

2-8-01

BEFORE THE TALLAHASSEE-LEON COUNTY PLANNING COMMISSION

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MEADOWBROOK NEIGHBORHOOD ASSOCIATION, INC.; VICTOR CORDIANO; LYNN HILL; A.A. SULKES; PHILIP BENNETT; VERA HARPER; AND CARLOS MC DONALD,

AT

FILED  
ALLEN COUNTY CLERK  
TALLAHASSEE, FLORIDA

PETITIONERS,

CASE NO. 00-3907

VS.

DRA-CWS

CITY OF TALLAHASSEE; GEORGE K. WALKER, TRUSTEE; GENESIS GROUP; AND TTK, L.L.C.,

RESPONDENTS.

FINAL ORDER

On February 8, 2001, Donald R. Alexander, Administrative Law Judge, entered his recommended order in the subject matter. Petitioners filed exceptions on March 2, 2001. Respondents George K. Walker, Genesis Group and TTK, L.L.C. filed exceptions on February 25, 2001. The Tallahassee-Leon County Planning Commission ("Commission") heard oral arguments on March 14, 2001. After extensive deliberations, the matter came before the Commission for final action on August 20, 2001.

I. Standard For Review.

Article IX of part I of the Bylaws of the Commission provides the standard for review as follows:

"The Planning Commission shall adopt the recommended order, adopt the recommended order with changes, or direct staff to prepare a revised order. The Planning Commission shall not change any findings of fact reached by the Hearing Officer unless after review of the entire record, the Planning Commission finds there is no competent substantial evidence to support the Hearing

Officer's findings. The Planning Commission may change conclusions of law if it is found that the Hearing Officer did not apply the correct law."

## II. Determination.

On August 8, 1991, the Division of Administrative Hearings entered a final order approving a Stipulation and Final Settlement Agreement between the parties in George Walker v. City of Tallahassee, Case No. 91-4109VR, in a vesting rights determination proceeding. The effect of that order was to grant vesting of the subject property. Pursuant to the City of Tallahassee's Vested Rights Review Ordinance, that decision was final subject only to judicial review. No judicial review was sought.

On July 28, 2000, the Developmental Review Committee of Respondent, City of Tallahassee, approved a site plan for an apartment project on the subject property. That Committee approved the application and determined that the project was exempt from consistency and concurrency requirements of the Comprehensive Plan by virtue of the vested status obtained in the 1991 proceeding.

Thereafter, a petition was filed with the Tallahassee-Leon County Planning Commission to contest the decision. Pursuant to the Bylaws of the Commission, the matter was referred to the Division of Administrative Hearings on September 20, 2000 for a formal hearing before an Administrative Law Judge. Ultimately, an evidentiary hearing was held and the Administrative Law Judge submitted a Recommended Order, which recommends that the Tallahassee-Leon County Planning Commission enter an order granting the Type B site plan review application filed by George K. Walker.

Petitioners' attack upon the decision of the Development Review Committee is

based upon the assertion that the 1991 order was faulty and should not have been entered. We have determined that we have no authority to set aside the 1991 order.

The Planning Commission is an entity created by the City Commission of the City of Tallahassee. As such, it has only the authority given to it in the City Code. Section 4.2 of Chapter 27 of the City Code sets out the duties of the Planning Commission and the Planning Commission Bylaws. While the Planning Commission has the authority to take action on recommended orders from the Administrative Law Judge on appeals of Type B site plan reviews, there is no authority to approve or disapprove vested rights determinations.

When the 1991 Order was entered, the only review available from that order was to the courts. Since no review was sought, it became final and cannot be set aside by this Commission. While there may or may not be another forum in which such an attack can be made, we are simply not clothed with such authority. Consequently, since the challenge of Petitioners in this proceeding is totally dependent upon the setting aside of the 1991 order which we have no authority to grant, we are required to approve the site plan of the subject property.

The Administrative Law Judge in his order reassessed the vesting of the subject property as if he had been the original hearing officer. Since we have no authority to review that matter, we have rejected the recommended order and instead hereby enter this order. In addition, since the exceptions filed in response to the recommended order primarily address questions regarding the entry of the 1991 order and we have no capacity to review that question, we see no reason to review them and, therefore, decline

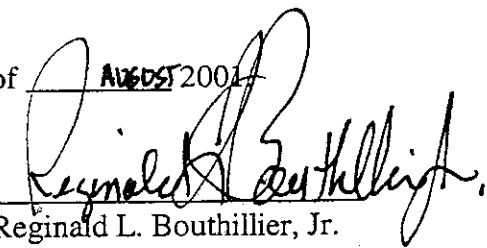
to do so. We, of course, adopt all findings of fact in the proposed order necessary to support this order.

III. Conclusion.

We, therefore, approve the Type B site plan review application filed by George K. Walker.

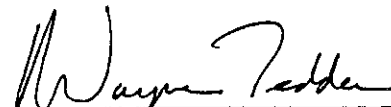
The Florida Land Use and Environmental Dispute Resolution Act provides an opportunity for an owner of property who believes that a development order is unreasonable or unfairly burdens the use of his real property to apply for a special master proceeding. An owner who believes that a development order, either separately or in conjunction with other development orders, or an enforcement action of a governmental entity, is unreasonable or unfairly burdens the use of his real property, may apply within 30 days after receipt of the order or notice of the governmental action for relief under this Act. Owners of real property contiguous to the site will be provided a copy of any such request filed with the Planning Department. Any substantially affected party who submits oral or written testimony of a substantive nature which states with particularity objections to or support for any development order at issue may also receive a copy of any request for relief filed under the Florida Land Use and Environmental Dispute Resolution Act by filing a written request for such copy with Wayne Tedder, Planning Commission Clerk, Tallahassee-Leon County Planning Department, City Hall, 300 South Adams Street, Tallahassee, Florida 32301.

APPROVED by the Commission on the 20 day of AUGUST 2001

  
Reginald L. Bouthillier, Jr.  
Chair

**CERTIFICATE OF SERVICE**

I certify that a copy of this document has been furnished to Linda Hurst, Assistant City Attorney, City Attorney's Office, City Hall, 300 S. Adams Street, Tallahassee, Florida 32301; Jay Adams, Broad & Cassel, 215 South Monroe Street, Suite 400, Tallahassee, Florida 32301; and Kenneth D. Goldberg, 1725 Mahan Dive, Suite 201, Tallahassee, Florida 32308, by U.S. Mail on this 21<sup>st</sup> day of August, 2001.

  
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Planning Commission Clerk