

NOTICE OF APPEAL FROM AN ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM GREENVILLE COUNTY PLANNING COMMISSION

Jay Rogers, Chairman

Subdivision Application 2020-036

Northern Greenville County Rural Landowners,

Appellant,

v.

Greenville County Planning Commission and SK Builders, Inc.

Respondents.

NOTICE OF APPEAL

Appellant appeals Greenville County Planning Commission approval of the Oakvale preliminary subdivision by vote on April 29, 2020.

May 29, 2020

s/ Michael Corley
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authority of the Planning Commission to consider density and other factors in its evaluation. Disagreement between the commissioners and staff on this question was explicit.

4. The Planning Commission's debate over Oakvale during its February meeting centered around the density of the subdivision in relation to the surrounding community. (February Minutes attached as Exhibit A). After much back-and-forth between the commissioners and staff as to whether density was a lawful consideration, the Planning Commission resolved that, rather than making a decision based on that contentious factor, the commissioners would deny the subdivision by refusing a variance requested by SK.

5. Oakvale subdivision was denied at the February 26, 2020 Planning Commission meeting on the basis of an emergency access variance, but it was plain to all in attendance, and was practically stated explicitly on the record, that the denial was actually because the project was too dense for the surrounding community. (Id.)

6. In response to the Planning Commission's denial, SK submitted a second proposed design for Oakvale, having the same density but covering more land with more lots. This time, SK avoided the need for an emergency access variance.

7. On April 29, 2020, the new design for Oakvale came before the Planning Commission, which voted 6-3 to approve the subdivision plat. (April Minutes attached as Exhibit B).

8. This meeting occurred via video conference, and public comments were not accepted. Opponents to the subdivision, including the Appellant, submitted written comments prior to the meeting, but these comments were not read aloud or summarized during the meeting. A representative from SK was on the phone during the meeting to field questions.

9. South Carolina's Local Comprehensive Planning Enabling Act provides a right to appeal from Planning Commission decisions for any "party in interest," including the subdivision developer and opponents of the subdivision. See S.C. Code § 6-29-1150; Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n, 426 S.C. 97 (Ct. App. 2019). Such appeal must be initiated "within thirty days after actual notice of the decision." S.C. Code § 6-29-1150.

10. This circuit court has jurisdiction over appeals from the Greenville County Planning Commission. See S.C. Code § 6-29-1150(D)(1).

11. Venue is proper in this Court, as the property at issue in this appeal is located within Greenville County.

PARTIES

12. Appellant Northern Greenville County Rural Landowners is a non-profit corporation organized in the state of South Carolina for the purpose of protecting and promoting rural land uses in the remaining lightly developed sections of northern Greenville County. Members of Appellant organization own property and reside in close proximity to the proposed Oakvale subdivision.

13. Appellant organization, through its members, has a significant interest in the outcome of the decision at issue here and has standing to bring this action on the basis of that interest.

14. Respondent Greenville County Planning Commission is an appointed local planning commission as defined in the South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code § 6-29-310, *et seq.*, and was created pursuant to that legislation.

15. Respondent SK Builders, Inc. is a business entity incorporated in South Carolina

and doing business in Greenville County. SK is a necessary party to this appeal.

16. This Court has personal jurisdiction over the parties due to their location or activities in Greenville County.

STANDARD OF REVIEW

17. A Planning Commission decision “will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the [commission] has abused its discretion.” Peterson Outdoor Advertising v. City of Myrtle Beach, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997), cited in Kurschner v. City of Camden Planning Commission, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standard of review to a Planning Commission decision). Further, a decision of the planning commission will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” Rest. Row Assocs. v. Horry Cty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

GROUND FOR APPEAL

LDR Article 3.1

18. Pursuant to Greenville County’s Land Development Regulations, no plat of a subdivision shall be filed or recorded until it has been submitted to the Planning Commission and approved. LDR Article 1.1. Article 3.1 of the LDR provides the “Review Criteria” for proposed subdivisions and specifies that a subdivision may be approved only if it meets all criteria in the Article.

19. As is particularly relevant here, Article 3.1 provides that a proposed subdivision must be consistent with surrounding land use density and with the surrounding environment:

Submitted developments may be approved if they meet all of the following criteria:

- Adequate existing infrastructure and transportation systems exist to support the project;
- The project is compatible with the surrounding land use density;
- The project is compatible with the site's environmental conditions, such as but not limited to, wetlands, flooding, endangered species and/or habitat, and historic sites and/or cemeteries.

Article 3.1

20. Article 3.1 has been the source of significant debate and attention over the last year, as a string of controversial subdivisions has been challenged on the basis of density, with some approved and others denied. Litigation has arisen on the basis of the County's application of Article 3.1's density provision.

21. Article 3.1 and its density provision remain binding law in Greenville County, and subdivisions in unzoned areas were previously denied based on Article 3.1's density provision. Nevertheless, in the last several months, the County, through its staff and the Planning Commission, have stated repeatedly that the density limitation in Article 3.1 cannot be applied to subdivisions in unzoned areas. No legal basis exists for such position.

22. Article 3.1's density provision was not applied to Oakvale subdivision, based on the County's faulty legal position.

23. Further, in the last several months, the County, through its staff and the Planning Commission, have stated repeatedly that none of the limitations in Article 3.1 can be applied to subdivisions in unzoned areas and that the Planning Commission has no discretion under the Land Development Regulations as it relates to consideration of such subdivisions. No legal basis exists for such position.

24. Article 3.1, including its requirement for environmental compatibility, was not applied to Oakvale subdivision, based on the County's faulty legal position.

25. The record reflects that the Planning Commission fundamentally misunderstood its charge under Article 3.1 to assess the subdivision's compatibility with surrounding land use density and environmental conditions. When the transcript of the Planning Commission's considerations of Oakvale is generated, it will reflect extraordinary confusion on the part of the commissioners and staff regarding the Commission's ability to limit development on unzoned land, with the ultimate consensus being that the Commission was constrained to approve the project because the land was unzoned. The Commission misapprehended the fact that Article 3.1, as written, is specifically intended to impose conditions on the subdivision of unzoned land.

26. The Planning Commission committed a plain and reversible error of law in declining to apply the terms of Article 3.1 to Oakvale subdivision and in artificially reading a requirement into such law that it only applies in zoned portions of Greenville County.

27. Oakvale subdivision is, in fact, not compatible with the surrounding land use density under the standard of Article 3.1, and the Planning Commission was presented with ample evidence to demonstrate this fact in advance of its approval of the subdivision, including that:

- a. The community surrounding the proposed subdivision is striking in terms of the overwhelming prevalence of forest, farmland, and large residential lots, entirely dissimilar to what is proposed in Oakvale;
- b. The average residential lot size on properties directly adjacent to Oakvale is over ten acres, while most lots within Oakvale are 0.46 acres;
- c. Purely residential lots (those without farming and forestry) in the vicinity of Oakvale are typically in the range of 2-3 acres;
- d. The Comprehensive Plan designates the community surrounding Oakvale as "Rural" and specifies that residential lot sizes should be at least two acres; and
- e. The Comprehensive Plan specifies that the community surrounding Oakvale should consist of working farms with associated residences and otherwise should have minimal development. This is exactly the current land use density in the

community, apart from Oakvale.

28. Oakvale subdivision is, in fact, not compatible with the site's environmental conditions under the standard of Article 3.1, and the Planning Commission was presented with ample evidence to demonstrate this fact in advance of its approval of the subdivision, including that:

- a. Oakvale is located in and adjacent to the floodplain of Foyster Creek and will increase stormwater runoff into Foyster Creek;
- b. Foyster Creek has experienced increased incidence of flooding, affecting roads and other infrastructure, at the exact location where Oakvale is proposed and where its stormwater will be channeled;
- c. Oakvale is immediately upstream of Berry's Mill Pond, which is an important water resource owned by the SJWD Water District and maintained as a nature preserve under conservation easement, and the value of this resource will be degraded by the increased quantity and decreased quality of stormwater runoff from Oakvale's 39 adjoining residential lots.

29. All evidence before the Planning Commission indicated that Oakvale subdivision was incompatible with the terms of Article 3.1. Planning Commission's decision to the contrary is necessarily without evidentiary support, arbitrary, an abuse of discretion, and based on a misunderstanding of law.

Comprehensive Plan

30. During the Planning Commission's consideration of Oakvale, significant legal confusion was expressed by the commissioners and by County staff regarding the Planning Commission's ability to consider the content of Greenville County's Comprehensive Plan. County staff repeatedly informed the Planning Commission that the content of the Comprehensive Plan could not be a factor in its decision. No legal basis exists for such position.

31. While the Comprehensive Plan is not a law, per se, the Planning Commission certainly does have authority and discretion to consider the content of the Comprehensive Plan,

especially as it informs application of the Greenville County Land Development Regulations.

32. The Comprehensive Plan was not considered in relation to Oakvale subdivision, based on the County's faulty legal position.

33. Oakvale subdivision is fundamentally inconsistent with the Comprehensive Plan. Oakvale is proposed in an area having the most rural designation specified under the Plan. The "Rural" land classification that applies to Oakvale calls for the lightest impact from residential development in the County, outside of land that is part of a nature preserve or park. According to the Plan, the land in and around Oakvale should have the following characteristics:

Rural place types also support the primary residence of the property owner and any out-buildings associated with the activities of a working farm. Otherwise, these are places characterized by natural or cultivated landscapes with minimal development.

As specifically designated by the Plan, the density of residential development allowed in "Rural" areas like Oakvale should be: "1 dwelling per 2 + acres." Oakvale would be at least four times denser than the maximum density allowed for this area under the Comprehensive Plan and would otherwise be completely outside the designated character of the area.

34. The Planning Commission did not consider the fundamental inconsistency of Oakvale with the Comprehensive Plan, because the commissioners were informed by County staff that the Plan did not apply in relation to unzoned land. This advice, adopted by the Planning Commission, represents a plain and reversible error of law.

35. To the extent, if any, that the Planning Commission did apply the Comprehensive Plan, it fundamentally failed to examine the character of Oakvale in relation to the surrounding area and the requirements of the Plan.

36. Planning Commission's decision not to consider or apply the Comprehensive Plan,

along with its decision to approve a subdivision that is fundamentally inconsistent with the Comprehensive Plan, is necessarily without evidentiary support, arbitrary, an abuse of discretion, and based on a misunderstanding of law.

WHEREFORE, the Appellant requests that this Court:

- a. issue an order reversing the decision of the Greenville County Planning Commission to approve Oakvale, and
- b. for costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully submitted,

s/ Michael G. Corley
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Greenville, South Carolina
May 29, 2020

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IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-23-_____

SUMMONS

TO THE DEFENDANT SK BUILDERS, INC:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscribers at their offices, P.O. Box 5761, Greenville, South Carolina, 29606, within thirty (30) days after the service hereof, exclusive of the day of such service.

Respectfully submitted,

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TO THE DEFENDANT GREENVILLE COUNTY PLANNING COMMISSION:

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