

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001408-MR

MARK DURBIN;
COLLEEN MCKINLEY; and
DON MULHALL

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE FREDERIC J. COWAN, JUDGE
ACTION NO. 06-CI-008898

LOUISVILLE METRO PLANNING
COMMISSION;
PRIMROSE MEADOWS, LLC; and
THE PADDOCKS, LLC

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

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

KNOPF, SENIOR JUDGE: Mark Durbin, Colleen McKinley, and Donald Mulhall

appeal a Jefferson Circuit Court opinion and order affirming the Louisville Metro

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 KRS 21.580.

Planning Commission's (Commission) approval of Primrose Meadows, LLC (Primrose), a proposed subdivision. The residents claim that the decision was arbitrary on two grounds. First, the residents claim that the decision was not based on substantial evidence. Second, the residents claim that the approval was based upon invalid regulations that do not comply with the Comprehensive Plan which was established to guide the Commission in such decisions. Finding that the Commission did not act arbitrarily or capriciously, we affirm the judgment of the circuit court.

On July 3, 2006, Primrose filed an application with the Commission to build a one-hundred acre lot subdivision in southern Jefferson County, located on Thixton Lane (Thixton). The Commission held a public meeting to discuss the proposal and gather opinions from residents of the area. Residents expressed concerns that additional traffic on Thixton would worsen an already inadequate road.

On September 14, 2006, the residents presented evidence that Thixton was not 18-feet wide, as required by the subdivision regulations. Along with testimony, statistics and pictures, the residents presented a report from David S. Lee, a traffic engineer. Lee claimed that the majority of traffic from the proposed subdivision site will travel towards Preston Highway, the portion of Thixton that the residents argue is most narrowed and already damaged. Lee recommended that the Commission deny the proposal of Primrose until additional development occurs in the area and a plan for the reconstruction of Thixton is in place.

Primrose presented traffic engineer Dianne Zimmerman. Zimmerman testified that while the traffic counts given by Lee and the residents were accurate, she believed that they were skewed by cut-through traffic traveling from Bardstown Road to Preston Highway. She claimed that the majority of Primrose subdivision traffic would likely travel to Bardstown Road, rather than Preston Highway, because Primrose is two miles closer to Bardstown Road than to Preston Highway. After hearing evidence presented by Primrose and the local residents, the Commission approved the Primrose subdivision plan and found that Primrose complied with the Louisville Metro Subdivision Regulations (Subdivision Regulations). However, the Commission conditioned the approval on Primrose widening the areas of Thixton between the proposed Primrose subdivision and Bardstown Road that are not eighteen feet wide. Upon the completion of the improvements, Primrose could begin construction on the subdivision.

Residents appealed the approval to the Jefferson Circuit Court. The court upheld the Commission's decision, finding that the actions of the Commission were neither arbitrary nor capricious. This appeal follows.

It is well-established that the standard of review of an administrative decision is limited to whether the decision was arbitrary. *American Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450 (Ky. 1964). Courts deem a decision arbitrary if it exceeds the powers granted to that administrative office; fails to meet the requirements of procedural due process; or is not supported by substantial evidence. *Id.* at 456-57. In *Danville-*

Boyle County Planning & Zoning Comm'n v. Prall, 840 S.W.2d 205 (Ky. 1992), the Kentucky Supreme Court explained, “by arbitrary we mean clearly erroneous and by clearly erroneous we mean unsupported by substantial evidence.” *Id.* at 208; *Fritz v. Lexington-Fayette Urban County Gov't*, 986 S.W.2d 456 (Ky. 1998).

Further, when Courts review decisions made by zoning commissions, the commission decision is presumed reasonable and based upon the law, *Hatch v. Fiscal Court of Fayette County*, 242 S.W.2d 1018, 1021 (Ky. 1951). Therefore, the residents have the burden to prove that the Commission’s decision was arbitrary.

The residents argue that the approval was arbitrary because the evidence presented did not support the Commission’s conclusion. The residents claim that Thixton is narrow, dangerous, and in need of repair. They claim that the majority of Thixton traffic travels towards Preston Highway, the portion of Thixton that is most deficient. The residents suggest that Primrose presented no evidence to refute their claims that the proposed Primrose subdivision would not be “served by an adequate street network” as required by the subdivision regulations. In the absence of refuting evidence, the residents claim the decision of the Commission was not based on substantial evidence. And while the Commission required Primrose to repair and widen portions of Thixton, the residents contend the Commission required Primrose to repair the wrong portion of Thixton. Therefore, they claim that under *Fritz*, the Commission’s approval of Primrose was arbitrary. We disagree.

While the evidence presented by Primrose conceded most of the residents' assertions, Zimmerman, Primrose's traffic engineer, concluded that the statistics offered by the residents and Lee, the residents' traffic engineer, were skewed by "cut-through" traffic traveling from Bardstown Road to Preston Highway. She opined that the majority of traffic created by Primrose would travel to Bardstown Road instead of Preston Highway. The Commission essentially adopted Zimmerman's opinion by requiring Primrose to repair the portion of Thixton that runs from the proposed subdivision site to Bardstown Road, as a condition to the approval.

Nonetheless, the residents continue to argue the facts as they were presented to the Commission. However, the question of which portion of Thixton needs repair is not in our discretion. The Court may not substitute its opinion as to the weight of the evidence given by the Commission. *American Beauty Homes*, 379 S.W.2d at 457. Although Zimmerman's testimony differed from that of Lee, conflicting evidence alone does not invalidate the Commission's approval. *Leutenmayer v. Mathis*, 333 S.W.2d 774 (Ky. 1959). Therefore, we find that the Commission's decision was supported by substantial evidence.

Upon determining that the Commission's approval was supported by substantial evidence, our review is limited to whether the Commission correctly applied the law. Kentucky Revised Statutes (KRS) 100.193 requires that the Commission prepare a comprehensive plan which serves as a guide for public and private development in the most appropriate manner. *Fritz*, 986 S.W.2d at 459.

This master plan for an area is comprehensive in that numerous and extensive elements or studies are to be considered in formulating and adopting the plan.

KRS 100.187.

The residents argue that the Commission failed to apply the correct rule of law because the subdivision regulations and Land Development Code (LDC), used by the Commission, do not comply with mobility and transportation guidelines set out in Cornerstone 2020, the comprehensive plan adopted by Jefferson County. Therefore, the residents suggest that the regulations do not comply with the requirements of KRS 100.281. We disagree with this claim.

KRS 100.281 requires that local subdivision regulations must be based on the comprehensive plan. Subdivision regulations must contain specifications for physical improvements of streets, as well as any improvements that serve as conditions precedent to the approval of subdivision proposals. This Court, in *Snyder v. Owensboro*, 528 S.W.2d 663 (Ky. 1975), stated, “[t]he statute plainly contemplates that specific standards shall be set forth, rather than mere broad generalizations with regard to health, safety, morals and general welfare, or the use of such flexible terms as ‘most advantageous development.’” It follows, therefore, that subdivision approval by the Commission is a ministerial function to ensure compliance with the subdivision regulations. *Snyder v. Owensboro*, 528 S.W.2d 663 (Ky. 1975). Consequently, the regulations must be specific enough to remove the element of discretion from the approval process. *Id.* at 664.

To succeed in proving that the regulation allows arbitrary decisions, the residents must show that that no “rational connection between that action and the purpose for which the [enacting] body’s power to act exists.” *City of Louisville v. McDonald*, 470 S.W.2d 173, 178 (Ky. 1971). We disagree that the regulations in issue lack specific standards.

The subdivision regulations enacted for Jefferson County state:²

[i]n or adjoining any major subdivision of land hereafter proposed, access from new lots or a new street connecting an existing street shall not be approved unless the Planning commission . . . determines that the subdivision will be served by an adequate street network . . . the street . . . providing 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 . . . that the traffic flow associated with the 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. In addition to roadway width, the Planning Commission may require other off-site improvements to correct conditions that would impede the safe flow of traffic associated with the new subdivision

The regulations used by the Commission to approve Primrose correlate with the objectives expressed in the comprehensive plan. Both require arterial streets that serve subdivisions to be at least 18 feet wide. Although the residents argue that the repairs should have been completed prior to the Commission’s approval, the comprehensive plan anticipated such situations, providing that:

² Section 7.3.10, Louisville Development Code

[w]hen existing services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.

The regulations and the comprehensive plan specifically detail requirements for roads to assure standards of safety and convenience. Those requirements are compatible with the directives of KRS 100.281, and, under *City of Louisville v. McDonald*, are rational. Furthermore, the regulations are rationally related to the intents and policies set out in the comprehensive plan. By approving Primrose conditioned on the repair of Thixton, the Commission acted in accordance with the regulations and the comprehensive plan.

Therefore, we reject the residents' arguments that the approval, as well as the regulations, are arbitrary and capricious and must be reversed. A review of the record reveals that the approval was supported by substantial evidence. Further, the regulations are rational and adequately detailed to provide sufficient guidelines upon which the Commission can act.

Accordingly, we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

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