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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable 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,
Dream Finders Homes, LLC, and Cresent 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 Cresent Homes CHS, LLC, ... Respondents.

FINAL BRIEF OF RESPONDENT

[*Signature Block to Follow*]

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STATEMENT OF ISSUES ON APPEAL

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II. DID THE CIRCUIT COURT PROPERLY DECLINE TO SUBSTITUTE ITS JUDGMENT FOR THAT OF THE PLANNING COMMISSION WHERE THE APPLICATION APPROVALS WERE SUPPORTED BY EVIDENCE?

STATEMENT OF THE CASE

This matter involves consolidated appeals by the Ten Mile Neighborhood Association of Awendaw, S.C. (hereinafter "Appellant") challenging the Charleston County Planning Commission's (hereinafter "Respondent" or the "Planning Commission") approval of two minor subdivision applications made by Cresent Homes CHS, LLC (hereinafter "Developer"). (R. p. 10–12)

On July 8, 2024, Developer brought two minor subdivision applications (hereinafter the "Applications") before the Planning Commission. (*See id*.) In separate 7-1 votes, the Planning Commission approved the Applications that same day. (*See id*.) On August 12, 2024, pursuant to S.C. Code Ann. § 6-29-1150 and ZLDR § 3.14.2, Appellant timely filed Petitions and Notices of Appeal in the Charleston County Court of Common Pleas, seeking review of the Planning Commission's approval of the Applications. (R. pp. 18–43) On January 29, 2025, upon motion and consent of all parties, the appeals were consolidated by order of the Honorable Judge Deadra L. Jefferson. (R. pp. 3–7) A hearing on the appeals came before the Honorable Judge George M. McFaddin, Jr. on February 27, 2025, and the decisions of the Planning Commission were later affirmed by order of the same on April 25, 2025. (R. pp. 9–17) On May 27, 2025, Appellant timely filed and served a notice of appeal to this Court, seeking review of the decisions of the Planning Commission and Circuit Court.

STATEMENT OF THE FACTS

This appeal involves Developer's Applications to subdivide two separate tracts of land falling within the Ten Mile Community in Mt. Pleasant, South Carolina. The first application concerns two parcels (TMS 614-00-00-165 and TMS 614-00-00-331) (collectively hereinafter "Property #1") along Gadsdenville Road. Developer submitted a final plat seeking to combine,

and subsequently subdivide, the properties into four separate parcels ranging between .313 and .316 acres. (R. p. 491)

The second subdivision application relates to a 1.12 acre parcel (TMS 614-00-00-107) (hereinafter "Property #2") along Theodore Road. Developer submitted a final plat seeking to subdivide the property into three separate parcels ranging between .367 and .380 acres. (R. p. 461) Both Property #1 and Property #2 (collectively hereinafter the "Properties") fall within the Ten Mile Community Historic District, the importance of which is explained more fully below.

A. Overview of HPC and Planning Commission Review Process

In 2018, Charleston County Council established the Historic Preservation Commission (hereinafter the "HPC") with the goal of "preserv[ing] the historic properties, districts, sites, buildings, structures, and objects in Charleston County . . . ." Charleston County Ordinance Number 2285 (hereinafter the "HPO"). As part of its function, the HPC evaluates and issues a report for any preliminary plat or minor subdivision[1] application falling on or within 300 feet of a Historic Property or Historic District. *See generally*, HPO § 21-6. At a public hearing, the HPC evaluates and issues a report "address[ing] whether and how the application is or is not consistent with the goals, objectives, and policies of the Cultural Resources Element of the Comprehensive Plan." *Id*. at § D. Following HPC review, subdivision applications come before the Planning Commission for final determination. *See id*. at § A and E. The Planning Commission reviews applications "in order to determine whether or not the proposed subdivision is consistent with all requirements of [the ZLDR] and objectives of the Comprehensive Plan."

[1] 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 four or fewer lots, the rules for minor subdivision under the ZLDR apply.

ZLDR § 8.3.2. Importantly, HPC reports to the Planning Commission are made "in an advisory capacity, only, and . . . have no binding effect on the Planning Commission." HPO § E.

B. The Comprehensive Plan and ZLDR

The Comprehensive Plan is Charleston County's "future vision for preservation and development . . . for the next five to ten years." Comprehensive Plan § 1.1. 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.

Id. The Comprehensive Plan is 332 pages long and 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*.

On the other hand, the ZLDR is an ordinance 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 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.

C. HPC and Planning Commission Review of the Subject Applications

In accordance with HPO § 21-6, the HPC held a public hearing on June 26, 2024, to evaluate Developer's Applications. (*See* R. pp. 401–07; *see also*, R. pp. 475–82) The HPC found that Developer's proposed subdivisions were inconsistent with the Cultural Resources Element of the Comprehensive Plan. (*See id*.) On July 8, 2024, the Planning Commission held a public

hearing wherein the Applications were considered. During this hearing, the reports of the HPC were provided to, and considered by, the Planning Commission. (*See* R. pp. 420–426; *see also*, R. pp. 495–501).

Separately, the Cultural Resources Element statement and strategies from the Comprehensive Plan were provided to, and considered by, the Planning Commission. (*See id*.) Aside from the Cultural Resources Element, the County's Zoning and Planning staff presented evidence that the Applications met the requirements of the ZLDR, including those for low density residential development under ZLDR § 4.12. (*See* R. pp. 417 and 427; *see also*, R. pp. 492 and 502) The Planning Commission was also provided aerial views of the Properties, surrounding lots and adjacent streets. (*See* R. pp. 410–15; *see also*, R. pp. 485–90)

The County's Zoning and Planning staff recommended approval of both Applications. (*See* R. p. 427; *see also*, R. p. 502) In separate 7-1 votes, the Planning Commission approved the Applications. (*See* R. pp. 401–07; *see also*, R. pp. 475–82) On appeal to the Circuit Court, the Honorable Judge McFaddin later affirmed the Planning Commission's approval of the Applications, finding that the decisions satisfied the "any evidence" standard of review. (R. pp. 9–17)

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 Comm'n*, 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.

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

This 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 that case, 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 (***emphasis added***). 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) (citing *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)).

Appellant argues the Planning Commission and the Circuit Court committed an error of law, alleging that consistency with the Comprehensive Plan was not considered under ZLDR § 8.3.2. Thus, Appellant argues the appropriate standard of review should, at lease in part, be a "broader more independent review" under an abuse of discretion or arbitrary and capricious standard. (App. Br., at p. 12) The Circuit Court rejected this argument, finding that the Planning Commission did consider the Comprehensive Plan in approving the Applications, meaning that there was no error of law, and the "any evidence" standard applied. (R. p. 13, n. 3) As argued *infra* § I, the County asserts that the Circuit Court correctly held that no error of law occurred. Thus, like the Circuit Court, this Court should apply the "any evidence" standard of review.

ARGUMENT

I. BECAUSE THE PLANNING COMMISSION CONSIDERED CONSISTENCY WITH THE COMPREHENSIVE PLAN AND ZLDR, THE CIRCUIT COURT PROPERLY AFFIRMED THE APPROVAL OF DEVELOPER'S MINOR SUBDIVISION APPLICATIONS.

Appellant first argues that the decision to approve the Applications should be reversed because "the Planning Commission failed to consider consistency of the subdivision proposals with the Comprehensive Plan." (App. Br., at p. 13) Appellant relatedly argues that the Planning Commission "disregarded the Ten Mile community's evidence that highlighted inconsistency with the Cultural Resources [E]lement [of the Comprehensive Plan] and failed to engage with the Historic Preservation Commission report." (App. Br., at p. 15) Appellant's argument that the Planning Commission failed to consider the Comprehensive Plan is inaccurate, and therefore, the decision of the Circuit Court upholding the Planning Commission's decisions should be affirmed.

By presentation of staff, the Planning Commission was presented with significant evidence during its consideration of the Applications, including the HPC's reports regarding inconsistency with the Cultural Resources Element of the Comprehensive Plan, copies of the Cultural Resources Element statement and strategies of the Comprehensive Plan, evidence of compliance with the requirements of the ZLDR, and aerial views of the Properties, surrounding lots and adjacent streets. (*See* R. pp. 409–74; *see also* R. 484–547) The Planning Commission was also provided public comments raising concerns over the size of the proposed lots, and thus, alleged inconsistency with the Comprehensive Plan. (*See* R. pp. 430–53; *see also*, R. pp. 505–26)

While considering the evidence referenced above, discussion was held between the Planning Commission and the Zoning and Planning Director (Joel Evans) regarding the cadastral patterns of the Ten Mile Community. Directly considering the reports of the HPC and public

comments from the Ten Mile Community criticizing the proposed lot sizes and alleging inconsistency with the Cultural Resources Element of the Comprehensive Plan, Commissioner Morris and Director Evans had the following exchange on the record:

> "*Commissioner Luke Morris*: . . . So, I had two, I guess, general questions and these were comments that came from both Historic Preservation's comments, as well as comments received from the public. The first was the general lot layout for the cadastral patterns that are seen as unique to these communities. I wasn't too sure, was there – what's the study done or explanation for the current cadastral patterns or existing cadastral patterns for the plots? So like generally speaking, my assumption for these settlement communities was that plats are generally more linier and actually, if you look at the presentation, I guess that we'll have at the end of the meeting, that seems to back that up. ***But I don't see really any continuity or pattern in this – in the Ten Mile Community that's like continual, if that make sense. What's the explanation for that? Or what's the Staff's opinion on the existing cadastral patterns***?
>
> *Director Joel Evans*[2]: ***Well, I think in Ten Mile, you'll see a lot of differences in lot sizes. Some lots are very large, and some lots are quite small*** because they were developed under the R-4 Zoning District with the minimum lot size. . . ."

(R pp. 359–60, lines 11–22) (***emphasis added***)

As evidenced by this discussion, contrary to Appellant's argument, the Planning Commission did consider the HPC's reports and community input alleging the proposed lots were too small and inconsistent with the Comprehensive Plan. The Planning Commission was presented and considered the goals and strategies of the Cultural Resources Element of the Comprehensive Plan during staff presentations. (*See* R. pp. 420–23; *see also*, R. pp. 495–98). But more than that, discussion was held on the record concerning issues raised by the community and HPC's reports regarding the proposed lot sizes and consistency with the Comprehensive Plan. (R pp. 359–60, lines 11–22)

Thus, the record plainly demonstrates that the Planning Commission was presented with, considered, and discussed whether the lots proposed under Developer's Applications were

[2] As Appellant acknowledges, a typographical error exists in the Planning Commission transcript, incorrectly attributing comments of Director Evans to Commissioner David Kent. (App. Br., at n. 3)

consistent with patterns within the Ten Mile Community, and in turn, the Comprehensive Plan. Nevertheless, the Planning Commission's interpretation of the evidence was different from that of the community and the HPC.[3] In essence, then, Appellant's argument turns to one of disagreement with the reasoning and wisdom of the Planning Commission. But as discussed more fully *infra* § II, where the Planning Commission's decision is supported by "any evidence," as it is here, the decision must be affirmed. *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013) ("By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it.")

Relatedly, Appellant argues that the Planning Commission's decision to approve the Applications should be reversed because it relied upon the fact that the proposed lots met the applicable zoning and was recommended for approval by staff. (App. Br., at p. 14 ("the Planning Commission relied on the staff recommendation that because the application complied with R-4 zoning requirements, it should be approved.")) [4] Appellant further stresses a distinction between the ZLDR and Comprehensive Plan, arguing that the Planning Commission essentially ignored the Comprehensive Plan, electing instead to approve the Applications based on compliance with the ZLDR alone.

As an initial matter, this argument ignores the above-cited discussion held on the record between Commissioner Morris and Director Evans regarding lot sizes, the overall lack of

[3] Notably, the HPC's reports to Planning Commission are made in an advisory capacity only. The Planning Commission is not beholden to the conclusions made by the HPC regarding Comprehensive Plan consistency. *See* HPO at § E.

[4] Appellant's cited support for this argument is misguided. Appellant cites to a portion of the Planning Commission transcript in which Commissioner Warwick Jones notes that the zoning controlling the Applications was different from what currently existed (S-3 currently, R-4 previously). This discussion was made in response to some public input regarding the community's dislike of the previously applicable R-4 zoning, particularly the setbacks. (*See e.g.*, R. pp. 505–26) As explained by the Commissioner, because the Applications were made "under different circumstances, different zoning," R-4 zoning applied. Commissioner Jones provided an explanation why R-4 zoning applied; it was not, as Appellant suggests, a concession that the Planning Commission was required to approve the Applications so long they met applicable zoning. To the contrary, Commissioner Jones left open that the Planning Commission could "argue about the merits of what is required or what the [HPC] is asking." (R. pp. 362–63, lines. 25–13)

cadastral pattern in the Ten Mile Community, and the Planning Commission's obvious disagreement with the HPC reports. Appellant's argument that the Comprehensive Plan was not considered, therefore, is without merit.

But even assuming *arguendo* that the Planning Commission did not consider the Comprehensive Plan—which is expressly denied—Appellant also misunderstands the relationship between the ZLDR and the Comprehensive Plan. As Appellant correctly recognizes, the Planning Commission assess compliance with the ZLDR as part of its review. *See* ZLDR § 8.3.2. (App. Br., at p. 14). Therefore, the Planning Commission's consideration of the ZLDR was not only proper, but a necessary component of its review. But more importantly, the ZLDR is an extension of the Comprehensive Plan.

The ZLDR—which is reviewed by the Planning Commission prior to adoption by County Council—is the legal embodiment of the goals and strategies established under the Comprehensive Plan. *See* ZLDR § 1.5(A) (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.") For example, as further evidence of this interconnection, each of Charleston County's base zoning districts established under the ZLDR begin with an explanation of how that zoning district seeks to implement certain policies under the Comprehensive Plan. *See, e.g.*, ZLDR § 4.10.1 ("The R-4, Single Family Residential district implements the Suburban Residential/Residential Low Density (Urban/Suburban Area) policies of the Comprehensive Plan.") Therefore, compliance with the ZLDR takes into consideration the broader Comprehensive Plan. So even if, as Appellant argues, the Planning Commission's decision was based only upon compliance with the ZLDR, this would not be fatal to its approval of the Applications.

Therefore, the Circuit Court correctly affirmed the decisions of the Planning Commission because it did consider the Comprehensive Plan in approving the Applications. As explained *infra* § II, Appellant's argument is reduced to a disagreement with the wisdom of the Planning Commission's decisions, which, when supported by "any evidence," cannot be disturbed on appeal.

II. BECAUSE THE APPLICATION APPROVALS WERE SUPPORTED BY EVIDENCE, THE CIRCUIT COURT PROPERLY DECLINED TO SUBSTITUTE ITS JUDGMENT FOR THAT OF THE PLANNING COMMISSION.

Appellant alternatively challenges the Planning Commission's decisions by arguing that "the Circuit Court 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." (App. Br., at p. 16) Appellant argues "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." (App. Br., at p. 20) In effect, Appellant invites this Court to substitute its better judgement for that of the Planning Commission. The Circuit Court correctly declined Appellant's invitation, and this Court should do the same. (R. p. 6)

Findings by the Planning Commission must be treated "in the same manner as findings of fact by a jury." S.C. Code Ann. § 6-29-840(A) "It is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board," even where the court "may thoroughly disagree with the reasoning by which the board reached its decision" or where it "may feel that the decision of the board was a substandard piece of logic and thinking." *Furr v. Horry Cty. Zoning Bd. of Appeals*, 411 S.C. 178, 183, 767 S.E.2d 221, 224 (Ct. App. 2014) (citing *Rest. Row Assocs. v. Horry Cty*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)); *see also, Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567,

(2007) (citing *Rest. Row Assocs. v. Horry Cty*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)) (stating the court on appeal "will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.")

Here, the Planning Commission was presented evidence both in support of, and in opposition to, the Applications. The Planning Commission was presented with public input against the subdivisions, arguing that the proposed lot sizes were too small in relation to the development patterns within Ten Mile, and therefore, inconsistent with the Comprehensive Plan. (*See* R. pp. 430–53; *see also*, R. pp. 505–26) The Planning Commission was also presented with the HPC's reports, arguing the subdivisions were inconsistent with the Cultural Resources Element of the Comprehensive Plan due to the sizes of the proposed lots. (*See* R. pp. 424–26; *see also*, R. pp. 499–501) But the Planning Commission was also presented with aerial photographs of the Properties and surrounding lots showing a lack of cadastral consistency or pattern in the Ten Mile community. (*See* R. pp. 410–15; *see also*, R. pp. 485–90) As cited above, Commissioner Morris and Director Evans discussed the concerns of the HPC and community, noting the lack of cadastral continuity within the Ten Mile community with some lots being "very large" and others being "quite small." (R pp. 359–60, lines 11–22) Ultimately, faced with alternatives, each supported by some evidence, the Planning Commission voted 7-1 to approve the Applications. Appellant's disagreement with those decisions, valid as it may be in its members' minds, does not mean that they lack any supporting evidence in the record.

Further, Appellant criticizes the evidence presented to the Planning Commission, arguing that the aerial photographs "show predominantly S-3 zoning," and "to the extent that other development patterns were depicted, they were neither predominant nor actual historic settlement patterns." (App. Br., at p. 18) As an initial matter, evidence exists in the record beyond the aerial

photographs to show the lack of historical cadastral continuity within Ten Mile—namely, the discussion with Director Evans regarding the lack of cadastral consistency. (R pp. 359–60, lines 11–22) But even so, Appellant's critiques go to the quality of the evidence and the weight given to that evidence by the Planning Commission. These are not valid bases upon which to reverse. The Planning Commission obviously disagreed with Appellant's characterization of the evidence; it found the aerial photographs and discussion with Director Evans persuasive. Appellant's challenge to the quality of the evidence ignores the standard of review. The question is not whether the evidence was persuasive enough in the Appellant's mind; rather, the question is whether *any* evidence exists in the record to support the Planning Commission's decisions. *See e.g.*, *Kurschner*, at 174, 656 S.E.2d at 351.

Therefore, the Circuit Court correctly affirmed the decisions of the Planning Commission, finding that its decisions were supported by evidence and declining to entertain Appellant's challenge to the wisdom of those decisions.

CONCLUSION

Wherefore, for the foregoing reasons, Respondent requests that the Order of the Circuit Court and the Planning Commission's approval of the Applications be affirmed.

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CERTIFICATION OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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