STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	Civil Action No. 2021-CP-23-03048
Alliance to Preserve the Old White Horse Road Corridor, LLC and Mary Jean Horney,)	
Appellants,)	**ORDER AFFIRMING DECISION OF GREENVILLE COUNTY PLANNING COMMISSION**
v.)	
RP&L, LLC and the Greenville County Planning Commission,)	
Respondents.)	

Appellants appealed the decision of the Greenville County Planning Commission ("Commission") approving RP&L, LLC's preliminary plan application for a subdivision called The Stables. For the reasons set forth herein, this appeal is denied and the decision of the Commission is affirmed.

I. STATEMENT OF THE FACTS

In March of 2021, RP&L filed a preliminary plan application seeking to subdivide and develop an approximately 43-acre property located along Meadow Brook Road and Old White Horse Road in a rural section of Greenville County. After the developer met with Greenville County planning staff, the application was referred to the Greenville County Subdivision Advisory Committee, which recommended several changes to the preliminary plan. Thereafter, an Updated Preliminary Plan was submitted and became part of Greenville County's subdivision file for The Stables in late April 2021. While Appellants contend that the Updated Preliminary Plan was "never made available to the public in advance of the Commission meeting held on May

26, 2021,"[1] the undisputed evidence before this court is that the Updated Plan has been part of the public record maintained by the County and available to the public for review since the April 2021 filing.

The Commission considered RP&L's application, with its Updated Preliminary Plan, at the Commission's regularly scheduled meeting on May 26, 2021. Appellants do not contest the appropriateness of the notice given as to the meeting. Several representatives of Appellants spoke in opposition to the preliminary plan application, including counsel for Appellants. Appellants contended the application should be denied for a variety of reasons, including (a) the lack of findings of fact and conclusions of law in the Commission's decision; (b) violation of Appellants' due process rights; (c) public safety issues; (d) failure to comply with the open space requirements of Section 11 of the County's Land Development Regulations, and (d) incompatibility with the Greenville County Comprehensive Plan.

The Commission voted to approve the preliminary plan application. This appeal followed.

II. RULING

A. Standard of review

S.C. Code § 6-29-840 controls this court's review of the Commission's decision and requires the same level of deference as that given to a finding of fact by a jury. It is commonly referred to as the "any evidence" standard. This Court is not free to substitute its judgment for that of the Commission. *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-174, 656 S.E.2d 346, 351 (applying the "any evidence" standard of review applicable in appeals of jury verdicts to appeals

[1] The source of this contention is that the Updated Preliminary Plan had not been posted on the Greenville County website.

of planning commission decisions). The "any evidence" standard is the most deferential standard of review recognized by South Carolina's courts, and planning commissions receive this deference because of our Supreme Court's recognition of "the legislature's intent [to grant] a planning commission broad discretion in this area." *Kurschner*, 376 S.C. at 173-174, 656 S.E.2d at 351; see *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000) ("The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision.").

B. Decisions of the Commission are not statutorily required to include findings of fact and conclusions of law

Appellants contend that the Commission must issue findings of fact and conclusions of law in making its decisions. While Appellants quote accurately from several lower court orders, they do not quote the controlling law, as provided by the South Carolina Legislature in S. C. Code § 6-29-1150:

> *SECTION 6-29-1150. Submission of plan or plat to planning commission; record; appeal.*
>
> *(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans or subdivision plats with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.*
>
> *(B) A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.*

(C) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within sixty days, and the action of the planning commission is final.

(D)(1) An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.

(2) A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed.

(3) Any filing of an appeal from a particular planning commission decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(C)(1).

(4) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the planning commission, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

The entire statute is set forth above in order to demonstrate that it contains no requirement for the inclusion of findings of fact and conclusions of law in a Commission decision. That absence is even more striking when one compares the statute to the provisions of S. C. Code § 6-29-830 governing appeals from Boards of Zoning Appeals, found in the same chapter, and enacted at the same time:

SECTION 6-29-830. Notice of appeal; transcript; supersedeas.

(A) Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings

> *held before the board of appeals, including a transcript of the evidence heard before the board, if any,* ***and the decision of the board including its findings of fact and conclusions.***
>
> *(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper. (emphasis added)*

The fact that the Legislature opted to require findings of fact and conclusions for one type of administrative appeal, but not for another, is dispositive of the intent of the legislature. The Court is well aware that:

> "[T*]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning.*
>
> *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581, 2000 S.C. LEXIS 132, *3-4

The inescapable conclusion of a review of the applicable statutes is that the Commission is not required to issue findings of fact and conclusions of law. The Court also finds that the Commission's meeting minutes, the transcript of the meeting, and the file material, which includes written opposition to the proposed subdivision, provides the record of the Commission's actions and grounds for approval satisfying the requirements of S.C. Code Ann. § 6-29-1150(B).

C. Appellants received due process

There is no issue of fact as to whether the updated preliminary plan was available as a public record for a month prior to that meeting. Appellants' claim of lack of due process because of the perceived unavailability of that document is without basis. The Commission afforded the Appellants a meaningful opportunity to be heard, and their due process rights were not violated.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner*, 376 S.C. at 171, 656 S.E.2d at 350. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.* However, no particular procedure is required, as "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." *Id.*, 376 S.C. at 172, 656 S.E.2d at 350; *see SCDSS v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733-34 (2002) ("The requirements in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur.").

The South Carolina Supreme Court has concluded that the procedure that is due a subdivision applicant is different from and less formal than might be required in a traditional trial. *Kurschner*, 376 S.C. at 171-173, 656 S.E.2d at 350. In the end, due process requires that an applicant receive notice and an opportunity to be heard at some point before the Commission makes a final decision, but not at each level of the subdivision decision process. *See Ross v. MUSC*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997)

It appears from the uncontested affidavit testimony of Rashida Jeffers-Campbell that accepted subdivision applications in Greenville County generate a file with a distinct file number. The contents of these files are available to the public from the opening of the file. The County Subdivision Administrator and her staff maintain and update these files as public records, which any citizen can view at County Square during the County's normal operating hours

As the Jeffers-Campbell affidavit demonstrates, Subdivision Administration initially made a copy of the original filed preliminary plan available on the County's website. The public record,

however, continued to be kept in Subdivision Administration's physical office. Between the filing of the original application and the date the Commission considers the application, the public file grows, as items like Subdivision Advisory Committee comments and iterative updated versions of the preliminary plan are added when changes are made to address issues raised by planning staff and committees. The County does not add these items to the website. Instead, the County makes them available to the public as part of the subdivision file maintained at County Square.

Since the Appellant's due process argument hinges on the alleged unavailability of the April 26, 2021 updated preliminary plat prior to the May 26, 2021 meeting, that plat's availability in the County's physical subdivision file for the month preceding the meeting is fatal to this argument. *See Donadieu v. Morgan Cnty. Planning Comm'n*, 2016 W. Va. LEXIS 726, *15-16 W. Va. (2016) ("With respect to documents that did exist in Planning Commission's files, petitioners appear to complain that the Planning Commission did not disclose those documents to them in advance of the public hearing. However, they misconstrue the nature of Planning Commission hearings; they are not akin to civil trials where parties are entitled to certain discovery disclosures. Rather, everything in the Planning Commission's file was available for public inspection, and as the Planning Commission noted, petitioners did not avail themselves of that access.").

D. The Evidence in the Record Demonstrates that the addressed public safety concerns

Appellants claim that the Commission erred in approving the preliminary plan application in issue without adequately addressing public safety concerns and without any input from the Greenville County Fire Department. This argument fails because although Appellants acknowledge that the appropriate standard of review is the "any evidence" standard, they then argue not that there is no evidence as to consideration of public safety concerns, but that those concerns were not "adequately" addressed. Appellant's own brief makes specific reference to

discussion and/or consideration of traffic or road access issues (App. Brief pp. 4, 10, and 17), flooding potential (App. Brief, pp. 4, 5, and 13) and fire safety issues (App. Brief pp.5, 16). Viewed through the required standard of review, this argument must fail.

E. Appellants' LDR Article 11 arguments fail because the Commission's approval was based on an appropriate exercise of discretion.

A court must refrain from interfering with a planning commission's decision unless there is no evidence in the record to support it. *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013); *Kurschner*, 376 S.C. at 173-174, 656 S.E.2d at 351 (applying the any evidence standard of review applicable in appeals of jury verdicts to appeals of planning commission decisions). The "any evidence" standard is the most deferential standard of review recognized by South Carolina's courts, and planning commissions receive this deference because of our Supreme Court's recognition of "the legislature's intent [to grant] a planning commission broad discretion in this area." *Id.*; *see Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000) ("The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision.").

Despite the South Carolina Supreme Court's admonition to the judiciary to give planning commission decisions a wide berth, the Appellants ask this Court to substitute its opinion for that of the Planning Commission. The Appellants first argue that the Commission's approval violated LDR Article 11.4's instructions to developers concerning open spaces in cluster developments:

> The required open space must be directly accessible to the largest *practical* number of lots within the development. Non-adjoining lots must be provided with safe, convenient access to the open space.

LDR Art. 11.4 (emphasis added). The Appellants point to the preliminary plan and declare that because only four of the proposed lots adjoin the designated open space, the plan violates LDR

Art. 11.4 as a matter of law. The Planning Commission's decision is entitled to the same deference as a jury's verdict; the Appellants' arguments do not meet that high threshold.

Similarly, there is no merit to Appellants' argument that the Court should reverse because the preliminary plan did not state whether the proposed open space was "developable" or "undevelopable" or show what the proposed uses would be for the open space. First, the Court notes that the Updated Preliminary Plan designates open space Area E as "Developable" and open space Area F as "Undevelopable." In addition, the Updated Plan designates the use as general open space. The County's LDR and Zoning Ordinance require nothing more. In addition, while LDR Article 11.3.2 tells developers to include this information on their preliminary plans, nothing in the LDR, the Zoning Ordinance, or South Carolina law suggests that the absence of this information is fatal or warrants a reversal of a planning commission decision. *See* LDR Art. 11; Zon. Ord. § 7.2. If this information were missing from the approved preliminary plan, the technical error would, at worst, be a harmless error. *See* Zon. Ord. § 7:2.4-6 (stating that the required open space "may include both developable and undevelopable property" which makes the technical designation on the plan informational only).

F. The Greenville County Comprehensive Plan is not controlling law, and the Commission's decision cannot be reversed for a purported failure to follow that plan.

The Comprehensive Plan is not law, but only an advisory document for the County. The Plan expressly states that is "is a guiding policy document that reflects a community's vision for its future." *See* Ordinance 5155, Resolution, and Comp. Plan ("[T]his Comprehensive Plan will serve as a guide . . . [The Comprehensive Plan is adopted] as "general guides for change and development within the County."). Greenville County's approach, here, is consistent with the South Carolina Local Government Comprehensive Enabling Act of 1994 which instructs planning commission's to "develop and maintain a comprehensive plan to guide development in its area of

jurisdiction." *Sinkler v. County of Charleston*, 387 S.C. 67, 69 n.1, 690 S.E.2d 777, 778 n.1 (2010) (citing S.C. Code Ann. § 6-29-510(A)). That the Greenville County Comprehensive Plan is not codified as mandatory and that, as adopted, it represents itself as a guide only, requires this Court to conclude that any alleged failure to follow that plan is not error.

III. CONCLUSION

For the reasons set forth herein, the Court rules that this appeal is denied, and the decision of the Commission is affirmed.

Dated:
Greenville, SC

Greenville Common Pleas

Case Caption: Alliance To Preserve The Old White Horse Corridor LLC , plaintiff, et al VS RP&L Llc , defendant, et al

Case Number: 2021CP2303048

Type: Order/Other

So Ordered

G.D. Morgan Jr.