RECEIVED
Dec 04 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE COURT OF COMMON PLEAS FOR CHARLESTON COUNTY
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 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

---

FINAL BRIEF OF RESPONDENT

---

s/ William G. DesChamps, IV
William G. Deschamps, IV (S.C. Bar No. 100596)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
willdeschamps@parkerpoe.com

Attorneys for the Respondent Crescent Homes CHS, LLC

December 4, 2025
Charleston, South Carolina

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES ON APPEAL 1

I. DID THE CIRCUIT COURT PROPERLY AFFIRM THE CHARLESTON COUNTY PLANNING COMMISSION'S APPROVAL OF RESPONDENT'S SUBDIVISION APPLICATIONS, HOLDING THE DECISIONS SATISFIED THE "ANY EVIDENCE" STANDARD OF REVIEW. 1

II. DID THE CIRCUIT COURT PROPERLY AFFIRM THAT THE PLANNING COMMISSION CORRECTLY CONSIDERED, AND ULTIMATELY DISAGREED WITH THE HISTORIC PRESERVATION COMMISSION'S REPORT. 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 5

ARGUMENT 6

I. THE CIRCUIT COURT PROPERLY AFFIRMED THE CHARLESTON COUNTY PLANNING COMMISSION'S APPROVAL OF RESPONDENT'S SUBDIVISION APPLICATIONS, HOLDING THE DECISIONS SATISFIED THE "ANY EVIDENCE" STANDARD OF REVIEW. 6

II. THE CIRCUIT COURT PROPERLY AFFIRMED THAT THE PLANNING CORRECTLY CONSIDERED, AND ULTIMATELY DISAGREED WITH, THE HISTORIC PRESERVATION COMMISSION'S REPORT. 8

CONCLUSION 11

TABLE OF AUTHORITIES

Page(s)

Cases

Gurganious v. City of Beaufort,
317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995).....5

Knowles v. City of Aiken,
305 S.C. 219, 407 S.E.2d 639 (1991) 8

Kurschner v. City of Camden Plan. Comm'n,
376 S.C. 165, 656 S.E.2d 346 (2008) 5, 6

Lenardis v. City of Greenville,
316 S.C. 471, 450 S.E.2d 597 (Ct. App. 1994).....8

Mikell v. Cnty. of Charleston,
386 S.C. 153, 687 S.E.2d 326 (2009) 7

Town of Hollywood v. Floyd,
403 S.C. 466, 744 S.E.2d 161 (2013) 5, 10

Statutes

S.C. Code Ann. § 6-29-320.....6

S.C. Code Ann. § 6-29-720.....6

S.C. Code § 6-29-340.....5, 6, 8

Other Authorities

Charleston Cty. Ord. No. 2028 9

Charleston Cty. Ord. No. 2285 Sec. 21-6 (amended May 7, 2024).....3

Charleston Cty. Ord. No. 2210 3

Zoning and Land Development Regulations Ordinance.....6

Charleston County Zoning and Land Development Regulations
Ordinance ("ZLDR") § 8.3.1 2

Charleston County Zoning and Land Development Regulations
Ordinance ("ZLDR") § 8.3.2 2

Charleston County Zoning and Land Development Regulations
Ordinance ("ZLDR") § 1.5 7

Charleston County Zoning and Land Development Regulations Ordinance ("ZLDR") § 4.12.3 7

Charleston County Zoning and Land Development Regulations Ordinance ("ZLDR") § 4.12.1 8

Charleston County Comprehensive Plan ("Comprehensive Plan"). § 1.1 7

Charleston County Comprehensive Plan ("Comprehensive Plan"). § 3.1.1 7

Charleston County Comprehensive Plan ("Comprehensive Plan"). § 3.1.7.B 7

STATEMENT OF ISSUES ON APPEAL

I. **DID THE CIRCUIT COURT PROPERLY AFFIRM THE CHARLESTON COUNTY PLANNING COMMISSION'S APPROVAL OF RESPONDENT'S SUBDIVISION APPLICATIONS, HOLDING THE DECISIONS SATISFIED THE "ANY EVIDENCE" STANDARD OF REVIEW.**

II. **DID THE CIRCUIT COURT PROPERLY AFFIRM THAT THE PLANNING COMMISSION CORRECTLY CONSIDERED, AND ULTIMATELY DISAGREED WITH, THE HISTORIC PRESERVATION COMMISSION'S REPORT.**

STATEMENT OF THE CASE

This matter involves consolidated appeals challenging the Charleston County Planning Commission's ("Planning Commission") approval of two minor subdivision applications (the "Subdivision Applications") made by Cresent Homes CHS, LLC ("Respondent").

The first application concerns two parcels (TMS 614-00-00-165 and TMS 614-00-00-331) (collectively "Property #1") along Gadsdenville Road in Mt. Pleasant, SC. Respondent submitted a final plat seeking to combine, and subsequently subdivide, the properties into four separate parcels ranging between .313 and .316 acres. (R. p. 295). The second subdivision application relates to a 1.12 acre parcel (TMS 614-00-00-107) ("Property #2") along Theodore Road, Mt. Pleasant, SC (Property 1 and Property 2 may referred to together herein as the "Properties"). Respondent submitted a final plat seeking to subdivide Property #2 into three separate parcels ranging between .367 and .380 acres. (R. p. 148).

Each of the Subdivision Applications was considered a Minor Subdivision under Charleston County's Zoning & Land Development Regulations Ordinance ("ZLDR") Sec. 8.3.1.[1] Applications for Minor Subdivisions are submitted to and reviewed by the Zoning and Planning Department. ZLDR Sec. 8.3.2. Under ZLDR Sec. 8.3.2, "there is one required step in the Minor Subdivision process which is Final Plat review and approval. Generally, Minor Subdivisions are reviewed in the Zoning and Planning Department and approved by the Zoning and Planning Director. However, 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 this Ordinance and the goals and objectives of the Comprehensive Plan."

The Properties are located within the Ten Mile Community Historic District. *See* Charleston

[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

Cty. Ord. No. 2210. In 2018, Charleston County Council established the Historic Preservation Commission (hereinafter "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 "HPO"). As part of its function, the HPC evaluates and issues a report for any preliminary plat or minor subdivision 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 regarding a subdivision application's "compliance with the cultural resources element of the County's Comprehensive Plan." *Id*. at § D. HPC reports to the Planning Commission are made "in an advisory capacity, only, and . . . have no binding effect on the Planning Commission." *Id*. at § E.

The HPC met on June 26, 2024, and issued a report stating that the Subdivision Applications are not consistent with the Cultural Resources Element of the Comprehensive Plan, citing inconsistencies with the Element Goal Statement and Cultural Resource Strategies CR1, CR3, CR7, and CR9. (R. p. 123, lines 3-18, pp. 133-134); (R. p. 213, lines 18-25, p. 214, lines 1-5).

The Planning Commission met on July 8, 2024, where Ms. Tamara Avery delivered the staff presentation. (R. p. 122, lines 1-7); (R. p. 211, lines 22-23). Ms. Avery noted that the Subject Properties were zoned R-4 (low density residential) at the time the Subdivision Applications were submitted. (R. p. 122, lines 10-13, pp. 134, 148); (R. p. 212, lines 8-20). Ms. Avery's presentation also included the future land use map for the Subject Properties. (R. p. 122, lines 13-14, pp. 142-143); (R. p. 212, lines 11-12). Ms. Avery discussed and presented slides summarizing the Historic Preservation Commission's Report that the proposed subdivision is not consistent with the Cultural Resource Element of the Comprehensive Plan. (R. p. 123, lines 3-18, pp. 151-158); (R. p. 213, lines 18-25; p. 214; p. 215, lines 1-3). Ms. Avery also noted that the Planning Commission received two letters and an additional petition signature in opposition to the Subdivision Applications. (R. p. 124, lines 6-9); (R. p. 214, lines 19-25, p. 215, lines 1-3). In conclusion, Ms. Avery delivered the staff

recommendations that the Subdivision Applications should be approved because they complied with all requirements of the Charleston County ZLDR. (R. p. 123, lines 19-22); (R. p. 214, lines 6-9).

Phil Spitz, a representative of Respondent, spoke in support of the Subdivision Applications. He asked the Planning Commission to approve the Subdivision Applications because each met the full requirements of the ZLDR. (R. p. 124, lines 15-19); (R. p. 216, lines 3-21).

Two members of the public spoke in opposition to the Subdivision Applications. Ms. Pearl Ascue of 977 Gadsdenville Road, Awendaw, SC 29429, asked the Planning Commission to deny the Subdivision Applications the lot sizes are not consistent with the pattern of the Ten Mile Community Historic District. (R. p. 125, lines 1-6, p. 134); (R. p. 216, lines 23-25, p. 217, p. 218, lines 1-9). Ms. Myra Richardson of 2755 Earl Johnson Lane, Mount Pleasant, SC 29466, asked the Planning Commission to deny the Subdivision Applications because "of the pattern of our historic districts and our settlement communities and the fact that the setbacks and the way they're going to be positioned on the property does not fit our character." (R. p. 125, lines 9-16, p. 135).

In response to the public input, Commissioner Luke Morris asked whether any study had been conducted as to the existing cadastral patterns in the Ten Mile Community, adding that "I don't see really any continuity or pattern." (R. p. 220, lines 11-25, p. 221, lines 1-6). Commissioner David Kent responded that "in Ten Mile, you'll see a lot of differences in lot sizes." Commissioner Warwick Jones acknowledged that "we have to face the fact that this application was made under different [R-4] zoning, which applies." (R. p. 224, lines 3-13).

The Planning Commission voted 7-1 to adopt the staff recommendation and approve the Subdivision Applications on the basis that it complied with all requirements of the ZLDR. (R. p. 125, lines 21-25, p. 126, p. 127, lines 1-3); (R. pp. 133-135); (R. p. 224, lines 17-25, p. 225, p. 226, lines 1-3).

The Planning Commission's decision to approve the Subdivision Applications was appealed by Appellant on August 12, 2024, in the Charleston County Court of Common Pleas. On January 29, 2025, upon motion and consent of all parties, the appeals were consolidated by order of the Honorable Judge Deadra Jefferson. (R. pp. 3-7). A hearing on the appeals was held on February 27, 2025, and the decisions of the Planning Commission were affirmed by order of the Honorable Judge George McFaddin, Jr. on April 25, 2025. (R. pp. 8-17). On May 27, 2025, Appellant filed and served a notice of appeal to this Court.

STANDARD OF REVIEW

On an appeal from a decision of the Charleston County Planning Commission, the appropriate standard of review is what is alternatively referred to as the "any evidence" or "no evidence" standard. *See Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 656 S.E.2d 346 (2008) (applying "any evidence" standard to planning commission's denial of subdivision application). "By statute, the trial court must uphold a decision by the Planning Commission unless there is ***no*** evidence to support it." *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) (emphasis added); *see also Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995) (the circuit court's affirmance of an administrative board should not be reversed unless the board's findings of fact have no evidentiary support or the board commits an error of law).

The decision of a planning commission to grant or deny an application to subdivide land is an exercise of discretionary authority, as opposed to adjudicatory power. *Kurschner*, 376 S.C. at 172, 656 S.E.2d at 350. The legislature expressly granted this discretionary authority in the area of local planning to municipal planning commissions. *See* S.C. Code § 6-29-340 (conferring municipal planning commissions with the power to implement and oversee the administration of regulations for the growth and development of land). To apply a standard of review different from the "any evidence"

standard would be contrary to the legislature's intent in granting a planning commission broad discretion in the area of local planning. *Kurschner*, 376 S.C. at 174, 656 S.E.2d at 351.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY AFFIRMED THE CHARLESTON COUNTY PLANNING COMMISSION'S APPROVAL OF RESPONDENT'S SUBDIVISION APPLICATIONS, HOLDING THE DECISIONS SATISFIED THE "ANY EVIDENCE" STANDARD OF REVIEW.

The Circuit Court properly affirmed the Planning Commission's approval of the Subdivision Applications on the basis that each application complied with the requirements of the Charleston County Zoning and Land Development Regulations ("ZLDR") in effect at the time the Subdivision Applications were submitted. (R. p. 122, lines 7-19, p. 123, lines 19-22); (R. p. 125, lines 21-25, p. 126, p. 127, lines 1-3); (R. p. 214, lines 6-9); (R. pp. 224-225, p. 226, lines 1-3).

Appellant contends that the Planning Commission committed an error of law by failing to consider or discuss the Comprehensive Plan in approving the Subdivision Applications. Appellant further argues that even if the Planning Commission considered the Comprehensive Plan, the Planning Commission erred in approving the Subdivision Applications because they did not comport with Cultural Resources Element of the Comprehensive Plan, including Cultural Resource Strategies CR1, CR7, and CR9.

Appellant's arguments fail to grasp the relationship between the ZLDR and Comprehensive Plan. The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the Enabling Act) granted local governments the authority to create planning commissions to implement comprehensive plans governing development in their communities. S.C. Code Ann. § 6-29-320. A planning commission is granted various powers to prepare a comprehensive plan and recommend it to a local government. S.C. Code Ann. § 6-29-340. The Enabling Act also permits the governing body of a county to adopt zoning ordinances to help implement a comprehensive plan. S.C. Code Ann. § 6-29-720. Charleston County enacted its Zoning and Land Development Regulations Ordinance in order to

implement the Comprehensive Plan. *Mikell v. Cnty. of Charleston*, 386 S.C. 153, 156, 687 S.E.2d 326, 328 (2009).

"A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making zoning decisions." *Mikell* at 156, 687 S.E.2d at 328 (Cooper, J., dissenting) (quoting Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Development Regulation Law* 283 (2007). The Comprehensive Plan itself acknowledges that:

> The Zoning and Land Development Regulations Ordinance is the predominate regulatory tool the County has to implement the Comprehensive Plan. This ordinance provides standards that development must meet, and therefore, is the link between the recommendations of the Plan and the resulting development in the County.[2]

The ZLDR, in turn, reflects the County's best efforts to apply the recommendations of the Comprehensive Plan. *See* ZLDR Sec. 1.5; Comprehensive Plan, Sec. 1.1 ("The Plan is provided as a comprehensive guide for the county but specific recommendations may apply more in one circumstance than another."). In particular, the recommendations contained in the Future Land Use portion of the plan are intended to provide guidance to the County in its review and update of the ZLDR. Comprehensive Plan, Sec. 3.1.1.

In this case, the Subject Properties were zoned R-4 at the time the Subdivision Applications were submitted. (R. p. 122, lines 7-19, p. 148); (R. p. 212, lines 8-20).[3] The R-4 designation provides for a maximum density of "4 Principal Dwelling Units per acre." ZLDR Sec. 4.12.3. The R-4 Zoning designation is consistent with the future land use designation for the Subject Properties, Urban/Suburban Cultural Community Protection, which provides that "the residential density should be a maximum of four dwellings per acre." Comprehensive Plan, Sec. 3.1.7.B; *see also* ZLDR Sec.

[2] Comprehensive Plan, Appendix A Charleston County Implementation Toolbox to Comprehensive Plan.
[3] The Subject Properties were rezoned to S-3 after Respondent submitted the Subdivision Applications. It is undisputed that Subdivision Applications are reviewed under the zoning ordinance in effect at the time the Subdivision Applications were submitted.

4.12.1 ("The R-4, Low Density Residential Zoning District implements the Urban Suburban Mixed Use policies of the Comprehensive Plan.").

Appellant essentially asks the Courts to disregard the County Council's implementation of the Comprehensive Plan's policies to the Subject Property through the R-4 zoning designation and impermissibly substitute its own, which would amount to rezoning. That is not the law. While some residents of the area do not embrace this choice of zoning, the Court may not inject its own choice of zoning into a review of the Planning Commission's decision. *See Lenardis v. City of Greenville*, 316 S.C. 471, 471, 450 S.E.2d 597, 597 (Ct. App. 1994) ("Rezoning is a legislative matter."); *See Knowles v. City of Aiken*, 305 S.C. 219, 223, 407 S.E.2d 639, 642 (1991); *Lenardis* at 472, 450 S.E.2d at 598 ("The governing bodies of municipalities clothed with authority to determine residential and industrial districts are better qualified by their knowledge of the situation to act upon such matters than are the courts ….").

By correctly applying the ZLDR and, more specifically, the R-4 zoning designation in approving the Subdivision Applications, the Planning Commission properly considered the Comprehensive Plan as implemented by Charleston County through the ZLDR. This evidence is sufficient to meet the "any evidence" standard of review, and the Court should affirm Circuit Court's order affirming the Planning Commission's decision.

II. THE CIRCUIT COURT PROPERLY AFFIRMED THAT THE PLANNING COMMISSION CORRECTLY CONSIDERED, AND ULTIMATELY DISAGREED WITH, THE HISTORIC PRESERVATION COMMISSION'S REPORT.

Appellant further argues that the Planning Commission did not consider the Historic Preservation Commission's report regarding the Cultural Resources Element of the Comprehensive Plan. This argument similarly fails.

Subdivision regulation is within the purview of the Planning Commission, not the Historic Preservation Commission. *See* S.C. Code Ann. § 6-29-340. Any report by the Historic Preservation

Commission regarding a subdivision application is made in an advisory capacity *only* and has no binding effect on the Planning Commission. *See* Sec. 21-6.E of Charleston Cty. Ord. No. 2028 (amended May 7, 2024).

Ms. Avery's presentation at the July 8, 2024, Planning Commission meeting expressly addressed the Historic Preservation Commission's report, including the Cultural Resources Element of the Comprehensive Plan and *each* of the Cultural Resource Strategies CR1, CR3, CR7, and CR9 cited in Appellant's Petition. (R. p. 123, lines 3-18). All public opposition received by both the Historic Preservation Commission and the Planning Commission is a part of the record, and the Planning Commission heard opposition from two members of the Public. However, as explained above, the Planning Commission was free to consider and disagree with the Historic Preservation Commission's Report. *See* Charleston Cty. Ord. No. 2028 Sec. 21-6.E.

By presentation of staff, the Planning Commission was presented with significant evidence during its consideration of the Applications, including the HPC's reports regarding consistency 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. 140-161, *see also* pp. 244-265). The Planning Commission was also provided with public comments raising concerns over the size of the proposed lots. (*See* R. pp. 162-184, *see also* pp. 266-287).

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 consistency 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*[4]: ***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. p. 220, lines 11-22) (***emphasis added***).

Thus, contrary to Appellant's argument, the Planning Commission did consider the Comprehensive Plan and HPC reports during its hearings on the Applications. 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. 150-158, *see also* pp. 255-262). 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. p. 220, lines 11-22).

The record plainly demonstrates that these issues were presented, discussed, and considered as part of the Planning Commission's ultimate decision to approve the Applications; the Planning Commission simply disagreed with the reports of the HPC. 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 below, where that decision is supported by "any evidence," as it is here, the Planning Commission's decision must be affirmed. *Town of Hollywood v. Floyd*, 403 S.C. 466,

[4] As Appellant acknowledges, a typographical error exists in the Planning Commission transcript, incorrectly attributing comments of Director Evans to Commissioner David Kent.

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.").

CONCLUSION

The Planning Commission acted properly in exercising its discretion to disregard the Historic Preservation Commission's Report and by correctly applying the ZLDR to approve the Subdivision Applications. This evidence is sufficient to meet the "any evidence" standard of review, and the Court should affirm the Circuit Court and Planning Commission's decisions.

Respectfully submitted,

PARKER POE ADAMS & BERNSTEIN LLP

s/ William G. DesChamps, IV
William G. Deschamps, IV (S.C. Bar No. 100596)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
willdeschamps@parkerpoe.com

December 4, 2025
Charleston, South Carolina

Attorney for the Respondent
Crescent Homes CHS, LLC