

Plaintiffs seek for the Court to enter orders stating Metro must protect the Existing Uses and prevent Metro from taking any actions that would injure and harm the Existing Uses.

The Plaintiffs claim four legal rights of Tennessee law which they assert as Counts in their *Amended Complaint* as allowing their lawsuit to proceed. These causes of action are Declaratory Judgment, Mandamus, Injunction, and Writ of Certiorari.

Metro asserts none of these rights is triggered by Metro's proposed Additional Uses, and on that basis Metro has filed a motion seeking dismissal of the case.

After studying Tennessee law and the *Amended Complaint* of the Plaintiffs, and considering oral argument of the attorneys for each side, the Court concludes Metro is correct. This lawsuit must be dismissed.

It is therefore ORDERED that the *Metropolitan Government's Motion to Dismiss* is granted on these grounds:

- (1) Counts I and III seeking a declaratory judgment and injunction are not ripe; and
- (2) Counts II and IV fail to state a claim.

It is additionally ORDERED that, because the case is not ripe, the issues of Plaintiffs' standing and/or private right of action to enforce the Metro Charter, raised in Metro's *Motion to Dismiss*, have not been addressed and no ruling on those issues is made.

It is finally ORDERED that the *Amended Complaint for Declaratory Judgment, Writ of Mandamus and Certiorari and/or Injunctive Relief* is dismissed. Court costs are taxed to the Plaintiffs.

The Tennessee law on which this decision is based is stated below.

No Ripe Controversy—Counts I and III

The court filings and argument show that no ripe controversy exists.

As cited in the briefs filed in this case, “[T]he province of a court is to decide, not advise, and to settle rights, not to give abstract opinions.’ Accordingly, they limit[] their role to deciding ‘legal controversies.’ A proceeding qualifies as a ‘legal controversy’ when the disputed issue is real and existing, and not theoretical or abstract, and when the dispute is between parties with real and adverse interests.” *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County*, 301 S.W.3d 196, 203 (Tenn. 2009). “Although a showing of present injury is not required in a declaratory judgment action, a real ‘case’ or ‘controversy’ must nevertheless exist.” *Thomas v. Shelby Cty.*, 416 S.W.3d 389 (Tenn. Ct. App. 2011).

The briefing further states the Tennessee law that courts will not address issues that are not yet ripe for review. *City of Memphis v. Shelby Cty. Election Com’n*, 146 S.W.3d 531, 539 (Tenn. 2004). Ripeness requires a court to determine “whether the dispute has matured to the point that it warrants a judicial decision.” *B & B Enters. of Wilson Cty., LLC v. City of Lebanon*, 318 S.W.3d 839, 848 (Tenn. 2010). “The central concern of the ripeness

doctrine is whether the case involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all.” *Id.* at 848 (citing *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 479–80 (1990)).

Applying this law to the record, the Court sees from the filings that the Plaintiffs assert there is a controversy that Metro, with its proposed Additional Uses, is not protecting the Existing Uses as required by section 11.602(d) of the Metro Charter. Yet that is not demonstrated in the record.

First, the scope of the Metro Charter as to the Existing Uses is important. Nothing in the Metro Charter prevents additional uses of the Fairground Tract. The scope of section 11.602(d) is that it provides for continuation of the Existing Uses, and allows no demolition without a council vote or Charter amendment.²

Next, the record shows that Metro is aware of the requirements of section 11.602(d) of the Metro Charter and is taking that into account in its proposals. Exhibits the Plaintiffs have attached to their Amended Complaint: D—press release; F—October 5, 2017

²Section 11.602. - Functions and duties.

It shall be the duty of the metropolitan board of fair commissioners to:

* * *

- (d) All activities conducted on the premises of the Tennessee State Fairgrounds as of December 31, 2010, including, but not limited to, the Tennessee State Fair, Expo Center Events, Flea Markets, and Auto Racing, shall be continued on the same site. No demolition of the premises shall be allowed to occur without approval by ordinance receiving 27 votes by the Metropolitan Council or amendment to the Metro Charter.

(Amended by Amdt. 1 to referendum petition approved August 4, 2011)

Resolution for Bonds; G—Media Advisory; I—October 10, 2017 Minutes of the Metro Government Board of Fair Commissioners; and J—Substitute Resolution—all contain statements and provisions of abiding by section 11.602(d) of the Charter. For example are these excerpts from Exhibits D and I.

Mayor Barry Statement on Major League Soccer in Nashville
January 26, 2017

Mayor Megan Barry has issued the following statement on the administration's support for bringing Major League Soccer to Nashville and the location of the Fairgrounds Nashville as the best place for a new soccer stadium:

“I fully support the effort to bring Major League Soccer to Nashville. While no formal proposals or deals have been reached, we have been working with the local organizing group, led by John Ingram and Bill Hagerty, to submit a great application to MLS.

“Ultimately, a soccer facility will be needed in order to attract an MLS team here to Nashville. I believe a private-public partnership, with an emphasis on the “private” part of the equation, will be needed in order to accomplish this goal, and I am convinced that the best and only site for this to happen would be at the Fairgrounds Nashville.

“This will not come at the expense of any existing activities at the Fairgrounds, such as racing, the flea market, or the fair, but will be in addition to all the great things that are happening there now.

“Last year, we allocated \$12 million in capital funds to start the renovation of the Fairgrounds property, in addition to \$3 million for community soccer fields at that site.

“I've also asked the Fairgrounds manager to initiate an RFP for the operation of the racetrack. For too long, we have held back the chances for racing to be successful by limiting the term of the contract. This RFP will seek innovative proposals that could result in an operator willing to make necessary capital improvements to the track with a long-term agreement by which they can recoup the investment.

“With playing fields, pro soccer, a more viable racing operation, a greenway through the property and renovated, improved buildings, the fairgrounds will share in and help continue Nashville’s prosperity.”

* * *

[Excerpt from Exhibit I—Nonbinding Resolution Section 8(d)(4)]

4. The Metropolitan Government shall be entitled to twenty public use days of the Stadium provided such public use days do not conflict with Team events. The Team will coordinate scheduling for Stadium events with the Executive Director of the Fair Board to ensure the Nashville Fairgrounds is able to provide all activities on the premises required by Section 11.602 of the Metropolitan Charter, including the fair, expo center events, flea markets, and automobile racing. Further, the Nashville Fairgrounds shall be entitled to use the concourse of the Stadium for Fairgrounds events. The Metropolitan Government shall be responsible for all operating expenses associated with its use of the Stadium on public use days and for the Fairgrounds events.

Additionally, while the Plaintiffs’ *Amended Complaint* has counted up 67 acres (paragraphs 35, 37, 38), that Metro proposes the Additional Uses may entail on the 117-acre Fairground Premises, that does not demonstrate a concrete threat required for a declaratory judgment as sought by the Plaintiffs in Count I of the *Amended Complaint* or Injunction as sought in Count III. Specifically,

- the Plaintiffs’ *Amended Complaint* and exhibits acknowledge that out of the 67 acres proposed for the Additional Uses that no MOU related to the proposed 45 acres of the property currently used for parking has been executed or approved by the Fair Board (paragraphs 38 and 40).
- Ten (10) of the proposed acres is not yet (paragraph 37) specified.
- 12 acres for the Stadium footprint (paragraph 35) and the proposed coexisting use of the speedway (paragraph 42) are subject to the Non-Binding Resolution (Exhibit F) section 8(d)(4) which requires

adherence to section 11.602(d) of the Metro Charter. Tennessee law provides “The courts must always presume that governmental officials and agencies discharge their duties in good faith, and in the manner prescribed by law,” *Metro. Gov’t of Davidson Cty. v. Tatum*, 2008 WL 4853073, *6 (Tenn. Ct. App. Nov. 7, 2008), and the actions taken to date by Metro acknowledge that applicable state and local law must be adhered to including section 11.602(d) of the Metro Charter.

In the face of these proposals, there exists no ripe controversy for this Court to declare under Count I of the *Amended Complaint* or injoin under Count III of the *Amended Complaint*.

Failure to State A Claim—Counts II and IV

Dismissal of Counts II and IV is also required.

As to Count II, mandamus, it does not apply to this case.

Mandamus is a summary remedy, extraordinary in its nature, and to be applied only when a right has been clearly established. *Peerless Constr. Co. v. Bass*, 14 S.W.2d 732, 733 (Tenn. 1929); *Jones v. Anderson*, 250 S.W.3d 894, 897 (Tenn. Ct. App. 2007). Mandamus is not appropriate for doubtful obligations or actions requiring discretion. *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn. 1988) (emphasis added, citations omitted). A writ of mandamus may only be issued by a court where the plaintiff’s right to the relief sought is “clearly established,” the defendant has a “clear duty to perform the act” at issue, and “no other plain, adequate, and complete method of obtaining the relief” exists. *State ex*

rel. Metro. Gov't of Nashville & Davidson Cty. v. State, 2017 WL 1227239, at *3 (Tenn. Ct. App. Apr. 3, 2017), appeal denied Aug. 18, 2017.

Here, Plaintiffs request a writ of mandamus ordering the respondent to take verifiable steps to protect the Existing Uses. The *Amended Complaint* does not identify a ministerial act to be performed by Metro.

Count IV, writ of certiorari, also does not apply. In the *Amended Complaint*, the Plaintiffs seek review by writ of certiorari of an October 10, 2017 resolution by the Fair Board, an October 10, 2017 resolution by the Sports Authority, and a November 7, 2017 resolution by the Metro Council.

For the purposes of a writ of certiorari, review is available by anyone aggrieved by a board or commission's "final order:"

Right of review. – Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have the order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter.

TENN. CODE ANN. § 27-9-101 (emphasis added). A decision or action by a board or commission that is not final is "not subject to judicial review under the common law writ of certiorari." *Walker v. Metro. Bd. of Parks and Recreation*, 2009 WL 5178435, *9 (Tenn. Ct. App. Dec. 30, 2009) (citing *State Dep't. of Commerce v. FirstTrust Money Servs.*, 931 S.W.2d 226, 228–29 (Tenn. Ct. App. 1996); see also, *Historic Sylvan Park, Inc. v. Metro. Gov't of Nashville, Davidson Cty., Tenn.*, 2015 WL 5719771, *2-3 (Tenn. Ct. App. Sept. 29, 2015).

The minutes of the October 10, 2017 meeting of the Fair Board (attached as Exhibit I to Plaintiffs' *Amended Complaint*), show that the resolution at issue is a request to the Metro Council to take a particular action – it is described as “memorializing” and “non-binding.” Likewise, the Sports Authority’s resolution (attached as Exhibit F to Plaintiffs’ Amended Complaint) is a simply a request to the Metro Council to conditionally approve the issuance of bonds. Neither of these acts are the “decisive governmental act authorizing or taking any action,” and therefore, they are not reviewable by common law writ of certiorari. *Walker*, 2009 WL 5178435, *10.

Further, judicial review by common law certiorari is only available when the decision being reviewed is the “product of a judicial or quasi-judicial proceeding.” *Id.*; *see also*, *Ussery v. City of Columbia*, 2009 WL 1546382, *16 (Tenn. Ct. App. June 1, 2009) (holding that writ of certiorari is not available under Tenn. Code Ann. § 27-8-101 where the action challenged did not involve an inferior tribunal, board, or officer exercising judicial functions.) Here, the Fair Board and the Sports Authority were performing a policy-making function, rather than a judicial function when they approved resolutions requesting action by the Metro Council. Similarly, the Metro Council in approving Substitute Resolution RS2017-910 was performing a distinctly legislative function, which is also not reviewable by writ of certiorari. *McCallen v. City of Memphis*, 786 S.W.2d 633, 639 (Tenn. 1990); *see also*, *McFarland v. Pemberton*, 530 S.W.3d 76, 89 (Tenn. 2017) (holding that a governmental act is legislative “if it creates new laws, such as ordinances or regulations”).

As to the reference in paragraph 36 of the *Amended Complaint*, the statement by the Fair Board Chairman is incorrect as a matter of law, and is not binding on the Court or the parties.

Based upon the foregoing Tennessee law, the lawsuit is dismissed.

/s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

cc by U.S. Mail, email, or efile as applicable to:

James D. R. Roberts
Lora Barkenbus Fox
Catherine J. Pham

Rule 58 Certification

A copy of this order has been served upon all parties or their Counsel named above.

/s/Phyllis Hobson
Deputy Clerk
Chancery Court

December 18, 2017