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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE COURT OF COMMON PLEAS FOR CHARLESTON COUNTY

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2025-001048

Ten Mile Neighborhood Association of Awendaw, S.C.,

Appellant,

v.

Charleston County Planning Commission, McNeil Henry, and Crescent Homes CHS, LLC,

Respondents.

AND

Ten Mile Neighborhood Association of Awendaw, S.C.,

Appellant,

v.

Charleston County Planning Commission, Betty Ann Goodwater, Isaac Goodwater, Joseph Goodwater, and Crescent Homes CHS, LLC,

Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE PLANNING COMMISSION'S SUBDIVISION DECISIONS WHEN THE PLANNING COMMISSION FAILED TO DETERMINE WHETHER THE PROPOSALS COMPLIED WITH THE CULTURAL RESOURCES ELEMENT OF THE COMPREHENSIVE PLAN.

- II. WHETHER THE CIRCUIT COURT ERRED BY AFFIRMING THE PLANNING COMMISSION'S SUBDIVISION DECISIONS WHEN THERE IS NO EVIDENCE THAT THE SUBDIVISIONS WOULD BE CONSISTENT WITH THE COMPREHENSIVE PLAN CULTURAL RESOURCES ELEMENT'S GOAL AND STRATEGIES.

STATEMENT OF THE CASE

This matter is an appeal of the decision of the Charleston County Court of Common Pleas that affirmed the Charleston County Planning Commission's approval of two applications for subdivisions. On June 26, 2024, the Charleston County Historic Preservation Commission initially reviewed two separate subdivision proposals within the Ten Mile Historic District in the East Cooper area of unincorporated Charleston County. One proposal sought to divide two lots located on Gadsdenville Road into four lots, and the second proposal was to divide one lot located on Theodore Road into three lots. The Historic Preservation Commission determined that both proposals were contrary to the element goal statement and certain strategies of the Cultural Resources Element of the Charleston County Comprehensive Plan. The Planning Commission reviewed the proposals on July 8, 2024 and approved both subdivision requests.

On August, 12, 2024, Appellant appealed both matters to the Court of Common Pleas for Charleston County. While on appeal, the matters were consolidated on January 29, 2025. The appeals were heard by Judge McFaddin on February 27, 2025. The Court issued a ruling on April 3, 2025 and directed the Respondents to prepare an order affirming the decisions of the Planning

Commission. The Court entered the final order on April 25, 2025. Appellant timely filed its notice of appeal on May 27, 2025.

THE PARTIES TO THE APPEAL

Appellant is the Ten Mile Neighborhood Association of Awendaw, S.C. (“Ten Mile Neighborhood Association” or “Appellant”). Appellant’s organization is composed of residents of the 10 Mile Community, and its purpose is to “expand and preserve the traditions of the Gullah Geechee people while uplifting the Ten Mile Community culturally, economically, and socially.” (Reply Ex. A, Affidavit of P. Ascue at p. 2, ¶ 5).

The primary Respondents are the Charleston County Planning Commission (“Planning Commission” or “Respondent”) which approved the subdivision of the real property at issue and the applicant for the subdivisions, Crescent Homes CHS, LLC (“Crescent Homes” or “Respondent”). Crescent Homes also possesses an interest in the real properties at issue. Additional Respondents include the current title holders of the real property at issue. Betty Ann Goodwater, Isaac Goodwater and Joseph Goodwater all possess an interest in the real property located at 1083 Gadsdenville Road. Mr. McNeil Henry possesses an interest in the real property located at 1058 Theodore Road.

STATEMENT OF FACTS

The 10 Mile Community is located in the East Cooper area of unincorporated Charleston County, South Carolina and was founded after the Civil War during Reconstruction. (Reply Ex. A, Aff. P. Ascue at p. 2, ¶ 6). Appellant’s members engaged in extensive work within the community and, as a result, Ten Mile was designated a Historic District by the Charleston County Council on June 21, 2022. (*Id.*). The historic preservation ordinance defines “Historic District” as “[a] geographically definable area, urban or rural, which contains sites, buildings, structures,

objects, *or* works of art united historically or aesthetically by plan or physical development; demonstrates cultural cohesiveness; or a combination thereof as designated pursuant to this Ordinance.” Charleston Cnty. Code § 21-11. “A Historic District derives its importance from being a unified entity, even though it is often composed of a wide variety of resources. The identity of a district results from the interrelationship of its resources, which can convey a visual sense of the overall historic environment or be an arrangement of historically or functionally related properties.” Charleston Cnty. Code § 21-3(A). And yet, “[a] Historic District can contain buildings, structures, sites, objects, or open spaces that do not contribute to the significance of the Historic District.” *Id.*

The purpose of the historic preservation ordinance, and the reason for an area to seek Historic District designation, is to “safeguard the integrity of Historic Properties and Historic Districts.” Charleston Cnty. Code § 21-3 (B). In order to satisfy the approval criteria for a Historic District, a particular area may demonstrate that it “[h]as significant inherent character, interest, history, or value as part of the rural county or heritage of the county, state or nation; [or] [e]xemplifies the cultural, political, economic, social, ethnic, or historic heritage of the county, state or nation [....]” Charleston Cnty. Code § 21-3 (I)(1), (4). The historic preservation ordinance also requires, among other information, “supporting documentation to show that 51% or more of the registered voters of the properties in the proposed Historic District are in favor of the application.” Charleston Cnty. Code § 21-3 (E)(2)(b).

After Ten Mile was designated a Historic District, Charleston County Council amended the historic preservation ordinance on May 7, 2024. Charleston Cnty. Code § 21 passim. The amendments resulted in a change for subdivision reviews. Under the prior version of the ordinance, “subdivision plats or site plan review proposals” for development within historic

districts had to “demonstrate consistency with the prevailing patterns of existing lots, densities, spacing of homes, lot sizes and shapes, and other characteristics of the historic district that the historic preservation commission deems applicable.” Charleston Cnty. Code § 21-4(f)(1)(d) (2023 version).

The current version, which controlled the review of the subdivision proposals at issue here, authorizes the Historic Preservation Commission “to evaluate certain Preliminary and Minor Subdivision Plat applications and provide a report on the consistency of the applications with the Cultural Resources Element of the Charleston County Comprehensive Plan....” Charleston Cnty. Code § 21-2 (B). The purpose of this review is, naturally, to “encourage the preservation of the historic character of Historic Properties and Historic Districts[.]” Charleston Cnty. Code § 21-6 (A). The report is “made in an advisory capacity, only, and shall have no binding effect on the Planning Commission.” Charleston Cnty. Code § 21-6 (E).

Upon current knowledge, information and belief, the review of the subdivisions at issue here was the first time the Planning Commission was presented with a recommendation from the Historic Preservation Commission regarding compliance or noncompliance with the Cultural Resources Element of the Comprehensive Plan.

I. Historic Preservation Commission Review.

The Historic Preservation Commission considered the subdivision proposed for 1083 Gadsdenville Road (“Gadsdenville Road Subdivision”) on June 26, 2024. (Gadsdenville Record on Appeal (“G.R.A.”) Transcript 4:2-4). As part of the review process, the Commission received seven letters from the community opposing the proposal and a petition signed by over sixty people opposing the proposal. (G.R.A. at 32-52, 73). The Ten Mile community members objected to the proposal because the lot dimensions and setbacks were not consistent with a majority of those in the Ten Mile Historic District. Further, the R-4 zoning, itself, “was not consistent and is not

consistent with the district even when it was zoned R-4[.]" and "[t]he original lot sizes were more consistent with the district." (G.R.A. at 33). Ms. Frances White noted in her objection that "[n]one of the [approximately] 37 developed lots on Gadsdenville R[oad] are smaller than 0.40 acres. One of the approximately 20 undeveloped lots is smaller than 0.40. These new parcels would all be less than that." (G.R.A. at 33). Several members of the community repeated these points in their comments. (G.R.A. at 34-42). No one spoke in support of the subdivision. (G.R.A. at 30).

Ultimately, "all eight members of the Historic Preservation Commission stated that proposed subdivision is not consistent with the Cultural Resource [sic] Element of the Comprehensive Plan, citing inconsistencies with [the] Element Goal statement and strategies CR1, CR2, CR3, CR5, CR7, and CR9...." (G.A.R. Transcript 5:18-25).

The goal of the Cultural Resources Element of the Comprehensive Plan reads as follows:

Cultural, historic and archaeological resources, unique settlement patterns of traditional Lowcountry communities (such as historically African-American communities and family settlements), and traditional activities (such as Sweetgrass Basket Making) should be preserved and protected from potential negative impacts of growth and development.

(G.R.A. at 69).

The particular strategies that the Historic Preservation Commission found the proposal violated included the following: CR1. ("Continue to promote historic preservation and enhance the County's historic preservation ordinance"); CR3. ("Continue to work with communities along the Gullah Geechee Corridor to preserve the unique settlement patterns and community character, including historic property/district designations, community plans and overlay zoning districts"); CR7. ("Continue to protect rural historic landscapes by ensuring development is in character with inherent rural attributes"); and CR9. ("Continue to coordinate with residents, adjacent jurisdictions, outside agencies, non-profit organizations, and others with expertise in historic

preservation to implement planning, zoning and other techniques to protect historic communities and neighborhoods and other areas of cultural significance”).¹ (G.R.A. at 69–70).

The subdivision proposed for 1058 Theodore Road (“Theodore Road Subdivision”) was likewise considered by the Historic Preservation Commission on June 26, 2024. (Theodore Record on Appeal (“T.R.A.”) at 74). As in the case of the Gadsdenville Road Subdivision, the Commission received seven public comments in opposition and a petition in opposition with sixty-seven signatures. (*Id.*). Two people spoke before the Commission and both spoke in opposition while no members of the public spoke or wrote in support of the proposal. (*Id.*).

The 10 Mile community objections repeated those submitted in opposition to the other subdivision. Community members stated that the lot dimensions and setbacks were not consistent with a majority of those in the Ten Mile Historic District including those on Theodore Road. They emphasized that the R-4 zoning “was not consistent and is not consistent with the district[,]” and that “[o]riginal residents’ developed lots are larger [than what is proposed].” (T.R.A. at 32). All eight members of the Historic Preservation Commission concluded that the Theodore Road Subdivision failed to comply with the goal of the Cultural Resources Element of the Comprehensive Plan and the following strategies: CR1., CR3., CR7., and CR9. (T.R.A. Transcript 3:7-16; T.R.A. at 70-71).

The Historic Preservation Commission’s findings on the Gadsdenville Road Subdivision and the Theodore Road Subdivision were both presented by staff to the Planning Commission. (G.R.A. at 68-70; T.R.A. at 69-71).

¹ The Historic Preservation Commission also found that the proposal violates CR2. and CR5. (G.R.A. at 69–70).

II. Planning Commission Review of the Gadsdenville Road Subdivision Proposal.

The Planning Commission was briefed on the Gadsdenville Road Subdivision proposal by Ms. Tamara Avery, a planning staff person who presented it with the aid of a slide show. (G.R.A. Transcript 3:22-25). The presentation depicted the property's location on the following: a current zoning map (G.R.A. at 54), a current future land use map (G.R.A. at 55), a current aerial map (G.R.A. at 56), and a current FEMA Flood Zone map (G.R.A. at 57). There were slides of two current site photos, a current photo of Gadsdenville Road, and a current photo of adjacent property (G.R.A. at 58-59). There was also a copy of the current plat. (G.R.A. at 60).

A slide further outlined the requisite density/intensity requirements under R-4 zoning (G.R.A. at 61); another depicted an excerpt of S.C. Code Ann. § 6-29-340 (G.R.A. at 62); other slides showed an excerpt of the Charleston County Historic Preservation Ordinance that outlined the ordinances' purpose (G.R.A. at 63) and provided a copy of the Cultural Resources Element Goal and Strategies from the Charleston County Comprehensive Plan. (G.R.A. at 64-67).

Ms. Avery next showed slides recounting the Historic Preservation Commission's conclusion that the Gadsdenville Road proposal was inconsistent with the Element goal and specific strategies CR1., CR2., CR3., CR5., CR7., and CR9. (G.R.A. at 68-70). The staff recommended approving the subdivision, however, based on its conclusion that the proposal complies with the Charleston County Zoning and Land Development Regulations ("ZLDR") requirements. (G.R.A. at 71). County Planner Joel Evans explained that compliance with R-4 zoning was "why Staff made their recommendation, because it ... meets the ordinance that was in effect at the time the application was made." (G.R.A. Transcript 12:1-8).²

² At the time it was considering amendments to the historic preservation ordinance, Charleston County Council also rezoned the Ten Mile Historic District from R-4 to S-3 which allows for less dense development as that was one of the primary concerns of the community. (See G.R.A. Transcript 13:12-21).

The only other information staff presented included information on how the matter was noticed (G.R.A. at 72) and a summary of public input (G.R.A. at 73). The public input section noted that the Historic Preservation Commission had received public input opposing the subdivision, as discussed above. (G.R.A. at 73). The Planning Commission itself received one letter in opposition that provided the materials sent to the Historic Preservation Commission, and an additional signature on the prior petition in opposition. (*Id.*).

Two people spoke in opposition to the proposal during the Planning Commission meeting. (G.R.A. Transcript 8:25-11:6). Ms. Pearl Ascue, a longtime Ten Mile resident and member of Appellant, stated that “we have not, in the Ten Mile Historical District, have not had this type of pattern of development in the past 80 years. Even when it was R-4, it did not meet the consistent pattern of the historical Ten Mile Community.” (G.R.A. Transcript 9:19-24). Ms. Ascue also noted the Historic Preservation Commission’s findings and concluded that “when it comes to supporting Settlement Communities and how the patterns are laid out, it’s totally different from your average, what we would call subdivision and lot sizes.” (*Id.* at 10:1-8). Ms. Ascue has lived in the Ten Mile community for more than 70 years and her family has lived in the Ten Mile community “since the 1890s when Ten Mile was first established.” (Reply Ex. A, Aff. P. Ascue at p. 2, ¶ 2, p. 3, ¶ 10). Ms. Ascue resides nearby the proposed subdivision on Gadsdenville Road. (*Id.* at p. 2, ¶ 7). Ms. Myra Richardson spoke in opposition and noted the inconsistency of the proposed lot sizes with those in existence in the community. (G.R.A. Transcript 10:23-11:6). Only the applicant spoke in favor of the proposal. (G.R.A. Transcript 8:9-21).

The discussion among the Planning Commission was brief. It consisted of a conversation about why the proposal was reviewed under R-4 zoning instead of S-3 (G.R.A. Transcript 11:16-12:8), and then Commissioner Morris inquired about “the general lot layout for the cadastral

patterns that are seen as unique to these communities.” (G.R.A. Transcript 12:16-21). Commissioner Morris remarked, “I don’t see really any continuity or pattern in this – in the Ten Mile Community that’s like, continual, if that makes sense. What’s the explanation for that? Or what’s the Staff’s opinion on the existing cadastral patterns?” (G.R.A. Transcript 13:2-5). Commissioner Morris made this observation based upon “the [slide] presentation.” (G.R.A. Transcript 12:24-25). Planning Director Joel Evans answered, “Well, I think in Ten Mile, you’ll see a lot of differences in lot sizes. Some are very large, and some lots are quite small because they were developed under the R-4 Zoning District with the minimum lot size.”³ (G.R.A. Transcript p. 13, lines 8-12).

The other issue broached by Commissioner Morris related to the style of house proposed, and he noted that the letters from the public stated that “essentially wider and less steep [houses] seems to be more historic, although it seems that’s more 60’s [sic] Ranch Style homes.” (G.R.A. Transcript 14:18-23). Commissioner Morris asked if a study had been done about the historical house layout but then stated that “[o]bviously, this is a subdivision, so there’s no, like, conversation really on houses....” (G.R.A. Transcript 14:23-15:2). Mr. Evans noted that the Ten Mile community is working on an overlay to lessen density. (*Id.* at 14:4-9).

Commissioner Jones commented that “we have to face the fact that this application was made under different circumstances, different zoning, which applies. And we may argue about the merits of what is required or what the Historic Preservation is asking or why it is opposing, but legally, it seems to me and I think it’s of the opinion of the legal counsel that the Applicant has standing here to go forward under the proposal that he’s made, and that there’s nothing much we

³ Although the transcript identifies Commissioner Kent as making these comments, the context and the meeting minutes show that the speaker was actually Planning Director Joel Evans. (G.R.A. at 4).

can do about it.” (G.R.A. Transcript 16:3-13). At that point, Commissioner Jones moved to approve the subdivision application and the Planning Commission voted 7-1 to approve. (G.R.A. Transcript 16:17-17:20). The lone “no” vote was cast by Commissioner Susan Cox, who said that she “recognize[d] the legal issues here, but I’m going to agree with the ... Historic Preservation Commission, and vote no.” (G.R.A. Transcript 17:15-18).

III. Planning Commission Review of the Theodore Road Subdivision Proposal.

The Theodore Road Subdivision proposal review was very similar to the Gadsdenville Road Subdivision review. The Planning Staff again presented a slide show which mirrored the information presented for the earlier Subdivision review. Ms. Avery again presented a slide show which featured the Theodore Road property’s location on a current zoning map (T.R.A. at 10), a current future land use map (T.R.A. at 11), a current aerial map (T.R.A. at 12), and a current FEMA Flood Zone map. (T.R.A. at 13). There were likewise two current site photos (T.R.A. at 14), a current photo of Theodore Road, a current photo of adjacent property (T.R.A. at 15), and the plat (T.R.A. at 16).

The staff also presented slides outlining the same R-4 zoning requirements (T.R.A. at 17), the same statute excerpt (T.R.A. at 18), and the same excerpts from Charleston County Historic Preservation Ordinance (T.R.A. at 19) and Comprehensive Plan (T.R.A. at 20-23). The staff presented the Historic Preservation Commission’s findings of inconsistencies of the proposal with the Element goal and strategies CR1., CR3., CR7., and CR9. (T.R.A. at 24-26). Despite these findings, the staff again recommended approving the subdivision because it stated the proposal complies with the ZLDR requirements. (T.R.A. at 27).

The only other information staff provided was on how the matter was noticed (T.R.A. at 28) and public input provided to the Historic Preservation Commission (T.R.A. at 29) which has been recounted above. As for the Planning Commission, it received one letter in opposition,

providing the prior documentation submitted to the Historic Preservation Commission, and another petition with 67 signatures in opposition. (T.R.A. at 29). Two people spoke in opposition to the proposal during the Planning Commission meeting (T.R.A. Transcript 4:24-5:16). Ms. Ascue stated that “the lot sizes are not consistent with the pattern of the 10-mile [sic] historical communities. These homes would be too close together to fit the prevailing pattern.” (T.R.A. Transcript 4:24-5:6). Ms. Richardson said the proposal was inconsistent with the historic settlement community character because “the setbacks and the way they’re going to be positioned on the property does not fit our character.” (T.R.A. Transcript 5:9-16). Again, only the applicant spoke in favor of the proposal. (T.R.A. Transcript 4:15-19).

Unlike the Gadsdenville Road Subdivision matter, there were no comments, questions, or discussion from any of the Commissioners or staff about any aspect of the Theodore Road Subdivision after the staff presentation and public comments. (T.R.A. Transcript 5:17-22). Instead, the Commission simply voted 7-1 to approve the subdivision application with Commissioner Cox, again, the lone opponent. (T.R.A. Transcript 5:19-6:21).

IV. Appeal to the Circuit Court.

Appellant appealed both Planning Commission decisions to the Court of Common Pleas for Charleston County on August 12, 2024. (Petition Gadsdenville Road; Petition Theodore Road). The order consolidating the appeals was filed on January 29, 2025. (Order of Consolidation). The parties briefed their respective positions with Appellant contending, essentially, that the Planning Commission erred because it approved both subdivisions without considering whether the proposals complied with the Comprehensive Plan and because it approved the subdivisions even though they violate several aspects of the Cultural Resources Element of the Comprehensive Plan. (Gadsdenville Petition at pp. 10-14; Theodore Road Petition at pp. 9-14; Joint Reply at pp. 4-8; Gadsdenville Road Brief at pp. 5-10; Theodore Road Brief at pp. 5-11).

The appeals were heard by Judge McFaddin virtually on February 27, 2025. (Hearing Transcript p. 1). On April 3, 2025, Judge McFaddin emailed his ruling to the parties, denying the appeals. (Ruling). The Court entered its Final Order on April 25, 2025. (Order dated 4/25/2025).

STANDARD OF REVIEW

The standard of review that applies turns on whether a court is addressing a planning commission's determination of a question of fact or a question of law. The "any evidence" standard of review applies to reviews of factual findings made by planning commissions. *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008). Our Supreme Court has previously rejected arguments seeking to conflate the "any evidence" standard for factual findings with the "broader and more independent review" required when the court addresses a matter of law, such as construing an ordinance. *See Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 841 (1995) ("Board contends that its determination of Council's intent was a finding of fact which is binding on this Court unless there is no evidence to support it. *We disagree*. The determination of legislative intent is a matter of law." (emphasis added)).

Planning commission decisions will not be upheld "where there is no legal evidence to support it, where the [commission] acts arbitrarily or unreasonably, or where, in general, the [commission] has abused its discretion." *Kurschner*, 376 S.C. at 174, 656 S.E.2d at 351 (citing *Peterson Outdoor Adver. v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997)(zoning board of appeal)). Likewise, in *Gurganious v. City of Beaufort*, the Court of Appeals expressly recognized different standards of review with findings of fact reviewed under the "any evidence" standard and errors of law reviewed for under the abuse of discretion or arbitrary and capricious standard. 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct. App. 1995).

ARGUMENT

I. The Circuit Court Erred Because the Planning Commission Failed to Consider Consistency of the Subdivision Proposals with the Comprehensive Plan.

The ZLDR provides that “the Zoning and Planning Director may send Minor Subdivision applications to the Planning Commission for approval in order **to determine** whether or not the proposed subdivision is consistent with **all requirements of [the ZLDR] and the goals and objectives of the Comprehensive Plan.**” Charleston Cnty. Code § 8.3.2 (emphasis added). When this occurs, as it did here, there are two distinct obligations imposed on the Planning Commission: (1) determine whether the proposed subdivisions comply with the zoning and land development regulations, and (2) determine whether the proposed subdivisions are consistent with the goals and objectives of the Comprehensive Plan.

Compliance with the ZLDR’s zoning requirements does not equate to compliance with the Comprehensive Plan. Otherwise, the specific invocation of the Comprehensive Plan in the regulation would be surplusage.⁴ Further, the principle that local governments must adhere to the guidance and intent of the Comprehensive Plan has been recognized in South Carolina case law. *Mikell v. Cnty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009)(local ordinance which purported to rezone property to a higher density invalid because it conflicted with the legislative “intent ... clearly reflected in the *Comprehensive Land Use Plan* and the ZLDR”); *see also Knowles v. City of Aiken*, 305 S.C. 219, 223, 407 S.E.2d 639, 642 (1991)(determination of whether spot zoning is illegal is based, in part, on whether zoning adheres “to the City’s comprehensive plan”); *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 175, 72 S.E.2d

⁴ “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous....” *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)(citations omitted).

66, 71 (1952)(spot zoning invalid “where the ordinance does not form a part of a comprehensive plan of zoning”)(quoting 149 A.L.R. 293). Therefore, the Planning Commission’s duty to review for consistency extends beyond the ZLDR’s zoning requirements and necessarily includes review for consistency with the Comprehensive Plan, especially when the ZLDR makes an explicit reference to the Comprehensive Plan.

The Planning Commission failed to determine whether the Gadsdenville Road or the Theodore Road Subdivision Proposals were consistent with the Cultural Resources Element goal and certain strategies of the Charleston County Comprehensive Plan. The record contains no explicit findings on Comprehensive Plan consistency or inconsistency, nor does it contain any analysis or discussion tying the subdivision proposals’ potential impact to the Cultural Resources Element. The ordinary and plain meaning of “determine” is “to fix conclusively or authoritatively.” *Determine, Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/determine> (last visited September 2, 2025). Being presented with materials that may be utilized in making a determination on the question of consistency does not equate to actually making a reasoned determination on the question, as required by the ZLDR.

For the Gadsdenville Road Subdivision Proposal, the Commissioners’ discussion focused on zoning classifications and speculative observations, with no analysis on the Historic Preservation Commission’s specific findings of inconsistency with the Cultural Resources Element. (G.R.A. Transcript 11:13-16:19, G.R.A. at 68-70). Instead, the Planning Commission relied on the staff recommendation that because the application complied with R-4 zoning requirements, it should be approved. (G.R.A. Transcript 16:3-13). Meanwhile, the Theodore Road Proposal review involved no discussion about the application whatsoever after staff’s presentation and public comment. The Planning Commission merely voted to approved the subdivision

proposal again without making any determinations. (T.R.A. Transcript 5:18-6:21). The records demonstrate the Commission disregarded the Ten Mile community's evidence that highlighted inconsistency with the Cultural Resources Element and failed to engage with the Historic Preservation Commission report. The Planning Commission made no findings of whether or how either proposal was consistent or inconsistent with the Cultural Resources Element goal or any of the strategies identified by the Historic Preservation Commission.

The Circuit Court erred by accepting, presumably, that the staff presentations were conclusive evidence of a Planning Commission determination when the Commission itself made no findings or analysis on Comprehensive Plan consistency. The Circuit Court's review is limited to evidence that is in the record. *See Wyndham Enterprises, LLC v. City of North Augusta*, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (Ct.App. 2012)(reversing zoning board due to lack of evidence in the record); S.C. Code Ann. § 6-29-1150(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.”). And yet, with respect to this issue, the Circuit Court concluded “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.” (Order at 5). Much like the Planning Commission, the Circuit Court's conclusion is devoid of reasoning or analysis on this issue.

Review of consistency with the Comprehensive Plan's Cultural Resources Element is crucial to preserving Charleston County's unique historic and cultural resources, which is why fulfilling that obligation is necessary. Zoning regulations, by contrast, govern technical aspects, but often do not reflect consideration of historic settlement patterns, community traditions, or

cultural resources. Because the property is located within a Historic District, the Cultural Resources Element is particularly relevant to these decisions. The Historic District designation requires the Historic Preservation Commission to “evaluate [the] Minor Subdivision Plat applications and provide a report on the consistency of the applications with the Cultural Resources Element of the Charleston County Comprehensive Plan” to the Planning Commission. Charleston Cnty. Code § 21-2(B). The Planning Commission failed to engage with this report or make its own findings regarding consistency or inconsistency.

Because the Planning Commission failed to determine consistency of the subdivision proposals with the Comprehensive Plan, it committed an error of law, and the Circuit Court should have reversed the decision or, at the very least, remanded the decision back to the Planning Commission. The error of law here, including the absence of the required findings related to the Cultural Resources Element and the Commission’s disregard of the evidence of inconsistency, renders the decisions arbitrary and capricious and necessitates reversal.

II. The Circuit Court Erred by Concluding that Both Subdivision Applications Complied with the Requirements of the Comprehensive Plan.

In addition to erring because the record contains no evidence demonstrating that the Planning Commission fulfilled its multi-prong review under the ZLDR and the Comprehensive Plan, the Circuit Court further erred when it concluded the record contains evidence that the subdivision proposals are consistent with the Comprehensive Plan’s Cultural Resources Element’s goal and strategies.

As mentioned in the previous section, the ZLDR states that Minor Subdivision applications before the Planning Commission must be “consistent with all requirements of [the ZLDR] and **the goals and objectives of the Comprehensive Plan.**” Charleston Cnty. Code § 8.3.2 (emphasis added). The ZLDR further states that it is intended to implement “the goals, objectives and policies

of the Comprehensive Plan” and to assure “in general, the wise and timely Development of new areas, and redevelopment of previously developed areas in harmony with the Comprehensive Plan[.]” Charleston Cnty. Code § 1.5 (A), (M).

There is no question that extensive evidence was produced that showed both subdivision proposals were contrary to the Comprehensive Plan’s Cultural Resources Element goal and strategies CR1., CR3., CR7., and CR9. The Circuit Court even acknowledged that there was evidence in the record that shows inconsistency with the Comprehensive Plan, including public comments from community members in opposition and “the HPC’s reports that subdivision was inconsistent with the cultural resource [sic] element of the Comprehensive Plan.” (Order at 8).

Despite this evidence, the Circuit Court concluded that “[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.**” (Order at 5 (emphasis added)). This was an error. *See Gurganious*, 317 S.C. at 486, 454 S.E.2d at 915 (when zoning board’s decision is “unsupported by the evidence or is clearly erroneous, its decision is not fairly debatable but is instead arbitrary and an abuse of discretion”). As noted in the Order, the “Zoning and Planning staff presented evidence that Developer’s subdivision applications met all requirements under the ZLDR.” (Order at 8). Based on compliance with the ZLDR for R-4 zoning, the County staff recommended approval of the subdivision applications. (*Id.*; *see also* G.R.A. Transcript 12:5-8 (staff made recommendation because the proposal “meets the ordinance that was in effect at the time the application was made”); T.R.A. Transcript 3:19-22). But R-4 zoning compliance does not satisfy the separate Comprehensive Plan consistency requirement. Charleston Cnty. Code § 8.3.2. The only evidence the Circuit Court identified that purportedly contradicted the vast evidence of

inconsistency, and on which it based its decision, was “aerial photographs of the Property and surrounding lots showing a lack of cadastral consistency or pattern in the Ten Mile Community.”

(Order at 8)

The aerial photographs do not, however, show that the proposed subdivisions are consistent with the historical development patterns and character of the Historic District that the Cultural Resources Element requires. Instead, the aerials show predominantly S-3 zoning near and around the proposal subdivisions. (G.R.A. at 54; T.R.A. at 55). Furthermore, to the extent that other development patterns were depicted, they were neither predominant nor actual historic settlement patterns. To the contrary, the maps and photographs showed some recent, smaller lot sizes but even those were larger than the current proposals. (G.R.A. at 33 (“[n]one of the [approximately] 37 developed lots on Gadsdenville R[oad] are smaller than 0.40 acres. One of the approximately 20 undeveloped lots is smaller than 0.40. These new parcels would all be less than that.”); T.R.A. at 32 (majority of developed and undeveloped lots on Theodore Road are larger than proposed subdivided lots and smaller lots were created under R-4)). Consistent with these statements, Mr. Evans admitted that “some of the lots are quite small because they were developed under the R-4 Zoning District with the minimum lot size.” (G.R.A. Transcript 13:9-12). Ms. Ascue and many others in the Ten Mile community stated that the R-4 zoning was inconsistent with the historical development patterns. (G.R.A. Transcript 9:19-24; G.R.A. at 33-42; T.R.A. at 32-41). In fact, these smaller lot sizes are a product of prior zoning and several predated the Ten Mile’s Historic District designation. The Court’s conclusion that the “aerial photographs of the Property and surrounding lots showing a lack of cadastral consistency or pattern in the Ten Mile community” is mistaken for other reasons as well. (Order at 8).

First, there is not one “Property” at issue for comparison purposes; instead, there are multiple properties at issue—the Order specifically designates them as “Property #1” and “Property #2”—but neither property is identified in the Order here. (Order at 2, 8). Second, the only reference to an alleged lack of cadastral patterns was in discussing the Gadsdenville Road proposal (G.R.A. Transcript 12:15-13:12); no comments nor conclusions were made about cadastral continuity regarding the Theodore Road proposal (T.R.A. Transcript 5:17-6:21). Third, and most importantly, the purported lack of cadastral patterns that Commission Morris noted with respect to the Gadsdenville Road property was based on a viewing of current aerials (G.R.A. Transcript 12:24-25, 13:12-22; G.R.A. at 11-14; T.R.A. at 10-13), which were not and cannot be evidence of a lack of historical development patterns in the Ten Mile Historic District because they necessarily include modern lot changes under R-4 zoning. This, as many in the community stated, is not consistent with the historical development pattern in Ten Mile.

Concluding that modern development, undertaken before the Historic District designation, is sufficient to deprive the Historic District of any historic development patterns is contrary to the facts, as conveyed by community members. Such a conclusion is also contrary to the Historic District designation which utilizes historical settlement patterns to support designation, Charleston Cnty. Code § 21-3 (D)(1), (4), while also recognizing that not all properties within a Historic District need to be uniform to constitute a historic settlement pattern. *See* Charleston Cnty. Code § 21-3 (A)(“[a] Historic District can contain buildings, structures, sites, objects, or open spaces that do not contribute to the significance of the Historic District”). Of course, the Planning Commission was not presented with maps that distinguished the more modern development in Ten Mile from that of historical settlement patterns (*see* G.R.A. at 11-14; T.R.A. at 10-13) but it was presented with evidence from the community that explained that lots consistent with more recent

zoning was not consistent with the historic settlement patterns and lot sizes. (G.R.A. Transcript 9:17-10:8; T.R.A. Transcript 4:24-5:5).

Even the “any evidence” standard, while generous, still has limits as the evidence must provide a reasonably sound basis from which the fact-finder could infer the required conclusion. *See Wyndham Enterprises, LLC*, 401 S.C. at 151, 735 S.E.2d at 663)(reversing zoning board’s decision “not supported by competent, substantial, and material [factual] evidence”); *Boehm v. Town of Sullivan’s Island Bd. of Zoning Appeals*, 423 S.C. 169, 181-82, 813 S.E.2d 874, 880-81 (Ct. App. 2018), cert. granted (Sept. 21, 2018). No reasonable fact finder could conclude that the current aerials depicting present day zoning, FEMA, or Future Land Use, or anything else provided to the Planning Commission, supports the conclusion that the proposed subdivisions are consistent with the historic character and settlement patterns. Therefore, there is no evidence that the subdivision proposals at issue here comply with the Cultural Resources Element goal and strategies CR1., CR3., CR7., and CR9., because the subdivision proposals create negative impacts from growth and development on the community, instead of protecting and preserving Ten Mile’s historic character and settlement patterns. Therefore, the Circuit Court erred as a matter of law in affirming those approvals, and its decision should be reversed.

CONCLUSION

The Planning Commission erred when it failed to determine whether the Gadsdenville Road and Theodore Road Subdivisions complied with the Cultural Resources Element of the Comprehensive Plan. This failure precluded the Planning Commission from actually determining that the two subdivision proposals are consistent with the Cultural Resources Element of the Comprehensive Plan. The Circuit Court erred in concluding that the Planning Commission actually made a determination that these two subdivision proposals are consistent with the Cultural

Resources Element. The Circuit Court further erred when it concluded that there was evidence before the Planning Commission that both proposals comply with the Cultural Resources Element. The only evidence before the Planning Commission and the Circuit Court was that the proposals were contrary to the Cultural Resources Element. Modern development patterns are not the same as historic settlement patterns, and utilizing them as proof of that erodes the historic character and integrity of a unique place entitled to protection under the local law. Appellant respectfully requests that the Order of the Circuit Court affirming the Planning Commission decisions as to both subdivisions be reversed.

Respectfully submitted,

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