

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-001618-MR

TITUS LOCKARD;  
JOSEPH LYNCH; MICHAEL  
BRAMBLETT; SARA  
VONEECKHONTE; LARRY  
BREEDING; AND ROGER  
BASHAM

APPELLANTS

v. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE KEN M. HOWARD, JUDGE  
ACTION NO. 09-CI-02718

GENE MCGEE; DIANE HUMPHREY;  
KENTUCKY LAND COMPANY, INC.; AND  
HARDIN COUNTY PLANNING  
COMMISSION

APPELLEES

OPINION  
AFFIRMING

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BEFORE: KELLER, THOMPSON, AND WINE, JUDGES.

KELLER, JUDGE: Titus Lockard, Joseph Lynch, Michael Bramblett, Sara  
Voneeckhonte, Larry Breeding, and Roger Basham (collectively, the Friends of  
Big Springs) appeal from a Hardin Circuit Court order affirming the Hardin

County Planning Commission's (the Planning Commission) decision to conditionally approve a preliminary subdivision plat proposed by Kentucky Land Company. The issues on appeal are whether the Planning Commission: (1) exceeded its authority; (2) did not base its approval upon substantial evidence; (3) did not apply the plain meaning of section 3-2(C)(7) of the Hardin County Development Guidance System (the DGS); and (4) should have held a hearing because the approval violated the purpose of the ordinance. Based upon a careful review of the briefs, the record, and applicable case law, we affirm the Hardin Circuit Court.

## FACTS

In 2009, the Kentucky Land Company filed a preliminary subdivision plat for approval by the Planning Commission. The proposed subdivision, Moorman Acres, consists of more than one-hundred acres in rural western Hardin County. The preliminary plat proposed dividing the property into 53 lots with the construction of internal subdivision streets. The entrance to Moorman Acres connects to Kentucky 2199, a state-maintained road.

The DGS, the county's zoning ordinance, provides that "[n]ew subdivision streets must intersect with government maintained roads with a minimum of 40 foot dedicated right-of-way and a minimum 18-foot paved road surface." DGS 3-2 (C)(7). It is undisputed that Kentucky 2199 did not meet the minimum paved road surface requirement. In an attempt to comply with DGS 3-2(C)(7), Kentucky Land Development agreed to widen a 500-foot stretch of

Kentucky 2199 from the entrance to Moorman Acres to an adjoining road, Kentucky 2213.

The Friends of Big Springs are adjoining property owners who object to the subdivision. It appears that they object to the subdivision, in part, because of their belief that Kentucky Land Company has a history of developing rural land into mobile home parks. According to the Friends of Big Springs, such a development would unduly burden existing roadways and water treatment services. However, because the property in question is zoned for residential subdivision, the Friends of Big Springs formally objected to the plat on the grounds that Kentucky 2199 does not meet the width requirements of DGS 3-2(C)(7).

Conditional approval of the plat first came before the Planning Commission at its November 3, 2009, meeting. At that meeting, the Planning Commission staff presented a memorandum indicating that DGS 3-2(C)(7) was adopted "to provide for safety for vehicles associated with new subdivision lots being developed." The regulation did not specify whether the state-maintained road intersecting the subdivision's entrance road had to be 18-feet wide at the point of intersection, along its entire length, or for some other unspecified distance surrounding the intersection. The staff indicated that the Planning Commission's interpretation of DGS 3-2(C)(7) was important with regard to future development in Hardin County. Because the staff had not completed its research, it recommended tabling the matter, which the Planning Commission did.

The Planning Commission again discussed the preliminary plat at its December 1, 2009, meeting. At that meeting, the staff indicated that there are a number of methods for determining the width of a paved road. One such method is to include the driving surface and, if paved, the road shoulders. The staff recommended that the Planning Commission use this method when applying DGS 3-2(C)(7). The staff noted that Kentucky 2199 does not have 18 feet of paved road surface. However, the staff also noted that the developer had agreed to widen Kentucky 2199 from the intersection with the subdivision entrance to Kentucky 2213. With that provision, as well as others that are not in dispute, the staff recommended approval of the preliminary plat. In doing so, the staff noted that widening of the entire length of Kentucky 2199 was not consistent with past practices. Furthermore, the staff noted that the widening proposed by the developer was consistent with its reading of the requirements of DGS 3-2(C)(7).

After the staff presented its evidence, the county attorney stated that the Planning Commission could not change the ordinance but had to apply the ordinance "it had." Having noted that, the county attorney advised the Planning Commission that, if the plat met the technical requirements of the DGS, the Planning Commission was required to approve it. The county attorney did not comment about how he believed the Planning Commission should interpret the technical requirements of the DGS.

Based on the above information, the Planning Commission voted to approve the preliminary plat. Prior to the vote, one of the Commissioners stated

that he did not believe that the development would improve the lives of the residents. He recommended that the Commission consider amending the DGS so that approval of such plats would not occur. The Planning Commission then voted unanimously to approve the plat with the conditions recommended by the staff.

The Friends of Big Springs appealed the Planning Commission's decision to the circuit court. The circuit court affirmed the Planning Commission's decision. It is from the circuit court's order that the Friends of Big Springs appeal.

### STANDARD OF REVIEW

Our review of a planning and zoning commission's decision is limited to determining whether the commission's rulings are arbitrary, capricious, or unreasonable. *American Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Commission*, 379 S.W.2d 450, 456 (Ky. 1964). An agency's decision is deemed arbitrary if it exceeds its power or authority, fails to meet procedural due process requirements, or is not supported by substantial evidence. *Id.* at 456-57. Even though the evidence may suggest an alternate conclusion, we may not substitute the Court's opinion for that of the commission. *Id.* at 457. We set forth additional standards of review as necessary below.

### ANALYSIS

As noted above, the Friends of Big Springs argue that the Planning Commission: (1) exceeded its authority; (2) did not base its approval upon substantial evidence; (3) did not apply the plain meaning of DGS 3-2(C)(7); and

(4) should have held a hearing because the approval violated the purpose of the ordinance. We address each argument separately below.

1. Whether the Planning Commission Exceeded its Authority

This issue is a question of law, which we review *de novo*. *Cincinnati Bell Telephone Co. v. Kentucky Public Service Commission*, 223 S.W.3d 829, 836 (Ky. App. 2007).

As we understand it, the Friends of Big Springs argue that the Planning Commission exceeded its authority simply by interpreting DGS 3-2(C)(7), and that the Planning Commission compounded that error by making an unreasonable interpretation. According to the Friends of Big Springs, because the term "paved road" was not defined, the Planning Commission should have referred the matter to the fiscal court so that it could clarify the meaning of the term. However, the DGS specifically provides that its terms are to be interpreted by the staff. DGS 1-6(E)(3). Therefore, the Friends of Big Springs' argument that any interpretation must be put before the fiscal court runs counter to the fiscal court's own mandate and is not persuasive.

We also discern no merit in the Friends of Big Springs' argument that the Planning Commission's interpretation of DGS 2-3(C)(7) was unreasonable. As noted above, the interpretation of the DGS is delegated to the staff and the Planning Commission adopted the staff's interpretation. Furthermore, the Planning Commission's interpretation that the adjoining road must be 18-feet wide from the intersection with the entrance of the subdivision to the next intersecting road is

reasonable. That interpretation accomplishes the purpose of protecting the public by providing adequate roads for vehicles entering and leaving a subdivision.

## 2. Substantial Evidence

As we understand it, the Friends of Big Springs argue that the evidence presented did not support a finding that Kentucky 2199 and Kentucky 2213 are 18-foot wide. As to the first part of that argument, we do not believe that the Planning Commission made a finding that either road is 18-foot wide. What the Commission determined was that widening Kentucky 2199 from Moorman Acres to Kentucky 2213 met the requirements of DGS 3-2(C)(7).

Furthermore, even if the Commission had made a finding that Kentucky 2213 is 18-foot wide, there was evidence to support such a finding. As noted by the staff, two existing plats indicate that Kentucky 2213 is 19-foot wide as did the preliminary plat. The fact that one other existing plat and the Department of Transportation indicated otherwise is not controlling.

## 3. Plain Meaning of DGS 3-2(C)(7)

The Friends of Big Springs argue that the Planning Commission ignored the plain meaning of the term "government maintained road" in DGS 3-2(C)(7). According to the Friends of Big Springs, that term plainly means the entire length of the road, not just the point of intersection with a subdivision. The Friends of Big Springs questioned "[w]ho in their [sic] right mind" could accept the Planning Commission's interpretation. The Planning Commission argues that the interpretation urged by the Friends of Big Springs is absurd and ridiculous.

Setting aside the fact that such language in briefs is not helpful to the parties' arguments, we believe that the Planning Commission could have adopted either interpretation. The staff indicated that the requirement in DGS 3-2(C)(7) was adopted "to provide for safety of vehicles associated with new subdivision lots being developed." Given that legislative history, it is reasonable that the point of intersection and a portion of the road beyond that point are of greatest concern. Therefore, we cannot say that the Planning Commission's interpretation was arbitrary, capricious, unreasonable, or in conflict with the plain meaning of DGS 3-2(C)(7).



#### 4. Necessity for a Hearing

The Friends of Big Springs argue that the Planning Commission "materially changed" the DGS and, therefore, was required to hold a hearing. According to the Friends of Big Springs, the Commission's failure to hold a hearing violated their constitutional right to due process. We disagree for three reasons. First, as noted above, the Planning Commission did not "materially change" the DGS, it simply interpreted it, as it was authorized to do.

Second, the approval of a preliminary plat is a ministerial act that required the Commission to determine if the plat met the specifications of the DGS. *See Snyder v. Owensboro*, 528 S.W.2d 663, 664 (Ky. 1975). The Commission was not required to hold a hearing to do that. In fact, the Commission could have delegated the responsibility to "its secretary or any other officer or employe[e]." *Id.*

Third, the Planning Commission obtained input from the Friends of Big Springs during the November 3, 2009, meeting. At that meeting, the commissioners accepted a statement from counsel for the Friends of Big Springs as well as documentary evidence. While this may not have been a full evidentiary hearing, it was more than the Planning Commission was required to provide. Therefore, the argument by the Friends of Big Springs that the Planning Commission was required to hold a hearing and that it failed to provide them with due process is without merit.

#### CONCLUSION

For the foregoing reasons, we hold that the Planning Commission's approval of the preliminary plat was neither arbitrary, nor capricious, nor unreasonable. Accordingly, we affirm the circuit court's well-reasoned order.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEES GENE  
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