioner respectfully submits that the Board's decision to deny this conditional use permit for a church was illegal, arbitrary, or beyond its jurisdiction.

It is, of course, true that under the common law writ of certiorari, a court may not substitute its judgment for that of the administrative tribunal. Further, there is no doubt but that the decision of the zoning board becomes final on the facts. Reddoch v Smith, 214 Tenn. 213 379 SW 2d 641 (1964). See also McCallen v City of Memphis, 786 S.W.2d 633 (Tenn. 1990). However, there must be some competent material evidence submitted to the board upon which it could make its factual findings. Without such an evidentiary basis, the decision of the board is illegal and must be reversed. In Hoover Motor Express itself, the Tennessee

Supreme Court held:

Under the common law writ of certiorari, questions of law only will be reviewed by the Courts. An order of the Commission which is not supported by any evidence is arbitrary and void, and therefore, within judicial power to quash under the common law writ of certiorari. The question whether there is any material evidence to support the finding and order of the Commission is, therefore, a matter of law for the Court upon review, and to ascertain that, whether there is any material evidence, is the limited purpose for which the evidence introduced before the Commission is admissible in the Court granting the writ of common law certiorari.

Hoover Motor Express, 195 Tenn. at 606, 261 SW 2d at 238-9. Judge Ben Cantrell

in his well-known law review article, makes the same point.¹¹

[T]he common law writ permits at least a limited review of the fact findings of the administrative body, since the question of whether there was any material evidence in the record before the lower tribunal from which their fact findings could reasonably have been made is itself a question of law. A fact finding for which there is no legally sufficient basis is illegal, arbitrary, and capricious action.

Ben Cantrell, *Review of Administrative Decisions by Writ of Certiorari in*

Tennessee, 4 Memphis State University Law Review 19(1973) at 23.¹²

There can be no doubt therefore but that the absolute lack of any proof and any legal basis upon which to base the denial of this application is reversible under the common law writ.

3. The petitioner is entitled to his attorneys' fees.

¹¹B. Cantrell, *Review of Administrative Decisions by Certiorari in Tennessee*, 4 Memphis State University L. Rev. 19, 23 (1973).

¹²*McCallen v. City of Memphis*, 786 S.W.2d 633 (Tenn. 1990) is likewise.

The Petition in this case request attorneys' fees under the Federal Attorneys' Fees Award Act, 42 USC §§ 1983 and 1988 and the Tennessee Equal Access to Justice Act, Tenn. Code Ann. § 29-37-101, et seq. The petitioner submits that he is entitled to reimbursement of his attorneys' fees under these statutory provisions.

While for a number of years, land use planning attorneys have been attempting to recover their fees on behalf of their clients, it has not been until the last several years that this practice has been successful. To a large extent, that success is based upon Wimley v Rudolf, 931 SW 2d 513 (Tenn. 1996), a decision of the Tennessee Supreme Court which sanctioned the idea of requesting attorneys fees as part of an administrative appeal. In Wimley, the appeal was from a denial of benefits under Aid to Families with Dependent Children. The argument was that the state had improperly and illegally deprived the petitioner in that case of her benefits under the statute. This illegal deprivation of benefits amounted to a violation of the applicant's civil rights and the Supreme Court indicated that the petitioner could include a request for attorneys fees because there was no inconsistency between the relief sought under the Attorneys' Fees Awards Statute and the administrative appeal.

In the case at bar, there is a very similar situation. The PRCD is and was absolutely permitted under the law. The planning commission denied the application based on illegal criteria: there was in fact, no justification for the denial of the permit. Since the planning commission lacked a reasonable basis, indeed, any legal basis, for the decision to deny, then that is a violation of substantive due

process and the petitioner is entitled to its attorneys fees.¹³ There is certainly no inconsistency between the administrative appeal as it is presented here and the request for attorneys' fees. The latter request is only another species of relief sought, just as in Wimley.

The Tennessee Courts have at least tangentially considered this issue. In Gregory v Metropolitan Board of Zoning Appeals, 1991 WL 17174 (Tenn. Ct. App. 1991) (copy attached), a case involving a construction landfill, the zoning board improperly denied the application.¹⁴ On appeal, the Tennessee Court of Appeals reversed. In so doing, the court noted that the application for attorneys' fees (in this instance, under the Tennessee Equal Access to Justice Act) should be considered by the Chancery Court below.

There have been similar cases decided by the federal courts involving rights to permits. In TLC Development, Inc., v Town of Branford, 855 F. Supp. 555 (D. Conn. 1994)(copy attached),¹⁵ the denial of a site plan with no valid legal reason, much as the petitioners contend occurred here, was found to be a violation of due

¹³Mandelker, Land Use Law, § 6.77 (1997). As Professor Mandelker indicates, decisions overturning zoning board denials of conditional use applications are often based upon substantive due process concerns.

¹⁴In fact, there is a remarkable similarity between the reasons offered by the church in that case (traffic, decrease in property values, and so forth) in opposition to the application and the reasons proffered by the opponents in this case to the site plan approval.

¹⁵This case was also cited in Buckeye Community Hope Found. v. City of Cuyahoga Falls, 970 F. Supp. 1289 (N.D. Ohio 1997), applying 6th Circuit principles which would also apply in federal court in Tennessee.

process. As the Judge explained,

It is not that the decision was wrong; it had no basis in law. It was a decision with no legitimate justification within the bounds of the Commission's authority. There was no evidence that the submitted site plan did not meet the requirements of the regulations. The only evidence is that the commission, on the basis of factors they were not lawfully entitled to consider, denied approval of the plan. There was an administrative duty to approve the plan as it complied. The refusal to do so was a denial of substantive due process.

TLC at 560. This case is almost precisely on point with the case at bar and fees should be awarded as a result.

Under the Tennessee act, the petitioner must prove that he has less than 15 employees, makes less than \$300,000 a year, and that the decision of the administrative body was arbitrary and capricious. Since the Planning Commission can only be reversed if its actions were arbitrary and capricious, that criteria is met only if the Court rules for the petitioner. Thereafter, only the technical provisions of the act need to be satisfied. Fees are limited to \$10,000 under the Tennessee statute.

If the Court deems such fees appropriate under either statute, an affidavit and supporting documentation will be filed after the ruling.

IV. Conclusion

For the foregoing reasons, the Williamson County Planning Commission illegally, arbitrarily and capriciously denied the application of the petitioner for site

plan approval, and its decision must be reversed. Further, the petitioner is entitled to its attorneys' fees pursuant to the Federal Attorneys Fees Award Act or the Tennessee Equal Access to Justice Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by postage-paid, U.S. Mail to:

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on October 1, 2003.

George A. Dean

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Exhibit A

Williamson County Planning Commission
Minutes

June 13, 2002

Exhibit B

Williamson County Planning Commission Minutes

July 11, 2002

Exhibit C

Gregory v Metro Board of Zoning Appeals

1991 WL 17174

Exhibit D

TLC Development, Inc., v Town of
Branford, 855 F. Supp. 555
(D. Conn. 1994)