

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2022-CP-04-00387

Toll Brothers Inc., Gail Keener, David J.)
Woodson as Trustee and on behalf of)
The David J. Woodson Revocable)
Living Trust, and Kay Elrod,)

Plaintiffs/Appellants,)

vs.)

Anderson County Planning Commission,))

Defendant/Respondent.)
_____)

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SC Court of Appeals

ORDER

This matter came before me on the Plaintiffs/Appellants (“Appellants”) *Notice of Appeal and Request for Pre-Litigation Mediation* filed on February 23, 2022, as well as the *Amended Notice of Appeal* filed on April 14, 2023. Defendant/Respondent (“Anderson County Planning Commission”) filed Responses to both. After considering the pleadings on file, the pertinent portion of the official meeting minutes of the Anderson County Planning Commission provided to me, and the oral arguments of counsel for the parties, I hereby deny Appellants’ appeal.

By way of background, this case is an appeal from the denial by the Anderson County Planning Commission of the preliminary plat application for the Appellants’ Powdersville Walk single family residential project (“Powdersville Walk”) pursuant to S.C. Code § 6-29-1150. The Powdersville Walk project was originally heard and considered at the Anderson County Planning Commission’s meeting on December 14, 2021. After hearing the Appellants’ presentation, as well as the comments made by the citizens who

spoke in opposition to the project, the Commissioners discussed the project and voted to deny it by a 4-2 vote. Pursuant to the Appellants request for mediation, the parties mediated this matter on September 14, 2022. Thereafter, the Appellants made revisions to the Powdersville Walk project and brought those revisions before the Anderson County Planning Commission for consideration at its meeting on November 8, 2022. Once again, the Commissioners voted to deny the Powdersville Walk project.

In this appeal, Appellants allege the Anderson County Planning Commission's decision to deny the Powdersville Walk project was unreasonable, arbitrary, capricious, and beyond its lawfully delegated authority; a clear abuse of its authority under South Carolina law and the ordinances and regulations of Anderson County; and that it failed to apply the applicable standards and consider the preliminary plat and application in a fair and unbiased manner. See ¶¶ 21, 22, and 23 of the Notice of Appeal, and ¶¶ 54, 55, and 56 of the Amended Notice of Appeal. I disagree.

S.C. Code § 6-29-840 controls this court's review of the Anderson County Planning 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). 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 v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-174, 656 S.E.2d 346,

351 (2008); 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.”).

In a direct appeal of a decision by a planning commission, the circuit court must uphold the decision if there is any evidence to support it. *Kurschner* at 173. Furthermore, on appeal, the reviewing court must “refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). According to the relevant case law, this court must uphold the Anderson County Planning Commission’s decision provided there is any evidence to support the decision, unless the decision is based on errors of law, there is no legal evidence to support it, the board has acted arbitrarily, or where, in general, the board has abused its discretion.

I hereby find there is more than sufficient legal evidence in the record to support the Anderson County Planning Commission’s decision, that its decision was not based on any errors of law, and that the Anderson County Planning Commission did not act arbitrarily or abuse its discretion in denying the Appellants’ Powdersville Walk project. Notwithstanding the fact that the majority of the public comments were opposed to the project due primarily to safety, overcrowding of schools, and traffic concerns, the Anderson County Planning Commission was also presented with a November 7, 2022 email from Chad McBride, the Anderson County Sheriff, which set forth his many concerns for this project, among them emergency response for EMS, law enforcement and fire services. See Exhibit B to the Anderson County Planning Commission’s

Supplement to Amended Notice of Appeal. Furthermore, the Anderson County Planning Commission heard comments from the Fire Chief who also shared his serious safety concerns surrounding the proposed project. See page 28 of the Meeting Minutes from the November 8, 2022 Anderson County Planning Commission meeting which was attached as Exhibit C to the Appellants' Amended Notice of Appeal.

Based thereon, I find there is ample evidence in the record to affirm the Anderson County Planning Commission's denials of the Appellants' Powdersville Walk project, and the Appellants' appeal is hereby denied.

IT IS SO ORDERED.

R. Lawton McIntosh, Presiding Judge
Judge's Electronic Signature Page to Follow



Anderson Common Pleas

Case Caption: Toll Brothers Inc. , plaintiff, et al VS Anderson County Planning Commission
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