

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

William R. McKibbon III and Anne
McKibbon,)

Appellants,)

v.)

Greenville County Planning Commission,
Red Oak Developers, LLC, and Irvin H.
Philpot, III,)

Respondents.)

Civil Action No. 2024-CP-23-7360

**ORDER AFFIRMING DECISION OF
GREENVILLE COUNTY
PLANNING COMMISSION****RECEIVED****Jun 29 2026****SC Court of Appeals**

This matter is before this Court on the Notice of Appeal filed by the Appellants William R. McKibbon, III and Anne McKibbon. A hearing was held before this Court on December 7, 2025, with the Appellants and all counsel of record present. After a review of the pleadings, the transcript of the Greenville County Planning Commission meeting at issue, the written submissions by the parties, the appellate record, and the oral arguments of counsel, the Court affirms the decision of the Greenville County Planning Commission at its November 20, 2024 meeting.

INTRODUCTION

This is an appeal from the Greenville County Planning Commission's decision on November 20, 2024, to grant conditional approval to the preliminary subdivision application for the "Derby Farm" development. The Respondents Red Oak Developers, LLC and Irvin H. Philpot submitted a preliminary subdivision application to subdivide the subject property owned

by the Respondent Philpot. The Planning Commission issued its unanimous decision on November 20, 2024. The Appellants filed their Notice of Appeal pursuant to S.C. Code Ann. § 6-29-1150 on December 20, 2024. Thereafter, on July 18, 2025, the Appellants filed a motion seeking to amend their Notice of Appeal to assert additional issues on appeal. That motion was heard on September 23, 2025, and by Form Order issued October 1, 2025, this Court denied that motion.

STANDARD OF REVIEW

S.C. Code Ann. § 6-29-840 prescribes the standard of review a Circuit Court shall apply when considering an appeal from a local planning commission. In *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008), the South Carolina Supreme Court cited S.C. Code Ann. § 6-29-840 in holding that the Circuit Court "must uphold the Commission decision unless there is no evidence to support it." 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. The Supreme Court concluded that the "any evidence" standard had been "consistently utilized in these types of cases." *Id.* Thus, under the prevailing standard of review, the findings of fact by the Planning Commission "must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840.

The articulation of the applicable standard of review was reaffirmed five years after *Kurschner* in the case of *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.” 744 S.E.2d at 166. (Citation omitted).

The standard of review further provides that “[i]n determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.” S.C. Code Ann. § 6-29-840(A). See, *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 602 S.E.2d 76 (Ct. App. 2004) (“[a]ppeal to the circuit court is only for a determination of whether the board's decision is correct as a matter of law”); *Bennett v. Sullivan's Island Board of Adjustment*, 313 S.C. 455, 438 S.E.2d 273, 275 (Ct. App. 1993) ([b]ecause the findings of fact by the Board of Adjustment are final and conclusive on appeal, our scope of review is limited to determining whether the decision of the Board is correct as a matter of law”). It is important to note that “a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *McCrowey v. Zoning Board of Adjustment of City of Rock Hill*, 360 S.C. 301, 599 S.E.2d 617, 619 (Ct. App. 2004).

There is some disagreement between the parties as to the applicable standard of review. In their brief filed October 28, 2025, the Appellants cite to the standard of review under the Administrative Procedures Act (“APA”) and specifically Section 1-23-380(5), as establishing the applicable standard of review. The Appellants, however, cite no authority for their position that the APA has any applicability to appeals filed to the Circuit Court from a local planning commission. Notably, the Appellants include a discussion of the standard of review in their Notice of Appeal, and in that filing, they include no mention of the APA and its standard of review having any applicability.

LEGAL ANALYSIS

The Respondents argue that the Appellants, in their brief filed October 28, 2025, raise a number of grounds for appeal that were not included in the Notice of Appeal, and as a result, those grounds are not properly or timely raised on appeal. This Court agrees.

As noted above, the Appellants made a motion to amend their Notice of Appeal to add new issues that were not asserted in their Notice of Appeal, and that motion was denied by this Court in its Form Order filed October 1, 2025. As this Court ruled, South Carolina law does not permit an amendment of the Notice of Appeal more than thirty days after the appeal is filed. The issue is governed by the Court of Appeals' decision in *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). In that case, the Court of Appeals ruled that "the circuit court correctly refused Austin's request to amend the petition after the expiration of [the] 30-day period for filing the appeal." 606 S.E.2d at 214. The Court of Appeals explained that "[w]hen reviewing a Board decision, the circuit court sits as an appellate court," and as such, the Rules of Civil Procedure, including Rule 15, does not apply to nor authorize amendments of a notice of appeal. The Court of Appeals further explained:

The procedures governing appeals of Board decisions to the circuit court are prescribed by statute. Section 6-29-820 requires that the aggrieved party must file a written petition with the clerk of court "setting forth plainly, fully, and distinctly why the decision is contrary to law." Furthermore, this petition "must be filed within thirty days after the decision of the board is mailed." The statute makes no provision for amendment of the grounds set forth in the petition.

606 S.E.2d at 213. (Citation omitted).

The same is true for appeals from a local planning commission to the circuit court. The appeal in this case was filed pursuant to S.C. Code Ann. § 6-29-1150, which includes no

provision for the amendment of the notice of appeal. Thus, as dictated by the decision in *Austin*, the Appellants were precluded from amending their Notice of Appeal, and as a result, are prohibited from asserting new, unpled grounds for reversal after the thirty-day appeal time has expired.

In their Notice of Appeal, the Appellants asserted three grounds: (1) that the Derby Farms development is contrary to the Greenville County Comprehensive Plan; (2) that their procedural due process rights were violated; and (3) that the Planning Commission did not consider that its approval would give rise to foreseeable “civil wrongs/torts.” Those are the grounds this Court will address. Any other grounds, which are not asserted in the Notice of Appeal, are not properly before this Court for adjudication and will not be considered.

I.

The Appellants contend that the Planning Commission “abused its discretion and acted in an arbitrary and capricious manner in approving Derby Farm when Derby Farm violated the Suburban Edge density limits.” In taking that position, the Appellants rely exclusively on the Greenville County Comprehensive Plan; however, as the Respondents argue, the Appellants fail to even consider what density is allowed under the Zoning Ordinance. This Court agrees and finds that there is evidence in the record that the density plans as outlined for Derby Farm do not violate Residential-Suburban (R-S) zoning laws and regulations.

The Derby Farm property is zoned R-S, the purpose of which is “to provide reasonable safeguards for areas that are in the process of development with predominantly single-family dwellings but are generally still rural in character.” *See*, Zoning Ordinance, § 5:4. The zoning district therefore anticipates single-family residential development within a rural area. The permitted density under the R-S zoning for a cluster development is 1.7 units per acre. *See*,

Zoning Ordinance, § 7:2 (Table 7.1). There is evidence in the record showing that the Derby Farm development was approved for 16 lots on 13.82 acres for a density of 1.16 units per acre, which is within compliance with the Zoning Ordinance.

The Derby Farm development is designated as Suburban Edge in the Comprehensive Plan, and that character area type recommends a density of zero to one units per acre. The Comprehensive Plan, however, is not mandatory nor does it supersede the Zoning Ordinance. Instead, the Comprehensive Plan is intended to provide guidance to a governing body. In the section titled “Purpose,” the Zoning Ordinance states: “The zoning regulations and districts as herein set forth have been made in accordance with a comprehensive plan.” *See*, Zoning Ordinance, § 1:1. Moreover, as the Supreme Court has explained in *Sinkler v. County of Charleston*, 387 S.C. 67, 690 S.E.2d 777 (2010), the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 allows for the creation of a local planning commission to “develop and maintain a comprehensive plan to *guide* development in its area of jurisdiction.” 690 S.E.2d at 780, n.1, *citing* S.C. Code Ann. § 6–29–510(A). (Emphasis added). Further, “[t]he Enabling Act permits the governing body of a county to adopt zoning ordinances to help implement a comprehensive plan.” 690 S.E.2d at 780, *citing* S.C. Code Ann. § 6-29-720. Similarly, a comprehensive plan was recently described by a federal district court as “a legally required, long-range policy document adopted by local governments to guide growth, development, and preservation.” *MBSC Property South, LLC v. City of Myrtle Beach*, 2025 WL 2484183, *1, n.2 (D.S.C. 2025). Thus, this Court concludes that a comprehensive plan is a “guide” for the governing body to utilize, but the comprehensive plan does not mandate strict adherence nor is it a substitute for the adopted zoning ordinance.

Accordingly, the Court finds that the density for Derby Farm is within the parameters for

R-S zoning for a cluster development, and as a result, the Planning Commission did not err in approving the preliminary plan.

II.

The Appellants also contend that the Planning Commission violated their procedural due process rights by showing deference to the developer and by the procedures followed at the November 20, 2024 meeting. The Court finds no basis for that position in the record.

In *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008), the Supreme Court established the parameters for the due process to which parties to a local planning commission proceeding are entitled. Interestingly, the Appellants cite *Kurschner* but then ignore its specific holdings. As an initial observation, the Supreme Court explained that “due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” 656 S.E.2d at 350. The Court then concluded that “due process does not require the full gamut of rules and procedures to which the Kurschners claim they were entitled. While due process may require a trial-type hearing in fact-specific, adjudicatory decisions of an administrative body, the power exercised by the Commission and the individual interests at stake in this case are very different.” *Id.* The Court recognized that a decision on a subdivision application or plan is “an exercise of discretionary authority, as opposed to adjudicatory power,” on the basis that “[t]he legislature expressly granted this discretionary authority in the area of local planning to the Commission.” *Id.*

Accordingly, the Supreme Court in *Kurschner* held that “[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Id.* The Court rejected the request for an array of due process protections and focused

on the requirement that the parties be afforded “a meaningful opportunity to be heard.” *Id.*

In applying these basic principles of law to the present case, the Court finds that the Appellants received a meaningful opportunity to be heard. The Appellants were represented by counsel at the November 20, 2025 meeting (William McKibbin is an attorney representing himself and his wife), and their counsel made a full ten-minute presentation to the Planning Commission. (ROA 155-158).¹ The Appellants also submitted a four-page letter dated November 7, 2024, to the Planning Commission prior to the meeting. (ROA 12-15). There were additional emails sent by the Appellants before the meeting. Moreover, the Appellants submitted numerous documents, including media articles, water quality reports, and other materials obtained by way of internet research. Those materials are described on pages 4 and 5 of the Appellants’ brief. As the foregoing reflects, the Appellants had a meaningful opportunity to be heard, which is the focus of the *Kurschner* decision.

The Appellants also claim lack of notice, but they do not substantiate that position. From the record, it is apparent that the Appellants knew of the hearing weeks before and, as mentioned above, submitted their position in writing by at least November 7, 2024. The Appellant were clearly in possession of the preliminary plat in that they re-submitted a copy of the plat with handwritten notes and arrows drawn thereon. (ROA 18). They have not alleged nor shown that they attempted to inspect or obtain any other records from the County's Subdivision Administration Office, and were denied such information. The Court further observes based on the transcript that the Appellants did not raise any due process concerns at the meeting itself, and

¹ The Appellants complain about the ten-minute limit, but as the Respondents point out, most parties are limited to ten minutes for oral arguments in our appellate courts. To the extent the Appellants claim they had no ability to rebut the developer’s representative’s presentation, there is no indication in the transcript that their attorney asked for additional time or sought an opportunity to rebut and was turned down. The Appellants have also not described what appropriate rebuttal information they would have provided had they had that opportunity.

that is indicative of the lack of prejudice. As an additional point, these due process arguments have been raised for the first time on appeal, which arguably renders them untimely.

Finally, the Appellants also complain that the standard of review is not *de novo*, but that argument has no merit because the Supreme Court has already rejected that argument in *Kurschner*, where the Court explained:

Additionally, we believe that the Kurschner's argument regarding judicial review is wholly mistaken. The Kurschner's argue that the trial court should have considered the substance of the evidence, and failing to do so deprived them of a meaningful review of the decision. In our view, the Kurschners are essentially urging this Court to reject the any evidence standard of appellate review that is consistently-utilized in these types of cases and asking us to adopt an appellate review somewhere between a substantial evidence and *de novo* in examining decisions of a planning commission. We decline to do so.

By statute, the trial court must uphold the Commission's decision unless there is no evidence to support it. 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.

Kurschner, 656 S.E.2d at 351. (Citations omitted). In sum, this Court concludes that the Appellants have not demonstrated a due process violation that warrants the reversal of the Planning Commission's approval of the preliminary plan.

III.

Finally, the Appellants argue that the Planning Commission did not consider that its approval would give rise to foreseeable "civil wrongs/torts." In effect, the Appellants contend that the Planning Commission's decision could lead to litigation for the Respondents Red Oak Developers, LLC and Irvin H. Philpot and potentially Greenville County. While the Appellants' claims of "civil wrongs" are entirely speculative, the Court also finds no reversible error in that

the Appellants provide no legal authority for their premise that the Planning Commission was required to consider the potential for future civil ligation as part of its decision-making process.

IT IS, THEREFORE, ORDERED that the Appellants' appeal is denied and the Court hereby affirms the decision of the Greenville County Planning Commission at its November 20, 2024 meeting granting conditional approval to the preliminary subdivision application for the "Derby Farm" development.

AND IT IS SO ORDERED.

VERNON F. DUNBAR
Presiding Judge,
Thirteenth Judicial Circuit



Greenville Common Pleas

Case Caption: William R Mckibbon III , plaintiff, et al VS Planning Commission
Greenville County , defendant, et al
Case Number: 2024CP2307360
Type: Order/Other

So Ordered

Vernon F. Dunbar