

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MAYE WALKER,)
)
 Petitioner,)
)
 vs.) Case No. 04-1840
)
 CITY OF TALLAHASSEE and SCHOOL)
 OF ARTS AND SCIENCES FOUNDATION,)
 INC.,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

On August 30, September 3, and September 8, 2004, a hearing was held in this case in Tallahassee, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings, acting as the hearing officer in a formal proceeding under Chapter 2, Article III, Division 2, Subdivision II, of the Tallahassee Land Development Code (LDC)(2003).

APPEARANCES

For Petitioner Maye Walker:

Maye Walker, pro se
1305 Covington Drive
Tallahassee, Florida 32312-2504

For Respondent City of Tallahassee:

Linda R. Hurst, Esquire
Office of the City Attorney
City of Tallahassee
City Hall
300 South Adams Street
Tallahassee, Florida 32301-1731

For Respondent School of Arts and Sciences Foundation, Inc.:

Cari L. Roth, Esquire
201 South Monroe Street, Suite 500
Tallahassee, Florida 32301

Wellington H. Meffert, II, Esquire
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue in this case is whether the Tallahassee-Leon County Planning Commission (Planning Commission) should approve, approve with conditions, or deny the site plan application filed by the School of Arts and Sciences Foundation, Inc. (SAS).
§ 9-153, LDC.

PRELIMINARY STATEMENT

On August 9, 2002, SAS filed an application with the City of Tallahassee for approval of a site plan for a 1,043 square-foot addition to a building on its campus at 3208 Thomasville Road, Tallahassee, Florida. (The building is to have two floors, so the additional floor area was twice the square-footage of the building, actually 2,238 square feet.¹) The City's staff processed and reviewed the site plan application as a Type B site plan.²

On January 27, 2003, the City's Development Review Committee (DRC) denied the applications, as submitted. After further discussion with the City's staff, SAS submitted a revised site plan application on March 8, 2004, which was approved by the DRC, with conditions, on March 23, 2004.³

On April 21, 2004, Maye Walker and the Leewood Hills Neighborhood Association filed a Petition for Quasi-Judicial Proceedings (Petition) with the Planning Commission. The Planning Commission's Attorney made a Determination of Standing that the Petition's allegations as to standing were insufficient, and an Amended Petition was filed adding standing allegations. On May 11, 2004, a Second Determination of Standing was issued finding standing as to Maye Walker but no standing as to the Leewood Hills Neighborhood Association.

On May 21, 2004, the City referred the matter to the Division of Administrative Hearings (DOAH) for assignment to a DOAH Administrative Law Judge (ALJ) to act as the hearing officer in a formal quasi-judicial proceeding. A hearing was scheduled for August 30, 2004. As ordered by the ALJ, a Pre-Hearing Stipulation was filed on August 20, 2004. In addition, SAS filed a Motion to Strike and Motion in Limine on August 24, 2004. Those motions were heard by telephone, and an Order was entered on August 27, 2004, which further narrowed the issues.

Based on the Amended Petition, Pre-Hearing Stipulation, and Order entered on August 27, 2004, the following issues were to be heard at the hearing in this case: whether Petitioner has standing; whether the revised site plan, with the DRC's conditions, will increase traffic and noise in the neighboring residential area; and whether the revised site plan, with the DRC's conditions, is compatible with neighboring residential

properties and in compliance with land use plan and zoning provisions in light of any increased noise, traffic, and other resulting impacts (as opposed to impacts from existing conditions and operations), but not considering impacts from misbehavior of students or temporary noise and traffic impacts from construction of the addition (which were ruled not relevant to a site plan review).

As required by Section 2-138(g)(3), LDC, the hearing was duly noticed on August 15, 2004, in the Tallahassee Democrat. During the hearing, the order of presentation set out in Section 2-138(g)(7), LDC, generally was followed, with some exceptions due to availability of witnesses and other considerations.

There were four public witnesses: Sally R. Johnson; Kathy Berger; Tyson Waters; and Dino Kaklamanos. One Public Exhibit also was received.

SAS called four witnesses: James M. Croteau, Ph.D., Acting Assistant Superintendent for Business Services and Executive Director for Planning and Policies for Leon County Public Schools, who was accepted as an expert in school planning; Debo Powers, Principal of the School of Arts and Sciences; Rick Moore, P.E., who was accepted as an expert in engineering, permitting, and planning; and Jane Wofford, Assistant Principal and Finance Officer of the School of Arts and Sciences. SAS also had its Exhibits a, c through g and j admitted in evidence. (SAS

Exhibit b, which was part of City Exhibit 6, was identified but not moved into evidence.)

The City called four witnesses: Allen Secreast, P.E., Assistant City Traffic Engineer, who was accepted as an expert in traffic engineering; Dwight R. (Roy) Arnold, Jr., the City's Land Use and Environmental Services Administrator; David "Wayne" Tedder, AICP, Director of the Tallahassee-Leon County Planning Department, who was accepted as an expert in urban planning; and Wade L. Pitt, III, Land Use Administrator in the City's Growth Management Department. The City also had its Exhibits 1 through 7 and 9 through 16 admitted in evidence.

Petitioner testified and called five witnesses: Ava Ruth (spelled Aberuth in the Transcript) Johnson; Patricia Johns; Keely Waters-Kaklamanos; Joseph Phillip Shook, Senior Planner in the City's Growth Management Department; and Gordon Hansen (spelled Hanson in the Transcript), also a Senior Planner in the City's Growth Management Department. Petitioner identified several exhibits during the course of her presentation without offering them into evidence, including Petitioner's Exhibits E, G (which also was part of City Exhibit 6), J, K, and DD. Petitioner's Exhibits A, P, V, and W were offered and admitted into evidence. Objections to Petitioner's Exhibit N were sustained. Rulings on objections to Petitioner's Exhibits D, M, S, AA, BB, and CC were reserved.

Respondents objected on grounds of relevance to Petitioner's proffered exhibits D, AA, BB, and CC, all of which regard a 1992 site plan application in which Epiphany Lutheran Church sought to build an addition to its Day School. In the Order dated August 27, 2004, it was ruled that "because Petitioner asserts that the 1992 application (which was denied because it was incompatible with the neighborhood) is almost identical to the application filed here, she may make inquiry on that subject." But those documents established that the 1992 application was more different than it was similar to the SAS application at issue here. (Specifically, while not indicating the student census at the time, the documents indicated that the addition proposed by Epiphany Lutheran in 1992 was expected to increase classroom space by 25% and add 35 car trips to and from the school each morning and afternoon, approximately a 30% increase.) At this time, the objections are sustained, and those exhibits are excluded from evidence.

Respondents also objected to admission of Petitioner's Exhibit M, which consisted of a series of e-mails documenting Petitioner's attempts to acquire a copy of the original permit for the driveway cut which gave access from the subject property to Cabot Drive. These documents are irrelevant because Petitioner did not raise or preserve any issue as to the legality of the existing driveway access, or the need for a driveway permit as part of the SAS site plan at issue. At this time, the

objections are sustained, and the exhibit is excluded from evidence.

Respondents also objected to admission of Petitioner's Exhibit S, which consisted of a series of e-mails between the City's Counsel and Counsel for SAS, which Petitioner proffered as proof of bias on the part of the City in this proceeding. At this time, the objections are overruled, and the exhibit is admitted in evidence.

After presentation of evidence, the Respondents requested a transcript of the final hearing and 15 days from the filing of the transcript to file proposed recommended orders (PROs), which was granted. The Transcript was filed (in four volumes) on September 20, 2004, making PROs due October 5, 2004. The Respondents timely-filed PROs, which have been considered. Petitioner did not file a PRO.

FINDINGS OF FACT

A. Petitioner and Leewood Neighborhood

1. Petitioner, Maye Walker, lives in Leewood Hills at 1305 Covington Drive. The "Leewood Neighborhood" consists of three small subdivisions: Leewood Hills; Lisa Park; and Piedmont Forest. The sole access into or out of the Leewood Neighborhood is Leewood Drive, which intersects with Thomasville Road at its eastern end. Cabot Road is a short road running from Leewood Drive to the eastern end of Covington Drive, which parallels Leewood Drive. Lisa Court is a short, dead-end street running

from Covington Drive to the north in Lisa Park. Atwood Road is a somewhat longer, dead-end street running north from the western end of Leewood Drive and past the western end of Covington Drive to where it dead-ends in Piedmont Forest.

B. School of Arts and Sciences

2. SAS is located on a 4.03-acre campus at 3208 Thomasville Road. Thomasville Road is the eastern border of the SAS property. The Leewood Neighborhood lies to the south and west of SAS. To the north of SAS is the Piedmont Park Alliance Church. To the east, across Thomasville Road, is the Thomasville Road Baptist Church and Oven Park.

3. SAS is a public charter school sponsored by the Leon County School District. The charter for the School was first approved by the Leon County School Board in April of 1998. By the terms of its charter, SAS may operate a K-12 school with up to 350 students. SAS actually operates as a K-8 school. When it opened, it had approximately 175 students, but enrollment has gone up since then.

4. SAS students come from all over the Leon County School District. SAS's hours of operation are 9:30 a.m. to 3:35 p.m. with an extended day program available beginning at 7:30 a.m. and ending at 6 p.m.

5. SAS operates on the former site of the Epiphany Lutheran Church and Day School. SAS initially leased the site in 1998 with an option to purchase. One of the conditions of purchase

was obtaining necessary authorizations from the City for use of the site as a charter school.

6. The City issued a land use compliance certificate (LUCC) on January 5, 1999, which confirmed the ability of SAS to use the Epiphany Lutheran Church and Day School site "for a K-12 Public Charter School." The LUCC also put SAS on notice that its school would be subject to the Education Element of the Comprehensive Plan and that a Type B site plan review would be the process required for adding buildings to the SAS site. (Normally, the type of addition requested by SAS would go through Type A site plan review, but exercising the discretion granted by the City Code, the City's Growth Management Department required a Type B site plan review, which adds a requirement for public notice to the review process.)

7. All buildings currently in use by SAS existed on the site when SAS occupied it. Likewise, the playground on the southern side of the property and the asphalt, outdoor basketball court on the western side of the property were constructed by the Epiphany Lutheran Church and in existence when SAS occupied the site.

8. When the Epiphany Lutheran Church occupied the site, school traffic entered the site from Leewood Drive and Cabot Road, exiting onto Thomasville Road. That traffic circulation pattern caused traffic to back up along Cabot Road and obstruct driveways when parents dropped off and picked up their children,

which generated complaints from residents of the Leewood Neighborhood.

9. In response to those complaints, SAS changed the traffic circulation pattern when it occupied the site and began operating. On Monday through Friday, 7:30 a.m. to 6:30 p.m., SAS used a one-way traffic flow through the SAS property, with vehicles entering from Thomasville Road and exiting the school south along Cabot Road to Leewood Drive then left to the intersection with Thomasville Road. A speed bump and stop sign exist at the exit from the SAS property onto Cabot. This change eliminated the traffic backups on Cabot Drive, shifting them to the interior of the SAS property.

10. The traffic circulation pattern used by SAS has been posted on signs at the entrance to and exit from SAS. SAS also has made an on-going effort to educate its parents as to proper traffic circulation, the need to observe stop signs and no parking signs, and the need to give neighborhood traffic the right-of-way. Unfortunately, not all parents have been compliant, and SAS's efforts have not been able to eliminate problems between parents of school children and residents of the Leewood Neighborhood.

11. On weekends, the site is used by the Thomasville Road Baptist Church for overflow parking, and SAS's auditorium is used on some evenings for performances or other gatherings. For Sunday and evening use, traffic enters and exits onto Thomasville

Road. This use of the SAS site does not cause traffic problems for the Leewood Neighborhood.

12. SAS's charter requires it to offer bus service to the students of the school. Bus service is provided by the Leon County Public School District, and the bus number and schedule are determined by the school district based on a number of logistical factors. Currently, eight buses serve the school in the morning and six serve it in the afternoon.

C. SAS's First Addition Proposal

13. On January 6, 2001, SAS obtained another LUCC, which identified the site as "potentially eligible for a 16,559 square foot addition to the existing 15,077 square foot Arts & Sciences Charter School" and identified the applicable review process. It is not clear from the evidence whether SAS ever intended to add 16,559 square feet of building space to its existing campus, as opposed to adding a net of 1,482 square feet for a total of 16,559. In any event, no application was filed to add 16,559 square feet. Instead, a site plan application was filed to add approximately 2,000 square feet of space for a media center and additional classroom. The site plan was designed to accommodate a total of 225 students.⁴

14. It is not clear from the evidence what student enrollment at SAS was at the time of this application. However, the evidence was that student enrollment was 211 in February 2002. Although the evidence was that student enrollment

can vary during a school year, it probably was approximately 211 during the 2001/2002 school year.

15. During the process of the Type B site plan review of this application, it came to the attention of the City that SAS was not in compliance with vegetation buffers imposed by a Leon County environmental permit issued to the Epiphany Lutheran Church prior to October 1, 1990. SAS was not aware of the requirement before the City required compliance in the spring of 2002. In response, SAS spent approximately \$16,000 replacing vegetation buffer along the western boundary of its property and along the southern boundary extending to the east as far as the driveway access to Cabot Road. SAS also added an eight-foot high wood fence along the western boundary line and replaced a low, chain-link fence along the southern boundary, to the east of the driveway access to Cabot Road, adjacent to a residential lot fronting on the east side of Cabot Road, and separating the lot from a kindergarten playground, with an eight-foot high wood fence.

16. It is not clear from the evidence whether an eight-foot high wood fence also was placed along the southern boundary of SAS's property, just north of Covington Drive, west of the driveway access to Cabot Road. There was testimony suggesting that this was done, but the revised site plan under review does not show it.⁵

17. In April 2002, the DRC denied SAS's site plan application. Although other grounds for denial were cited as well, one ground for denial was that comprehensive plan and land development regulation provisions for school siting were applicable and precluded site plan approval. When SAS learned it was being denied on that ground, it consulted Dr. Jim Croteau, now Acting Assistant Superintendent for Business Services and Executive Director for Planning and Policy at the Leon County School District. Dr. Croteau was the School Board's lead on the Education Element of the comprehensive plan, and was the primary drafter of the Education Element. He explained to the City's Planning Department staff that the Education Element applied only to new facilities. Based on these discussions, the City's Planning Department staff reexamined the issue and agreed with Dr. Croteau. SAS was informed of the re-evaluation of the application of the Education Element but was told it had to reapply for site plan approval.

D. SAS's Second Addition Proposal (at Issue)

18. At this juncture in the application process, SAS attempted to further alleviate traffic impacts to the Leewood Neighborhood by proposing a new traffic circulation pattern that would not use Cabot Drive at all. But while SAS thought it possible to have passenger cars enter and exit the site via the Thomasville Road driveway access, it was impossible to devise a way for school buses to also use such a traffic circulation

pattern. Then, the City and SAS approached the Piedmont Alliance Church to the north in an attempt to share driveways with SAS, but those efforts ultimately were rejected by the Church. As a result, SAS redesigned its project to turn cars around on the site so that they would enter and exit at Thomasville Road, but with bus traffic routing remaining unchanged.

19. On August 9, 2002, SAS filed a new application with the City for approval of the new site plan. Similar if not identical to the previously denied application, the site plan proposed to add an approximately 1,043 square-foot building for a media center and additional classroom at its campus. (The building being added had two floors, so the additional floor area was twice the square-footage of the building, actually 2,238 square feet.) However, the new traffic circle was proposed as part of this application.

20. It is not clear from the evidence what student enrollment at SAS was at the time of this new application. However, the evidence was that student enrollment was 226 at the end of the 2002/2003 school year. Although the evidence was that student enrollment can vary during a school year, it probably was approximately 225 during the 2002/2003 school year.

21. City staff had numerous concerns with the new site plan, including the potential for dangerous conflict between pedestrians and car and bus traffic. In addition, the redesigned project would require changes to the driveway that would impact

stormwater treatment and require the placement of stormwater facilities within the 25-year floodplain. On January 27, 2003, the City's (DRC) denied the applications, as submitted.

22. After further discussion with the City's staff, SAS submitted a revised site plan application on March 8, 2004, which reverted to the one-way, flow-through traffic circulation that has been in effect since SAS has been in operation on the site (and eliminated the need to impact stormwater treatment or require the placement of stormwater facilities within the 25-year floodplain).

23. On March 23, 2004, the DRC approved the revised site plan, with conditions, including a 225 cap on student enrollment. While SAS's site plan application is to add a two-story building addition to provide an additional classroom, as well as a media center, SAS intends to utilize the new classroom instead of an existing undersized classroom, which will become a conference room, so that the number of classrooms will not increase. SAS's representatives testified that the purpose of the addition was not to increase the student population, and SAS agreed to the 225-student cap as a condition of site plan approval, even though current enrollment is approximately 230.

E. School Siting Provisions Inapplicable

24. The evidence was clear that, while some City officials have suggested at earlier points in the site plan review process that compliance with comprehensive plan and land development

regulation provisions for school siting were applicable and precluded site plan approval, those provisions actually do not apply to site plans for additions to existing schools. As stated in the City's Planning Department staff report dated March 17, 2004: "The proposed development is not inconsistent with the goals, objectives, and policies of the Education Element of the Tallahassee-Leon County Comprehensive Plan. The provisions of this element include requirements for determining the appropriate locations for new educational facilities but do not address the expansion or modification of existing, established educational facilities." The wording of the Education Element, Objectives 1.2, Policies 1.2.1, 1.2.5, 1.2.7 and 1.3.1 illustrate the intent to apply only to new facilities. If the Education Element applied to existing facilities, many capital improvements, including some planned with sales tax money, would not be able to proceed on many existing schools. As many as half of the District's existing school sites would not be in compliance with the Education Element of the Comprehensive Plan.

25. SAS's property is categorized as Residential Preservation land use on the Comprehensive Plan Land Use Map and is located in a Residential Preservation 1 zoning district. Schools are an allowable use in these comprehensive plan and zoning categories. The Comprehensive Plan and the LDC contain similar identical matrices which prohibit connection of a community service facility to a local road and require planned

unit development (PUD) review. But the evidence was clear that those provisions apply only new land uses, not to evaluation of an existing use.

F. Traffic and Noise Impacts of Proposal at Issue

26. The evidence was that, in order of preference, the Piedmont Park Alliance Church driveway was the best for sight distance, with Leewood Drive being almost as good. From a traffic safety standpoint, exiting cars back onto Thomasville Road at the existing SAS driveway was the worst option for two reasons: it had the poorest sight distance of the alternatives; and the median opening on Thomasville Road allowed for the interaction of vehicles from two opposing driveways (SAS's and Thomasville Road Baptist Church's).

27. The evidence suggested that, in May 2004, SAS was adding approximately 300 car and bus trips a day to other neighborhood traffic traveling south on Cabot Drive and east on Leewood Drive to Thomasville Road. Even so, the one-way SAS traffic flowing through the campus and exiting at Cabot Drive tends to be fairly-well spread out. Students beginning to arrive from 7:30 a.m. for the extended day program up through the beginning of the official school day at 9:30 a.m., spaced at an average of 2- to 5-minute intervals, but with a more concentrated peak traffic between 8:45 and 9:30 a.m. In the afternoon and evening, students seemed to be picked up between 3:30 and 6 p.m.,

with two separate peaks, one between 3:30 and 4 p.m. and another between 5:30 and 6 p.m., but otherwise sporadically.

28. A certain amount of noise generated by SAS's operations impacts at least parts of the neighborhood. There was some evidence to suggest that the proposed two-story addition would add to noise impacts of the basketball court and play area on the western end of the campus by adding to the echo chamber effect of existing building being added to (identified as the former parsonage of the Epiphany Lutheran Church). But at the hearing, SAS committed to construction in accordance with plan elevations placed in evidence as SAS Exhibit j, so that the proposed two-story addition would be attached to the east side of the existing building with a roofline that matches the roofline of the existing building to the west. As a result, while the significant noise impacts to the residents in the home to the immediate west of SAS are not to be taken lightly, the second story of SAS's proposed addition would not add to noise impacts.

29. Because the proposed addition is not anticipated to increase the student population, the addition itself is not expected to increase traffic impacts--either through additional traffic or a different traffic pattern. For the same reason, the addition itself is not expected to increase noise impacts or other disturbances to the Leewood Neighborhood. However, it should be recognized that the purpose of the addition is to enable SAS to better accommodate an increase in student

population from 175 when it first opened to 225 under the cap, which was allowed under the LUCC issued in January 1999. For this reason, for the protection of the Leewood Neighborhood, it is imperative that the 225 cap be strictly enforced. The evidence suggested that one way to do this would be to require SAS to report to the appropriate City enforcement officials if enrollment ever exceeds the 225 cap.

G. Visual Impacts and Buffers

30. As for alleged visual impacts from the addition on the residents in the home to the immediate west of SAS (especially from their second story), if constructed in accordance with SAS Exhibit j, not only would the second story of SAS's proposed addition not add to noise impacts, it would not be visible at all from the west.

31. From the south (from sightlines along Covington Drive), even if no eight-foot wooden fence has been erected in that location, the existing vegetation buffer would remain and provide some visual buffer--approximately the same visual buffer that the vegetation was providing for the existing building (the old parsonage).

32. To the extent that Petitioner raised a question as to efficacy of the vegetation buffer in that location, there was no persuasive evidence that the vegetation buffer was inadequate for the addition. From sightline through SAS's driveway access at Cabot Drive, the addition would be visible, but the existing

building (the old parsonage) also is visible along those sightlines.

33. A question also was raised as to the SAS's compliance with the vegetation buffer requirements--specifically, that some of the buffer has been removed improperly. Vegetation was removed in the area of the kindergarten playground, but that vegetation buffer was replaced by a privacy fence acceptable to the adjacent resident and by additional vegetation buffer farther to the east. Some vegetation also was removed incidental to installation of a privacy fence in the vicinity of the basketball court.

CONCLUSIONS OF LAW

H. Jurisdiction

34. The Division of Administrative Hearings has jurisdiction of the parties to, and the subject matter of, this proceeding. §§ 2-133(a), 2-138, and 9-155(9)i., LDC; and § 120.65(7), Fla. Stat. (2003).

I. Nature of Proceedings

35. Section 9-155(9)i., LDC, provides in part that a decision of the DRC on a Type B site plan becomes final 30 calendar days after it is rendered unless a party files a petition for formal proceedings in accordance with the LDC and Planning Commission bylaws. Under Section 2-135(a), LDC, when a petition is filed, formal proceedings on the petition are de novo. Therefore, a decision on whether the application at issue

should be approved should be based on all evidence presented at the de novo hearing, not solely on the information considered by the DRC.

J. Burden of Proof

36. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in a proceeding before the Division of Administrative Hearings. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 249 (Fla. 1st DCA 1977).

37. In this proceeding, Petitioner is asserting the affirmative on the issue of her standing. In addition, while Section 2-137, LDC, provides that the Planning Commission's Attorney determines standing, it also states:

The determination of standing is only a preliminary determination that the petitioner has alleged sufficient facts in the petition to establish standing. A petitioner will still be required to prove standing in the formal evidentiary hearing to be conducted in the matter, unless waived by the parties.

For these reasons, Petitioner bears the burden of proof as to her standing.

38. On the main issue (whether the City should approve SAS's site plan application), SAS is asserting the affirmative

(that it should be approved). In addition, Section 5, Article IX, Planning Commission Bylaws, states:

In de novo quasi-judicial proceedings, the initial burden of proof shall be on the applicant. Once the applicant establishes his or her entitlement to approval by submittal of competent, substantial evidence supporting the approval (referred to by the courts of this state as a "prima facie case"), the burden of proof will shift to the petitioner(s) to rebut the evidence submitted by the applicant. The decision under appeal will be treated as a staff report.

K. Standing

39. Standing to participate in this proceeding is governed by Section 2-134, LDC. Standing is recognized for the "applicant," the "local government," and for:

any persons who will suffer an adverse effect to an interest protected or furthered by the comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or service, or environmental or natural resources. The alleged adverse effects to an interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.

40. Petitioner proved that she has an interest in this matter that exceeds in degree the general interest in community good shared by all persons. As a resident on Covington Drive of the Leewood neighborhood adjacent to SAS, Petitioner has an interest in ensuring that any development of SAS's property is consistent with applicable development requirements and

compatible with her neighborhood. See Allapattah Community Association, Inc. v. City of Miami, 379 So. 2d 387, 392 (Fla. 3d DCA 1980).

L. Applicable Review Criteria

41. Section 9-153, LDC, provides:

In deciding whether to approve, approve with conditions, or deny a site plan, the entity with authority to render such decision shall determine:

(1) Whether the applicable zoning standards and requirements have been met.

(2) Whether the applicable criteria of chapter 5 of this Code have been met.

(3) Whether the requirements of other applicable regulations or ordinances which impose specific requirements on site plans and development have been met.

Chapter 5 of the LDC relates to environmental requirements, which are not at issue in this proceeding. At issue in this proceeding are provisions relating to the compatibility of the proposed site plan with the neighboring residential area.

42. SAS presented a more-than-adequate prima facie showing of entitlement to approval of its site plan application, taking into account the objections raised by Petitioner. See Snyder v. Board of County Commissioners of Brevard County, 595 So. 2d 65 (Fla. 5th DCA 1991), aff'd, 627 So. 2d 469 (Fla. 1993). The burden then shifted to Petitioner to prove the allegations of her petitions. Id. The evidence presented by Petitioner in support of her petition was required to be of at least equivalent quality

to the evidence presented by SAS. See Hoffert v. St. Joe Paper Company, 12 F.A.L.R. 4972 (Fla. Dept. of Env. Reg. 1990). Except for the need for a building height limitation and for monitoring student enrollment, Petitioner failed to meet her burden.

43. It is clear that, for several reasons, the site plan could not be approved if it provided for the initial establishment of a school on the property. First, such a site plan would require a special exception under today's code. Under Section 10-170(b)(4), LDC, community services such as schools are an allowable use in a residential preservation zone; under Section 10-241(1), LDC, they are allowed there by special exception. Special exception procedures have not been followed in this case. Second, under the Development Standards Schedule found in Section 10-178, a PUD approval would be required. PUD procedures have not been followed in this case. Third, current school siting provisions would apply, and SAS's property would not meet all of those requirements if it were being sited for the first time, including requirements for street access. (An initial street access from the property to Cabot Drive would require a separate permit under Section 8-31.) But all of these requirements would apply to new development, not to a preexisting school and driveway access.

44. For a preexisting school, the issue is whether the site plan under review would expand or intensify the preexisting use so as to make the school less compatible than before. In this

case, the preexisting use was for a school with a student enrollment of approximately 225 students (the approximate student enrollment at the start of the 2002/2003 school year). If conditioned on an enrollment cap of 225, the site plan application at issue would not expand or intensify the preexisting use in terms of traffic or noise impacts. However, for monitoring and enforcement purposes, an additional condition should require SAS to report to the appropriate City code enforcement officials if SAS's student enrollment ever exceeds the 225 cap.

45. As for visual impacts, there should not be any adverse impacts so long as the roofline of the proposed addition matches the existing building, which also should be a condition of approval.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Planning Commission approve SAS's site plan application, with the conditions recommended by the DRC, together with additional conditions: to report to the appropriate City code enforcement officials if SAS's student enrollment ever exceeds 225; and to limit the height of the proposed addition to the roofline of the existing building, as depicted in SAS Exhibit j.

DONE AND ENTERED this 21st day of October, 2004, in
Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of October, 2004.

ENDNOTES

1/ This was the second site plan application filed by SAS for the addition. The first time SAS filed, City staff initially indicated that its application would be denied because it was inconsistent with the City's Comprehensive Plan provisions for school siting. After discussions, the City's staff agreed that those provisions did not apply to SAS since it operated an existing school. Nonetheless, the City required SAS to re-file its application.

2/ As part of the review, the City's staff also considered two applications for deviations from development standards: one, to allow fewer bicycle parking spaces; and a second, to construct an eight-foot high wood fence along a portion of SAS's southern boundary in lieu of some required vegetation buffer. Neither of these applications is at issue in this proceeding.

3/ The DRC denied the applications for development standard deviations, but members of its Parking Standards Committee approved the reduction in bicycle parking spaces. While denying the elimination of the required vegetation buffer, the DRC allowed the vegetation buffer to be moved further east to be added to the vegetation buffer already required there along SAS's southern property line. As previously indicated, neither of these actions is at issue in this proceeding.

4/ There was no direct evidence of this application, but the evidence suggested that it was very similar if not identical to the subsequent application, which is at issue in this case, at least as to the dimensions of the proposed addition.

5/ Handicapped ramping also has been added to improve access to the school grounds.

COPIES FURNISHED:

Maye Walker
1305 Covington Drive
Tallahassee, Florida 32312-2504

Linda R. Hurst, Esquire
Office of the City Attorney
City of Tallahassee
City Hall
300 South Adams Street
Tallahassee, Florida 32301-1731

Cari L. Roth, Esquire
201 South Monroe Street, Suite 500
Tallahassee, Florida 32301

Wellington H. Meffert, II, Esquire
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Cherie Bryant, Clerk
Tallahassee-Leon County Planning Commission
City Hall
300 South Adams Street
Tallahassee, Florida 32301-1731

NOTICE OF RIGHT TO SUBMIT OBJECTIONS

All parties have the right to submit specific written objections to the Recommended Order within 10 days from the date this Recommended Order is served. Any objections to this Recommended Order should be filed with the Clerk of the Planning Commission. All objections must include appropriate references to the record in this matter.