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Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000175-MR

SHELBY COUNTY PROPERTY OWNERS
ASSOCIATION, INC. APPELLANT

APPEAL FROM SHELBY CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 04-CI-00330

ICON PROPERTIES, LLC AND
OTHER APPELLEES AS IDENTIFIED
IN THE NOTICE OF APPEAL APPELLEES

AND: NO. 2005-CA-000197-MR

GOLDEN CREEK FARMS, INC. APPELLANT

APPEAL FROM SHELBY CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 04-CI-00330

ICON PROPERTIES, LLC AND
OTHER APPELLEES AS IDENTIFIED
IN THE NOTICE OF APPEAL APPELLEES

AND: NO. 2005-CA-000464-MR

GOLDEN CREEK FARMS, INC. APPELLANT

APPEAL FROM SHELBY CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 04-CI-00330 &
ACTION NO. 04-CI-00331

ICON PROPERTIES, LLC AND
OTHER APPELLEES AS IDENTIFIED
IN THE NOTICE OF APPEAL APPELLEES

AND: NO. 2005-CA-000294-MR

ICON PROPERTIES, LLC
AND OTHER CROSS-APPELLANTS AS
IDENTIFIED IN THE NOTICE OF APPEAL CROSS-APPELLANTS

CROSS-APPEAL FROM SHELBY CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 04-CI-00330 &
ACTION NO. 04-CI-00337 &
ACTION NO. 04-CI-00338

SHELBY COUNTY PROPERTY
OWNERS ASSOCIATION, LLC CROSS-APPELLEE

AND: 2005-CA-000449-MR

ICON PROPERTIES, LLC
AND OTHER CROSS-APPELLANTS
AS IDENTIFIED IN THE NOTICE
OF APPEAL CROSS-APPELLANTS

CROSS-APPEAL FROM SHELBY CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 04-CI-00330 &
ACTION NO. 04-CI-00331

GOLDEN CREEK FARMS, INC. CROSS-APPELLEE

AND: 2005-CA-000465-MR

ICON PROPERTIES, LLC
AND OTHER CROSS-APPELLANTS
AS IDENTIFIED IN THE NOTICE OF
APPEAL CROSS-APPELLANTS

CROSS-APPEAL FROM SHELBY CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 04-CI-00330 &
ACTION NO. 04-CI-00331 &
ACTION NO. 04-CI-00332 &
ACTION NO. 04-CI-00333 &
ACTION NO. 04-CI-00337 &
ACTION NO. 04-CI-00338 &
ACTION NO. 04-CI-00339 &
ACTION NO. 04-CI-00340

GOLDEN CREEK FARMS, INC. CROSS-APPELLEE

AND: NO. 2005-CA-000201-MR
AND
NO. 2005-CA-000462-MR

WESTERN SHELBY COUNTY ORGANIZED
FOR PRESERVATION, INC. APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM SHELBY CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 04-CI-00330

ICON PROPERTIES, LLC AND
OTHER APPELLEES/CROSS-APPELLANTS
AS IDENTIFIED IN THE NOTICE
OF APPEAL APPELLEES/CROSS-APPELLANTS

AND NO. 2005-CA-000202-MR
AND
NO. 2005-CA-000463-MR

SADDLEBRED FARMS OF SHELBY
COUNTY, LLC APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM SHELBY CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 04-CI-00330

ICON PROPERTIES, LLC AND
OTHER APPELLEES/CROSS-APPELLANTS
AS IDENTIFIED IN THE NOTICE
OF APPEAL APPELLEES/CROSS-APPELLANTS

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: HENRY, HUDDLESTON AND KNOPF, SENIOR JUDGES.[1]

HENRY, SENIOR JUDGE: ICON Properties, LLC, intending to build a residential development called Saddle Ridge in Shelby County, Kentucky, filed two applications before the Triple S Planning Commission (representing Shelby County and the cities of Simpsonville and Shelbyville) requesting zoning-map amendments for property in Shelby County located partially within the limits of the City of Simpsonville. Although the owner of the property was Whistlestop Developers, LLC, the applications were filed by ICON, the developer. Application 1 sought to re-zone a total of 131.74 acres within the City of Simpsonville. That proposal requested that 51.01 acres be re-zoned from "A" (Agricultural) to "R-2" (Low Density-Residential), and that 80.73 acres be re-zoned from "A" to "R-4" (Multi-Family Residential). Application 2 requested re-zoning of 219.2 acres in Shelby County outside Simpsonville, seeking re-zoning of 59.3 acres from "A" to "R-2", and 159.9 acres from "A" to "R-4".

The Commission held a public hearing on the proposed map amendments on February 17, 2004. The hearing was transcribed, and statements were made both in support of and in opposition to the amendments. Additional material was accepted for filing in the record, both for and against, for ten days after the hearing. On the February 17 hearing date and during the ten-day period, the developer filed a total of ten "binding elements" or "special conditions" whereby William L. Hysinger Sr., on behalf of ICON, proposed adding specific features to the map amendment proposal. The features included

[1] Senior Judges Michael L. Henry, Joseph R. Huddleston and William L. Knopf sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

committing $300,000 to improve traffic conditions on U.S. Highway 60, limiting certificates of occupancy, changing proposed apartment units to condominium units, reducing the number of residential units for the development, adding landscaping, and increasing the distance of the setback of buildings from U.S. Highway 60. The Commission voted to approve both proposed zone-map amendments at its next scheduled meeting on March 16, 2004, without additional discussion or testimony, and recommended approval of the proposed amendments. The Simpsonville City Commission and the Shelby County Fiscal Court, after conducting their own public hearings, adopted the recommendations of the Commission. Shelby County Property Owners Association, Inc. (SCPOA), Golden Creek Farms, Inc., Saddlebred Farms of Shelby County, LLC and Western Shelby County Organized for Preservation, Inc. (WSCOP) filed appeals pursuant to Kentucky Revised Statutes (KRS) 100.347. ICON, Whistlestop Developers, LLC, Shelby County Fiscal Court and the Simpsonville City Commission filed cross-appeals. The Shelby Circuit Court affirmed the decisions of Simpsonville and Shelby County, and this appeal followed.

ARGUMENTS

The Appellants filed three joint briefs on behalf of SCPOA, Golden Creek, Saddlebred and WSCOP. They argue that 1) the entire map-amendment request process was void because ICON, the developer, filed the applications rather than Whistlestop, the property owner; 2) the action of the Planning Commission violated due process in a variety of ways; 3) the requirements of KRS 100.213 for a zone change were not met for several reasons, including a lack of substantial evidence that the proposed changes agree

with Shelby County's Comprehensive Plan; 4) the Commission acted in excess of its statutory powers; and 5) the Circuit Court committed reversible error by permitting counsel for the developer, ICON, to write the opinion and judgment from which these appeals are taken. The foregoing is a summary or overview of the principal arguments, some of which are divided into multiple sub-parts. The Appellees filed cross-appeals contending that the Appellants lack standing.

STANDARD OF REVIEW

In Kentucky, when reviewing actions of administrative agencies for error, courts are generally limited to looking for "(1) action in excess of granted powers, (2) lack of procedural due process, and (3) lack of substantial evidentiary support." American Beauty Homes Corp. v. Louisville and Jefferson County Planning Commission, 379 S.W.2d 450, 456 (Ky. 1964). But, "[i]n the final analysis all of these issues may be reduced to the ultimate question of whether the action taken by the administrative agency was arbitrary." Id. at 457. "By arbitrary we mean clearly erroneous and by clearly erroneous we mean unsupported by substantial evidence." Danville-Boyle County Planning and Zoning Commission v. Prall, 840 S.W.2d 205, 208 (Ky. 1992).

VALIDITY OF APPLICATIONS

SCPOA argues that the application process was void from the beginning because the applications for the zoning map amendments were filed by ICON, the developer, rather than by Whistlestop Developers, LLC, the record owner of the property

in question. The basis for this argument is SCPOA's reading of KRS 100.211(1). SCPOA relies upon the first sentence of the statute which reads:

> (1) A proposal for a zoning map amendment may originate with the planning commission of the unit, with any fiscal court or legislative body which is a member of the unit, or with an owner of the property in question.

SCPOA reads the foregoing sentence to require that no application for zoning map amendments may be filed except by the listed entities. ICON responds that Triple S has enacted regulations pursuant to KRS 100.2111 (at Shelby County Zoning Regulations Section 1410) which are controlling rather than the provisions of KRS 100.211. ICON further asserts that ICON and Whistlestop Developers are so closely related that Whistlestop, the owner, knew what happened at every stage of the process as soon as ICON knew it. ICON argues that, even if there is a requirement that the property owner must file the application, it is merely a procedural requirement, and the Appellants have shown no prejudice from its violation.

The language of the pertinent portions of KRS 100.211 and KRS 100.2111 is identical except that KRS 100.2111 specifies that legislative bodies or fiscal courts may, by regulation, enact their own provisions pertaining to the process by which zoning map amendments are requested. Of course, any such regulations must incorporate the basic due process provisions of the statutes. See KRS 100.2111. Shelby County's Regulation Section 1410, titled "Application for Amendment", provides that in addition to the entities listed in the quoted statutes, a proposal for an amendment may originate

with “a person having written authorization from the owner of the subject property”. Although much of the discussion in the briefs refers to “filing an application” for a zoning map amendment, we note that the statutes in question, and Regulation Section 1410, refer instead to the origination of a proposal for such an amendment. The permissive form “may” is used rather than the mandatory “shall”. Shelby County Zoning Regulations, Article II, p. 4, “Terms and Definitions”. The Appellants make no argument that ICON requested the map amendment without the property owner, Whistlestop’s knowledge, consent and participation. In fact it is clear from the record that the opposite is true. That being the case the Appellants can show no prejudice resulting from the application form having been filed by ICON rather than by Whistlestop. See KRS 100.182; see also Minton v. Fiscal Court of Jefferson County, 850 S.W.2d 52 (Ky.App. 1992). We must always be mindful of the overriding principle that “judicial review of administrative action is concerned with the question of *arbitrariness*.” American Beauty Homes, 379 S.W.2d at 456 (emphasis in original). We do not find that the basic fairness of the legislative process was violated here by ICON’s filing of the paperwork with the full knowledge, consent and participation of the property owner. This is particularly true in light of Shelby County’s Regulation Section 1410, which contemplates that a map amendment proposal may originate with a non-owner who has the permission of the owner.

DUE PROCESS

At the February 17 public hearing and in the ten days following, real-estate developer William Hysinger Sr. wrote a letter and submitted a list of what he

characterized as "binding elements" to the Planning Commission. The due-process objections of the Appellants primarily revolve around the Commission's acceptance of, or reliance upon, these revisions to the applications submitted by ICON. The Appellants contend that the Commission is required to act upon the application as it appeared in the record prior to the hearing, or at least to hold an additional hearing on the amended application. They also contend that Hysinger's letter and "binding elements" (which are referred to in ICON's brief interchangeably as "special conditions") constitute an impermissible "ex parte" contact with the Commission.

The trial court relied upon Minton v. Fiscal Court of Jefferson County, 850 S.W.2d 52 (Ky.App. 1992) in holding that the Commission's acceptance of the letter and the binding elements did not constitute a due-process violation. The court also found that the Commission kept the record open for ten days after the public hearing for filing of additional material by all parties, and that information was submitted to the Commission by both sides during that time. Although the question does not appear to have been specifically raised in Minton as a due-process issue, it is clear that this Court was not troubled by the fact that the proposal was amended after the public hearing. Minton at 52. We find no due-process violation, nor are we persuaded that there was an improper "ex parte" contact, given the trial court's finding that the record was open and that additional material was submitted by both sides after the hearing. We do not find that the material rendered the Commission's action "so tainted as to make it unfair either to the innocent party or to the public interest," hence, we find no error in this regard. Hougham v. Lexington Fayette Urban County Government, 29 S.W.3d 370, 374 (Ky.App. 1999).

CIRCUIT COURT'S ADOPTION OF DRAFT OPINION SUBMITTED BY COUNSEL

We turn next to the Appellants' contention that the circuit court's adoption *in toto* of a draft opinion submitted by counsel for ICON constitutes reversible error. Kentucky's courts have long held that such is "not good practice". Kentucky Milk Marketing and Anti-Monopoly Commission v. Borden Co., 456 S.W.2d 831, 834 (Ky. 1969). It appears from the record that the trial court solicited draft opinions from both sides, and only ICON submitted a draft. We find no objection in the record on behalf of any of the Appellants to the judge's request for draft opinions, nor do we find a post-judgment motion citing this practice as a reason to vacate or set aside the judgment. "An appellate court 'is without authority to review issues not raised in or decided by the trial court.'" Fischer v. Fischer, 197 S.W.3d 98, 102 (Ky. 2006), quoting Combs v. Knott County Fiscal Court, 283 Ky. 456, 141 S.W.2d 859, 860 (1940). Further, while the practice of accepting draft opinions from counsel is disfavored, we have been directed to no Kentucky authority[2] holding that the practice constitutes reversible error.

FAILURE TO MEET STATUTORY REQUIREMENTS AND ACTION IN EXCESS OF AUTHORITY

The gist of these arguments by the Appellants is that there is no evidence in the record that the proposed map amendments comply with the requirements of Shelby County's Comprehensive Plan, and that "binding elements" such as those tendered by

[2] The Appellants cited an unpublished opinion supporting this argument in violation of Kentucky Rules of Civil Procedure (CR) 76.28(4)(c). The Rule has been amended effective January 1, 2007, to permit the citation of unpublished opinions not as binding precedent, but for "consideration by the court." When the briefs were filed as well as at this writing the Rule prohibited the citation of unpublished opinions. Accordingly, the unpublished opinion cited in this case was given no consideration.

Mr. Hysinger are not permitted except where authorized by the Binding Element Enforcement Act, codified in Kentucky at KRS 100.401-419.

Turning first to the question of whether statutory requirements were met, we note that KRS 100.213 sets out specific factual findings which must be made before a planning commission, legislative body or fiscal court may approve a zoning map amendment. The relevant portion of the statute says:

> (1) Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the adopted comprehensive plan, or, in the absence of such a finding, that one (1) or more of the following apply and such finding shall be recorded in the minutes and records of the planning commission or the legislative body or fiscal court:
>
> (a) That the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate;
>
> (b) That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.

The Commission issued two separate Findings of Fact, one for each of the proposed map amendments. In each case the Commission found that the proposed amendments agree with the Comprehensive Plan under the provisions of KRS 100.213(1), and that the existing zoning classification is inappropriate and the proposed classification is appropriate under KRS 100.213(1)(a). However, the Commission's Recommendation to the legislative bodies stated that approval of the map amendments was recommended "because it agrees with the Shelby County Comprehensive Plan". The

Recommendation noted that the proposed zoning is appropriate to the Saddle Ridge site but did not mention whether the current zoning is inappropriate. The Simpsonville City Commission, the Shelby County Fiscal Court and the Shelby Circuit Court all based their decisions solely upon the Commission's finding that the amendments complied with the Comprehensive Plan, failing even to mention the KRS 100.213(1)(a) finding.

If the findings of the Commission are not based upon substantial evidence they are arbitrary, and they fail to meet the requirements of KRS 100.213. See City of Louisville v. McDonald, 470 S.W.2d 173, 179 (Ky. 1971). "Substantial evidence means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." Smyzer v. B.F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

ICON filed a copy of Shelby County's most recent Comprehensive Plan Map, and a map detail showing the area proposed for the Saddle Ridge development, along with its map amendment proposals. The maps illustrate that of the area proposed for Saddle Ridge, 59% was characterized in the Plan as "Low-Density Residential", 28% showed "No Use", meaning that the Plan did not establish a suggested use for the area, and 13% was characterized "Conservation". ICON's proposal would re-zone 240 of the 350 acres contained within Saddle Ridge from "A" to "R-4".

The crucial question in this case as presented by the parties is whether the density of residential units per acre permitted by "R-4" zoning complies with the Comprehensive Plan. The position of the Appellants is that "R-4" zoning is inconsistent with the Plan's guideline designation of "Low-Density Residential" for the area. ICON

submits that such zoning is permitted by the concept of "overall density" provided for in the Plan. To resolve the question we must refer to the Plan and to the Shelby County Zoning Regulations.

ICON's development plan as submitted at the February 17 hearing provided for 1,293 units on 350.9 acres, which, as calculated by ICON, equals 3.68 units per gross acre. As revised by Mr. Hysinger's "binding elements", the plan called for 1,221 units in the same area, which equals 3.48 units per gross acre.

The Comprehensive Plan, at page 100-101, defines "Residential Categories". "Low Density Residential" is described as follows:

> Developments with a density of up to five units per gross acre. Developments in these districts may utilize clustering and planned unit development techniques for single family dwellings. Some single family dwellings may be approved to be attached or to utilize zero-lot-line concepts if such concepts are a part of an approved planned unit development wherein the overall density is consistent with the low density residential standards.

In the Zoning Regulations at Article VI, Section 665, page 54, "Low Density Residential", designated "R-2", lists principal permitted uses as single-family dwellings, two-family dwellings, all other uses permitted in Residential Estates (RE) and the Very Low Density Residential (R-1) district, and agricultural uses as permitted in the R-1 district. The principal permitted uses in the "R-4", Multi-Family Residential District, are detached single-family dwellings, detached two-family dwellings, and "multi-family dwellings including town houses, condominiums, rooming and boarding houses and tourist homes". The Comprehensive Plan at pages 100-101 describes Very Low Density

Residential areas as not exceeding a density of 3.5 units per gross acre, and High Density Residential (R-4) areas as having a density between 12 and 16 units per gross acre.

The parties agree that the Comprehensive Plan contemplates that the area proposed for Saddle Ridge is to be Low Density Residential. The Appellants argue that the highest density of residential units permitted by the Zoning Regulations in such as area requires that it be zoned R-2, which allows no more than 5 units per gross acre. ICON insists that the concept of "overall density" in a development permits R-4 zoning, so long as the total number of units in the development divided by the acreage does not exceed that which would be permitted by Low Density Residential zoning. In its "overall density" argument ICON refers us to the Low Density Residential description quoted above from the Comprehensive Plan. We could find no other reference to "overall density" in the Plan or the Regulations. We note that the description states that developments in Low Density Residential districts "may utilize clustering and planned unit development techniques", and that zero-lot-line concepts may be used in such districts "if such concepts are a part of an approved planned unit development wherein the overall density is consistent with the low density residential standards." A Planned Unit Development is described at page 12 of the Comprehensive Plan to "[p]rovide for comprehensive development through Planned Unit Developments (PUDs) having building site flexibility and/or a mixture of housing types." In turn, the Zoning Regulations at Article XII, "Planned Unit Developments", pages 131-134, Section 1200 states:

> A Planned Unit Development (PUD) project which may depart from the literal conformance with the regulations for individual lot development may be permitted in those zones where it is designated as a special use under the zone regulations. All Planned Unit Development projects shall be subject to the following regulations.

The regulations which follow set out specific procedures for applying for PUDs, as well as other specific zoning standards. Section 1240 of the Regulations, titled "Special Conditions", requires the Planning Commission to "attach reasonable special conditions to insure that there shall not be a departure from the intent of these Regulations". Presumably these are intended to be the kind of "special conditions" submitted by Mr. Hysinger. We could find no other reference in the Regulations or in the Comprehensive Plan to "special conditions".

In its consolidated brief in Case No. 2005-CA-000197 at page 27, footnote 9, ICON states that "Saddle Ridge is proposed as a planned unit development". At the February 17 hearing before the Planning Commission, John Carroll, one of the attorneys for ICON, testified that the current farm fields at the Saddle Ridge site "create pods for development. We refer to these pods as villages. That is one of our major concepts." Transcript of Planning Commission Hearing (TPCH), p. 9. He later testified, concerning unit density, that "[s]ome of the villages will require planned unit developments, which is where you can change your required yard lines around but you cannot exceed the density that's set by the zoning in that district. But for compliance with the comprehensive plan, you look at overall density." TPCH, p. 24. And, the "Revised Justification Statement for Zoning Changes", filed with the Commission on February 5, 2004, states at Paragraph f:

> Proposed residential unit types are villages of single family, townhouses, patio homes and apartments. Several of the villages will be planned unit developments (PUDs). This range of residential units complies with Residential Land Use Goal 2 of providing for comprehensive development through PUDs having site flexibility and a mixture of housing types.

We have reviewed the map amendment applications thoroughly and the foregoing references in the "Revised Justification Statement" to the effect that "several of the villages will be planned unit developments," and Mr. Carroll's statement at the hearing indicating that "some of the villages will require planned unit developments" are the only references we can find in the applications to planned unit developments. The briefs do not refer us to any separate or specific planned unit development project proposal as set out in Article XII of the Zoning Regulations. We have been unable to find in the Regulations any indication that planned unit development proposals for the villages are subsumed within the development plan and the map amendment proposals that were filed; in fact it seems clear from the "Revised Justification Statement" and Mr. Carroll's testimony that ICON intended to file the proposals at some time in the future. If indeed "Saddle Ridge (was) proposed as a planned unit development" as is stated in ICON's brief we are unable to glean it from the record, and WSCOP's brief at page 21 states that the developer did not seek approval of a planned unit development.

This discussion of PUDs takes on importance because of the question of how Saddle Ridge can obtain R-4 zoning within an area designated Low Density Residential in the Comprehensive Plan. It can do so only by the use of the concept of "overall density." As stated in the Comprehensive Plan, within a Low Density

Residential area "[s]ome single family dwellings may be approved to be attached or to utilize zero-lot-line concepts "*if such concepts are a part of an approved planned unit development wherein the overall density is consistent with the low density residential standards.*" The conclusion seems inescapable that the Comprehensive Plan would only permit construction of the type of structures allowed by R-4 zoning within a Low Density Residential area, as part of a previously approved PUD. The Planning Commission cannot determine whether "overall density" is "consistent with low density residential standards" apart from "an approved planned unit development." If part of an area designated Low Density Residential is zoned R-4 before approval of a PUD is sought, we can find nothing within the Regulations to curtail or restrict other principal permitted R-4 uses. ICON might apply for approval of PUDs for the villages later, or it might not. Once R-4 zoning has already been obtained for the development site, it might no longer see the need for such additional approval. The fact that the Regulations require the attachment of "special conditions" only in conjunction with PUDs reinforces this interpretation.

As a result of the foregoing analysis we are compelled to conclude that the Commission's findings that ICON's map amendment proposals agree with Shelby County's Comprehensive Plan are not supported by substantial evidence in the record, are therefore arbitrary, and thus do not meet the requirements of KRS 100.213(1). That being so, we must reverse on that ground. American Beauty Homes at 456. However, as noted previously, the Planning Commission also found that both proposals met the requirements of KRS 100.213(1)(a) to the effect that "the existing zoning classification

given to the property is inappropriate and that the proposed zoning classification is appropriate." Neither the rulings of the Simpsonville City Commission, the Shelby County Fiscal Court or the Opinion and Order of the Shelby Circuit Court addressed this finding. Given the nature of our review we are without authority to direct the legislative bodies to make specific findings or to substitute our findings for theirs. See Danville-Boyle County Planning Commission v. Centre Estates, 190 S.W.3d 354, 359 (Ky.App. 2006). We must therefore remand to the Shelby Circuit Court with directions that the cases be remanded to the Triple S Planning Commission for a review of the existing record and a new recommendation considering the Planning Commission's findings of fact under KRS 100.213(1)(a). The Commission shall then forward its new recommendation to the Shelby County Fiscal Court and to the Simpsonville City Commission for appropriate action.

We have reviewed each of the other arguments advanced by the Appellants. None of them require reversal under the standards set by American Beauty Homes or the cases discussing it. Because we remand as set out above, we find it unnecessary to discuss those arguments further.

CROSS-APPEALS REGARDING STANDING

The Appellees contend that each of the Appellants lack standing to appeal. We disagree. Kentucky's legislature as well as the courts have liberally conferred standing to challenge the decisions of zoning boards. KRS 100.347(2); Rogers Group, Inc. v. Masterson, 135 S.W.3d 630, 636 (Ky.App. 2005); 21st Century Development Co.,

LLC v. Watts, 958 S.W.2d 25, 28 (Ky.App. 1997). The decision of the Circuit Court rejecting the Appellees' challenges to the Appellants' standing is affirmed.

CONCLUSION

The Opinion and Order of the Shelby Circuit Court affirming the actions of the Triple S Planning Commission, the Simpsonville City Commission and the Shelby County Fiscal Court is reversed to the extent that it determined that the findings of the Commission and the actions of the legislative bodies in this case are in agreement with Shelby County's Comprehensive Plan. The case is remanded to the Shelby Circuit Court with directions to remand to the Triple S Planning Commission, directing it to issue a new Recommendation based upon its findings pursuant to KRS 100.213(1)(a) that current zoning for the area of the Saddle Ridge development is inappropriate, and that the proposed zoning is appropriate. This Court does not find that additional factual hearings on that issue are required; however, in accordance with the holding of McKinstry v. Wells, 548 S.W.2d 169, 175 (Ky. 1977), after they receive the new recommendation, the Shelby County Fiscal Court and the Simpsonville City Commission, in their discretion, may (1) follow the recommendations of the Planning Commission; (2) review the record made before the Commission and make their own findings of adjudicative facts from that record; or (3) hold their own trial-type hearing and make findings of adjudicative facts. The Circuit Court may impose a reasonable time limit within which the Commission and the legislative bodies must act.

ALL CONCUR.

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BRIEF FOR APPELLEES AND CROSS-APPELLANTS:

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