

LEON COUNTY
BOARD OF COUNTY COMMISSIONERS

WYNONA C. BRASWELL AND
VICKIE GOODMAN,

Petitioners,

Leon County Project ID# LSP180013
DOAH CASE NO. 18-2734

vs.

PALAFX, LLC, AND LEON
COUNTY DEPARTMENT OF
DEVELOPMENT SUPPORT AND
ENVIRONMENTAL
MANAGEMENT,

Respondents.

FINAL ORDER

An Administrative Law Judge with the Division of Administrative Hearings (“DOAH”), serving as a special master for purposes of the quasi-judicial hearing prescribed by section 10-7.414, Leon County Land Development Code, submitted a Recommended Order (“RO”), on August 31, 2018, to the Leon County Board of County Commissioners (“Board”) in the above-captioned proceeding. This proceeding is an appeal of the preliminary conditional approval of a site and development plan for Market District Housing, Leon County Project ID No. LSP 180013, by Wynona C. Braswell and Vickie Goodman (collectively “Petitioners”). As described in the RO, the proposed project is a 36 unit townhome development to be located on Martin Hurst Road and Palafox Lane (“Project”). Additional details about the Project are set out in the RO. The RO finds that the Project is consistent with all requirements for approval, and recommends that the Board enter a Final Order approving the Project, consistent with the written preliminary decision of approval dated April 27, 2018.

The RO advised that all parties had the right to file written exceptions within 10 days from the date of the RO, pursuant to section 10-7.414(K), Leon County Land Development Code. No exceptions were timely filed by any party. On September 20, 2018, Petitioner Braswell filed Exceptions to the Recommended Order with DOAH. The Exceptions to the Recommended Order filed by Petitioner Braswell were filed beyond the deadline outlined in the RO and section 10-7-414(K), Leon County Land Development Code. Further, section 10-7.414(K), Leon County Land Development Code, requires exceptions to be filed with the Clerk of the Board of County Commissioners. The Exceptions to the Recommended Order filed by Petitioner Braswell were not filed with the Clerk of the Board but instead were filed with DOAH.

This matter is now before the Board for review of the RO, as provided in section 10-7.415, Leon County Land Development Code. Pursuant to the County's Land Development Code, a duly noticed public hearing before the Board was held on September 24, 2018. All parties who participated in the quasi-judicial hearing before DOAH, including Petitioners, Palafox, LLC, and the County, were given the opportunity to provide oral argument.

The hearing before the Board is limited to matters of record and argument based on the record. §10-7.415(E), Leon County Code. No new evidence may be presented. Id.

As set forth in the County's Code, the Board of County Commissioners "is bound by the special master's findings of fact unless the findings of fact are not supported by competent substantial evidence in the record before the special master." §10-7.415(H), Leon County Code. However, the Board "may modify the conclusions of law if it finds that the special master's application or interpretation of law is erroneous." Id. Ultimately, the Board must approve, approve with conditions, or deny the Project. Id. The label assigned a statement is not dispositive as to whether it is a finding of fact or conclusion of law. Kinney v. Dep't of State, 501 So. 2d 129 (Fla. 5th DCA 1987); Goin v. Comm. on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995).

Conclusions of law labeled as findings of fact, and findings labeled as conclusions, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

ORDER

IT IS THEREFORE ORDERED as follows:

1. The Exceptions to the Recommended Order filed by Petitioner Braswell are stricken as being untimely and improperly filed.
2. The findings of fact and conclusions of law in the Recommended Order are ADOPTED. The Recommended Order is incorporated by reference and made a part hereof as Exhibit A.
3. The Administrative Law Judge's recommendation is ACCEPTED.
4. The Leon County Board of County Commissioners enters this Final Order, approving the Project with conditions consistent with the written preliminary decision dated April 27, 2018.

APPROVED by the Board and EXECUTED by the Chairman on the 24th day of September 2018.



NICK MADDOX
Chairman
Leon County Board of
County Commissioners

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that this Final Order has been filed with the undersigned Clerk of the Board of County Commissioners, and that true and correct copies have been furnished to the persons listed below in the manner described, on this 25th day of September, 2018.


Clerk

By Electronic Mail:

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WYNONA C. BRASWELL AND
VICKIE GOODMAN,

Petitioners,

vs.

Case No. 18-2734

PALAFIX, LLC, AND LEON COUNTY
DEPARTMENT OF DEVELOPMENT
SUPPORT AND ENVIRONMENTAL
MANAGEMENT,

Respondents.

_____ /

RECOMMENDED ORDER

The quasi-judicial hearing in this case was held on July 11 and 12, 2018, in Tallahassee, Florida, before Francine M. Ffolkes, Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), acting as the Special Master under section 10-7.414 of the Leon County Land Development Code.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue to be determined in this case is whether the Leon County Application Review Committee's preliminary decision approving a site and development plan for the Market District Housing (LSP 180013) is consistent with the Tallahassee-Leon County Comprehensive Plan ("Comp Plan") and the Leon County Land Development Code ("Code").

PRELIMINARY STATEMENT

On April 27, 2018, the Application Review Committee issued a letter which conditionally approved the site and development plan submitted by the Respondent, Palafox, LLC ("Palafox"), for the Market District Housing, a 36-unit townhome development to be located on the southwest corner of Martin Hurst Road and Palafox Lane ("Project"). The Project required review and approval of a "Type A" site and development plan, and Palafox chose the final design plan approval ("FDPA") review track. The FDPA review

track provides for concurrent land use and environmental permitting approval. On May 23, 2018, the Petitioners, Wynona C. Braswell, Scott Hampton, and Vickie Goodman, filed a joint petition challenging the Application Review Committee's preliminary approval as inconsistent with certain provisions of the Comp Plan and Code.

Pursuant to a contract between DOAH and the Respondent, Leon County Department of Development Support and Environmental Management ("Leon County"), Leon County sent the matter to DOAH to appoint a Special Master and conduct a quasi-judicial hearing. A notice of the hearing was provided in accordance with section 10-7.414(J) (ii) of the Code.

Prior to the hearing, the Petitioner, Scott Hampton, filed a notice of withdrawal as a petitioner, and was dismissed as a petitioner by Order dated June 20, 2018. At the hearing, Leon County's pending motions for official recognition were granted. The Petitioners presented the testimony of Vickie Goodman; Wynona Braswell; Ryan Culpepper; Cheryl Poole, P.E.; Kevin Songer; Steve Stinson, P.L.S.; Scott Hampton; and Sal Arnaldo, P.E. The Petitioners' Exhibits 1, 2, 3, 9, 10, 12, 15, 16, 17, and 19 were admitted into evidence. The Petitioners' Exhibits 4, 5, 6, 7, 8, 11, 13, 14, and 18 were marked for identification but were not admitted into evidence. The Respondents presented the testimony of Gary Zins, Shawna Martin, and Nawfal Ezzagaghi, P.E. The

Respondents' Joint Exhibits 1 through 36, 63, 65, 70, and 92 through 116 were admitted into evidence.^{1/}

At the hearing, an opportunity was provided to receive comments from the public. One person, George E. Lewis, II, offered comments in opposition to the Project. A copy of this Recommended Order is being sent to Mr. Lewis.

The Transcript of the hearing was filed with DOAH on July 30, 2018. The parties submitted proposed recommended orders that were considered in the preparation of this Recommended Order.

References to the Florida Statutes are to the 2018 version, unless otherwise indicated.

FINDINGS OF FACT

The Parties

1. The Petitioner, Wynona C. Braswell, lives at 2784 Palafox Lane, which is the single-family lot located at Lot 5, Block A, of the 2008 Palafox Preserve Subdivision Plat ("Plat"). The Petitioner, Vickie Goodman, lives at the single-family lot located at Lot 1, Block A, of the Plat.

2. The Petitioners are concerned that changes in the storm water management facility on Lot 1, Block B, of the Palafox Preserve Subdivision will reduce the size of the storm water pond. The Petitioners are concerned that changes in the storm water pond will cause the conservation easement to overflow and

burden the storm water facilities owned by residential homeowners.

3. Leon County is a political subdivision of the State of Florida and has adopted a comprehensive plan that it amends from time to time pursuant to chapter 163, Florida Statutes. Leon County is responsible for enacting and applying relevant Comp Plan and Code provisions to the development of property located within its political boundaries.

4. Palafox is a limited liability corporation that is the applicant seeking approval for the "Type A" site and development plan, which is the subject of this proceeding. Palafox is the sole member of the Palafox Preserve Commercial Property Owners' Association, Inc. Gary Zins owns and controls Palafox through its managing member, Evergreen Communities, Inc., and is also the president of the Palafox Preserve Commercial Property Owners' Association, Inc., and controls the association as its only officer and director.

Land Use Designations

5. The Project is located on approximately 2.75 acres of the approximately 6-acre parcel of land identified as Lot 1, Block B, on the Plat. The parcel is within the Suburban ("SUB") and Lake Protection ("LP") categories on the Future Land Use Map of the Comp Plan. The parcel is split zoned Office Residential 3

("OR-3") and LP. The Project is proposed only within the OR-3 zoned portion.

6. Policy 2.2.5 of the Future Land Use Element ("FLUE") of the Comp Plan provides that the major function of the SUB designation is to mix placement of employment and shopping opportunities, with convenient access to low and medium density residential land uses. The proposal for 36 dwelling units which equates to a density of approximately 13 dwelling units per acre ("du/a") meets the gross density requirement of the OR-3 zoning district.

7. The Project is located within the Urban Services Area established by the FLUE, which is the area identified by Leon County as desirable for new development based on the availability of existing infrastructure and services.

8. The parcel contains a localized closed basin, wetlands and 100-year floodplain. Consistent with Comp Plan Conservation Element Policies 1.3.2 and 1.3.6, the areas of the site that contain environmentally sensitive features were previously placed in a perpetual conservation easement, and Palafox does not propose to disturb the area in the conservation easement.

Background

9. Leon County previously approved development of 19 single-family lots located on Lots 1 through 19, Block A, of the Plat. This development included infrastructure such as

Palafox Lane, which is the entrance to the subdivision, and storm water management facilities in both Block A and Block B of the Palafox Preserve Subdivision. The Palafox Preserve Subdivision is a common scheme of development, and the storm water management facilities are operated under a single operating permit. It is also a private subdivision with all of the storm water management facilities dedicated to private entities and not to Leon County.

10. A wetland of approximately seven acres was identified as part of the Natural Features Inventory ("NFI") and placed in a perpetual conservation easement in 2006. The wetland was initially delineated in 2001 by Kevin Songer who represented the applicant at that time. Mr. Songer's wetland delineation was field reviewed by representatives from Leon County and the Florida Department of Environmental Protection, adjusted, and finally approved by Leon County in 2006 as part of the NFI approval.

11. The wetland and perpetual conservation easement straddle the boundary between Block A and Block B with about two-thirds in Block A and about one-third in Block B. With the required buffer area added to the approximately seven-acre wetland, the perpetual conservation easement in total covers approximately nine acres.

12. Subsequent permits for the development of the Palafox Preserve Subdivision, such as for the 19 homesites, relied on the

2006 NFI, which included the 2001 wetland delineation and the perpetual conservation easement. Leon County did not require new wetland delineations prior to development of each homesite even though homes were built as recently as 2012, 2013, and 2014.

13. The storm water management facility constructed in Block B of the Plat is labeled as SWMF #1. SWMF #1 was designed to retain the additional runoff from the first 500 feet of Palafox Lane up to the 100-year, 24-hour storm. SWMF #1 has a concrete weir that allows a controlled discharge into the adjacent conservation easement wetlands. Storm water management facilities constructed in Block A included SWMFs #6 and #7 that collect the runoff from the homesites located on the west side of the conservation easement, namely Lots 11 through 19. Lots 11 through 19 all contain a portion of the conservation easement area as well as platted drainage easements.

14. SWMFs #6 and #7 are constructed in the platted drainage easements on Lots 11 through 19 in Block A. SWMFs #6 and #7 are constructed in a horseshoe shape adjacent to the conservation easement, are designed as detention facilities, and discharge to the conservation easement wetlands.

15. The SWMF #1 retention facility, the SWMFs #6 and #7 detention facilities, and the conservation easement containing the wetlands are within the localized closed basin. There is another SWMF to the west behind homesites located on Lots 1

through 7 that is labeled SWMF #5. SWMF #5 is not within the localized closed basin and discharges to the Lake Jackson drainage basin.

16. The conservation easement also contains a "pop-off" or outfall which allows for discharge of water from the wetlands to the west if it reaches a certain elevation, which based on the plans is 223.57 feet. It was designed to mimic pre-development conditions and only discharges if the 100-year, 24-hour storm is exceeded. If discharged, the water would travel west through drainage easements to SWMF #5 and ultimately to Lake Jackson. Because the localized closed basin retains up to the 100-year, 24-hour storm, it is a closed basin under the Code.

17. Leon County also previously approved commercial development on Lot 1, Block B, of the Plat, which is still active (Palafox Preserve Commercial Project). The site development approval and environmental permits for the Palafox Preserve Commercial Project are current but would be superseded by final approval of the site and development plan and environmental permit for the current Project.

The Project

18. In 2014, an earlier application for Site Plan and Development Review was submitted for the Market District Housing Project. An Environmental Permit Application ("EMP") was also reviewed concurrently under the Code. Leon County issued a

preliminary written decision of approval, which was appealed by Robert and Wynona Braswell, and the case was assigned to DOAH. Based on certain issues, the application was withdrawn, and the parties litigated in circuit court. That litigation concluded with a Final Judgment in favor of Evergreen Communities, Inc., and Palafox.

19. Palafox then submitted the current site and development plan application for the Project dated April 4, 2018, which was designated LSP 180013. Palafox concurrently submitted an EMP application for the Project, which was designated as LEM 18-00034.

20. The Project's current Plan application was reviewed by various departments within Leon County, as well as several other entities and agencies. Ms. Shawna Martin, principal planner with the Leon County Development Services Division, coordinated the review gathering comments and feedback from the various departments and agencies and coordinated the preparation of a Staff Report for the Application Review Meeting ("ARM") held on April 25, 2018.

21. The Staff Report recommended approval of the Project finding that the Project's proposed development was consistent with the Comp Plan, met applicable zoning standards and requirements, and met the applicable provisions of the County's

Environmental Management Act ("EMA") and the provisions of chapter 10 of the Code.

22. Leon County's Environmental Services Division ("Environmental Services"), under the supervision of Nawfal Ezzagaghi, a licensed professional engineer, reviewed the EMP application for the Project concurrently with the site plan and development review. Mr. Ezzagaghi has been the environmental review supervisor for Leon County since 2005, and is responsible for the review by Environmental Services' staff of environmental management plans, engineering calculations, engineering plans, and providing input on site plans and to the public works department.

23. During the review of the application, both in 2014 and 2018, Environmental Services under Mr. Ezzagaghi's supervision reviewed the application including the storm water design, modeling, and construction plans, and coordinated and communicated with the applicant. Environmental Services received and reviewed the materials, conducted an independent analysis, and ultimately verified compliance with the EMA.

24. The Petitioners received notice of the ARM meeting, submitted verbal and written comment, and ultimately challenged the written preliminary decision of approval.

25. The Petitioners' challenge raised three primary issues: (1) that the Project is inconsistent with the Plat; (2) that the

perpetual conservation easement wetland should have been re-delineated as part of the Project's current permitting application; and (3) that the storm water plan for the Project does not meet the requirements of the Code.

Palafox Preserve Subdivision Plat

26. The Plat designates a portion of Lot 1, Block B, as the "POA Drainage Easement." The dedication provisions of the Plat convey the POA Drainage Easement to the Palafox Preserve Commercial Property Owners' Association, Inc. Palafox, the applicant, is the sole member of the Palafox Preserve Commercial Property Owners' Association, Inc. The dedication provisions of the Plat convey all "drainage easements" to the Palafox Preserve Home Owners Association, Inc., which is the owners' association for Block A--the residential area of the subdivision.

27. Plat Note 5 states that "the construction of permanent structures, including fences but excluding driveways, by the Property Owner is prohibited within drainage and utility easements." The Petitioners claim that the Project is inconsistent with the prohibition in Plat Note 5.

28. SWMF #1 is located within the POA Drainage Easement on Lot 1, Block B, of the Plat and does not serve any part of the residential area of the subdivision. On its face, the prohibition in Plat Note 5 does not apply to the POA Drainage

Easement. In addition, words such as "fences" and "driveways" more reasonably refer to residential areas of the Plat.

Wetland Delineation

29. The application for the Project did not contain a new NFI. Leon County informed Palafox that the parcel had already been through the NFI process and held a valid and active EMP. As a matter of policy, Leon County does not require submission of a new NFI or new wetland delineation once previously delineated wetlands are under a perpetual conservation easement that is dedicated to Leon County as a preservation area.

30. Unlike the 2001 wetland delineation line submitted in the 2006 NFI and placed under the perpetual conservation easement, Kevin Songer's 2015 wetland delineation work for the Petitioners was neither checked by independent peer review nor confirmed by any state or local environmental regulatory agency. Mr. Songer's 2015 wetland delineation does not represent a recognized wetland jurisdictional line.

Storm Water Plan

31. The storm water management system for the Project is a "two-step system" designed to address both the water quality and volume control standards of the EMA. For water quality, the Code requires a one and one-eighth-inch standard for storm water treatment and the Project would satisfy this requirement through a new storm water detention and treatment facility. The

detention pond is designed to treat the volume determined from the one and one-eighth-inch standard, or slightly more than 14,000 cubic feet. This is the more critical volume for which the new facility must be designed.

32. For volume control, the closed basin standard requires the runoff volume in excess of the pre-development runoff volume to be retained for all storm events up to a 100-year, 24-hour duration storm. That difference is approximately 9,650 cubic feet. The closed basin for which retention must be demonstrated includes the conservation easement wetlands, and modeling demonstrated a change in elevation from 221.51 to 221.54 over approximately six acres. This difference in elevation is retained in the wetlands up to and including the 100-year, 24-hour storm. The post-development elevation of 221.54 does not approach the 223.57 "pop-off" elevation of the wetlands.

33. SWMF #1 was designed to retain runoff from the first 500 feet of Palafox Lane up to the 100-year, 24-hour storm. The evidence established that SWMF #1 was "over-designed" because of circumstances in 2006 to 2007, which may have included different Code requirements and the wishes of the original developer.

34. The Petitioners' engineer, Sal Arnaldo, who did not have any previous experience with the Code, opined that the existing SWMF #1 could not be replaced by the proposed detention with treatment facility. Mr. Arnaldo's understanding of the Code

was that all storm water that falls on Block B and runoff from the first 500 feet of Palafox Lane must be retained in a retention pond up to and including the 100-year, 24-hour storm. He viewed SWMF #1 as the "closed basin" or the "site" that was not allowed to discharge to the conservation easement wetlands. In his opinion, the proposed detention facility for the Project did not provide the same function.

35. Different pond sizes, designs, and storm water management methods can be used to meet the requirements of the Code exemplified by the fact that the two-step approach used for the Project is the same approach used on the west side of the wetlands for Lots 11 through 19, Block A. SWMFs #6 and #7 are also detention facilities which were designed to treat storm water and discharge to the conservation easement wetlands.

36. Leon County's expert engineer, Mr. Ezzagaghi, testified that the SWMF #1 retention facility, the SWMFs #6 and #7 detention facilities, and the conservation easement containing the wetlands are part of the closed basin under the Code. Thus, the standard is not a comparison of the capacity of existing SWMF #1 to the capacity of the proposed detention facility, but whether the storm water system as a whole controls for the post-development volume that is in excess of pre-development conditions.

37. The evidence demonstrated that the Project's proposed storm water system will not significantly impact the conservation easement wetlands and will not cause flooding or other adverse impacts to downstream areas.

Summary

38. The preponderance of the evidence, which includes Leon County's interpretation and application of applicable provisions of the Comp Plan and Code, demonstrated that the Project is consistent with all requirements for approval. See § 10-7.407, Leon Cnty. Code.

CONCLUSIONS OF LAW

Jurisdiction

39. DOAH has jurisdiction over the parties to and the subject matter of this proceeding pursuant to section 10-7.414 of the Code.

40. The Petitioners did not raise any specific issue regarding the procedures followed by Leon County for the decision under review, including public notice.

Burden and Standard of Proof

41. The burden is on the applicant for site plan approval to demonstrate that the application complies with the procedural requirements of the applicable ordinance and that the use sought is consistent with the applicable provisions of the Comp Plan and Code. See, e.g., Alvey v. City of N. Miami Bch., 206 So. 3d 67,

73 (Fla. 3d DCA 2016) (citing Bd. of Cnty. Commr's of Brevard Cnty. v. Snyder, 27 So. 2d 469, 472 (Fla. 1993)).

42. The standard of proof to establish a finding of fact is preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

Consistency with the Comp Plan

43. Under section 10-7.414(J)(vii) of the Code, the standard of review to be applied by the Special Master in determining whether the Project is consistent with the Comp Plan is "strict scrutiny in accordance with Florida law." Strict scrutiny in this context means strict compliance with the Comp Plan, based on the document as a whole. See Snyder, 27 So. 2d. at 475; Arbor Props. v. Lake Jackson Prot. Alliance, 51 So. 3d 502, 505 (Fla. 1st DCA 2010).

44. Palafox carried its prima facie burden to show by a preponderance of the evidence that the Project is consistent with the Comp Plan. The Petitioners did not raise any specific issues regarding compliance with the Comp Plan.

Consistency with the Code

45. Under section 10-7.414(J)(vii) of the Code, the standard of review to determine whether the Project is consistent with the Code "shall be in accordance with Florida law." Florida law requires that Leon County's determination that the Project is consistent with relevant provisions of the Code must be based on

competent substantial evidence. See Premier Dev. v. City of Fort Lauderdale, 920 So. 2d 852, 853 (Fla. 4th DCA 2006).

46. Local governments are entitled to broad deference in interpreting their land development regulations. Unless the local government's interpretation is clearly erroneous, it should be affirmed. See, e.g., Pruitt v. Sands, 84 So. 3d 1267, 1268 (Fla. 4th DCA 2012); Palm Beach Polo, Inc., v. Vill. of Wellington, 918 So. 2d 988, 995-996 (Fla. 4th DCA 2006).

47. The three primary issues raised by the Petitioners involve interpretation and application of the Code. Other arguments raised by the Petitioners during the hearing, such as allegations of trespass, use rights pursuant to drainage easements or storm water facilities reflected on the Plat, and compliance issues surrounding the previously approved and constructed storm water facilities in the Palafox Preserve Subdivision, are not issues within the scope of this proceeding. Palafox Preserve Subdivision Plat

48. Note 5 on the Plat clearly addresses the residential "drainage easements," not the "POA Drainage Easement." The Plat separately identifies the easements and dedicates them to different entities.

Previous NFI Approval and Wetlands Delineation

49. The Code requires an NFI prior to an application for site and development plan approval. See § 10-4.202, Leon Cnty.

Code. As part of this requirement, preservation areas, including wetlands, were mapped and inventoried, and were placed in a perpetual conservation easement to ensure such areas are protected and preserved, including a setback. See §§ 10-4.202, 10-4.322, Leon Cnty. Code.

50. Leon County's interpretation that the Code does not require an applicant to submit a new NFI for a development on a site with an existing NFI and a recorded perpetual conservation easement is reasonable. Private parties and Leon County have relied on the NFI and perpetual conservation easement for development and regulation of the Palafox Preserve Subdivision.

51. No statute, ordinance, rule or regulation requires a wetland to be re-delineated after it has been identified and placed in perpetual preservation under a conservation easement. The Petitioners' argument would lead to the absurd result of re-surveying and re-recording allegedly "perpetual" conservation easements every time a lot was developed within the Plat.

Storm Water Regulations

52. The Code's closed basin standards require that "[r]unoff volumes within regulated closed basins in excess of the pre-development runoff volume shall be retained for all storm events up to a 100-year, 24-hour duration storm." § 10-4.301(3)(b), Leon Cnty. Code. The Code defines "retention" to mean "the collection and storage of stormwater without subsequent

discharge other than through percolation, evaporation, or transpiration." § 10-1.101, Leon Cnty. Code. The Code defines "site" as "the total area within the property boundaries of a principal parcel to be developed, or contiguous parcels intended for development under a common scheme or plan." § 10-1.101, Leon Cnty. Code.

53. The Palafox Preserve Subdivision is an integrated or common scheme of development. It was platted as a single subdivision and designed with an integrated storm water system under a single operating permit. Additionally, there is one common subdivision entrance road, and all conservation easements for the subdivision were created within a single document.

54. The Code allows discharge of post-development runoff to a wetland under circumstances where it is "of sufficient capacity at the time of discharge to sustain the effects of, and to convey such discharges, without detriment to the continued natural function of the resource." § 10-4.301(6), Leon Cnty. Code. The Code's rate provisions do not apply "to approved discharges directly into water bodies, watercourses, wetlands and constructed conveyances which are of sufficient size and capacity to receive the discharges without significant adverse effects." § 10-4.302(1), Leon Cnty. Code. Also it must be demonstrated that "[t]he stormwater discharge shall not cause flooding or

other adverse impacts for the downstream areas." § 10-4.302(2), Leon Cnty. Code.

55. The preponderance of the evidence demonstrated that the Project's proposed storm water system will not significantly impact the conservation easement wetlands and will not cause flooding or other adverse impacts to downstream areas.

56. The Project as proposed does not violate section 10-4.304 of the Code regarding storm water easements because the Code authorizes discharges into a wetland area capable of sustaining the effects of such discharge without the need to acquire an easement.

57. During the hearing, the Petitioners argued that discharge of storm water into the conservation easement was not allowed by the terms of the recorded conservation easement and the applicable statute. However, the conservation easement on its face does not prohibit the discharge for this Project.

58. Section 704.06, Florida Statutes, which governs conservation easements, prohibits among others things, "[a]ctivities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife conservation habitat preservation." These statutory provisions are not violated by the Project, where the application and supporting material and Leon County's independent review and

analysis of the same demonstrate no adverse impacts to drainage and flood control.

Summary

59. The County's interpretations of the relevant provisions of the Code are reasonable and are not clearly erroneous.

60. The preponderance of competent substantial evidence in the record of this proceeding supports the determination of the Application Review Committee that the Project is consistent with all applicable provisions of the Comp Plan and Code.

RECOMMENDATION

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

RECOMMENDED that the Leon County Board of County Commissioners enter a final order approving the Project, subject to the conditions outlined by the Application Review Committee in its written preliminary decision dated April 27, 2018.

DONE AND ENTERED this 31st day of August, 2018, in
Tallahassee, Leon County, Florida.



FRANCINE M. FFOLKES
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of August, 2018.

ENDNOTE

^{1/} Over the hearsay objections of the Petitioners, Respondents' Joint Exhibits 1, 3 through 20, 22, and 23 were admitted into evidence under the public records exception to the hearsay rule. Martin 530:9-539:17. Respondents' Joint Exhibits 92 through 116 were admitted into evidence under the public records exception to the hearsay rule. Ezzahaghi 580:19-581:10. Respondents' Joint Exhibits 24-25, 27 through 36, 63, 65 and 70 were also admitted into evidence over the Petitioners' hearsay objection under the public records exception to the hearsay rule. Ezzahaghi 585:1-586:18.

The public records exception to the hearsay rule applies to records, reports, statements reduced to writing, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report, excluding in criminal cases matters observed by a police officer or other law enforcement personnel, unless the sources of information or other circumstances show their lack of trustworthiness. The exception encompasses two types of public records and reports: (1) records setting forth the activities of the office or agency; and (2) records of a public office or agency which set forth matters observed pursuant to duty imposed by law

as to which matters there was a duty to report. Philip Morris USA, Inc. v. Pollari, 228 So. 3d 115, 120 (Fla. 4th DCA 2017). The application materials (Respondents' Joint Exhibits 1 through 36 and 92 through 116) generally fall within the first category of the exception because they are records or reports of the activities of Leon County in carrying out its essential function to process and review applications in accordance with the Code including sections 10-4.203 and 10-7.403.

After review of the three issues identified by the Petitioners as the bases for their challenge, it is highly probable that the application materials are not subject to the hearsay rule at all, i.e. not hearsay. Foster v. State, 778 So. 2d 906, 914 (Fla. 2000) ("A statement may, however, be offered to prove a variety of things besides its truth."); T. 530:19-20. The Petitioners' assertions in this proceeding concern disputes about interpretation of Code provisions and the plain language on a plat. Thus, the application materials do not need to be offered for the truth of the matters asserted therein, but are admissible as evidence relevant to show that Palafox applied and Leon County reviewed the application and provided a preliminary approval.

To the extent that any application materials, e.g., storm water calculations and modeling, are hearsay, they are admissible under sections 120.569(2)(g) and 120.57(1)(c), Florida Statutes. Such information supplemented or explained the testimony of Leon County's engineer, Nawfal Ezzagaghi, P.E., regarding Leon County's independent evaluation of those calculations and modeling. See Bellsouth Advertising & Publishing Corp. v. Unemployment Appeals Comm'n, 654 So. 2d 292, 294 (Fla. 5th DCA 1995).

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the clerk of the Board of County Commissioners of Leon County. See § 10-7.414(K), Leon Cnty. Code.