STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KALI BLOUNT, NKWANDA JAH, JOEL PARKER, JENNIFER PARKER, AND CARRIE JOHNSON,

Appellants,

vs. Case No. 20-2135

TRAMELL WEBB PARTNERS, INC. AND CITY OF GAINESVILLE,

Appellees.
_____/

FINAL ORDER

Petitioners/Appellants, Kali Blount, NKwanda Jah, Joel Parker, Jennifer Parker, and Carrie Johnson (Appellants), appeal a development plan application for Peak Campus Seminary Lane filed by Respondent/Appellee, Tramell Webb Partners, Inc. (TWP), and administratively approved by Respondent/Appellee, City of Gainesville (City), on March 27, 2020.[1] The Division of Administrative Hearings, by contract with the City and pursuant to section 30-3.57 of the City's Land Development Code (LDC), assigned an Administrative Law Judge to serve as the Hearing Officer to conduct the proceedings for this appeal.[2]

[1] Roberta Parks and Floid Churchill were originally appellants in this case, but both filed requests to withdraw which were granted. Mr. Churchill withdrew after the final hearing, but before the issuance of this Final Order. Appellees filed a Suggestion of Mootness as to issues related to Mr. Churchill's property, but failed to delineate what those issues were or why they were no longer relevant to the appeal. The Suggestion of Mootness was denied on December 10, 2020.

[2] All references to sections are to the 2019 LDC version in effect at the time of the application.

APPEARANCES

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ISSUES ON APPEAL[3]

The ultimate issue in this appeal is whether to affirm, reverse, or modify the City's administrative approval on March 27, 2020, of TWP's application for the "Preliminary/Final Development Plans for Phase A: Seminary Lane Development."[4] The issues to be determined in this appeal are as follows:

(1) Whether the approved development is compatible with the historic Fifth Avenue Neighborhood.

[3] The issue of Appellants' standing was dismissed without prejudice in the Order on Outstanding Motions dated on June 8, 2020. Appellees did not raise standing as an issue again and have conceded that the remaining Appellants have standing (Appellees' Pro. Final Ord., ¶129).

[4] Although the application refers to "Peak Campus Seminary Lane" and to "Phase A," the parties and the undersigned have referred to this portion of the development as "Phase 1."

(2) Whether the approved development violates the maximum density allowed for multi-family development by the LDC.

(3) Whether the approved development meets the compatibility standards between multi-family development and single-family development found in the LDC.

(4) Whether the approved development meets the building design standards set forth in the LDC.

(5) Whether the approved development meets the parking structure standards set forth in the LDC.

PRELIMINARY STATEMENT (PROCEDURAL HISTORY)

TWP submitted a development plan application for Phase 1 (of 2) of a master planned residential development known as the "Seminary Lane Development." On February 4, 2020, the City administratively approved TWP's Master Plan governing the Seminary Lane Development. On March 27, 2020, the City administratively approved TWP's "Preliminary/Final Development Plans for Phase A: Seminary Lane Development" (the Development Decision). On April 24, 2020, Appellants filed with the City a Notice of Appeal of Administrative Decision under section 30-3.57 of the LDC.

The Division of Administrative Hearings (DOAH), by contract with the City and pursuant to section 30-3.57, assigned Administrative Law Judge Suzanne Van Wyk to serve as the Hearing Officer for the appeal.

In accordance with the Order of Pre-Hearing Instructions dated May 26, 2020, the City filed a Record on Appeal (Record) on June 9, 2020. Additionally, pursuant to section 30-3.57.C.6.a., the parties submitted numerous motions to supplement the record with witness affidavits. All of the motions to supplement the record were granted and the affidavits of

numerous individuals were made part of the Record, including the following: Kim Tanzer, Thomas Hawkins, Erick Smith, Patricia Hilliard-Nunn, Gerry Dedenbach, Russell Adams, Paul Allen, John Webb, NKwanda Jah, Joel Parker, Jennifer Parker, Carrie Johnson, Floid Churchill, Andrew Persons, Yvette Thomas, and Liliana Kolluri.

On June 12, 2020, Appellants filed their Brief. On September 10, 2020, after being granted an extension of time, Appellees filed their Joint Answer Brief.

A public hearing was held on June 19, 2020, allowing unsworn public comment regarding the Development Decision and appeal. Thereafter, on July 31, 2020, the City filed a Motion to Disqualify Administrative Law Judge Van Wyk. On August 3, 2020, DOAH transferred this appeal to Administrative Law Judge Hetal Desai.

The parties filed several motions that were heard during motion hearings or pre-hearing conferences held on September 25, 2020, September 8, 2020, August 25, 2020, June 3, 2020, and May 19, 2020. Orders on these motions were issued and are reflected on the DOAH electronic docket. Notably, an Order Clarifying Pre-Hearing Procedures and Hearing Procedures was entered on August 28, 2020, addressing the briefing schedule, timelines to supplement the Record, procedures for the final hearing, transcript costs, proposed final orders, and rendering of the final order.

The final hearing was held via Zoom web conferencing on September 14 and 15, and October 1 and 2, 2020. At the final hearing, the parties were allowed to present witness testimony to supplement the Record. Appellants presented the testimony of eight witnesses: Appellants NKwanda Jah, Kali Blount, Jennifer Parker, and Joel Parker; Floid Churchill (former appellant);

Eric Smith (expert witness - arborist); Kim Tanzer (expert witness - architecture and land use planning); and William Hawkins (expert witness - land use planning). The City presented the testimony of three witnesses: Lillian Kolluri (City's Environmental Coordinator); Evette Thomas (City Planner); and Andrew Persons (City's Interim Director of the Department of Sustainable Development). TWP presented the testimony of John Lee Webb (TWP President); Russell Stuart Adams (expert witness - arborist); Paul Allen (expert witness - architecture); and Gerry Dedenbach (expert witness - land use planning). On the last day of hearing, October 2, 2020, oral argument was conducted regarding the appeal.

The Transcripts of the public hearing and the final hearing were filed with DOAH on October 30, 2020. The parties filed a Joint Motion for Extension of Deadline to Submit Proposed Final Orders, which was granted, making the parties' post-hearing submissions due on or before November 16, 2020.[5] All parties timely filed Proposed Final Orders, which have been duly considered.

STANDARD OF REVIEW

Pursuant to section 30-3.57.D. of the LDC, the standard of review for this appeal is as follows:

> *Appeal criteria.* The Hearing Officer shall give deference to the administrative official's final decision, order, requirement, interpretation, determination, or action, and may only reverse or modify such when the Hearing Officer finds that the administrative official's final decision, order, requirement, interpretation, determination, or action:

[5] Although the LDC requires a final order in an appeal proceeding to be rendered seven days after the final hearing, the parties had agreed to submit to the traditional deadlines allowed for providing proposed final orders, and for rendering of the final order provided for under the DOAH rules. By jointly agreeing to an extension to file the proposed final orders, the parties waived the deadline for issuance of the final order. *See* Fla. Admin. Code R. 28-106.216(2).

> 1. Was clearly erroneous or patently unreasonable and will result in a miscarriage of justice;
>
> 2. Has no foundation in reason, meaning the absence of a situation where reasonable minds could disagree, and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, morals, safety, or welfare; or
>
> 3. Was an ultra vires act, meaning the administrative official clearly lacked the authority to take the action under statute or the City of Gainesville Charter Laws or Code of Ordinances.

In a footnote in their Proposed Final Order, Appellants argue the City's decisions and interpretations should not be given deference based on Article V, section 21 of the Florida Constitution (2020) (also known as Amendment Six). (*See* Appellants' Pro. Final Ord., p. 22, n. 4).[6] This constitutional provision states:

> In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo.

Art. V, § 21, Fla. Const.

Appellants' reliance on this provision is misplaced. This provision clearly addresses non-deference to agencies in interpreting "a state statute or rule." Based on the current state of the law, Amendment Six does not apply to local ordinances or regulations. *See Evans Rowing Club, LLC v. City of*

[6] Appellees filed a Joint Memorandum of Law Regarding the Applicable Standard of Review (Memorandum) on December 10, 2020, well after the Proposed Final Orders were submitted. Appellants filed a Response to the Memorandum on December 16, 2020. Neither filing is authorized pursuant to the DOAH procedural rules or LDC, nor did Appellees seek leave to file additional briefing as required by the DOAH rules. *See* Fla. Admin. Code R. 28-106.215. Despite being unauthorized, the undersigned has reviewed both the Memorandum and the Response and addresses the arguments therein for completeness.

Jacksonville, 300 So. 3d 1249, 1249-50 (Fla. 1st DCA 2020) (per curiam) (Wolf, J. concurring) (explaining Amendment Six applies only to state agency interpretations of state statutes or rules and does not apply to local land use decisions). Even the concurring opinions by Judge Brad Thomas in *Evans Rowing Club* and in *Neptune Beach FL Realty, LLC v. City of Neptune Beach*, 300 So. 3d 140, 2020 WL 4433806, at *2 (Fla. 1st DCA 2020) (unpublished opinion) cited by Appellants, acknowledge that the issue of whether Amendment Six applies to local governments has not been resolved. Judge Thomas also correctly states that until the Florida Supreme Court finds to the contrary, courts must follow Florida precedent of giving deference to local governments in interpretation of their own land use and zoning decisions:

> In land-use cases, the hyper-deferential review of second-tier certiorari is based on the principle that the local decisions on zoning and exceptions are entitled to "deference [as] to the agency's technical mastery of its field of expertise, and the inquiry narrows as a case proceeds up the judicial ladder." *Broward Cty. v. G.B.V. Int'l Ltd.*, 787 So. 2d 838, 843 (Fla. 2001) (emphasis added) (footnotes omitted). The precedent of the supreme court establishing that district courts are powerless to conduct plenary review of local zoning decisions is based on the principle that such decisions are inherently administrative and "technical" in nature and, therefore, the extremely limited review on appeal, solely by second-tier certiorari, must respect that administrative competence.

Evans Rowing Club, 300 So. 3d at 1250 (Thomas, J. concurring).

Additionally, the administrative decision cited by Appellants, *SCF, Inc. v. Department of Business and Professional Regulation*, Case No. 19-4245RU (Fla. DOAH Order Mar. 13, 2020), was a challenge to a state agency's allegedly unadopted rule. In his order, Judge John G. Van Laningham examined the impact of Amendment Six on *state* agencies:

> But there has been a sea change in administrative law as a result of the voters' approval, in 2018, of "Amendment Six," which added an anti-deference provision to the Florida Constitution. Effective January 8, 2019, article V, section 21, of the Florida Constitution rescinds the doctrine of judicial deference as a rule of Florida law. *Thus, Florida agencies* can no longer expect to receive judicial deference, which means that they have lost the interpretive discretion they used to enjoy—and with it the latitude to formulate quasi legislative policy retroactively, through adjudication. (emphasis added).

Id. at p.64, ¶117.

Although Judge Thomas in *Evans Rowing Club* certified a question of great public importance to the Florida Supreme Court as to whether Amendment Six applied to local government decisions, the Florida Supreme Court has yet to address the issue. Like Judge Thomas, the undersigned must also follow established precedent and leave it to the appellate courts to address the applicability of Amendment Six to DOAH and local government decisions:

> If we were not bound by the limited standard of review applicable here, I would grant the writ. I again urge the Florida Supreme Court to reconsider its precedent in this area of law in light of the declaration of the people of Florida that courts must exercise their independent judgment in cases involving local zoning decisions which both naturally and procedurally depend on administrative determinations. … For the foregoing reasons, I concur with the opinion while urging the Florida Supreme Court to reconsider its precedent in this area of law.

Neptune Beach FL Realty, 2020 WL 4433806, at *3. As such, the deference provided for in section 30-3.57.D. of the LDC to the City must be adhered to in this appeal.

FINDINGS OF FACT BASED ON THE RECORD

The Parties and Property

1. The Seminary Lane Development consists of multiple parcels totaling 6.33 acres of property that straddle Northwest 5th Avenue and Northwest 12th Street in Gainesville, Florida (Property).[7] The majority of the Property is owned by the Gainesville Florida Housing Corporation (Housing Corporation).[8] The area around the Property is known as the Fifth Avenue Neighborhood (Neighborhood).

2. Appellant Kali Blount is a resident of Gainesville who has worked continuously to improve the Neighborhood since 1987. Mr. Blount has served multiple terms on the Gainesville Fifth Avenue Community Redevelopment and Pleasant Street Advisory Board, a board of citizens appointed by the Gainesville Community Redevelopment Agency (CRA) to advise the CRA on development in the area including and surrounding the Property.

3. Appellant NKwanda Jah is a resident of Gainesville and is the founder and executive director of the Cultural Arts Coalition, which is housed in the Wilhelmina Johnson Center located in the Neighborhood at 321 Northwest 10th Street. The Center is about 200 feet from the Property.

4. Appellant Carrie Johnson resides in the Neighborhood at 705 Northwest 10th Street. Ms. Johnson has lived in her home for the last 35 years. Her home is about 700 feet from the Property.

5. Appellants Jennifer and Joel Parker live in the Neighborhood at 1202 Northwest 4th Avenue, which is located about 150 feet from the Property. The Parkers' home is located in a part of the Neighborhood that has been designated by the City as the "University Heights Historic District" (UHHD).

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[7] Northwest 5th Avenue in Gainesville, Florida, is also known as "Seminary Lane."

[8] The remainder of the Property consists of two additional parcels which TWP intends to purchase in the future.

6. Appellee TWP is a Florida limited liability company that is developing the Seminary Lane Development. TWP submitted the application which resulted in the Development Decision.

7. Appellee City is a Florida municipality. The City enacted the LDC and has authorized its staff to administratively issue final approval of TWP's application for the Development Decision.

History of the Property and Neighborhood

8. The Neighborhood has historic and cultural significance to Gainesville's history. In the past, African Americans (who were denied access to land that was restricted to "whites only" for residential, commercial, institutional, or religious use elsewhere in Gainesville) exclusively occupied the Neighborhood. As a result, the community has a number of single-family homes, as well as religious and institutional buildings that serve the African American community. Some Appellants have lived in the Neighborhood since the Jim Crow era or have close ties to Neighborhood institutions.

9. The homes in the Neighborhood are of varying architecture but are no more than two-story. They sit on varying lot sizes. The streets in the Neighborhood are sometimes narrow and often lack sidewalks.

10. More recently, the Neighborhood has diversified in its residents and character. For example, although historically African American, non-African Americans also own property and/or reside in the Neighborhood. In the past five years, at least two student housing developments, similar to the project proposed by TWP, have been built in or on the outskirts of the Neighborhood.

11. The City has taken steps to lay the foundation for redeveloping the Property and Neighborhood. The Property was acquired by the Housing Corporation. In 2009, the City removed 31 structures from the Property. Since that time the Property has remained and is currently vacant.

12. In 2017, the City changed the Future Land Use designation for the Property and other surrounding and nearby properties to Urban Mixed Use (UMU) and changed the zoning for the Property to Urban 6 (U6).

13. Ultimately, the Housing Corporation entered into a contract to sell TWP the Property for $8,590,600.

14. The proceeds from the sale of the Property will give the Housing Corporation funds to further its mission of providing affordable housing in the form of mortgage-free homes or payment-assisted homes. Additionally, TWP is obligated to build eight affordable housing units on the Property, contribute $200,000 towards a community center, community space, or for community-based investment in the surrounding neighborhood, and provide $50,000 toward relocation of a building housing a leadership program currently located on the site.

The Master Plan and Development Decision

15. On April 17, 2019, TWP (through a consultant) conducted a workshop regarding its intention to file an application to develop the Property. At the time, TWP was applying for a special use permit for the Seminary Lane Development. Although special use permits require a neighborhood meeting, the workshop was not sponsored by the City, nor was City Staff in attendance in their official capacity at this meeting.

16. TWP's consultant mailed notice of the workshop to property owners in the Neighborhood and published notice of the neighborhood workshop in the newspaper. The notice was mailed to Appellants Joel Parker and Jennifer Parker. The notice did not mention a "master plan." After the workshop, TWP changed the type of development procedure it would utilize and abandoned the special use permit process.

17. By way of a letter dated February 3, 2020, the City notified TWP's consultant that it had administratively approved the Seminary Lane Master Plan (Master Plan) and that the approval would remain effective for five years. The letter stated in relevant part:

> The [City's] Technical Review Committee (TRC) has reviewed the Seminary Lane Master Plan, DB 19-00180, in accordance with the process and

> requirements as set forth in the [LDC]. Based on the review by the TRC, the plan has been approved.
>
> Please note, the master plan serves as a basis for the review of future development plans in the phased development and any individual phases or portions of the project and must be consistent with the approved master plan. Any future development plan shall comply with the [LDC], the City's Comprehensive Plan and any and all applicable regulations for the City of Gainesville.

18. The City-approved Master Plan consists of one sheet and sets forth a graphic of the area approved for development. The Master Plan also indicates that there will be two phases of development, sets forth the acreage for each phase (Phase One – 5.41 acres and Phase Two – .92 acres), as well as the total acreage of 6.33 acres. The Master Plan provides no specific details of the number of units proposed for each phase of the project or the individual parcels within the Property.

19. Rather, the Master Plan depicts Phase 1 containing proposed buildings for multi-family dwelling units and for car parking. The Development Decision at issue in this appeal addresses development for Phase 1 of the project.

20. Phase 2 is depicted on the Master Plan as containing affordable housing units on land to be donated by TWP, proposed parking, and a stormwater area for the affordable housing units. Phase 2 is not at issue in these proceedings.

21. The Master Plan sets forth the following information related to density for the entire proposed development, both Phase 1 and Phase 2.

TABLE 2: PROPOSED MAXIMUM BED COUNT	
AREA	BEDS
ALLOWABLE**	1042

> **ALLOWABLE TOTAL BASED ON THE MAXIMUM NUMBER OF DWELLINGS IS PERMITTED BASED ON LAND DEVELOPMENT CODE (LDC) §30-4.9.C1 60 UNITS PER ACRE @ 6.33 ACRES = 379 UNITS MAX 379 UNITS @ 2.75 BEDS/UNIT = 1042 BEDS MAX[9]

22. The City provided no public notice of the TRC's review of the Master Plan. The City provided no notice to anyone - besides TWP - of its decision to administratively approve the Master Plan. The City did not inform anyone living in the Neighborhood, including Appellants, about its consideration or administrative approval of the Master Plan.

23. After the Master Plan (labeled by the City as DB-90-180) was administratively approved by the City for the Seminary Lane Development, TWP submitted a major development plan application for the first phase of the development which was referred to as "Peak Campus Seminary Lane" (labeled by the City as DB-19-00074). As required by the LDC, the application was reviewed by the TRC, made up of City Staff from different departments, for consistency and compliance with the LDC and with the Master Plan.

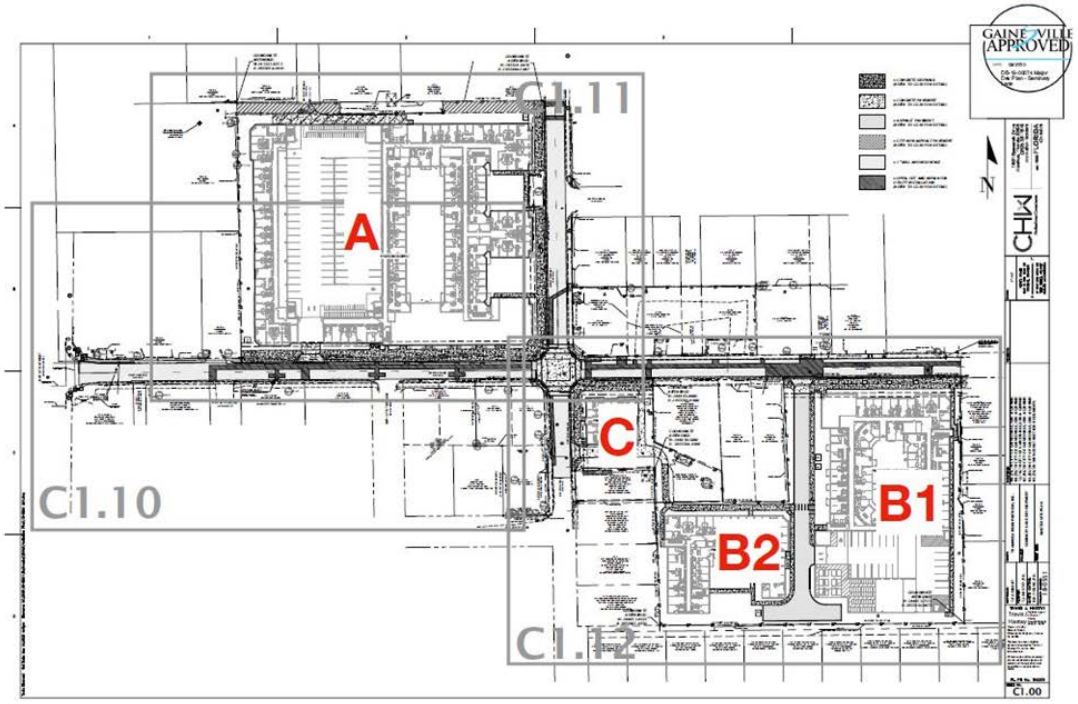
24. Although TWP argues this development is not "student housing," the units will contain up to four bedrooms, each with their own bathroom, and a very small living space. As a practical matter, although technically the development is not limited to students, it will cater to the large student population in Gainesville. The floor plan is a dorm-like apartment setting, and, as the "Campus" in its name suggests, the development is within walking distance to the University of Florida campus.

25. On March 27, 2020, after five rounds of review, the TRC administratively issued a final approval for DB-19-00074, the Development Decision. The approved Development Decision consists of approximately 46 sheets of schematics, renderings, and plans for stormwater, demolition, tree

[9] The term "beds" refers to the number of bedrooms per unit.

protection, grading, drainage, underground utilities, landscape, and architecture.

26. The Development Decision involves three development areas that make up the Property: Area A, Area B, and Area C. Below is a graphic of the areas and buildings approved by the TRC in the Development Decision as superimposed on the Master Plan.



27. Area A is located on the northwest corner of Northwest 5th Avenue and Northwest 12th Street. It is one block east of Northwest 13th Street, a major street through Gainesville, Florida. The area across Northwest 12th Street east of Area A is zoned RSF-4 and Residential Conservation (RC). The area north of Area A, which is separated from Area A by an undeveloped (and perhaps abandoned) right-of-way or an alley, is zoned Urban 2 (U2) and has a Future Land Use Designation of Residential Low (RL).

28. Area A consists of buildings (as explained below) that will house multi-family residential units and a parking garage. The proposed buildings are connected as one structure and have a "terraced" design containing three to

five stories. The parking garage is wrapped with multi-family residential units, but some sides of the parking garage face the outside streets.

29. Area B is a backwards "L" shaped parcel on the interior portion of a block bordered by Northwest 5th Street to the north. Building B1 is on the west portion of the parcel. It has a "terraced" design similar to the building in Area A, and also contains multi-family residential units and a multi-story parking garage attached to its southern wall. Building B1 abuts the rear of several single-family homes.

30. Building B2 is also on this parcel and will contain multi-family residential units but have no parking. Building B1's parking garage will serve the units in Building B2. It also abuts the rear of several single-family homes.

31. Area C is located on the southeast corner of Northwest 5th Avenue and Northwest 12th Street. The building in Area C will be four stories and will contain multi-family residential units but have no parking. Building B1's parking garage will serve the units in Building C.

32. The homes abutting Area B on the south are in "a designated historic district," UHHD. Several single-family homes located in this historic district are within 100 feet from the south side of Buildings B2 and B1.

33. Although the number of units to be built is not specified in the Development Decision, the following is provided regarding the maximum number of bedrooms:

> **PROJECT DESCRIPTION:**
> Only Phase 1 as seen on the master plan is proposed to be permitted with this set. Phase 1 includes areas, area [sic] A, B and C.
> Area A & B include the construction of a three and five-story multi-family building with a four-story parking garage, amenities, underground stormwater system, landscape and utilities.
> *Area A proposes a total of 502 beds.*
> *Area B proposes a total of 325 beds.*

> Area C includes the construction of a four-story multi-family building with included amenity space, utilities, underground stormwater and landscaping. *Area C proposes a total of 32 beds.*
> *The total proposed beds for Phase 1 is 859. Based on a total allowable of 1,042 beds*, Phase 2 can have up to 183 beds. (emphasis added).

34. As noted above, Phase 1 will allow development of 859 bedrooms in three separate multi-family buildings located on Areas A, B, and C in the Neighborhood. Section 30-4.8.D.3.a., establishes the following formula for the maximum bedrooms in multi-family developments:

> Multi-family developments shall be limited to a maximum number of bedrooms based on the development's maximum residential density allowed by the zoning district multiplied by a 2.75 multiplier.

35. Using this multiplier, the maximum number of units approved by the City for Phase 1 is 312 units. Additionally, the parking structures attached or part of Buildings A and B1, will provide 537 motor vehicle parking spaces.

36. Prior to commencing construction on Phase 1 of the proposed development, TWP must submit documentation and obtain building permits for the individual buildings. According to the testimony at the hearing, the building permit documentation will be consistent with the Development Decision but have more detail.

Issue I - Whether the approved development is compatible with the historic Fifth Avenue Neighborhood.

37. Appellants contend that the size and nature of the multi-family buildings and the multi-story parking structures contrast with the existing neighborhood in a manner that does not fit with the character of the Neighborhood. Specifically, Appellants point to the approved 312 off-campus apartments with 859 bedrooms and 537 motor vehicle parking spaces as compared with the existing single-family homes surrounding the Property.

(Appellants' Proposed Final Order, ¶ 46). Appellants also contend potential residents of the project (i.e. students) will not mix with the existing residents in the Neighborhood.

38. More specifically, Appellants argue the Seminary Lane Development violates section 30-1.3 of the LDC, which is entitled "Purpose" and states as follows:

> This chapter implements the City of Gainesville Comprehensive Plan (Comprehensive Plan) to secure an environment for present and future generations that is environmentally sustainable, socially just and desirable, and economically sound through the scientific, aesthetic, and orderly disposition of land, resources, facilities and services.

39. Further, Appellants argue that the Seminary Lane Development violates the objectives described in section 30-1.4 of the LDC:

> This chapter is prepared in accordance with and for the promotion of the goals, objectives and policies of the Comprehensive Plan. *The regulations herein are designed* to conserve the value of land, building and natural resources; protect the character and maintain the stability of residential, commercial and industrial areas; and provide for efficiency and economy in the process of development through:
>
> A. Preservation, protection and conservation of significant natural features of land, creeks, lakes, wetlands, uplands and air;
>
> B. Appropriate use of land;
>
> C. Regulation of the use and occupancy of buildings, land and water;
>
> D. Healthful and convenient distribution of population;
>
> E. Provision of convenient circulation of people and goods and the control of traffic congestion;

> F. Provision of adequate public facilities and utilities;
>
> *G. Protection, enhancement and perpetuation of specific community areas with special character, interest or value representing and reflecting elements of the city's cultural, social, economic, political, historical and architectural heritage;*
>
> H. Establishment of zoning districts regulating the location and use of buildings and other structures, and the use of water and land for trade, industry, residence and other purposes, by regulating and limiting the height, bulk and access to light and air of building and structures, the area of yards and other open spaces and density of use; and
>
> I. Provision of low cost, efficient and expeditious development review process. (emphasis added).

40. Article I of the LDC is titled "Generally" and City Staff has construed this provision as being aspirational rather than imposing any substantive requirements for a proposed development. A plain reading of Article I indicates it is a description of the general purpose and objectives that motivated the City when it adopted the land development regulations that are codified as the LDC. It is prefatory in nature, serving as an introduction and guidance to interpreting the requirements set forth in the LDC. Thus, compliance with the specific substantive requirements contained in Articles III through X of the LDC would carry a presumption of furthering these motivational goals and objectives; violation would indicate that a project was inconsistent with these goals and objectives. Whether the Development Determination violated the substantive requirements of the LDC are addressed below.

41. As such, neither LDC section 30-1.3 nor section 30-1.4 provides a basis upon which to challenge the Development Decision. *See generally Dep't of State v. Fla. Greyhound Ass'n, Inc.*, 253 So. 3d 513, 521 (Fla. 2018)

("Although prefatory language may aid a court to determine legislative intent when the operative terms of a provision of law are ambiguous, such language does not control interpretation of the operative terms of that provision."); *Per Jonas Ingvar Gustafsson v. Aid Auto Brokers, Inc.*, 212 So. 3d 405, 409 (Fla. 4th 2017)(noting prefatory language did not necessarily create any obligations).

42. As such, the Development Decision cannot be said to violate sections 30-1.3 or 30-1.4 of the LDC. The City's interpretation of these sections in approving the Development Decision is not clearly erroneous, patently unreasonable, or unfounded in reason. Nor will the City's determination result in a miscarriage of justice or an ultra vires act.

Issue II - Whether the approved development violates the maximum density allowed for multi-family development by the LDC.

43. Appellants argue that the Development Decision exceeds the density allowed by the LDC. The City found that the project was entitled to a density bonus based on the preservation of a tree. Based on this bonus, the City approved 60 units per acres. TWP counters that appellants waived the issue of density because Appellants did not appeal approval of the Master Plan, and even if not waived, the City's density calculations are correct.

Did Appellants waive the issue of density? [10]

44. Section 30-3.57 allows the appeal of "a final decision, order, requirement, interpretation, determination, or action." As stated above, Appellants challenge the density allowed in the Development Decision proposed for Buildings A, B1, B2, and C, not the Master Plan. Appellees' waiver argument fails for the following reasons.

45. First, the Master Plan does not provide an actual number of units or beds that will be constructed in each phase or area, nor does it identify the qualifying tree that results in the density bonus. Rather, it provides for the

[10] The LDC defines "density" as "the extent of development of residential uses, expressed in dwelling units per acre of land."

maximum allowable density for the project in a chart titled "*Proposed* Maximum Bed Count" (emphasis added). The use of the word "proposed" indicates that this number was not the final or actual number approved by the City.

46. Second, the LDC anticipates that a master plan is just one step in the development process, not a final step. It states:

> Sec. 30-3.49. - Master plans.
>
> A. **Purpose.** *Master plan review is an optional* step for projects that fall within the intermediate or major level of development review. A master plan is *intended to provide for large area planning for phased developments*. The intent of the master plan is to identify internal and external connectivity, regulated natural and archeological resources, and developable areas.
>
> B. **Review and effect.** Master plans are reviewed by the technical review committee in accordance with the process set forth in this division for development plan review, and must demonstrate that the completed development will be consistent with this chapter and with the Comprehensive Plan. Each phase must include a proportionate share of any required recreational and open space, and other site and building amenities of the entire development, except that more than a proportionate share of the total amenities may be included in the earlier phases with corresponding reductions in the later phases. *An approved masterplan will serve as a basis for review of future development plans in the phased development, and individual phases or portions of the project must be consistent with the approved master plan.*
>
> C. **Expiration of master plan.** A master plan shall be effective for up to five years from the date of approval. (emphasis added).

47. Third, the City's February 3 letter approving the Master Plan explicitly states that the Master Plan is not final. Rather, the City informed TWP "the master plan serves as a basis for the review of future development plans in the phased development and any individual phases or portions of the project." It goes on to state that any "development plan shall comply with the [LDC], the City's Comprehensive Plan and any and all applicable regulations for the City of Gainesville." The clear intent is that a development plan would be submitted in the future and that each phase of the development would require a separate review of consistency with the LDC.

48. Lastly, the notices regarding the workshops were not from the City, nor did the workshop notice mention "Master Plan." The City and TWP admit that they did not provide notice to anyone that the TRC had approved the one-page Master Plan because the LDC does not require it.

49. Appellants did get actual notice, albeit not automatically or from the City, that the application for Phase 1 of the project was approved in the 45-page Development Decision that had the actual bedroom numbers and identified the qualifying tree. As a practical matter, Appellants could not have challenged the size of the qualifying tree (as discussed below) without identification of the tree or the final numbers proposed for the development.

50. To require Appellants to have appealed the Master Plan's proposed density formula without having been given notice of the specific details provided in the Development Decision would be a miscarriage of justice. *See generally Mordenti v. State*, 630 So. 2d 1080, 1084 (Fla. 1994) (noting a fundamental error "equivalent to a denial of due process" results in a miscarriage of justice). They have the right to challenge the density numbers approved in the Developmental Decision, even though the formula was previously established in the Master Plan.

Was TWP entitled to a tree bonus?

51. As stated above, the Property is located in a zoning district designated as U6, which allows a broad range of uses including multi-family residential.

Pursuant to section 30-4.13, the maximum residential density in the U6 Zoning District is 50 units per acre "by right" and up to 60 units per acre with certain bonuses. Section 30-4.9 establishes the City's incentive-based "Development Bonus System":

> A. *Available bonuses*. In accordance with this section and up to the limit allowed with bonuses as specified for the applicable zoning district, development *projects* may be eligible for: 1) additional building stories and the corresponding increase in overall building height; and 2) increased residential density. (emphasis added).

52. Section 30-4.9.C.1. awards a developer a density bonus of ten units per acre if the development preserves either one High Quality Heritage Tree with a diameter breast height (DBH) of more than 71 inches or two trees that have a DBH of between 51 to 70 inches. It provides:

RESIDENTIAL DENSITY BONUS				
High Quality Heritage Tree Preservation (fair or better condition):				
Tree DBH	20"—30"	31"—50"	51"—70"	71"+
Bonus DU/Acre	0.5	1	5	10

53. Although Appellants presented contrary measurements, the record reflects that the City and TWP presented evidence that the Property has a qualifying tree in Area A with a DBH of 71.8 inches. This tree is located on the eastern side of proposed Building A on Northwest 12th Street. Additionally, there is testimony in the record that there are two trees in Area B that have a DBH of between 51 and 70 inches that would also qualify for the bonus and award TWP 10 bonus units per acre.

54. There is no dispute that the development is a "project" as defined by the LDC.[11] Section 30-4.18 provides that the density bonus applies project-wide, not just in the immediate area where the qualifying tree exists:

> Development criteria described in the density bonus points manual, when met, shall allow increases in development intensity based upon the limits in this section. These increases in intensity shall be allowed should a developer propose to undertake *a project* that will result in a development sensitive to the unique environmental and developmental needs of the area. For each criterion met by the developer, certain *points shall be credited to the project. Those points, calculated in accordance with the Density Bonus Points Manual, shall determine the maximum allowable density.* (emphasis added).

55. Appellants also assert that the Development Decision fails to protect the qualifying tree in Area A and that as proposed, the building would harm

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[11] The City's LDC defines "project" as follows:

> Project means a single development as designated by the applicant, but two or more purportedly separate developments shall be considered one project if the City Manager or designee determines that three or more of the following criteria exist:
>
> A. The purportedly separate developments are located within 250 feet of each other;
>
> B. The same person has an ownership interest or an option to obtain an ownership interest of more than 50% of the legal title to each purportedly separate development;
>
> C. There is a unified development plan for the purportedly separate developments;
>
> D. The purportedly separate developments voluntarily do or shall share private infrastructure; or
>
> E. There is or will be a common management or advertising scheme for the purportedly separate developments.

LDC § 30-2.1. The development fulfills criteria A, B, C, and E.

the qualifying tree's root structure or interfere with the tree's "dripline." In other words, Appellants argue, the City has failed to require TWP to provide a sufficient buffer to ensure the qualifying tree remains healthy. At the hearing, TWP objected to testimony regarding this issue because it was not raised in Appellants' Amended Notice of Appeal or any supporting briefs. The undersigned agrees and sustains the objection regarding the "dripline" issue.

56. Even if this issue had been properly raised, the undersigned must defer to the City Staff, who did not seem concerned that the tree would not remain in "fair or better" condition as required for the bonus.

57. The City's calculation of 60 units per acre for the maximum density for the project (which includes the 50 units provided for the U6 Zoning District plus the 10-unit bonus for having one or more qualifying High Quality Heritage Trees) cannot be said to be clearly erroneous, patently unreasonable, or unfounded in reason. Nor will the City's density calculations result in a miscarriage of justice or an ultra vires act.

Did the City err in calculating the density amount for Phase 1?

58. TWP intends to develop Buildings A, B1, B2, and C to have 312 residential units and 859 beds. Appellants argue that the City erred in allowing TWP to "transfer" density from Phase 1 to Phase 2, and among areas. As indicated above, the City determined that TWP was allowed a maximum of 379 units or 1,042 beds. The record further establishes all of the project's units could theoretically be placed anywhere on the Property.

59. The City determined a maximum density of 379 units, based on the 60-unit per acre density calculation and the 6.33 acreage for the entire project. The City further determined that based on the entire size of the project, the maximum number of bedrooms (calculated by multiplying the 379 units by the 2.75 multiplier for allowable bedrooms per unit) would be 1042 bedrooms.

60. Appellants seem to argue that the density calculations should have been done by phase or parcel. In other words, they insist the density

allowance (here, 60 units or 165 beds per acre) should be multiplied by individual acreage for each area and not the 5.41 acres for Phase 1 or the 6.33 acreage of the entire project.

61. Below is a chart comparing the calculations for the separate areas.

Property	Size	Number of Units allowed by Right (@ 50 per acre)	Number of units allowed by exception (@ 60) for tree bonus	Number of Units approved in the Development Decision
Area A	2.91	145	174	175
Area B	2.24	112	134	129
Area C	0.26	13	15	8
Phase 1	5.41	270	324	312
Total Project	6.33	316	379	n/a

62. Assuming the density should be based on the size of the parcel being developed in each phase, the total area for Phase 1 (Areas A, B, and C) being developed would be 5.41 acres. This would equate to maximum density of 324 units or 891 beds for Phase 1. Again, TWP only seeks to develop 312 units with 859 beds. This is well under the density limitation calculated by Appellants for Phase 1.

63. Using Appellants' method of calculation per parcel, the allowable density approved for Area A is one unit over the allowable amount under the LDC (using the bonus formula). This is the only portion that would go beyond the maximum amount. This parcel approach, however, is not consistent with the LDC. As indicated above, the density bonus is project-wide, not phase or parcel dependent. It would be illogical to calculate the density bonus per project, and not also calculate the base density the same way, per project.

64. The testimony of City Staff (taken at the hearing and made part of the record) also establishes that a development applicant may allocate density anywhere within the boundaries of the project, regardless of whether the

project consists of multiple lots or parcels, and regardless of whether the project has streets crossing through the project. For example, all the approved 312 units for Phase 1 could be located in Area A even though this amount was calculated based on the entire Phase 1 acreage, so long as the project complied with other aspects of the LDC.

65. Because the density is correctly calculated for the entire project area and the proposed number of beds is consistent with the terms of the LDC, it cannot be said that the City's determination of maximum density is clearly erroneous, patently unreasonable, or unfounded in reason. Nor can it be said that these calculations would result in a miscarriage of justice.

Issue III - Whether the approved development meets the compatibility standards between multi-family development and single-family development found in the LDC.

66. Appellants argue that the project violates the LDC because it is a multi-family development that fails to comply with section 30-4.8 of the LDC. Section 30-4.8.D. states, in pertinent part, as follows:

> 1. *Generally*. Multi-family development shall contain no more than six dwelling units per building and shall be in the form of single-family dwellings, attached dwellings, or small-scale multi-family when located within 100 feet of any property that is in a *single-family zoning district*, the U1 district, or a designated historic district. (emphasis added).

67. A plain reading of section 30-4.8.D.1. indicates the restrictions in that section apply only to multi-family development in three instances: when the project is located within 100 feet of any property in (1) a single-family zoning district, (2) a U1 Zoning District, or (3) a designated historic district.

68. Section 30-4.2 sets forth the zoning districts that are considered "single-family" by the City.

Future Land Use Category	Zoning Districts
Single-Family (SF)	U1, RSF-1 to 4, RSF-R

69. Before evaluating Appellants' argument regarding subsection D.1., it is helpful to identify the zoning districts surround the Property. With regards to Area A, the land to the north is zoned U2, U4, or U6; the land to the immediate east is zoned U8; the land to the west across Northwest 12th Street is zoned U6, RSF-4, and RC; and the land to the south is mostly U6, but the southwest corner catty-corner to the property is zoned U8. Again, only the RSF-4 to the east of Area A is a "single-family" zoning district.

70. Areas B and C are surrounded by U4 and U6 zoning districts. To the south of Area B, is property located in the UHHD, a designated historic district. According to the Development Decision, Building B2 is within 100 feet from the UHHD.

71. The City has interpreted section 30-4.8.D.1. as establishing a definite prescriptive compatibility standard that applies specifically to a land area that is measured as 100 feet within certain areas (i.e., single-family zoning district, U1 district, or designated historic district). Here, there are two areas of the proposed project that trigger section 30-4.8.D.1. First, there is the portion of Area A that is located on Northwest 12th Street and 100 feet from the RSF-4, a "single-family zoning district." According to the City, section 30-4.8.D.1. does not apply to the entirety of a project area, no matter how large, just because a portion may be within 100 feet of a described area. Rather, it applies only to the portion that is located within 100 feet of that designated zone. Thus, the City determined that the limitation of no more than six dwelling units per building and the requirement that such buildings be in the form of single-family dwellings, attached dwellings, or small-scale multi-family only applies to that portion of the project area which is located within 100 feet of the RSF-4 Zoning District.

72. The issue then becomes whether the restrictions in section 30-4.8.D.1. apply to the entire Building A, or only that portion that is built in Area A that is within the 100 feet of the RSF-4 Zoning District. City Staff has applied this provision to achieve development within the applicable 100-foot area where each building, or portion thereof, contains no more than six dwelling units in the form of single-family dwellings, attached dwellings, or small-scale multi-family. This achieves the City's goal to provide a transition between property designated as a single-family zoning district, U1 district, or a historic district and property proposed for larger-scale development.

73. As an example, Appellees point to Figure 2 in section 30-4.8, which depicts an example of allowable transitioning between property in a designated single-family zoning district and a portion of a multi-family building that lies within 100 feet of that zoning district.

74. The Development Decision depicts three separate structures of residential development that are on the eastern side of Building A. The City has interpreted these three structures as "buildings" because they will be

built for the enclosure or shelter of persons.[12] Although Appellants argue that these three structures are part of one building, Building A, and cannot be treated separately, the undersigned defers to the City's determination that these are three separate buildings. Similarly, the City considers the parking structure as a separate building from the three buildings in Area A on Northwest 12th Street.

75. These three buildings make up the only portion of the development that is located within 100 feet of property in a single-family zoning district. Each building is capped at three stories with a maximum of six units per building. Thus, these buildings are in the form of a small-scale multi-family structure with a maximum of six units per building and, thereby, meet the requirements of section 30-4.8.D.1., as interpreted by the City.

76. The second area triggering section 30-4.8.D.1 is in Area B. TWP disclosed that as approved, Building B2 exceeds the maximum density of six (6) dwelling units per building for multi-family development because that portion of the building, which is five stories tall, is located within 100 feet of the UHHD. The City failed to detect this conflict with the LDC when it approved the development of Building B2 in the Development Decision.

77. Pursuant to section 30-3.57.C.7., TWP requested at the hearing that the undersigned consider modified plans for Building B2 that correct the error approved by the City. The undersigned declines to do so. Rather, based on the representations by the City at the hearing, the portion of the

---

[12] The City's LDC defines "building" as follows:

> Building means any structure, either temporary or permanent, except a fence or as otherwise provided in this definition, used or built for the enclosure or shelter of persons, vehicles, goods, merchandise, equipment, materials or property generally. This definition shall include tents, dining cars, trailers, mobile homes, sheds, garages, carports, animal kennels, storerooms, jails, barns or vehicles serving in any way the function of a building as described herein. This definition shall not include individual doll houses, play houses, and animal or bird houses.

Development Decision approving Building B2 is reversed without prejudice, so that TWP may proceed with development of Buildings A, B1, and C, and submit an amendment to the City for TRC review and approval of revised plans for Building B2.

78. Appellants next argue that the Development Decision violates section 30-4.8.D.2.e., which requires certain dividers in the form of walls or screening between multi-family projects that abut single-family properties:

> 2. **Abutting single-family property**. All new multi-family projects, whether stand alone or part of a mixed-use project, *abutting property in a residential district* or a planned development district with predominantly residential uses shall comply with the following regulations:
>
> * * *
>
> e. *A decorative masonry wall* (or equivalent material in noise attenuation and visual screening) with a minimum height of six feet and a maximum height of eight feet plus a Type B landscape buffer *shall separate multi-family residential development from properties designated single-family residential*. However, driveways, emergency vehicle access, or pedestrian/bicycle access may interrupt a continuous wall. If, in the professional judgment of city staff or other professional experts, masonry wall construction would damage or endanger significant trees or other natural features, the appropriate reviewing authority may authorize the use of a fence and/or additional landscape buffer area to substitute for the required masonry wall. There shall be no requirement for a masonry wall or equivalent if buildings are 200 or more feet from abutting single-family properties. In addition, the appropriate reviewing authority may allow an increased vegetative buffer and tree requirement to substitute for the required masonry wall.
>
> f. The primary driveway access shall be on a collector or arterial street, if available. Secondary

> ingress/egress and emergency access may be on or from local streets. (emphasis added).

79. Specifically, Appellants argue that Building A fails to provide the proper wall and dividers from the property to the north of Area A. Area A is separated from the property to the north by a 15-foot alley which includes the paved portion of Northwest 6th Avenue. This area includes a former appellant's property and homes that were built by or with the assistance of Habitat for Humanity. Although this alley may be an abandoned right-of-way, a platted street maintained by the City, or simply an undeveloped portion of Northwest 6th Avenue, it is clear that there is separation between Area A and the single-family homes to the north.

80. Section 30-2.1. provides clarification by defining "adjacent" and "abut":

> ***Adjacent*** means when two properties, uses or objects are not abutting but are separated only by a right-of-way, street, pathway or similar minimum separation.
>
> ***Abut*** means to physically touch or border upon, or to share a common property line.

81. As such, Area A does not abut the residential property to the north but rather, is adjacent to that area.

82. Moreover, this area to the north of Area A is zoned U2 and is not included as a residential zoning district in section 30-4.1, which is described as follows:

Residential	
RSF-1 to 4	Single-Family
RC	Residential Conservation
MH	Mobile Home
RMF-5	Single/Multi-Family
RMF-6 to 8	Multi-Family

83. Even assuming the property to the north of Building A abuts the project, neither section 30-4.8.D.2.e. nor section 30-4.8.D.2.f. is applicable to the Development Decision. Section 30-4.8.D.2.e. requires a decorative masonry wall only to "separate multi-family residential development from properties designated single-family residential." There are no properties which abut the property that are "designated as single-family residential."

84. Section 30-4.8.D.2.f. requires the primary driveway access to "be on a collector or arterial street, if available." Section 30-2.1 defines both collector and arterial streets as follows:

> ***Arterial or arterial street*** means any street:
> A. Designated as arterial on the roadway map on file in the public works department;
>
> B. Functionally classified by the state department of transportation as an urban principal arterial street or an urban minor arterial street; or
>
> C. Designated by the city commission as an arterial street based on its physical design, moderately long trip length, and existing or anticipated traffic characteristics.
>
> * * *
>
> ***Collector or collector street*** means any street:
>
> A. Designated as collector on the roadway map on file in the public works department;
>
> B. Functionally classified by the state department of transportation as a collector; or
>
> C. Designated by the city commission as a collector street based on its physical design, moderate trip length, and existing or anticipated traffic characteristics.

85. It is undisputed that a collector or arterial street is not available to the project. Thus, the Development Decision complies with the requirements of section 30-4.8.D.2.f.

86. With the exception of Building B2, it cannot be said that the City's determinations that TWP's application meets the requirements of sections 30-4.8.D.1. and 30-4.8.D.2.e. and f. are clearly erroneous, patently unreasonable, or without foundation in reason. Nor can it be said that the City's finding of compatibility and compliance with these sections of the LDC will result in a miscarriage of justice or is an ultra vires act.

Issue IV - Whether the approved development meets the building design standards set forth in the LDC.

87. Appellants argue that the project does not meet building design standards set forth by the LDC. Appellants contend that the Seminary Lane Development fails to provide building entrances as set forth in section 30-4.14.D.

88. Section 30-4.14.D. states as follows:

> *Building entrances.*
>
> 1. *Each building shall provide a primary public entrance oriented toward the public right-of-way, and may be located at the building corner facing the intersection of two streets*. Additional entrances may be provided on other sides of the building.
>
> 2. Primary public entrances shall be operable, clearly-defined and highly-visible. In order to emphasize entrances they shall be accented by a change in materials around the door, recessed into the façade (alcove), or accented by an overhang, awning, canopy, or marquee.
>
> 3. Building frontages along the street shall have functional entrances at least every 150 feet. (emphasis added).

89. First, Appellants contend that the development proposed for Area A does not provide for primary entrances into the residential portion of the building on two streets. As noted above, the development proposed for Area A is made up of more than one building. There are at least three buildings fronting Northwest 12th Street that are within 100 feet from the RSF-4 Zoning District, the larger building made up of five stories that is outside the 100-foot area, and the parking structure.

90. TWP must make sure that each building complies with the LDC requirements. Assuming the portion of Building A that is beyond 100 feet from the RSF-4 Zoning District is a separate building, it has one public entrance into a proposed non-residential space at the corner of Northwest 5th Avenue and Northwest 12th Street. This satisfies the LDC's provision that states the entrance "may be located at the building corner facing the intersection of two streets."

91. There are, however, multiple buildings (as defined by the LDC) in Area A. The drawings and plans approved by the City in the Development Decision do not reflect that each of the three buildings that front Northwest 12th Street and are located within 100 feet from the RSF-4 Zoning District have their own entrances "oriented toward the public right-of-way." Because this failure to designate entrances for each of these three buildings is in violation of the LDC and clearly erroneous, the Development Decision must be modified to require entrances for each building in Area A.

92. Appellants also contend that the buildings set to be constructed on Proposed Development Area B do not have any entrances oriented toward the public right-of-way. Because approval of Building B2 has been reversed, the issue of whether the entrance complies with the LDC is moot.

93. Regarding Building B1, which is made up of a residential portion and a parking garage, the Development Decision plans indicate an entrance at the corner facing Northwest 5th Street, which is a public right-of-way. Thus,

the proposed Building B1 complies with the entrance requirements of the LDC.

94. Finally, the Development Decision plans relating to Building C reflect that its primary public entrance is on the west side of the building facing Northwest 12th Street, which is a public right-of-way. Thus, the proposed Building C complies with the entrance requirements of the LDC.

95. With the exception of the three buildings that lack complying entrances in Area A modified above, it cannot be said that the City's decision in approving the proposed plans for Buildings A, B1, or C are clearly erroneous, patently unreasonable, or without a foundation in reason. Nor can it be said that the approval of these buildings and their entrances would result in a miscarriage of justice or constitute an ultra vires act.

Issue V - Whether the approved development meets the parking structure standards set forth in the LDC.

96. Appellants argue that the two parking structures in the project violate the LDC's provisions regulating parking structures.

97. Section 30-7.3 provides the following regarding structured parking:

> A. Development plans for new parking structures as a principal or accessory use must:
>
> 1. Minimize conflict with pedestrian and bicycle travel routes;
>
> 2. Provide parking for residents, employees, and customers to reduce the need for on-site surface parking;
>
> 3. Be located and designed to discourage vehicle access through residential streets; and
>
> 4. Design facilities for compatibility with neighborhoods by including ground floor retail, office, or residential use/development (as appropriate for the zoning district) when located on a public street. The facility must also have window

> and facade design that is scaled to relate to the surrounding area.
>
> B. Structured parking may not be located within 100 feet of property zoned for single-family use.

98. Section 30-4.15.C. further provides:

> C. *Design of parking structures.*
>
> 1. *Parking structures located along Storefront streets shall be concealed by liner buildings,* which may be attached or detached from the parking structure. The liner building shall have a minimum of two stories and a minimum height of 30 feet and a minimum depth of 25 feet along the entire length of the parking structure.
>
> 2. Parking structures located along Principal streets shall be required to provide ground floor commercial or office space along the street frontage.
>
> 3. *On all other streets,* any structured parking that is not concealed behind a liner building or ground floor commercial or office space shall have decorative screening walls, perimeter parking landscaping per Article VII, or a combination thereof to screen ground floor parking. (figures and references omitted; emphasis added).

99. Appellants first argue that the Development Decision does not comply with section 30-7.3.A.3., which discourages vehicle access to and from a parking structure via residential streets. Notably, this section does not prohibit vehicle access through residential areas but just discourages it. According to the record, the parking structure in Area A has vehicle access on the southside through an opening to Northwest 5th Street and on the northside on Northwest 6th Street. Both of the entrances to the parking structure seem to be toward the west end of Area A, away from the properties in the RC and RSF-4 zoning districts and closest to Northwest 13th Street.

As indicated above, Northwest 13th Street is a multi-lane road running through Gainesville.

100. Moreover, the parking structures in Areas A and B have access from Northwest 5th Street, which the City consider to be a "Storefront street," not a "residential street." Therefore, section 30-7.3.A.3. is not implicated for these vehicular access openings.

101. The Northwest 6th Avenue entrance for the parking garage in Area A is depicted on one of the architectural sheets that makes up the Developmental Decision. As stated above, Northwest 6th Avenue runs between Area A and a number of single-family homes. Vehicular access so close to the residences could be disruptive and not compliant with the LDC's goal in section 30-7.3 of minimizing conflict with nearby residences.

102. The hearing testimony established that during the TRC review process the City requested TWP remove the Northwest 6th Avenue vehicular access opening. TWP claims that the original architectural sheet has simply not been updated. To the extent the Developmental Decision has not been updated, the Developmental Decision is modified to remove the vehicular access from Northwest 6th Avenue into the parking structure in Area A.

103. Next, Appellants contend that the Area A parking garage fails to comply with section 30-4.15.C., which requires certain design features when located on a public street. Arguably, the parking structure in Area A also fronts Northwest 6th Avenue as well, but this is an undeveloped part of that street, and it is unclear if it is a "public street." Regardless, the parking structure in Area A is located on at least one public street: Northwest 5th Avenue.

104. The City determined that both parking structures have the required window and façade designs that are scaled to relate to the surrounding area. Moreover, the parking structure in Area A is wrapped with residential units, and thus complies with the requisite screening requirements. It cannot be

said that this decision was clearly erroneous, patently unreasonable, or not based in reason.

105. Appellants next contend that the parking structure located in Area A is within 100 feet from a "single-family zoning district," the property across Northwest 12th Street that is zoned RSF-4. However, the parking structure in Area A is on the far west side of the property, more than 100 feet from the area zoned RSF-4. Moreover, as noted above, there are three buildings between the parking structure in Building A and Northwest 12th Street. Because, as explained above, there are multiple buildings in Area A, the parking structure in Area A does not violate section 30-4.15.C.

106. Appellants also contend that the Development Decision does not provide for any decorative screening walls, perimeter landscaping, or window and façade design compatible with or scaled to relate to the surrounding area as described in section 30-4.15.C.

107. As stated above, the City has designated Northwest 5th Avenue as a "Storefront Street." Thus, section 30-4.15.C.1. is applicable to the parking structures located along Northwest 5th Avenue. The depictions in the Development Decision indicate that the parking structures will have the required liner building, thus complying with this section of the LDC.

108. The parking structure in Area A that fronts Northwest 6th Avenue must comply with section 30-4.15.C.3., which requires a liner building, ground floor commercial, office space, or decorative screening walls. The portion of the parking structure in Area A that is not concealed behind a liner building has a decorative screening wall made up of brick veneer with openings made to look like windows. Thus, the parking garage in Building A complies with the requirements of section 30-4.15.C.3.

109. With the modification of removing the Northwest 6th Avenue vehicular access entrance for the parking structure in Area A, it cannot be said that the City's decisions regarding the parking structures were clearly erroneous, patently unreasonable, or not founded in reason. Nor can it be

said that the development of these parking structures as part of the project will result in a miscarriage of justice or an ultra vires act.

CONCLUSION OF LAW

110. The parties do not dispute, and the record supports, standing to appeal for all Appellants.[13]

Burden of Proof

111. Appellants challenging the administrative decision are tasked with the burden of proving that the City approved a development plan application in violation of the applicable administrative review criteria in section 30-3.46 of the LDC.

112. Section 30-3.46 of the City's LDC provides that an application may be approved if the "proposed development is consistent with the Comprehensive Plan and complies with the Comprehensive Plan, the Land Development Code, and other applicable regulations."

113. Based on the above Findings of Fact, TWP's development plan application is consistent with the City's Comprehensive Plan and complies with the City's Comprehensive Plan and LDC, except with regard to Building B2; the entrances to the three buildings in Area A that are within 100 feet of

[13] Section 30-3.57 of the City's LDC governs standing to appeal administrative decisions and provides:

> Decisions relating to particular property. The following persons shall have standing to appeal an administrative decision that is not of general applicability and that is specifically related to a particular project or parcel of real property:
>
> * * *
>
> c. All owners of real property that lies within 400 feet of the property that is the subject of the decision.
>
> d. Any resident, landowner, or person having a contractual interest in land in the city who demonstrates a direct adverse impact from the decision that exceeds in degree the general interest in community good shared by all persons.

the RSF-4 Zoning District; and the vehicular access to the parking structure in Area A on Northwest 6th Avenue.

114. Except as indicated above, Appellants did not carry their burden to show that the City-approved Development Decision is in violation of section 30-3.46 of the LDC.

DETERMINATION

Based on the foregoing Findings of Fact, the City's administrative decision approving the project in the Development Decision, is approved, with the following modifications and partial reversal:

A. Tramell Webb Partners, Inc., shall update the architectural sheet and resubmit it to the City of Gainesville for approval for Area A so that it reflects that each individual building located within 100 feet of the RSF-4 Zoning District across Northwest 12th Street depicts an entrance in compliance with the Gainesville Land Development Code.

B. Tramell Webb Partners, Inc., shall update the architectural sheet which incorrectly depicts a vehicular access into the parking garage in Building A from Northwest 6th Avenue, to remove that vehicular access.

C. The approval for Building B2 is reversed without prejudice. Tramell Webb Partners, Inc., may submit amended plans for Building B2 to the City of Gainesville for review for compliance with the Gainesville Land Development Code, Comprehensive Plan, and other applicable regulations.

DONE AND ORDERED this 29th day of December, 2020, in Tallahassee, Leon County, Florida.

HETAL DESAI
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of December, 2020.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to section 30-3.57 of the City of Gainesville Land Development Code, this decision shall be final, and may be subject to judicial review as provided by ordinance.