

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Ten Mile Neighborhood Association of)
 Awendaw, S.C.,)
)
 Plaintiff/Appellant,)
)
 v.)
)
 Charleston County Planning Commission,)
 McNeil Henry, Dream Finders Homes, LLC,)
 and Crescent Homes CHS, LLC,)
)
 Defendants/Respondents.)
)
 _____)
 Ten Mile Neighborhood Association of)
 Awendaw, S.C.,)
)
 Plaintiff/Appellant,)
)
 v.)
)
 Charleston County Planning Commission,)
 Betty Ann Goodwater, Isaac Goodwater,)
 Joseph Goodwater and Crescent Homes)
 CHS, LLC,)
)
 Defendants/Respondents.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 C/A Nos. 2024-CP-10-04072
 2024-CP-10-04074

RECEIVED
May 27 2025
SC Court of Appeals

**ORDER
 AFFIRMING THE DECISIONS OF
 THE CHARLESTON COUNTY
 PLANNING COMMISSION**

These consolidated appeals came before the Court from final decisions of the Charleston County Planning Commission (the “Planning Commission”) approving two minor subdivisions within the Ten Mile Community.¹ For the reasons set out below, the Court finds that the Planning Commission committed no error of law, that its decision is supported by ample evidence in the record, and that its decisions to approve the subdivision applications should be affirmed.

¹ Having common questions of law and fact, these appeals (2024-CP-10-04072 and 2024-CP-10-04074) were consolidated by Order of Judge Jefferson on January 28, 2025.

STATEMENT OF FACTS

A. The Properties

This case deals with the Planning Commission’s approval of two subdivision applications. The first application concerns two parcels (TMS 614-00-00-165 and TMS 614-00-00-331) (collectively “Property #1”) along Gadsdenville Road. Crecent Homes CHS, LLC (“Developer”) submitted a final plat seeking to combine, and subsequently subdivide, the properties into four separate parcels ranging between .313 and .316 acres. The second subdivision application relates to a 1.12 acre parcel (TMS 614-00-00-107) (“Property #2”) along Theodore Road. Developer submitted a final plat seeking to subdivide the property into three separate parcels ranging between .367 and .38 acres. Both Property #1 and Property #2 (collectively the “Properties”) fall within the Ten Mile Community Historic District.

B. Overview of HPC and Planning Commission Review Process

In 2018, Charleston County Council established the Historic Preservation Commission (“HPC”) with the goal of “preserv[ing] the historic properties, districts, sites, buildings, structures, and objects in Charleston County” Charleston County Ordinance Number 2285 (the “Ordinance”). As part of its function, the HPC evaluates and issues a report for any preliminary plat or minor subdivision² application falling on or within 300 feet of a Historic Property or Historic District. *See generally*, Ordinance § 21-6. The stated purpose of HPC’s review is to “encourage the preservation of the historic character” of designated properties. *Id.* at § A. At a public hearing, the HPC evaluates subdivision applications “for compliance with the cultural resources element of the Comprehensive Plan.” *Id.* at § D. HPC reports to the Planning

² ZLDR § 8.3.1 generally defines a minor subdivision as one which divides a tract of land into four or fewer lots. As the applications here involved subdivisions of 4 or fewer lots, the rules for minor subdivision under the ZLDR apply.

Commission are made “in an advisory capacity, only, and . . . have no binding effect on the Planning Commission.” *Id.* at § E.

Under Charleston County’s Zoning and Land Development Regulations Ordinance (the “ZLDR”), applications for minor and major subdivisions follow different review procedures. For minor subdivisions, applications are reviewed in the Zoning and Planning Department and approved by the Zoning and Planning Director. Planning Commission approval is not necessary for minor subdivision applications; however, the Zoning and Planning Director has discretion to send an application to Planning Commission “in order to determine whether or not the proposed subdivision is consistent with all requirements of [the ZLDR] and objectives of the *Comprehensive Plan*.” ZLDR § 8.3.2

C. The ZLDR and Comprehensive Plan

The Comprehensive Plan is Charleston County’s “future vision for preservation and development . . . for the next five to ten years.” The stated purpose and intent of the Comprehensive Plan is to:

[G]uide public decision-making affecting the quality of life in Charleston County . . . The Plan identifies the community’s Vision for the future. The Vision articulates the essential components of the quality of life in Charleston County, as identified by the community, and serves as the touchstone for the Comprehensive Plan.

Comprehensive Plan § 1.1. The Comprehensive Plan covers eleven total elements including land use, economic development, natural resources, cultural resources, population, housing, transportation, community facilities, priority investment, energy/sustainability, and resilience. *See id.* The ZLDR is reviewed by the Planning Commission and adopted by Charleston County Council in order to “implement[] the goals, objectives and policies of the Comprehensive Plan.” ZLDR § 1.5(A) Thus, while the Comprehensive Plan gives a general direction and a broad

overview of the County's long-term development, the ZLDR provides the legal means by which those general goals are carried out on a day-to-day basis.

D. HPC and Planning Commission Review of the Properties

In accordance with Ordinance § 21-6, the HPC held a public hearing on June 26, 2024, to evaluate Developer's subdivision applications for the Properties. The HPC reported that Developer's proposed subdivisions were inconsistent with the cultural resources element of the Comprehensive Plan. On July 8, 2024, the Planning Commission held a public hearing wherein the subdivision applications were considered. During this hearing, the reports of the HPC were provided and considered by the Planning Commission. Separately, the cultural resources element statement and strategies from the Comprehensive Plan were provided to and considered by the Planning Commission. Aside from the cultural resource element, Zoning and Planning staff presented evidence that the subdivision applications met the requirements of the ZLDR, including those for low density residential development under ZLDR § 4.12. The Planning Commission was also provided aerial views of the Properties, surrounding lots and adjacent streets. Ultimately, Zoning and Planning staff recommended approval of both subdivision applications because "the application[s] complie[d] with all requirements of the Charleston County [ZLDR]." The Planning Commission voted to approve both applications and these appeals followed.

STANDARD OF REVIEW

The South Carolina Supreme Court established the applicable standard of review for appeals from a local planning commission in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008). In that case, the Supreme Court held that "[b]y statute, the trial court must uphold the Commission's decision unless there is no evidence to support it." *Kurschner*, 376 S.C. at 173, 656 S.E.2d at 351. The Supreme Court further explained:

We refuse to apply a standard of review different from the any evidence standard in this case, for any other standard of review would be contrary to the legislature's intent in granting a planning commission broad discretion in this area. Furthermore, this standard of review does not violate the Kurschner's due process rights.

Id. at 174, 656 S.E.2d at 351. The Supreme Court concluded that the "any evidence" standard had been "consistently utilized in these types of cases." *Id.*

The articulation of the applicable standard of review was reaffirmed five years later in *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013), in which the Supreme Court cited *Kurschner* and defined the standard of review as follows: "By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it." 403 S.C. at 476, 744 S.E.2d at 166. The court on appeal "will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567, (2007) *Rest. Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).³

FINDINGS

I. THE PLANNING COMMISSION'S DECISION TO APPROVE DEVELOPER'S MINOR SUBDIVISION APPLICATIONS WAS SUPPORTED BY EVIDENCE.

A review of the record on appeal shows that the Planning Commission's decision to approve the subdivisions was supported by ample evidence that the applications complied with the requirements of the ZLDR and Charleston County's Comprehensive Plan. Findings by the Planning Commission are treated "in the same manner as findings of fact by a jury." *Black v. Lexington County Bd. Of Zoning Appeals*, 396 S.C. 453, 457, 722 S.E.2d 22, 24 (Ct. App. 2012)

³ Appellant argues that the Planning Commission committed an error of law in "fail[ing] to consider whether the subdivision application complied with the Charleston County Comprehensive Plan . . . ," and therefore, an abuse of discretion standard should apply. (App. Reply Br., at pp. 2-4) The Court finds that the Planning Commission did consider the Charleston County Comprehensive Plan in its approval of the subdivision applications, and therefore, the appropriate standard of review is whether its decision was supported by any evidence.

(citing S.C. Code Ann. § 6-29-840(A)) As such, the Court “will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567, (2007) *Rest. Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). The decision of the Planning Commission is given deference and will only be overturned “if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Black*, at 458, 722 S.E.2d at 24.

The records on appeal show that Charleston County Zoning and Planning staff presented Power Points to the Planning Commission outlining the HPC’s reports, portions of the Comprehensive Plan, and community input. The Planning Commission considered, but was not beholden to, the reports of the HPC. Ordinance §21-6 (E) (explaining the HPC report serves in “an advisory capacity, only, and . . . ha[s] no binding effect on the Planning Commission.”) The Planning Commission received public input raising concern that Developer’s proposed lots would be too small in comparison to those already existing within the Ten Mile Community. However, the Planning Commission was also provided aerial photographs of the Properties and the surrounding lots. Contrary to public input, the aerial shots show a variety of lot sizes and lack of cadastral continuity within the surrounding Ten Mile community. During the Planning Commission’s public hearing, Commissioner Morris opined that he did not see “any continuity or pattern” in lot sizes within the Ten Mile Community. Joel Evans, the Director of Charleston County’s Zoning and Planning Department, confirmed that the Ten Mile Community contains “a lot of differences in lot sizes” where “[s]ome lots are very large, and some lots are quite small...”

Ultimately, the Planning Commission received evidence both supporting and contrary to the HPC’s report. Presented with conflicting evidence, the Planning Commission is given broad

discretion in its decision making; the wisdom of the Planning Commission's decision cannot be questioned on appeal. *See Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567, (2007) (stating the court "will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.")

Therefore, the Planning Commission's decision to approve Developer's subdivision applications is affirmed because evidence exists in the record to show that the subdivisions comply with the ZLDR and are consistent with the Comprehensive Plan.

II. THE WISDOM OF THE PLANNING COMMISSION'S DECISION TO APPROVE DEVELOPER'S SUBDIVISION APPLICATIONS CANNOT BE DISTURBED ON APPEAL

Appellant alternatively challenges the Planning Commission's approval of the subdivision applications on the ground that it "is in direct violation of the Charleston County Comprehensive Plan." Relying on the cultural resource element of the Comprehensive Plan, Appellant argues these subdivisions should be denied because they would "lead to increased density in an already flood prone area," "sets a dangerous precedent for this community" by adding smaller lots, and "will lead to an increased density that is out of character with the historic settlement patterns of this unique community." (Appellant's Petition and Notice of Appeal, at ¶¶ 46-7; *see also*, App. Br. at p. 9) In effect, Appellant asks this Court to substitute its better judgement for that of the Planning Commission, something which the standard of review does not allow. *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567, (2007) (stating the court on appeal "will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.") Findings by the Planning Commission are treated "in the same manner as findings of fact by a jury." *Black v. Lexington County Bd. Of Zoning Appeals*, 396 S.C. 453, 457, 722 S.E.2d 22, 24 (Ct. App. 2012) (*citing* S.C. Code Ann. § 6-29-840(A))

Here, as discussed above, the Planning Commission was presented evidence both in support and opposition of the subdivision applications. Zoning and Planning staff presented evidence that Developer's subdivision applications met all requirements under the ZLDR. Based on that compliance, County staff recommended that the Planning Commission approve subdivision. The Planning Commission was also presented with public input opposed to subdivision, in addition to the HPC's reports that subdivision was inconsistent with the cultural resource element of the Comprehensive Plan. But the Planning Commission was also presented with aerial photographs of the Property and surrounding lots showing a lack of cadastral consistency or pattern in the Ten Mile community. Ultimately, faced with alternatives, each supported by some evidence, the Planning Commission voted 7-1 to approve Developer's subdivision applications. Appellant's disagreement with that decision, valid as it may be in its members' minds, does not make the decision of the Planning Commission arbitrary, capricious, or without any supporting evidence.

Therefore, the Planning Commission's decision to approve these subdivisions is affirmed because it was supported by some evidence and is afforded deference.

CONCLUSION

Wherefore, for the foregoing reasons, the Planning Commission's approval of the subdivision applications is **AFFIRMED**.

IT IS SO ORDERED.

The Honorable Judge George M. McFaddin, Jr.
Presiding Judge
Charleston County Court of Common Pleas



Charleston Common Pleas

Case Caption: Ten Mile Neighborhood Association , plaintiff, et al VS Planning
Commission Charleston County , defendant, et al
Case Number: 2024CP1004072
Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759