

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Northern Greenville County Rural
Landowners,

Appellant,

vs.

SK Builders, Inc., and the Greenville County
Planning Commission,

Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2020CP2305445

ORDER

This matter comes before the Court pursuant to an appeal by Northern Greenville County Rural Landowners (“Northern Greenville”) from the Greenville County Planning Commission’s (“Planning Commission”) approval of the Oakvale subdivision, a proposed residential development. Appellants, Northern Greenville asserts that the Planning Commission disregarded the density provisions of Article 3.1 of the Greenville County Land Development Regulations April 2018 (“Greenville County Regulations”). The Planning Commission approved the Oakvale subdivision without specifically addressing the factors of Article 3.1 of the Greenville County Regulations (“Article 3.1”) asserting that Article 3.1 did not apply to this proposal since the Oakvale subdivision was located in an unzoned area. After considering the record in this matter and briefs submitted by all parties, the Court finds that Article 3.1 applies to the proposed subdivision and the Planning Commission must consider the factors of Article 3.1 in the approval process for the Oakvale Subdivision.

DISCUSSION

First, Respondents argue that Article 3.1 does not apply to unzoned areas and therefore would not apply to the Oakvale subdivision. This Court disagrees. Article 3.1 states as follows:

3.1 Review Criteria

To further the intent set forth in Section 1.2, the following shall apply for all developments reviewed under this Article.

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.*

Under 1.2 of the Greenville County Regulations, the County has set forth its intent for the “harmonious, orderly, and progressive development of land within the municipalities and counties of the State of South Carolina” and then lists goals for the regulation of land development by counties. Under 1.2 (E), the Greenville County Regulations allows for the regulation of land development “To assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of counties.” But nowhere in these two provisions, Article 1.2 or 3.1 nor the Greenville County Regulations, does the regulation limit the 3.1 criteria to zoned areas. The County could have very easily inserted such a phrase in the regulations if that was its intent. Under *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), the South Carolina Supreme Court found that what a legislative body “says in the text of a statute is considered the best evidence of the legislative intent or will, therefore the courts are bound to give effect to the expressed intent of the legislature.”

Further, the Planning Commission previously found that Article 3.1 applied to unzoned areas when considering approval of other subdivision plans:

-The Planning Commission rejected two proposed subdivisions in an unzoned area because they did not meet the criteria of Article 3.1. (See Minutes from Planning Commission of July 25, 2018-Record pp 202-203).

-The Planning Commission rejected the Howard Farms proposal in an unzoned area for not meeting the Article 3.1 criteria. (See R. pp. 183-184).

-The Planning Commission rejected the Echo Valley proposal in an unzoned area for failure to meet the Article 3.1 criteria. (See R. p. 150).

Therefore, to find that Article 3.1 does not apply to unzoned areas is not supported by the Greenville County Regulations nor its prior application by the Planning Commission.

Next, Respondents argue that if Article 3.1 applies, there was sufficient evidence to support the Planning Commissions' approval of the Oakvale subdivision. The only provision addressed by Appellant's brief appellants was the 2nd factor of Article 3.1: "[t]he project is compatible with the surrounding land use density". The Planning Commission points to various discussions and information presented at the hearing regarding compatibility with the surrounding land use density and argues that this establishes evidence to support the approval of the subdivision under Article 3.1. Under *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-174 (2008), the South Carolina Supreme Court confirmed the standard of review by the circuit court on appeal:

By statute, the trial court must uphold the Commission's decision unless there is no evidence to support it. See S.C.Code Ann. § 6-29-840 (2005) ("The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury"); Townes Assoc's, Ltd. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976) (holding that factual findings of the jury will not be disturbed unless there is no evidence which reasonably supports the jury's findings). 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.

The minutes of the Planning Commission contain numerous references and discussions relating to Article 3.1 factors, but it is difficult for this Court to determine if these discussions rise to the level of evidence to comport with the "any evidence" standard set out in *Kurschner*. Further, the

minutes of the Planning Commission clearly demonstrate that it was operating under the premise that Article 3.1 did not apply to this subdivision because it was in an unzoned area and therefore, these factors did not need to be considered. The Planning Commission cannot have it both ways.

At this point, the Court cannot make a determination of whether the factors of Article 3.1 were adequately considered or that there is “any evidence” to support the decision by the Planning Commission.

CONCLUSION

In conclusion, the Planning Commission failed to specifically address the factors set forth in Article 3.1 which applies to the proposed subdivision and the Court hereby **REVERSES** the decision of the Planning Commission and **REMANDS** this matter for the Planning Commission to address the Article 3.1 factors.

IT IS SO ORDERED.

(E-Signature of Judge Gravely to follow)



Greenville Common Pleas

Case Caption: Northern Greenville County Rural Landowners VS Planning
Commission Greenville County , defendant, et al

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Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755