

RENDERED: APRIL 25, 2008; 2:00 P.M.
 NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-000272-MR

PAULA AROH; AND
WILLIAM PEARSE

APPELLANTS

v.
APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A. C. McKAY CHAUVIN, JUDGE
ACTION NO. 06-CI-006836

LOUISVILLE METRO PLANNING
COMMISSION; WEST DEVELOPMENT,
LLC; AND ELIZABETH STILES WEST

APPELLEES

OPINION
AFFIRMING

*** * * * *

BEFORE: LAMBERT AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Paula Aroh and William Pearse appeal a Jefferson Circuit Court opinion and order holding that the Louisville Metro Planning Commission did not act arbitrarily or capriciously in approving West Development, LLC's proposed subdivision. Finding no error, we affirm.

In May 2006, West Development filed a Major Subdivision Preliminary Plan Application with the Louisville Metro Planning and Design Services. Under the

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and the Kentucky Revised Statutes (KRS) 21.580.

plan, West Development proposed to subdivide a 6.1 acre lot located in the historic Altawood Subdivision into 18 separate lots. Significant features of the plan were that it would create a net density of 4.0 dwelling units per acre, and a cut-through street between Rollington Road and Altawood Court. The proposed subdivision was zoned appropriately, required no variance or waivers, and complied with the applicable Louisville Metro Subdivision Regulations. Neighbors within the Altawood Subdivision, however, objected to the proposed subdivision as violating the Comprehensive Plan, being incompatible with the historic character of the Altawood Subdivision, diverting new traffic onto the underdeveloped Altawood Court, and violating certain aspects of the subdivision regulations.

At a meeting of the Planning Commission in July 2006, a number of the commissioners expressed their displeasure at having to approve the proposed subdivision, based on the subdivision's incompatibility with the larger Altawood Subdivision and the fact that West Development had made no concessions in its proposal to mitigate that incompatibility. Notwithstanding that displeasure, the commissioners voted to approve the proposed subdivision. Aroh and Pearse, neighboring lot owners within the Altawood Subdivision, appealed to the Jefferson Circuit Court, which granted summary judgment to West Development. Aroh and Pearse now appeal to this court.

Under the well-established standard of review of administrative decisions, a court's review is limited to whether the administrative decision was arbitrary. A decision is arbitrary, unreasonable or capricious if it: (1) exceeds the powers granted to the administrative body; (2) fails to meet the requirements of procedural due process; or

(3) is not supported by substantial evidence in the record. *City of Louisville v. McDonald*, 470 S.W.2d 173, 178-79 (Ky. 1971); *Am. Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450 (Ky. 1964); *Hougham v. Lexington-Fayette Urban County Gov't*, 29 S.W.3d 370, 373 (Ky.App. 1999).

The appellants make three arguments: (1) the Planning Commission's regulations did not comport with the requirements of the Comprehensive Plan as required by KRS 100.281; (2) the street network created by the proposed subdivision was inadequate and did not comply with Section 7.3.10 of the Land Development Code; and (3) the proposed subdivision was incompatible with the existing residential neighborhood and did not protect the historic resources of an area listed on the National Register of Historic Places. We address each of these arguments in turn.

I. Compliance of Planning Commission's Regulations with the Comprehensive Plan.

Under KRS 100.281, “[s]ubdivision regulations shall be based on the comprehensive plan” and are required, *inter alia*, to contain specifications for the contents of subdivision plats, and requirements for the design of streets, block, and lots. The contents of a comprehensive plan are addressed by KRS 100.187. Such a plan is required to contain a statement of goals and objectives, a land use plan element, a transportation plan element, and a community facilities plan element. In addition, a “comprehensive plan may include any additional elements such as . . . historic preservation.” KRS 100.187(6). The appellants argue that once these additional elements are included in a comprehensive plan, they become mandatory elements which, along with the required elements, must be reflected in the subdivision regulations. Further, since the Metro Louisville Comprehensive Plan includes

compatibility guidelines and a section on “Preservation of Historical Resources,” such elements should have been reflected in the Land Development Code.

All parties recognize that under *Snyder v. Owensboro*, 528 S.W.2d 663, 664 (Ky. 1975), subdivision regulations must contain specific standards, rather than broad generalizations. Further “the power of a planning board to approve or disapprove plats is limited to those rules and regulations.” *Id.* The court in *Snyder* also held that “the approval of subdivision plats is a ministerial act.” *Id.*

In *Wolf Pen Pres. Ass'n, Inc. v. Louisville & Jefferson County Planning Comm'n*, 942 S.W.2d 310, 311-12 (Ky.App. 1997), this court rejected the contention that the Commission’s decision was “arbitrary and capricious” because the Commission failed to make findings based on a proposed development’s compatibility with adjacent neighborhoods. This court also addressed an argument similar to appellants’ present argument:

Since the Commission made its decision by comparing C-K’s plans to a very detailed set of subdivision regulations, the Association attempts to obtain reversal of the Commission’s approval by arguing that those regulations are invalid. They insist that the regulations fail to comply with the Comprehensive Plan adopted by the Commission pursuant to KRS 100.183, a plan plainly designed to be used as a “guide.” See *Ward v. Knippenberg*, Ky., 416 S.W.2d 746 (1967). In any event, even if the plan were something more than a mere guide, it would not require the density of Wolf Pen Woods to be any less than that approved by the Commission. The Comprehensive Plan categorizes areas from “extremely low” to “very high.” Areas zoned R1 and R4 both fall into the “low” category defined in the plan as having greater than 1 and up to 5 dwelling units per acre. Thus, while the Comprehensive Plan contains language the Association contends would require the Commission to “consider the aesthetic effects of differing densities on adjacent developments,” even the Association acknowledges that the specific provisions of the plan would

neither warrant nor require a result different from that reached by the Commission. It is our opinion that the appellants' argument that the subdivision regulations are inconsistent with the Comprehensive Plan is without any merit.

Id. at 312 (footnote omitted).

While appellants make a compelling argument, under Kentucky case law "a comprehensive plan is intended to be a guide for development, not a straight-jacket." *Warren County Citizens for Managed Growth, Inc. v. Bd. of Comm'rs*, 207 S.W.3d 7, 16-17 (Ky.App. 2006) (citing *Ward v. Knippenberg*, 416 S.W.2d 746, 748 (Ky.1967)). Further, "a zoning agency is not bound to follow every detail of a land use plan." *Warren County*, 207 S.W.3d at 17 (citing *Ward*, 416 S.W.2d at 748). See also *Minton v. Fiscal Court of Jefferson County*, 850 S.W.2d 52, 56 (Ky.App. 1992). It follows, therefore, that the subdivision regulations are not rendered invalid merely because they do not specify in great detail the aspirational goals of compatibility and historic preservation.

II. Adequacy of Street Network.

Next, appellants argue that the Planning Commission failed to require the street network created by the proposed subdivision to comply with the standards established by the Land Development Code (LDC). West Development and the Planning Commission argue, conversely, that this argument was not preserved because the trial court failed to make factual findings on the issue, and that in any event, the proposed subdivision does not violate the street network requirement.

In their motion for summary judgment, appellants argued that the street network created by the proposed subdivision was inadequate since it tied into Altawood

Court, which has a 14 to 16 feet pavement width instead of 18 feet as required by the LDC. In its opinion granting West Development's motion for summary judgment, the trial court did not specifically address the street network issue, but instead noted that the Land Development and Transportation Committee² found that the proposed subdivision was zoned appropriately, required no variance or waivers, and complied with the applicable subdivision regulations. The trial court concluded that the Committee's decision was not arbitrary or capricious.

CR³ 52.04 provides:

A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

In this instance, CR 52.04 does not prevent our consideration of this matter. As noted above, the trial court was not sitting as a fact finder, but in review of the action or inaction of the Committee. The only issue before the trial court was whether the Committee's actions were arbitrary or capricious.

That said, the street network issue does not entitle appellants to relief. Specifically, Section 7.3.10 of the LDC provides that each major subdivision of land will be served by an adequate street network, and further:

In order to be considered adequate, the street or combination of streets providing the most direct means of access to an arterial level street shall have a minimum roadway width of 18 feet of pavement. The Commission may determine, based on input from the Director of Works, that

² The Land Development and Transportation Committee is a committee of the Louisville Metro Planning Commission. As noted by the trial court, "all subdivisions in Metro Louisville are subject to approval of the Commission. The Commission has delegated that responsibility to the Committee."

³ Kentucky Rules of Civil Procedure.

the traffic flow associated with a proposed subdivision will utilize more than one route to one or more arterial streets. As a result of such determination, the Planning Commission may require that more than one route (street or combination of streets) must have a minimum roadway width of 18 feet.

Appellants argue that since the proposed subdivision's street will connect with Altawood Court which has a roadway width of only 14 to 16 feet, the proposed subdivision's roadway network does not comply with Section 7.3.10. However, the record on appeal includes the Committee minutes of June 29, 2006 which contain a determination that "Public Works and Transportation Review stated that they do not consider Altawood Court to be the primary entrance to the new subdivision (Rollington Road will be), therefore no improvements are needed." The language of Section 7.3.10 is permissive in that it permits the Planning Commission to require more than one route to meet the 18 feet requirement, but does not mandate that all routes in and out of the subdivision do so. The Planning Commission's decision to approve the proposed subdivision was not arbitrary or capricious on this basis.

III. Incompatibility with Existing Neighborhood.

Next, appellants argue that the proposed subdivision was incompatible with the existing residential neighborhood and did not protect the historic resources of an area listed on the National Register of Historic Places. However, we reject this argument based on our reading of *Snyder* and *Wolf Pen*, as cited above.

Finally, we note that appellees West Development LLC, and Elizabeth Stiles West, have styled their appellate brief as a "brief and motion to dismiss appeal and award damages." Such motion was denied in an order entered by a panel of this court on April 17, 2007, and shall not be addressed further in this appeal.

The Jefferson Circuit Court's opinion and order is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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**BRIEF FOR APPELLEE LOUISVILLE
METRO PLANNING COMMISSION:**

Jonathan L. Baker
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**BRIEF FOR APPELLEES WEST
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