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CHAPTER NO. 54

SENATE BILL NO. 1996

By Kurlta

Substituted for: House Bill No. 1991

By Williams

AN ACT To authorize the Town of Kingston Springs, within Cheatham County, Tennessee, to levy and collect a development privilege tax on new development within the municipality in order to provide that new development contribute its fair share of the cost of providing public facilities and services to the residents of such municipality.

WHEREAS, Cheatham County, Tennessee, has been one of the fastest growing counties in the state for the past fifteen (15) years, having been impacted by the rapid growth in the standard metropolitan area of Nashville; and

WHEREAS, Anticipated continued growth from the expansion of Nashville is expected to accelerate due to the continuing location of manufacturing and commercial businesses in the Middle Tennessee area, and from other factors; and

WHEREAS, Current projections show that:

(1) County population will be forty-two thousand (42,000) persons in the year 2010, an increase of fifty-five percent (55%) from 1990; there will be a demand for approximately five thousand (5,000) additional dwelling units between 1990 and 2010; and new residential and non-residential development will consume an additional three thousand (3,000) acres of land in Cheatham County; and

(2) The majority of the projected growth in Cheatham County between 1990 and 2010 will occur within the boundaries of the incorporated municipalities within the county; and

(3) The projected growth and land use development within the municipalities in Cheatham County will cause a demand for municipal capital facilities (roads, parks, city governmental facilities, etc.) in an amount well in excess of ten million dollars (\$10,000,000) over the next fifteen (15) years; and

(4) Each municipality's present revenue-raising authority is limited and relies heavily on intergovernmental transfers which are not subject to city control and on property taxes, which would impose the costs of new growth on existing residents rather than on new residents and businesses who create the demand for the additional expenditures; and

WHEREAS, The municipalities are committed, both to present and future residents, to maintaining a level of public facilities and services commensurate with those presently provided; and

WHEREAS, The municipalities are prepared to impose a fair, equitable and reasonable share of the costs of providing the necessary public facilities and services on existing residents of their respective municipalities; and

WHEREAS, The municipalities' present population, employment rate, tax base and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, Due to these unique circumstances, it is necessary and appropriate that the Town of Kingston Springs, within Cheatham County, be given authorization to extend its taxing power to enable the municipality to impose a fair and reasonable share of the costs of public facilities necessitated by new development within its boundary on that development so as not to create an unfair and inequitable burden on existing municipal residents; and

WHEREAS, There is precedent in the State of Tennessee for such additional tax measures to impose costs on those who benefit from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, The most logical and effective mechanism to accomplish the intended result would be the imposition of a development privilege tax on new development within the municipality; now, therefore.

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

SECTION 1. This act shall be known and cited as the "Kingston Springs Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning appears from the context:

(1) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home, but excludes those buildings specified in Section 6 of this act;

(2) "Building Permit" means a permit for development issued in Kingston Springs, as herein defined, within Cheatham County;

(3) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of the physical assets of the community are included;

(4) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of a residential or non-residential use;

(5)(a) "Floor Area" for non-residential development means the total of the gross horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas; and

(b) "Floor Area" for residential development means the total or the gross horizontal area of all floors, including basements, cellars, or attics which is heated and/or air-conditioned living space, or designed to be finished into heated and/or air-conditioned living space at a future date;

(6) "General Plan" means the official statement of the planning commission which sets forth major policies concerning future development of the jurisdictional areas and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-4-201, 13-4-203, and 13-4-302. For purposes of this act only, a general plan may consist solely of the land development element which sets out a plan or scheme of future land usage;

(7) "Governing Body" means the City Commission of Kingston Springs, Tennessee;

(8) "Major Street or Road Plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, Sections 13-4-201, 13-4-302, and 13-4-303, showing among other things, "the general location, character, and extent of public ways (and) the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways";

(9) "Municipality" means the Town of Kingston Springs;

(10) "Non-Residential" means the development of any property for any use other than residential use, except as may be exempted by this act.

(11) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number;

(12) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status;

(13) "Public Buildings" means a building owned by the State of Tennessee or any agency thereof, a political subdivision of the State of Tennessee, including but not necessarily limited to counties, cities, school districts and special districts, or the federal government or any agency thereof;

(14) "Public Facility or Facilities" means a physical improvement undertaken by the municipality, including, but not limited to the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the municipality;

(15) "Residential" means the development of any property for a dwelling unit or units;

(16) "Subdivision Regulations" means the regulations adopted by the governing body, as amended, pursuant to Tennessee Code Annotated, Section 13-4-303, by which the municipality regulates the subdivision of land; and

(17) "Zoning Resolution" means the ordinance adopted by the governing body, as amended, pursuant to Tennessee Code Annotated, Section 13-7-201, by which the municipality regulates the zoning, use and development of property.

SECTION 3. It is the intent and purpose of this act to authorize the governing body of the Town of Kingston Springs to impose a tax on new development in the city payable at the time of issuance of a building permit or certificate of occupancy so as to ensure and require that the person responsible for new development share in the burdens of growth by paying their fair share for the cost of public facilities necessary to serve the residents of Kingston Springs.

SECTION 4. Engaging in the act of development within the municipality, except as provided in Section 6 of this act, is declared to be a privilege upon which the municipality may, by ordinance of the governing body, levy a tax in the manner established in Section 5.

SECTION 5. For the exercise of the privilege described herein, the governing body of the Town of Kingston Springs may impose a tax on new development within the municipality as provided herein. The governing body may levy the tax authorized herein by passage of an ordinance after adopting a capital improvements program indicating the need for and the cost of public facilities anticipated to be funded, in part, by this tax. The ordinance of the governing body imposing this tax shall state the rate of tax on new residential and non-residential development. The tax rate schedule included in the ordinance levying the tax authorized herein may classify residential and non-residential uses by type for the purpose of imposing such tax.

The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development for:

- (1) Public buildings;
- (2) Places of worship;
- (3) Barns or outbuildings used for agricultural purposes;

(4) Replacement structures for previously existing structures destroyed by fire or other disaster;

(5) Additions to a single-family dwelling;

(6) A structure owned by a non-profit corporation which is qualified 501(c)(3) corporation under the Internal Revenue Code; and

(7) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided that the permanent structure is a residence for the owner and occupant of the mobile home, and that owner and occupant has resided on the property for a period of not less than three (3) years.

SECTION 7. The tax established in this act shall be due and collected at the time of application for a building permit for development as herein defined by a municipal official duly authorized by the governing body. No building permit for development as herein defined shall be issued within the municipality unless the tax has been paid in full to the municipality.

SECTION 8. All tax funds collected within the municipality shall be deposited and accounted for in a special revenue or capital projects fund, and shall be used for the purpose of providing public facilities to serve the residents of the municipality.

SECTION 9. The authority to impose this privilege tax on new development within the municipality is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land development regulatory measures granted either by the private or public acts of the State of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 10. Any person aggrieved by the decision of the city building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to the municipality and by notifying the official in writing that the payment is made under protest.

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. Appeals shall be heard by the governing body. A hearing shall be scheduled within forty-five (45) days of the written request for appeal.

The governing body shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued for time to time by a majority vote of the governing body for further information.

The governing body shall act as a quasi-judicial body whose purpose is to determine the intent of the act, its applicability to the appellant, and to rule upon the interpretation of the official: "The governing body shall not be bound by the rules of evidence applicable to the various courts of the state.

Hearings before the governing body shall proceed as follows:

(a) The building official or other appropriate official shall explain the ruling and the reasons for the ruling;

(b) The appellant shall explain the reasons for protesting the ruling;

(c) The governing body may request further information from any city official, including, but not limited to the city manager, the city attorney, or the city planning staff. The governing body shall not have the power of subpoena; and

(d) The governing body shall deliberate and render a decision by a majority vote. A decision shall be reduced to writing and copies shall be sent to all parties, and the decision shall become a part of the minutes of the governing body. The decision of the governing body shall be final, except that either the building official or the person aggrieved may seek review of the governing body's actions by certiorari and supersedeas to the Chancery Court of Cheatham County, Tennessee, as provided by state law.

SECTION 11. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to the Town of Kingston Springs. The act shall be deemed to create an additional and alternative method for the municipality to impose and collect taxes for the purpose of providing public facilities within the municipality.

SECTION 12. If any provision of, this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall have no effect within the Town of Kingston Springs unless it is approved by a two-thirds (2/3) vote of the City Commission of Kingston Springs within one (1) year of the effective date of this act. Its approval or nonapproval shall be proclaimed by the presiding officer of the City Commission and certified to the Secretary of State.

SECTION 14. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 13.

PASSED: May 12, 1997

s/John Wilder
JOHN S. WILDER
SPEAKER OF THE SENATE

s/Jimmy Naifeh
JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this _____ day of _____ 1997

s/Don Sundquist
DON SUNDQUIST
GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 3299 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.