

IN THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI

FRANKLIN COLLECTION SERVICE, INC. *et al.*

APPELLANTS

V.

CAUSE NO. CV22-072(PF)L

CITY OF TUPELO, MISSISSIPPI, *et al.*

APPELLEES

ORDER

This cause is before the Court on timely appeal of the August 2, 2022, decision of the Tupelo City Council to approve a major site plan for an apartment development in an area zoned Mixed Use Employment (MUE). The matter has been fully briefed¹ and is ripe for review without oral argument. The Court accordingly finds as follows:

Facts and Issues

On April 4, 2022, Appellees Stewart Rutledge, Britton Jones, and Flowerdale Commons 2021, LP (collectively, “Flowerdale Commons”), submitted a Major Site Plan Application to build a 46-unit apartment development on property zoned MUE. The City’s staff, including the Development Services Department, reviewed the application and produced a Staff Analysis Report, which was presented to the City’s Planning Committee by the City Planner. The Planning Committee found the major site plan failed to comply with certain aspects of the City’s Development Code and tabled a decision on the Application until the deficiencies were corrected and a traffic impact analysis was performed. Flowerdale Commons submitted a revised site plan on June 3, 2022, which was considered by the Planning Committee on July 11. The City Planner presented an updated Staff Analysis Report, which again compiled input from various city departments, and

¹ The Mississippi Center for Justice filed an unopposed Motion for Leave to File Brief as *Amici Curiae* [Dkt. 17]. The Court finds the motion well-taken. The brief attached to the motion is deemed filed and has been considered by the Court.

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recommended approval of the major site plan. Despite Flowerdale Commons submitting three traffic studies from three different companies—all of which found the development would have no major impact on local traffic—the Planning Committee voted to recommend the City Council deny the Application due to adverse impact on local traffic.

The Application was presented to the City Council on August 2, 2022, along with the Planning Committee’s recommendation and the Staff Analysis Report. Following a vocal public hearing, a divided City Council voted to approve the major site plan. Appellants, owners of property adjacent to the proposed development, timely appealed raising the following issues:

- I. Whether apartment complexes are allowed as primary, standalone uses in MUE districts, or whether apartments are only allowed as secondary uses in connection with employment facilities.
- II. Whether the Tupelo City Council erred in approving a major site plan to construct an apartment complex when the site plan failed to satisfy the requirements for major site plan approval per Tupelo’s Development Code.

Analysis

The Mississippi Supreme Court recently overturned long-standing precedent “that established a standard of review deferential to local agencies on the pure questions of law presented in the interpretation of zoning ordinances.” *Wheelan v. City of Gautier*, 332 So. 3d 851, 859 (Miss. 2022). Now, the interpretation of zoning ordinances—as with all other questions of law—is subject to *de novo* review. *Id.*

- I. Apartment complexes are allowed as primary, standalone uses in MUE districts.

Like statutes, where the ordinance “is plain and unambiguous there is no room for construction. It is only when a[n ordinance] is unclear or ambiguous that a court should

look beyond that language of the [ordinance] in determining the [city]’s intent.” *Bullock v. Miss. Emp’t Sec. Comm’n*, 697 So. 2d 1147, 1150 (Miss. 1997).

The Tupelo Development Code unequivocally lists “Apartment Development” as a use by right² in a MUE district. Tupelo Dev. Code § 4.12.5.1(4). Importantly, that subsection lists 38 uses by right, some of which have requisite qualifications, such as being permitted only on local or collector streets or only if use is part of a mixed-use of 75% office, medical, and/or educational uses. “Apartment Development” has no such additional requirements listed.

Nevertheless, Appellants argue allowing a stand-alone apartment complex runs afoul of the purpose and intent of a MUE district. Appellants contend an apartment development must be tied to an employment facility. Applying *de novo* review, this Court disagrees. The Development Code identifies the purpose and intent of a MUE District:

The objective of the Mixed-Use Employment District (MUE) is to provide concentrated areas of high-quality employment facilities that may be integrated with or adjacent to complementary retail and commercial uses and medium density residential uses. Mixed-use employment areas should have direct access to arterial or collector streets and shall be compatible with and connected to the surrounding development as well as any nearby parks, open space, and pathways. Mixed use employment areas may include corporate office headquarters, hospitals and medical centers, research and development facilities, business parks, and educational facilities in planned, campus-like settings. Secondary uses such as live-work units, medium-

² “Use by right” is defined as

A land use listed in Chapter 4 or 5 of this Code as a “use by right” in the zoning district in which it is located, and which is not subject to approval procedures of this Code except as to the physical characteristics of land, structures or improvements associated with the use.

Tupelo Dev. Code § 2.4

density residential housing, and complementary commercial uses are encouraged.

Tupelo Dev. Code § 4.12.1. Thus, the objective of the district, as a whole, is to provide employment facilities that may be integrated with *or adjacent to* medium density residential uses. Without question, there are existing employment facilities in the district adjacent to the proposed development, which would be considered medium density residential. In fact, many of those existing, adjacent employment facilities are Appellants herein because they would rather see another employment facility than the proposed apartment development. While the primary use *of the district* may be employment, secondary uses, such as medium density residential housing, “are encouraged.”

In addition to adjacent employment facilities, substantial opposition to the development also came from adjacent residential property owners, some of which are Appellants herein, because they did want an apartment complex driving down their property values or attracting the wrong sort of people to their neighborhood. The Development Emphasis for a MUE district identified in the Development Code clearly provides that “residential units may be mixed into the MUE district, either on upper floors of mixed-use buildings or along the edges of the MUE district *to provide a buffer between the commercial district and adjacent residential development.*”³

Appellants further contend that standalone apartment complexes run afoul of the City’s Comprehensive Plan, on which the Development Code is based. The Court finds this argument unavailing. Like the Development Code, the Comprehensive Plan provides that “Mixed-Use Employment is intended to provide concentrated areas of high quality

³ Tupelo Dev. Code. § 4.12.2 (emphasis added).

employment facilities, integrated with or adjacent to complementary retail and commercial uses and/or medium-density residential uses.” The Court has already parsed this sentence above and need not repeat its analysis here. In identifying secondary uses of MUE districts, the Comprehensive Plan echoes the Development Code in that “[t]he incorporation of medium-density residential and/or complementary commercial uses with employment uses is strongly encouraged.” As noted, the proposed development would incorporate medium-density residential uses with existing employment uses.⁴

II. The City Council did not err in approving the Major Site Plan.

Appellants contend the Major Site Plan failed to contain a litany of required information and that without the required information, the City Council could not have granted approval. “Site Plan documents shall contain, at a minimum, the information listed below unless expressly exempted by another provision of this Code or the Director of Development Services makes the determination that an adequate review may be done with less detailed information.” Tupelo Dev. Code. § 12.11.2.3(4).

The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it shall be recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The applicant may rely on the recommendations of

⁴The Comprehensive Plan goes on to provide that “[g]enerally, complementary uses should not exceed twenty-five (25%) percent of the total land area of the site.” The Court makes two key observations. First, per the language of the Plan, “complementary” is an adjective applied to commercial uses, not residential uses. Second, even if it applied to residential uses, the word “generally” denotes discretion. The Comprehensive Plan reinforces the discretionary nature of the percentage of allowed complementary uses: “[I]t is anticipated that this percentage will vary depending upon the size of the development and the extent to which complementary uses are provided within the adjacent development context.” Thus the City is vested with discretion to deviate from the twenty-five percent complementary use cap, which is reviewed under the arbitrary-or-capricious standard. *See, e.g., Pruitt v. Zoning Bd. of City of Laurel*, 5 So. 3d 464, 467-68 (Miss. Ct. App. 2008). As there does not appear to be any other medium-density residential development in the MUE district at issue, the Court cannot say the City’s decision to vary from the twenty-five percent cap, assuming it applies, was arbitrary or capricious.

the appropriate department as to whether more or less information should be submitted.

Tupelo Dev. Code § 12.2.4(3)(b).

Appellants argue an application lacking the required information must be expressly exempted by another provision of the Development Code or *expressly* allowed by the Director of Development Services *personally*. The argument fails to comport with the clear language of the Development Code as cited above. The determination by the Director of Development Services that an adequate review may be done with less detailed information need not be expressly done. That particular adverb is ascribed only to exemptions by the Development Code. While § 12.11.2.3(4) appears, at first blush, to require a personal determination by the Director, the Development Code expands the definition of “Director of Development Services” to include the “Director of Development Services Department, *or his or her designee.*” Tupelo Dev. Code. § 2.4 (emphasis added).⁵ The City Planner, as the Director’s designee, expressly recommended that the major site plan be approved, without the missing information. Key information—such as a lighting plan, landscaping, and tree survey—was to be provided at a later stage of the development process. Other information, such as zoning of adjacent property and identity of adjacent property owners, was readily available and presented to the Planning Committee and City Council by way of the Staff Analysis Report.

Moreover, the record is clear that the Director himself oversaw the compilation of the Staff Analysis Report and the coordination with the various departments who approved

⁵ The Development Code further reinforces this expanded definition: “Any act authorized by this Code to be carried out by a specific official of the City is implicitly authorized to be carried out by a designee of such official.” Tupelo Dev. Code § 2.1.

the information contained in the application.⁶ He was present and offered comments at the Planning Committee meetings and the City Council meeting. He allowed the Staff Analysis Report—which, again, expressly recommended approval of the major site plan without certain “required” information—to be presented to the committee and to the council. As the Department of Development Services determined a review could proceed without the missing information, Appellees were expressly entitled, under Section 12.2.4(3)(b), to rely on this determination.⁷

Conclusion

The Court having considered the appeal, on the record, and being now in all things fully advised finds that the decision of the Tupelo City Council should be **AFFIRMED**.

ORDERED AND ADJUDGED, this 19th day of January, 2023.



PAUL S. FUNDERBURK
CIRCUIT JUDGE

⁶ See Tupelo Dev. Code 12.11.3(2).

⁷ Appellants also argue the major site plan failed to comply with “mandatory requirements set forth in Section 12.11.4.” Appellants contend any missing criteria under this section must result in denial of the application for a major site plan, but that is not what the Code provides. Rather, it states that “[s]ite plans that meet the following criteria shall be approved by the approving authority[.]” There is no such provision that mandates denial if any of the criteria is not met. That appears to be a matter of discretion left to the “approving authority.”

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