

SUPREME COURT OF SOUTH CAROLINA

Robert K. and Sharon G. Kurschner v. City of Camden Planning Commission, 376 S.C. 165

656 S.E.2d 346 (2008) · No. No. 26414 · Decided January 14, 2008

SUMMARY

The South Carolina Supreme Court affirmed the denial of Robert and Sharon Kurschner's application to subdivide the historic Sarsfield property in Camden. The court held that a planning commission member who had been elected to the state legislature but had not yet taken the oath of office was not required to recuse herself, and that the proceedings satisfied procedural due process. The court further held that the city's historic-preservation regulation did not require a balancing test, that the commission's decision was supported by evidence and was not affected by legal error, and that any takings claim was not ripe.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Moore; Justice Waller; Justice Pleicones; Justice Beatty
JURISDICTION	South Carolina
DECIDED	January 14, 2008
DOCKET	No. 26414
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the circuit court's affirmance of the City of Camden Planning Commission's denial of the Kurschners' application to subdivide their property.
STANDARD OF REVIEW	The court applies the any-evidence standard to factual findings in planning and zoning matters and determines whether the decision is correct as a matter of law. A zoning decision will not be upheld if it rests on an error of law, lacks legal evidence, is arbitrary or unreasonable, or constitutes an abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; binding South Carolina Supreme Court precedent.
PARTIES	Robert K. Kurschner, Sharon G. Kurschner v. City of Camden Planning Commission

TOPICS

zoning judicial review of agency action procedural due process municipal law statutory interpretation

PRACTICE AREAS

land use and zoning administrative law constitutional law municipal law appellate procedure

QUESTIONS PRESENTED

1. Whether the Planning Commission member who had won a special election to the South Carolina House but had not yet taken the oath of office was required to recuse herself and whether her participation invalidated the Commission's decision.
2. Whether the Commission's hearing procedures denied the Kurschners procedural due process by permitting opposing evidence, considering hearsay, denying cross-examination and voir dire, or otherwise failing to provide a meaningful opportunity to be heard.
3. Whether the circuit court's application of the any-evidence standard denied the Kurschners meaningful judicial review.
4. Whether the Commission's decision was unsupported by evidence, controlled by an error of law, or constituted an uncompensated taking.

HOLDINGS

1. The Commission member was not required to recuse herself because she had not yet taken the oath of office, and her participation did not require reversal in any event because the Kurschners could not show substantial prejudice.
2. Procedural due process did not require the Commission to use trial-type procedures, exclude hearsay, permit cross-examination or voir dire, or provide the full range of safeguards requested in deciding the discretionary land-use application.
3. Applying the any-evidence standard to review the Commission's decision did not violate procedural due process and was required by the governing statute and legislative grant of broad planning discretion.
4. The Commission's denial was not controlled by an error of law and was supported by evidence in the record; the applicable historic-site regulation did not require a balancing test.
5. The takings claim was not ripe for review in this direct appeal and had to be litigated in a separate action.

KEY QUOTATIONS

“due process is flexible and calls for such procedural protections as the particular situation demands.” (at 172)

“In our view, due process does not require the full gamut of rules and procedures to which the Kurschners claim they were entitled.” (at 173)

“We refuse to apply a standard of review different from the any evidence standard in this case” (at 174)

“The regulation merely directs the Commission to determine whether subdividing the property will negatively impact the historic value of the site.” (at 175)

FACTUAL BACKGROUND

In 1989, Robert and Sharon Kurschner purchased a 5.49-acre tract in Camden known as Sarsfield, the former residence of Mary Boykin Chestnut. In 2004, they sought approval to subdivide the property into eight lots. A Planning Commission member who had been elected to the South Carolina House of Representatives but had not yet taken the oath of office declined to recuse herself, and the seven-member Commission unanimously denied the application.

PROCEDURAL HISTORY

The Kurschners applied to subdivide a 5.49-acre tract into eight lots. The Planning Commission unanimously denied the application, and the circuit court affirmed. The Kurschners appealed directly to the South Carolina Supreme Court under Rule 203(d)(1)(A), SCACR, raising recusal, procedural due process, error-of-law, evidentiary-support, and takings arguments.

DISPOSITION

affirmed

CASES CITED

- Tall Tower, Inc. v. S.C. Procurement Review Panel, 294 S.C. 225, 363 S.E.2d 683 (1987)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- Stono River Environmental Protection Ass'n v. S.C. Department of Health and Environmental Control, 305 S.C. 90, 406 S.E.2d 340 (1991)
- First Federal Savings and Loan Ass'n of Walterboro v. Board of Bank Control, 263 S.C. 59, 207 S.E.2d 801 (1974)
- Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961)
- S.C. Department of Social Services v. Wilson, 352 S.C. 445, 574 S.E.2d 730 (2002)
- In re Vora, 354 S.C. 590, 582 S.E.2d 413 (2003)
- Brown v. S.C. State Board of Education, 301 S.C. 326, 391 S.E.2d 866 (1990)
- Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 642 S.E.2d 565 (2007)
- Townes Assoc's, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)
- Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach, 294 S.C. 475, 366 S.E.2d 15 (Ct. App. 1988)
- Peterson Outdoor Advertising v. City of Myrtle Beach, 327 S.C. 230, 489 S.E.2d 630 (1997)
- Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992)
- Waters v. S.C. Land Resources Conservation Commission, 321 S.C. 219, 467 S.E.2d 913 (1996)

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