

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PARKSIDE-PARK TERRACE )  
NEIGHBORHOOD ASSOCIATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 07-1884  
 )  
STEPHEN B. SKIPPER and CITY OF )  
TALLAHASSEE, )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A duly-noticed final hearing was held in this case by Administrative Law Judge T. Kent Wetherell, II, on September 24-25, 2007, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Joseph T. O'Neil  
Parkside-Park Terrace Neighborhood  
Association  
720 Voncile Avenue  
Tallahassee, Florida 32303

For Respondent Stephen B. Skipper (Skipper):

Charles R. Gardner, Esquire  
Murray Wadsworth, Jr., Esquire  
Gardner, Wadsworth, Duggar, Bist &  
Wiener, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308

For Respondent City of Tallahassee (City):

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STATEMENT OF THE ISSUE

The issue is whether the Type B site plan for the 78-unit townhome/condominium project known as Park Terrace Townhomes should be approved.

PRELIMINARY STATEMENT

On March 26, 2007, the City's Development Review Committee (DRC) conditionally approved the Type B site plan submitted by Skipper for the 78-unit townhome/condominium project known as Park Terrace Townhomes (the project). On April 24, 2007, Parkside-Park Terrace Neighborhood Association (Association) timely filed a Petition for Quasi-judicial Proceedings with the Tallahassee-Leon County Planning Commission (Planning Commission) contesting the approval of the site plan.

On April 27, 2007, the Planning Commission referred this matter to the Division of Administrative Hearings (DOAH) to conduct a hearing pursuant to Section 2-138 of the City's Land Development Code (LDC) and Article IX of the Bylaws of the Planning Commission (Bylaws). The referral was received by DOAH on April 30, 2007.

The final hearing was initially scheduled to begin on July 31, 2007, but it was rescheduled for September 24-25, 2007, at the request of the parties. At the hearing, the City presented the testimony of Dwight Arnold, Mary Jean Yarbrough, Olu Sawyerr, and James Lee Thomas; Skipper presented the testimony of Roger Wynn (expert in civil engineering) and Wade Pitt (expert in local land use planning); and the Association presented the testimony of Rodney Cassidy, Robert Morrison, Joseph O'Neil, and Don Merkel.

The following exhibits were received into evidence: Joint Exhibits J1, J2, J3-a through J3-d, J4 through J8, J9-a through J9-c, J10-a through J10-d, and J11 through J14; City's Exhibits 1 through 7; Skipper's Exhibits 1 and 2; and Petitioner's Exhibits 1 through 3, 7, 8, 10 through 13, 16, 19 through 21, and 26 through 31. Petitioner's Exhibits 4 through 6, 9, 14, 15, 17, 18, and 22 through 25, were offered into evidence, but were not received.

The parties filed a Prehearing Stipulation on September 14, 2007. The stipulated facts in that filing are interspersed throughout the Findings of Fact set forth below.

An opportunity for public comment was provided at the final hearing as required by the Bylaws. Public comment in opposition to the project was presented by 16 neighboring property owners: Joyce Keuling, Nancy Harper, Ralph Frisch, Mary Moody, Dennis

Canfield, Kathy Canfield, Elizabeth Kozumplik, Kai Parker, Martin Guttenplan, Charles E.M. Watson, Amanda Lewis, Greg Brown, Marie Bailey, Bob Lutz, Brigid Freeman, and Cheryl Rigby.

The three-volume Transcript of the final hearing was filed on October 9, 2007. The parties were given 10 days from that date to file proposed recommended orders (PROs). The City and Skipper filed a joint PRO on October 19, 2007. The Association filed a PRO on that same date. The PROs have been given due consideration.

#### FINDINGS OF FACT

##### A. Parties

1. Skipper is the applicant for the Type B site plan at issue in this proceeding, No. TSP060026.

2. Skipper owns the property on which the project will be developed, Parcel ID No. 21-23-20-417-000-0 (the project site).

3. The City is the local government with jurisdiction over the project because the project site is located within the City limits.

4. The Association is a voluntary neighborhood association encompassing 343 lots in an established single-family residential neighborhood generally located to the northeast of the Tharpe Street/Old Bainbridge Road intersection, adjacent to the project site.

5. The purpose of the Association is to "preserve and enhance the quality of life in [the] neighborhoods by taking coordinated action on matters which advance the common good of all residents," and one of the Association's objectives is to "protect[] the neighborhood from incompatible land use and rezoning."

B. The Project Site

(1) Generally

6. The project site is located to the north of Tharpe Street, to the east of Old Bainbridge Road, and to the west of Monticello Drive.

7. The project site is bordered on the south by the Old Bainbridge Square shopping center. It is bordered on the north, east, and west by the residential neighborhood represented by the Association.

8. The project site consists of 13.91 acres. The western 11.11 acres of the project site are zoned R-4, Urban Residential. The eastern 2.8 acres of the project site are zoned RP-1, Residential Preservation.

9. The project site is roughly rectangular in shape. It is 300 feet wide (north to south) and approximately 2,100 feet long (east to west).

10. The project site is located within the Urban Service Area (USA) boundary. The Tallahassee-Leon County Comprehensive Plan specifically encourages infill development within the USA.

11. The project site is designated as Mixed Use A on the future land use map in the Comprehensive Plan. Residential development of up to 20 units per acre is allowed within the Mixed Use A land use category.

12. The project site has been zoned R-4/RP-1 since 1997 when it was rezoned from Mixed Use A as part of the City-wide rezoning of all mixed use properties. Multi-family residential was an allowable use under the Mixed Use A zoning district, as was small-scale commercial.

13. The R-4 zoning is intended to function as a "transition" between the commercial uses to the south of the project site and the single-family residential uses to the north of the project site. The R-4 zoning district allows a wide range of residential development at a density of up to 10 units per acre.

#### (2) Surrounding Zoning and Uses

14. The property to the north, east, and west of the project site is zoned RP-1, and is developed with single-family residences.

15. The neighborhood adjacent to the project site is stable and well established. Most of the homes are owner-occupied, and many of the residents are retirees.

16. The property to the south of the project site is zoned UP-1, Urban Pedestrian, and is developed with commercial uses, namely the Old Bainbridge Square shopping center.

17. There is an existing stormwater pond located on the northwest portion of the shopping center parcel, adjacent to the southern boundary of the project site.

### (3) Environmental Features on the Project Site

18. The project site is vacant and undeveloped, except for several concrete flumes and underground pipes located in the drainage easements that run north/south across the site. The project site has been impacted by the surrounding development in that household and yard trash has been found on the site.

19. The vegetative community on the project site is considered to be upland hardwood forest. There are a number of large trees on the project site, including pecan, cherry, pine, gum, and various types of oak trees. There are also various exotic plants species on the site, such as kudzu. The vegetative density is consistent throughout the project site.

20. The land in the general vicinity of the project site slopes from south to north. The elevations along Tharpe Street to the south of the project site are in 220 to 230-foot range,

whereas the elevations in the neighborhood to the north of the project site approximately one-quarter of a mile north of Tharpe Street are in the 140 to 160-foot range.

21. The elevations across the R-4 zoned portion of the project site range from a high of 214 feet on the southern boundary to a low of 160 feet on the northern boundary. The southern property boundary is consistently 30 to 40 feet higher than the northern property boundary across the entire R-4 zoned portion of the project site.

22. The slopes are the main environmental feature of significance on the project site. There are a total of 7.32 acres (319,110 square feet) of regulated slopes -- i.e., severe or significant grades -- on the project site, which is more than half of the total acreage of the site.

23. There is a ravine that runs in a northwesterly direction across the RP-1 zoned portion of the project site. The ravine is considered to be an altered wetland area and/or altered watercourse.

24. The regulated slopes and altered wetland/watercourse areas on the project site were depicted on a Natural Features Inventory (NFI) submitted in September 2005, prior to submittal of the site plan.

25. The City's biologists reviewed the original NFI, and it was approved by the City on October 13, 2005.



26. A revised NFI was submitted in March 2007. The revised NFI removed the man-made slopes from the regulated slope areas, and made other minor changes based upon comments from the staff of the Growth Management Department.

27. The City's biologists reviewed the revised NFI, and it was approved by the City on August 24, 2007.

28. The Association questioned the change in the amount of regulated slopes identified on the project site, but it did not otherwise contest the accuracy of the NFIs.

29. Roger Wynn, the engineer of record for the project, testified that the amount of regulated slopes on the project site changed because the man-made slopes were initially included in the calculation but were later removed. That testimony was corroborated by the James Lee Thomas, the engineer who coordinated the Growth Management Department's review of the project.

### C. The Project

#### (1) Generally

30. The project consists of 78 townhome/condominium units in 14 two-story buildings.

31. It was stipulated that the density of the project is 7.02 units per acre, which is considered "low density" under the Comprehensive Plan and the LDC. The stipulated density is calculated by dividing the 78 units in the project by the 11.11

acres on the project site in the R-4 zoning district. If the entire acreage of the project site was used in the calculation, the project's density would be 5.61 units per acre.

32. All of the buildings will be located on the R-4 zoned portion of the project site. Five of the buildings (with 21 units) will have access to Monticello Road to the east by way of Voncile Avenue. The remaining nine buildings (with 57 units) will have access to Old Bainbridge Road to the west by way of Voncile Avenue. There is no vehicular interconnection between the eastern and western portions the project.

33. There is no vehicular access to the project from the north or south. However, pedestrian interconnections are provided to the north and south.

34. The only development on the RP-1 zoned portion of the project site is the extension of Voncile Avenue onto the site. The remainder of the RP-1 zoned property will be placed into a conservation easement.

35. The Voncile Avenue extension will end in a cul-de-sac at the eastern boundary of the R-4 zoned portion of the project site. The extension will be constructed to meet the City's standards for public roads, and it will comply with the City's Street Paving and Sidewalk Policy.

36. The other streets shown on the site plan are considered private drives because they are intended to serve

only the project. Those streets and the internal cul-de-sacs have been designed to allow for the provision of City services - - e.g., trash, recycling, fire -- but they do not have to meet the City's Street Paving and Sidewalk Policy.

37. It was stipulated that the project is consistent with the City's Driveway and Street Connection Regulations, Policies and Procedures.

38. It was stipulated that the project is consistent with the City's Parking Standards. The City's Parking Standards Committee approved tandem parking spaces and an increase in the number of parking spaces in the project.

39. It was stipulated that the project is consistent with the City's concurrency policies and regulations. A preliminary certificate of concurrency was issued for the project on March 9, 2007.

40. It was stipulated that the project is consistent with the City's requirements for utilities -- e.g., water, sewer, stormwater, electricity, gas, cable -- and infrastructure for those utilities. However, the Association still has concerns regarding various aspects of the project's stormwater management system. See Part D(3), below.

#### (2) Site Plan Application and Review

41. On August 4, 2005, the City issued Land Use Compliance Certificate (LUCC) No. TCC060219, which determined that 94

multi-family residential units could be developed on the R-4 zoned portion of the project site.

42. The LUCC noted that the RP-1 zoned portion of the project site "is not eligible for multi-family development," and that the "[a]ttainment of the full 94 units on the R-4 zoned property may be limited by the presence of regulated environmental features that will be determined via an approved Natural Features Analysis [sic]."

43. On March 10, 2006, Skipper submitted a Type B site plan application for the project. The initial site plan included 82 multi-family units in 13 buildings; an extension of Heather Lane onto the project site to provide vehicular access to the north; vehicular access to the west by way of Voncile Avenue; and no vehicular access to the east.

44. The Tallahassee-Leon County Planning Department (Planning Department) and other City departments expressed concerns about the initial site plan in memoranda prepared in advance of the April 10, 2006, DRC meeting at which the site plan was to be considered.

45. A number of neighboring property owners submitted letters to the DRC and other City departments detailing their concerns about the project. A number of neighboring property owners also sent "petitions" to Skipper urging him to reduce the

density of the project and to construct single-family detached units rather than multi-family units.

46. The DRC "continued" -- i.e., deferred consideration of -- the site plan at its April 10, 2006, meeting as a result of the concerns expressed by the City departments. The site plan was also "continued" by the DRC at each of its next 10 meetings.

47. Skipper submitted a revised site plan in February 2007 that reduced the number of units in the project from 82 to 78; eliminated the extension of Heather Lane onto the project site; added the connection to Voncile Avenue on the east; and made other changes recommended by City staff.

48. It is not unusual for a site plan to be revised during the DRC review process. Indeed, Mr. Wynn testified that it is "very uncommon" for the initial version of the site plan to be approved by the DRC and that the approved site plan is typically an "evolution" of the initial site plan. That testimony was corroborated by the testimony of Dwight Arnold, the City's land use and environmental services administrator.

49. The City departments that reviewed the revised site plan -- growth management, planning, public works, and utilities -- each recommended approval of the site plan with conditions. A total of 21 conditions were recommended, many of which were standard conditions imposed on all site plans.

50. The DRC unanimously approved the site plan with the 21 conditions recommended by the City departments at its meeting on March 26, 2007.

51. The DRC was aware of the neighborhood's objections to the project at the time it approved the site plan. Mr. Arnold, testified that the Growth Management Department was "extraordinarily careful" in its review of the site plan as a result of the neighborhood's concerns.

52. The site plan received into evidence as Joint Exhibit J13 is an updated version of the revised site plan submitted in February 2007. It incorporates all of the DRC conditions that can be shown on the site plan. For example, the updated site plan shows the "stub-out" at the southern property boundary and the pedestrian interconnections requested by the Planning Department as well as the appropriately designated handicapped parking spaces requested by the Public Works Department.

53. The site plan review process typically takes six months, but Mr. Arnold testified that the process can take longer depending upon the number of issues that need to be addressed. Mr. Arnold testified that there is nothing unusual about the one-year period in this case between the submittal of the site plan and its approval by the DRC.

#### D. Issues Raised by the Association

54. The primary issues raised by the Association in opposition to the project are the alleged incompatibility of the proposed multi-family development with the surrounding single-family neighborhood; concerns about increased traffic in and around the neighborhood; concerns relating to the design of the project's stormwater management system and the potential for stormwater run-off from the project to cause flooding in the neighborhood; and the alleged inadequate protection of the environmentally sensitive features on the project site.

55. The public comment presented at the final hearing generally focused on these same issues, but concerns were also raised regarding the potential for increased crime and decreased property values in the neighborhood if college-aged students move into the proposed multi-family units on the project site.

##### (1) Compatibility

56. Protecting the integrity of existing residential neighborhoods from incompatible development is a specifically emphasized "growth management strategy" in the Land Use Element of the Comprehensive Plan.

57. Policy 2.1.1 [L] of the Comprehensive Plan promotes the protection of "existing residential areas from encroachment of incompatible uses that are destructive to the character and integrity of the residential environment."

58. Paragraph (c) of Policy 2.1.1 [L] requires the adoption of land development regulations to limit future higher density residential development adjoining low density residential areas. Such limitations "are to result in effective visual and sound buffering (either through vegetative buffering or other design techniques) between the higher density residential uses and the low density residential uses; [and] are to discourage vehicular traffic to and from higher density residential uses on low density residential streets."

59. These Comprehensive Plan provisions are implemented through the buffering requirements in LDC Section 10-177, which requires landscaping and fencing to be installed between potentially incompatible land uses. The width of the buffer and the amount of the landscaping required vary depending upon the proposed and existing land uses.

60. The multi-family development proposed in the project at 7.02 units per acres is not inherently incompatible with the existing single-family neighborhood surrounding the project site. Indeed, as noted above, both uses are considered low density under the LDC and the Comprehensive Plan.

61. Multi-family residential development on the project site furthers the intent of the R-4 zoning district in that it provides for a "transition" between the commercial uses in the Old Bainbridge Square shopping center to the south of the



project site and the single-family residential neighborhood to the north of the project site.

62. The Planning Department expressed concerns about the initial site plan's compatibility with the surrounding neighborhood in its March 24, 2006, memorandum to the DRC. The memorandum recommended that the project be redesigned -- with a lower density and/or clustered single-family lots or townhomes -- in an effort to make it more compatible with the surrounding neighborhood. The Planning Department does not have the authority to require a project to be redesigned; it can only recommend that the developer consider alternative designs.

63. The Planning Department does not have compatibility concerns with the revised site plan. Indeed, Mary Jean Yarbrough, a senior planner with 10 years of experience with the Planning Department, testified that "the site plan has changed significantly from the first submittal" and that it now "meet[s] the compatibility requirements of the comprehensive plan."

64. Similarly, Wade Pitt, an expert in local land use planning, testified that the project meets the compatibility requirements in the Comprehensive Plan and the LDC. Mr. Pitt also testified the project furthers the intent of the R-4 zoning district by providing a transition between the commercial uses to the south of the project site and the single-family residential uses to the north of the project site.

65. Some of the changes in the site plan mentioned by Ms. Yarbrough that led to the Planning Department no longer having compatibility concerns with the project were the elimination of the Heather Lane interconnection; the reduction in the number of units in the project; the reduction in the size of the eastern stormwater pond; the inclusion of buffers in the project; and the elimination of the road through the project, which allowed for more extensive conservation areas in the central portion of the project site.

66. A Type D buffer is required where, as here, the existing use is single-family and the proposed use is multi-family. The width of a Type D buffer can range from 30 to 100 feet, but the wider the buffer, the less landscaping that is required.

67. The site plan includes a 30-foot wide buffer along the project site's northern and western property lines, as well as along the eastern border of the R-4 zoning district on the project site.<sup>1</sup>

68. The 30-foot Type D buffer is required to contain at least 12 canopy trees, six understory trees, and 36 shrubs for every 100 linear feet of buffer. The northern boundary of the R-4 zoned portion of the project site is approximately 1,600 feet long, which means that there will be approximately 864 plants -- 192 canopy trees, 96 understory trees, and 576 shrubs

-- in the buffer between the proposed multi-family units and the neighborhood to the north of the project site.

69. The Association contends that a 60-foot Type D buffer should have been required. However, Ms. Yarbrough persuasively testified that the 60-foot buffer actually provides less buffering because it is not required to be as densely vegetated as the 30-foot buffer provided on the site plan.

70. Portions of the buffer shown on the site plan overlap the designated conservation areas that will be subject to the conservation easement on the project site. Mr. Arnold testified that it is not uncommon for buffers to overlap conservation areas.

71. The conservation areas will be disturbed in those areas where the trees and shrubs are planted to comply with the landscaping requirements for the buffer.

72. An eight-foot high fence will be constructed along the northern and western property lines. The site plan shows the fence several feet inside the property line, within the designated conservation areas. However, Mr. Arnold and City biologist Rodney Cassidy testified that the fence will have to be placed outside of the conservation areas along the property lines.

73. LDC Section 10-177(f)(5) does not impact the placement of the fence on the property line as the Association argues in

its PRO. That code section requires planting materials to be located on the outside of the fence "[w]hen residential uses buffer against other uses." Here, the residential uses on the project are not being buffered against "other uses"; they are being buffered against the same type of use, residential.

74. None of the six buildings on the northern side of the project site directly abut the buffer. Only one of the buildings is closer than 40 feet from the northern property line, and three of the buildings are as much as 80 feet from the northern property line.

75. The only development actually abutting the 30-foot buffer is the retaining walls for the stormwater management ponds. The walls will be covered with vines to minimize their aesthetic impact on the adjacent properties.

76. It is not necessary that the trees and shrubs in the buffer reach maturity before a certificate of occupancy is issued; all that is required is that the appropriate type and number of trees and shrubs are planted.

77. The project is adequately buffered from the existing single-family residences to the north and west of the project site. The buffer requirements in the LDC have been met.

78. In addition to the landscaped buffer and fence, impacts of the project on the surrounding neighborhood have been mitigated by the placement of parking on the interior of the

site and by the elimination of the Heather Road interconnection that was in the initial site plan, which would have directed more traffic from the project onto the neighborhood streets.

79. In sum, the more persuasive evidence establishes that the project is not inherently incompatible with the surrounding single-family uses and that its impacts on the surrounding neighborhood have been mitigated as required by the LDC. Thus, there is no basis to deny the site plan based upon the incompatibility concerns raised by the Association.

#### (2) Traffic Concerns

80. There is currently considerable traffic on Old Bainbridge Road, particularly during rush hour. This makes it difficult for residents of the neighborhood north of the project site to turn left onto Old Bainbridge Road from Joyner Drive.

81. The amount of traffic on Old Bainbridge Road is in no way unique. There are many streets in the City that have similar amounts of traffic, particularly during rush hour.

82. Vehicles leaving the project will utilize Voncile Avenue, Joyner Drive, and Monticello Drive to access Old Bainbridge Road or Tharpe Street. Those streets are considered collector roads, not local streets.

83. The number of vehicles expected to utilize the local streets in the neighborhood to the north of the project site will not be significant from a traffic engineering perspective.

84. The initial version of the site plan showed Heather Lane being extended onto the project site and connected with a street running through the project. This interconnection, which is no longer part of the site plan, would have increased the amount of traffic on the surrounding neighborhood streets because Heather Lane runs through the middle of the neighborhood to the north of the project site.

85. There are expected to be less than 50 trips entering the eastern portion of the project during the afternoon peak hour, and less than 20 trips entering the western portion of the project during the afternoon peak hour. The exiting trips during the afternoon peak hour are expected to be about half those amounts.

86. The number of trips generated by the project fall below the one percent or 100 trip threshold in the City's concurrency regulations.

87. A preliminary certificate of concurrency, No. TCM060026, was issued for the project on March 9, 2007, indicating that there will be adequate capacity of roads (and other infrastructure) to serve the project. No credible evidence to the contrary was presented.

88. LDC Section 10-247.11 requires properties in the R-4 zoning district to have vehicular access to collector or arterial streets if the density is greater than eight units per

acre. Where, as here, the density of the project is less than eight units per acre, vehicular access to local streets is permitted. In any event, as noted above, access to the project site is by way of Voncile Avenue, which is considered a collector road.

89. In sum, there is no basis to deny the site plan based upon traffic concerns because the project satisfies the City's traffic concurrency requirements.

(3) Stormwater Management/Flooding Concerns

90. Currently, stormwater run-off from the project site flows uncontrolled across the site, down the slope towards the neighborhood to the north that is represented by the Association.

91. The neighborhood had severe flooding problems in the past. The City resolved those problems by reconfiguring the stormwater management system and constructing several stormwater ponds in the neighborhood.

92. The Association is concerned that the stormwater run-off from the project will cause flooding in the neighborhood. The Association also has concerns regarding the design of the stormwater ponds and their proximity to the neighborhood.

93. The project site is located in the upper reaches of a closed basin. As a result, the project's stormwater management system is subject to the additional volume control standards in

LDC Section 5-86(e), which requires the volume of post-development stormwater run-off from the site to be no greater than pre-development run-off.

94. The project's stormwater management system provides volume control, rate control, and water quality treatment. The system complies with all of the design standards in LDC Section 5-86, including the additional closed basin standards in paragraph (e) of that section.

95. The project will retain all post-development stormwater run-off on site by capturing it and routing it to two stormwater ponds located in the north central portion of the project site. Stormwater run-off will be captured by roof collectors on the buildings and inlets on the streets and then routed to the stormwater ponds through underground pipes.

96. The two stormwater ponds are designed with retaining walls on their north/downhill sides. The walls will have a spread footing, which was a design change recommended by Mr. Thomas to improve the functioning of the ponds. The walls will be eight to nine feet at their highest point, which is less than the 15-foot maximum allowed by LDC Section 5-86(f)(7), and they will be covered with vegetation as required by that section.

97. Access to the stormwater ponds for maintenance is provided by way of the 20-foot wide "pond access" easements



shown on the site plan for each pond. These easements meet the requirements of LDC Section 5-86(g)(2).

98. The stormwater ponds are roughly rectangular in shape, rather than curvilinear. The shape of the ponds is a function of the retaining walls that are required because of the sloping project site.

99. The stormwater ponds have been visually integrated into the overall landscape design for the site "to the greatest extent possible" as required by LDC Section 5-86(f)(10). The south side of the ponds will be contoured with landscaping, and the walls around the ponds will be covered with vegetation.

100. The final design of the stormwater ponds and the retaining walls is evaluated during the permitting phase, not during site plan review. The walls must be designed and certified by a professional engineer, and the construction plans submitted during the permitting phase will include a detailed analysis of the soil types on the site to determine the suitability of the walls and to ensure the proper functioning of the ponds.

101. The project's stormwater management system will also collect and control the overflow stormwater run-off from the existing stormwater pond on the Old Bainbridge Square shopping center site. That run-off currently overflows out of an existing catch basin on the eastern portion of the project site

and flows uncontrolled across the project site, down the slope at a rate of 6.7 cubic feet per second (CFS). After the project is developed, that run-off will flow out of a redesigned catch basin at a rate of 0.5 CFS, down the slope through a conservation area, to a graded depression area or "sump" on the northern property line, and ultimately to the existing stormwater management system along Heather Lane.

102. Mr. Arnold and Mr. Cassidy testified that the reduced flow down the slope will benefit the conservation area by reducing erosion on the slope. Mr. Cassidy further testified that he was not concerned with the flow through the conservation easement forming a gully or erosion feature or otherwise altering the vegetation in that area, and that potential impacts could be addressed in a management plan for the conservation area, if necessary.

103. The stormwater ponds and other aspects of the project's stormwater management system will be privately owned and maintained. However, the operation and maintenance of the system will be subject to a permit from the City, which must be renewed every three years after an inspection. The City can impose special conditions on the permit if deemed necessary to ensure the proper maintenance and function of the system.

104. The more persuasive evidence establishes that the project's stormwater management system meets all of the

applicable requirements in the LDC. On this issue, the testimony of Mr. Thomas and Mr. Wynn was more persuasive than the stormwater-related testimony presented on behalf of the Association by Don Merkel. Mr. Merkel, a former engineer, "eyeballed" the project site and the proposed stormwater management system; he did not perform a detailed analysis or any calculations to support his criticisms of the project's stormwater management system.

105. In sum, there is no basis to deny the site plan based upon the stormwater management/flooding concerns raised by the Association.

(4) Protection of Environmental Features on the Project Site

106. The NFI is required to depict all of the regulated environmental features on the site, including the regulated slopes. The revised NFI approved by the City in August 2007 accurately depicts the environmentally sensitive features on the project site.

107. The environmental features regulated by the City include "severe grades," which are slopes with grades exceeding 20 percent, and "significant grades," which are slopes with 10 to 20 percent grades.

108. The project site contains 5.74 acres (250,275 square feet) of "significant grades" and 1.58 acres (68,835 square feet) of "severe grades." Those figures do not include man-made

slopes in the existing drainage easements across the site, which are not subject to regulation.

109. There are 0.76 acres (33,056 square feet) of severe grades on the R-4 portion of the project site that are regulated as significant grades because of their size and location. Thus, there are a total of 6.50 acres (283,331 square feet) of slopes regulated as significant grades on the project site.

110. LDC Section 5-81(a)(1)d. provides that 100 percent of severe grades must be protected and placed in a conservation easement, except for severe grades that are less than one-quarter of an acre in size and located within an area of significant grades that are regulated as significant grades.

111. LDC Section 5-81(a)(2)d. provides that a minimum of 50 percent of significant grades must be left undisturbed and placed in a conservation easement.

112. LDC Section 5-81(a)(2)d.1. provides that the significant grades to be protected are those areas "that provide the greatest environmental benefit as determined by the director [of growth management] (i.e., provides downhill buffers, protects forested areas, buffers other protected conservation or preservation areas, or provides other similar environmental benefits)."

113. The Environmental Impact Analysis (EIA) included with the site plan shows that 100 percent of the severe slopes that

are regulated as such are protected and will be placed in a conservation easement.

114. The EIA shows that a total of 3.05 acres (133,002 square feet) of the significant grades on the project site will be impacted. That figure is 46.9 percent of the total significant grades on the project site, which means that 53.1 percent of the significant grades will be undisturbed and placed into a conservation easement.

115. It is not entirely clear what environmental benefit is provided by some of the smaller conservation areas shown on the site plan, such as those between several of the buildings, but Mr. Cassidy testified that he took the criteria quoted above into consideration in determining that the site plan meets the applicable code requirements and is "approvable." Moreover, Mr. Arnold testified that similar "small pockets" of conservation areas are located in other areas of the City and that fencing or other appropriate measures can be taken to ensure that the areas are not disturbed.

116. The EIA will be approved simultaneously with, and as part of the site plan.

117. The conservation easement is not required during site plan review. Rather, LDC Section 5-81(b) requires the easement to be recorded no later than 30 days after commencement of site work authorized by an environmental permit.

118. LDC Section 5-81(a)(2)d.1. provides that development activity in the area subject to the conservation easement is prohibited, except for "vegetation management activities that enhance the vegetation and are specifically allowed in a vegetation management plan approved by the director [of growth management]."

119. LDC Section 5-81(b) provides that a management plan for the area subject to a conservation easement "may be approved provided the activity does not interfere with the ecological functioning of the conservation or preservation area and the activities are limited to designs that minimize impacts to the vegetative cover." That section further provides that the management plan is to be approved "during the [EIA]."

120. Mr. Cassidy testified that an approved management plan is required in order to plant trees in a conservation area. He further testified that impacts related to the construction of the buffer fence could be addressed in the management plan, if necessary.

121. No management plan has been prepared or approved for the project even though there will be planting in the conservation areas that overlap the 30-foot Type D buffer.

122. In sum, more persuasive evidence establishes that the regulated environmentally sensitive features on the project site are accurately depicted in the NFI; that the required amounts of

regulated slopes are protected on the site plan; and that, subject to approval of a management plan for the plantings in the buffer as part of the EIA, the project complies with the requirements of the LDC relating to the protection of environmentally sensitive features.

#### E. Other Issues

123. The final hearing was properly noticed, both to the parties and the general public. Notice of the final hearing was published in the Tallahassee Democrat on September 9, 2007.

124. An opportunity for public comment was provided at the final hearing, and 16 neighboring property owners spoke in opposition to the project.

125. A number of the concerns raised by the Association and the neighboring property owners who spoke at the hearing are permitting or construction issues, not site plan issues. For example, issues related to the engineering specifications for the stormwater pond retaining walls and issues related to the protection of the conservation areas from construction impacts will be addressed and monitored as the project moves through the permitting process. Mr. Arnold testified that Association and neighboring property owners are free to provide input and express concerns on those issues to the appropriate City departments as the project moves through permitting and construction.

## CONCLUSIONS OF LAW

126. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to LDC Section 2-138. See also Bylaws, art. IX, § 1.

127. The Planning Commission is responsible for taking final action on the site plan for the project based upon the record developed at the final hearing and this Recommended Order. See Bylaws, art. IX, § 1(b)1.b.

128. Skipper has the initial burden of proof in this de novo proceeding. See Bylaws, art. IX, § 5. If Skipper presents competent evidence supporting approval of the site plan, then the burden shifts to the Association to "rebut the evidence submitted by [Skipper]." Id.

129. In order to "rebut" the evidence submitted by Skipper, it is not enough for the Association to simply present competent evidence in support of its position. Rather, to meet its burden of proof under the Bylaws, the evidence presented by the Association must be found more persuasive than the evidence presented by Skipper and the City in support of the project.

130. The Association was provisionally determined to have standing to participate in this proceeding, but it was required to prove its standing at the final hearing. See Bylaws, art. IX, § 1(j) and (m).



131. The Association proved its standing. The evidence presented at the final hearing establishes that members of the Association own property abutting the project site; that traffic from the project will utilize the streets in and around the neighborhood represented by the Association; that the neighborhood is immediately downhill from the project site and could be at risk for flooding if stormwater run-off is not properly retained on the project site; and that the relief sought by the Association in this proceeding is consistent with the purpose of the Association and is of the type appropriate for a neighborhood association to seek on behalf of its members. See also Respondents' Joint PRO, at ¶ 68 ("Petitioners [sic] proved their standing at hearing.")

132. Site plan approvals are governed by LDC Section 9-153, which provides:

In deciding whether to approve, approve with conditions, or deny a site plan, the entity with authority to render such a 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.

133. With respect to LDC Section 9-153(1), the more persuasive evidence establishes that the site plan meets the applicable zoning standards and requirements. The project is low density infill development located within the USA; its density is less than the maximum allowed in the R-4 zoning district; and it contains the required buffers.

134. With respect to LDC Section 9-153(2), the more persuasive evidence establishes that the site plan meets the applicable environmental management criteria in LDC Chapter 5. The environmentally sensitive features on the project site were properly identified on the revised NFI; all of the severe grades and more than 50 percent of the significant grades on the project site are being preserved, as required; conservation easements will be placed on all of the environmentally sensitive areas not impacted by the proposed development, including almost the entire RP-1 zoned portion of the site; and the stormwater management system meets the closed basin requirements in that post-development run-off from the project site will not exceed the pre-development run-off.

135. That said, the approval of the site plan should be further conditioned on the approval of a management plan for the conservation areas that will be disturbed through the plantings required in the Type D buffer. See LDC § 5-81(b) (requiring the management plan to be approved as part of the EIA, which

according to Mr. Arnold, is approved simultaneously with the site plan).

136. With respect to LDC Section 9-153(3), the more persuasive evidence establishes that the site plan meets the requirements of all other regulations applicable at this stage of development review. For example, the project is consistent with the City's concurrency policies and regulations; the City's Driveway and Street Connection Regulations, Policies and Procedures; the City's parking standards; and the City's requirements for utilities and infrastructure.

137. In sum, Skipper met its burden to prove that the site plan meets the requirements of LDC Section 9-153. The evidence presented by the Association in opposition to the project failed to rebut the evidence presented by Skipper and the City.

138. That said, the undersigned is not unsympathetic to the concerns raised by the Association and the neighboring property owners who spoke at the final hearing. Certainly, it would have been better for all concerned if the parties could have reached an amicable resolution of this case. However, it is not the undersigned's role to craft an alternative site plan or some other sort of equitable resolution of the parties' dispute where the evidence establishes that the site plan put forth by Skipper meets the applicable regulatory requirements.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the Planning Commission approve the Type B site plan for the Park Terrace Townhomes project, subject to the 21 conditions recommended by the DRC and additional conditions requiring:

1. the eight-foot high buffer fence to be located on the property lines, outside of the designated conservation areas; and

2. a management plan to be approved for the conservation areas that will be disturbed through the plantings required in the Type D buffer.

DONE AND ENTERED this 7th day of November, 2007, in Tallahassee, Leon County, Florida.



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T. KENT WETHERELL, II  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of November, 2007.

ENDNOTE

<sup>1/</sup> A 10-foot wide buffer is proposed on the southern property line, adjacent to the Old Bainbridge Square shopping center. The Association did not take issue with that buffer, and it appears to be consistent with the Type B buffer standards required between new multi-family development and existing commercial uses.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 calendar days from the date of this Recommended Order. See Planning Commission Bylaws, art. IX, § 10(a). Exceptions to this Recommended Order should be filed with the Clerk of the Planning Commission. Id.