

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 7, 2020

**ELISE HUDSON ET AL. v. METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY ET AL.**

**Appeal from the Chancery Court for Davidson County
No. 18-0020-II Anne C. Martin, Chancellor**

No. M2019-01081-COA-R3-CV

After a planning commission approved a subdivision request, neighboring property owners filed a petition for common law writ of certiorari. The trial court granted the writ and, upon review, vacated the decision and remanded the case for further consideration. Both the planning commission and the owner of the proposed development appealed. Based on our review, we conclude that the planning commission acted illegally when it misapplied the applicable legal standards. So we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed
and Case Remanded**

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Robert E. Cooper, Jr., Director of Law, and Lora Barkenbus Fox and Catherine J. Pham, Metropolitan Attorneys, Nashville, Tennessee, for the appellants, Metropolitan Government of Nashville & Davidson Co. and Metropolitan Planning Commission.

James L. Murphy, Junaid A. Odubeko, and Thomas V. White, Nashville, Tennessee, for the appellants, Parkwood Estates and Pulte Homes Tennessee Limited Partnership.

Jason D. Holleman, Nashville, Tennessee, for the appellees, Marcella Hudson, George Ewing, James Matthew Hudson, Taylor Hudson, James Frierson Hudson, Elise Hudson, Cheryl Hudson, Lillian Renee Hudson, Amanda Hudson, Marie Hudson, and Wesley Hudson.

OPINION

I.

A.

The Metropolitan Planning Commission approved, with conditions, a concept plan for the construction of 193 single-family homes on 65 acres in the Whites Creek-Bordeaux community. Approval of a concept plan is the first step in the subdivision process in Nashville/Davidson County.

A group of neighboring property owners (the “Petitioners”) filed a petition for writ of certiorari in Davidson County Chancery Court. The petition alleged that the Planning Commission acted illegally, arbitrarily, and capriciously in approving the concept plan and/or it followed an illegal procedure.

After reviewing the administrative record, the trial court ruled that the Planning Commission followed an illegal procedure in reaching its decision. The court took issue with statements made by the Planning Commission’s staff and legal counsel during the Planning Commission’s deliberations. Reasoning that this advice unduly restricted the Planning Commission’s discretionary authority, the trial court vacated the decision and remanded the case for further consideration.¹

B.

The concept plan was presented to the Planning Commission at its November 9, 2017 regular meeting. *See* Tenn. Code Ann. §§ 13-3-402, 13-4-302 (2019) (requiring all subdivision plats to be approved by a municipal or regional planning commission). The planning staff recommended approval with conditions based on the site’s topography.

The Planning Commission has adopted Subdivision Regulations to govern proposed development in the metropolitan area. *See id.* §§ 13-3-403, 13-4-303 (2019). The regulations incorporate the community transect classification system, adopted by the Planning Commission as part of the general plan. *See id.* §§ 13-3-301, 13-4-201 (2019). The transect system classifies property in Nashville/Davidson County into one of seven categories based on its characteristic development pattern. The Subdivision Regulations specify which rules apply to a proposed subdivision based on its particular location.

¹ After the court rendered its decision, it granted the property owners’ petition to intervene. The court later denied the property owners’ motion to alter or amend its previous decision.

The subject property was located within the T3 suburban transect. The general plan identified the property as “neighborhood evolving with some areas of conservation.”² The property served as a transition between the rural areas to the north and district industrial zoning to the south. This policy designation of “T3 suburban neighborhood evolving” meant that the conventional suburban subdivision rules in chapter 3 of the Subdivision Regulations applied to the concept plan. The planning staff advised the commission members that the requirements in chapter 3 had been met.

The planning staff also determined that the proposal complied with the Zoning Code. The subject property was zoned residential. No rezoning was requested or required. Because the site was “challenging due to . . . steep slopes,” the proposed subdivision was developed using the optional cluster lot provisions in the Zoning Code.³ Under this option, lots are clustered in less steep areas to preserve the natural features of the land. The cluster lot provisions allow reduced lot sizes but mandate the creation of common open spaces and recreational facilities within the subdivision.

The concept plan envisioned 193 single-family homes. Thirty-four percent of the site area was set aside as common open space, well above the fifteen percent required by the Zoning Code. No lots would be built on the most heavily sloped portion of the property; it was reserved for a natural walking trail. The plan also included several other recreational areas, such as a playground, dog park, horseshoe area, and a sitting area with a firepit.

Multiple neighboring property owners objected to the proposed development. While they expressed a variety of concerns,⁴ their main complaint was that the proposal was incompatible with the existing rural development pattern in the Whites Creek area. According to the neighbors, the general plan for the Whites Creek community highlighted its rural character. They argued that the density of the proposed development violated the general plan.

² The Planning Commission’s conservation policy identifies land with sensitive environmental features, such as steep slopes, and seeks to preserve the environmentally sensitive areas through protection and remediation.

³ Developers are encouraged to use the cluster lot option for single family subdivisions in areas of 20% or greater slope.

⁴ The objecting parties suggested the proposed development would increase traffic, destroy an extensive tree canopy, increase stormwater runoff in the area, and potentially disturb a rumored burial site. And some neighbors maintained that the concept plan did not meet the applicable sight distance requirements in the Subdivision Regulations or the open space provisions for cluster lot developments.

During the Planning Commission's deliberations, questions arose about the relevance of policy concerns when considering a subdivision request. The planning staff initially responded,

[A]s you know we're on a transect standard here in Davidson County. . . . [T]he subdivision regulations outline for you the way that they are applied to properties within th[e] different transects This area is T3 suburban neighborhood evolving policy. So it falls within that T3 transect, the suburban transect. And . . . the conventional suburban subdivision regulations are applied to that property, which is Chapter 3 of the subdivision regulations, the traditional suburban subdivision regulations. And so that's really the limit of policy in this regard for subdivision regulations as they pertain to this property.

The planning staff acknowledged that harmony and compatibility were proper considerations for some types of infill development and subdivision requests in other transect categories. But,

Again, as it relates to the development of land, as it relates to subdivisions, policy has a pretty limited role. The subdivision regulations outline for you . . . how the regulations are applied to different policies. In this instance, T3 neighborhood evolving, the conventional suburban regulations are applied to this property. That's really the limit of policy application in regards to subdivision regulations.

The Planning Commission's legal advisor agreed that the Planning Commission was limited to considering whether the concept plan complied with the standards in the Subdivision Regulations and the Zoning Code. As she explained,

The role of this commission when a subdivision request comes before you is to evaluate the criteria, evaluate – that is set forth specifically in the subdivision regulations. And if you determine that the application or the concept plan meets the subdivision regulations as well as the Zoning Code, you don't have the authority to disapprove it. You can disapprove it if you state with specificity that it does not meet the zoning reg—Zoning Code or the subdivision regulations.

Some commission members voiced concerns about the density of the proposed development. But after considering the entire record, the Planning Commission voted, six to one, to approve the concept plan with the recommended conditions.

II.

The scope of judicial review on a common law writ of certiorari is narrow. *Lewis v. Bedford Cty. Bd. of Zoning Appeals*, 174 S.W.3d 241, 245 (Tenn. Ct. App. 2004). We are not concerned with the “intrinsic correctness” of the Planning Commission’s decision. *Heyne v. Metro. Nashville Bd. of Pub. Educ.*, 380 S.W.3d 715, 729 (Tenn. 2012). We will not “reweigh the evidence” before the Commission or “substitute [our] judgment” for theirs. *Id.* It is the Planning Commission’s responsibility to evaluate subdivision requests, not this Court’s. *See Thompson v. Dep’t of Codes Admin., Metro. Gov’t of Nashville & Davidson Cty.*, 20 S.W.3d 654, 661 (Tenn. Ct. App. 1999) (“Tennessee law assigns full responsibility for the process of subdivision regulation, development, application and administration to regional and municipal planning commissions.” (citing Tenn. Code Ann. § 13-4-303)).

We will only intervene if we determine that the Planning Commission “(1) exceeded its jurisdiction, (2) followed an unlawful procedure, (3) acted illegally, arbitrarily, or fraudulently, or (4) acted without material evidence to support its decision.” *Heyne*, 380 S.W.3d at 729. In this context, the Planning Commission “acted illegally” if it failed “to follow the minimum standards of due process”; misrepresented or misapplied applicable legal standards; based its decision “on ulterior motives”; or violated the state or federal constitution. *See Harding Acad. v. Metro. Gov’t of Nashville & Davidson Cty.*, 222 S.W.3d 359, 363 (Tenn. 2007).

Planning commissions are entrusted with the authority to set local planning priorities. *See Metro. Gov’t of Nashville & Davidson Cty. v. Barry Constr. Co.*, 240 S.W.3d 840, 852 (Tenn. Ct. App. 2007). And they enjoy “a considerable amount of discretion” when exercising their authority. *State ex rel. Byram v. City of Brentwood*, 833 S.W.2d 500, 505 (Tenn. Ct. App. 1991). But the consideration of a subdivision request is an administrative or “a quasi-judicial function.” *B & B Enters. of Wilson Co., LLC v. City of Lebanon*, No. M2003-00267-COA-R3-CV, 2004 WL 2916141, at *3 (Tenn. Ct. App. Dec. 16, 2004); *see also McCallen v. City of Memphis*, 786 S.W.2d 633, 638 (Tenn. 1990) (noting that “[t]he term administrative is used interchangeably with judicial or quasi-judicial”). As such, the Planning Commission’s discretion “must be exercised within existing standards and guidelines.” *McCallen*, 786 S.W.2d at 639.

Petitioners complain that the planning staff and legal counsel precluded the commission members from considering whether the concept plan was harmonious with the surrounding area. In their view, “[t]he entire thrust of the state law enabling planning commissions to review subdivision requests is to permit those bodies to determine whether the request will provide for ‘harmonious development’ with the existing community.” Specifically, they point to Tennessee Code Annotated § 13-3-403(a) as authority for the Planning Commission to examine a concept plan and make an individual determination as to whether it is harmonious with its surrounding environment. *See also*

Tenn. Code Ann. § 13-4-303(a) (nearly identical provision pertaining to municipal planning commissions).

The plain language of the cited statute does not support Petitioners' argument. Tennessee Code Annotated § 13-3-403(a) directs regional planning commissions to "adopt regulations governing the subdivision of land within [their] jurisdiction." *Id.* § 13-3-403(a). Those regulations, among other things, "may provide for the harmonious development of the region and its environs." *Id.* Nothing in this statute authorizes the Planning Commission to evaluate each subdivision request to determine whether it is "harmonious." *See also id.* § 13-4-303(a) (applicable to municipal planning commissions).

As an alternative argument, Petitioners maintain that the concept plan violated section 3-1(2) of the Subdivision Regulations.⁵ As explained previously, the conventional suburban subdivision regulations, contained in chapter 3 of the Subdivision Regulations, were applicable to this concept plan. Section 3-1(2) provides that, in addition to the other requirements in chapter 3,

divisions of land shall comply with all applicable laws, ordinances, resolutions, rules, policies or regulations, including, but not limited to the following:

- a. All applicable provisions of Tennessee law, regulations, or policy.
- b. The Zoning Code, Building and Housing Codes, and all other applicable Metro laws.
- c. The adopted General Plan, including its constituent elements, and the Major Street Plan.**
- d. The rules of the Metropolitan Health Department and the Tennessee Department of Health and Environment.
- e. The rules of the Tennessee Department of Transportation if the subdivision or any lot contained therein abuts or encompasses a state highway or proposed state route.
- f. The standards and regulations adopted by all other boards, commissions, and agencies of the county, where applicable.

(emphasis added). Based on the highlighted terms, the Planning Commission had the authority to determine whether the concept plan complied with the "adopted General

⁵ The Subdivision Regulations were not included in the appellate record. All parties cite to portions of the regulations, which can be accessed from the Metropolitan Planning Commission's website. *See Subdivision Regulations*, METRO. GOV'T OF NASHVILLE & DAVIDSON CTY., TENN., <https://www.nashville.gov/Planning-Department/Land-Development/Subdivision-Regulations-.aspx> (last visited Dec. 3, 2020).

Plan.” Thus, the planning staff’s description of the role of policy in the subdivision approval process was incomplete and led the commission members to discount potentially legitimate objections.

In light of this misinterpretation of the applicable legal standards, we conclude that the Planning Commission acted illegally. *See Jacks v. City of Millington Bd. of Zoning Appeals*, 298 S.W.3d 163, 167 (Tenn. Ct. App. 2009) (“When inquiring whether an administrative decision is illegal, arbitrary, or fraudulent, a trial court should consider whether a board misconstrued applicable statutes and ordinances.”). Petitioners argued that the concept plan was incompatible with the policies laid out in the subarea plan for the Bordeaux-Whites Creek community. Whether or not Petitioners are correct is not for us to decide. As the Planning Commission’s legal advisor explained, it was the Commission’s role “to evaluate the criteria . . . set forth specifically in the subdivision regulations.” This includes whether the concept plan complied with Section 3-1(2).

III.

We affirm the trial court’s decision. And we remand this case to the Planning Commission for reconsideration of the concept plan.

W. NEAL MCBRAYER, JUDGE