

CITY OF TALLAHASSEE

CITY COMMISSION AGENDA ITEM

| | |
|-----------------------------|--|
| ACTION REQUESTED ON: | April 10, 2002 |
| SUBJECT/TITLE: | Policy and Procedures for High Wage Employment Slope Exception |
| TARGET ISSUE: | Economic/Downtown Development |

STATEMENT OF ISSUE

On June 27, 2001, the City of Tallahassee adopted Ordinance No. 01-O-37, which changed the requirements for development of "Significant Grade Areas (10-20%)" and "Severe Grade Areas (greater than 20%)." Among other things, the ordinance requires that 50% of a Significant Grade and 100% of a Severe Grade must be left undisturbed in order to maintain local topography and minimize erosion, maintain existing vegetation, and protect water quality. The Ordinance includes an exception from the Significant Grade requirements for high wage employment development. As stated in the Ordinance, proposed development (located anywhere within City Limits) that exclusively contains industrial and/or office uses and that creates a significant number of new high wage employment, can develop more than 50% of significant grade areas at the discretion of the City Commission. The Commission is to conduct a public hearing and may consider factors like the number of jobs, the average annual wage of Leon County, and the applicant's long-term level of commitment and ability to provide the jobs.

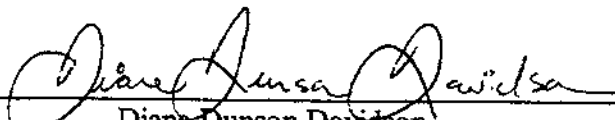
Staff is requesting Commission approval of definitions of the terms used in this exception, criteria for businesses wishing to use the exception, and procedures for review of requests from businesses and enforcement of approved exceptions.

RECOMMENDED ACTION


Option 1—Approve the Policy and Application Procedures for the High Wage Employment Slope Exception (without bond requirement)

FISCAL IMPACT

N/A



 Diane Dunson Davidson
 Economic Development Department



 Anita R. Favors
 City Manager

For Information, please contact: Diane Dunson Davidson (8879); Mike Donovan (8665)

ITEM TITLE: Policy and Procedures for High Wage Employment Slope Exception

SUPPLEMENTAL MATERIAL/ISSUE ANALYSIS

HISTORY/FACTS & ISSUES

On June 27, 2001, the City of Tallahassee adopted Ordinance No. 01-O-37, which changed the requirements for development of "Significant Grade Areas (10-20%)" and "Severe Grade Areas (greater than 20%)." Among other things, the ordinance requires that 50% of a Significant Grade and 100% of a Severe Grade must be left undisturbed in order to maintain local topography and minimize erosion, maintain existing vegetation, and protect water quality. The Ordinance includes an exception (Attachment 1) from the Significant Grade requirements for high wage employment development. Any proposed development that exclusively contains industrial and/or office uses and that creates a significant number of new high wage employment can develop more than 50% of significant grade areas at the discretion of the City Commission. The Commission is to conduct a public hearing and may consider factors like the number of jobs, the average annual wage of Leon County, and the applicant's long-term level of commitment and ability to provide the jobs.

Staff requests that the Commission provide definitions of the terms used in the Ordinance, establish criteria for businesses wishing to use the exception, determine an enforcement mechanism, and establish procedures for review of requests from businesses. The proposed policy and procedures (Attachments 3 and 4) will clarify that in order to qualify for the exception the proposed business must:

1. Hire at least 20 ("significant number") new full time, permanent employees ("new jobs"), with an average annual salary at or above the existing average annualized salary for Leon County and with more than 20% of the new jobs at or above the existing average annualized salary for Leon County ("high wage employment"). *Note: The Leon County average annualized salary figure will be annually adjusted using updated data provided by Enterprise Florida. Currently, the salary figure is \$27,143.*
2. Commit the use of the property developed and, if desired by the Commission, the employment for a time period to be set dependent on the percentage of slope to be developed ("long-term commitment"). See Options 1 and 1a.
3. Provide annual reports to the City to verify job commitment performance for a ten year period.

In order to provide consistency with the intent of the Environmental Management Ordinance, the proposed policy will also clarify that the area to be developed must be necessary for the viability of the development, minimized to the extent reasonable, and be the least environmentally-sensitive area available on the site (to be determined by the Growth Management Department).

The proposed procedures establish an application process and an enforcement mechanism. Enforcement will be through an officially recorded deed restriction. This mechanism will be effective in assuring that the property continues to exclusively contain industrial and/or office uses. However, it will be very difficult to

assure that the number of jobs and the salaries are actually provided. Another option is provided in Attachment 4 (Option 1a) to require that the Applicant provide a performance bond equal to the value of the additional land being developed pursuant to this approval. This bond would be paid to the City and could be used by the City for the purchase of other Significant Grade Areas if the applicant defaults on his/her job or salary commitment.

Performance bonds are normally used to assure performance of physical construction, such as subdivision roads, utilities, etc., and normally cost about three percent annually of the bond amount. Requiring a performance bond to assure jobs and salaries for an extended period of time will provide another enforcement tool and it guarantees collection if the business defaults, but it will require higher cost and higher risk to the Applicant, which may discourage the use of this exception. In addition, a long term performance bond to guarantee jobs and salaries is not a normal industry practice and may cost more than a typical performance bond. (A standard \$100,000 construction bond would typically cost approximately \$3,000 annually for the life of the bond. The actual cost for this type of bond will vary depending on bonding company criteria and the individual company.)

For these reasons, staff does not recommend a bond requirement. If, however, the Commission chooses such a requirement, the staff recommends that the long term level of commitment be shorter, to reflect the difficulty of guaranteeing a specific number of jobs and salaries for an extended time period. A chart summarizing the differences between Policy Option 1 and Policy Option 1a is included as Attachment 2.

OPTIONS

Option 1— Approve the Policy and Procedures for the High Wage Employment Slope Exception (Attachment 3-Option 1).

Option 1a-- Approve the Policy and Procedures for the High Wage Employment Slope Exception with a Bond Requirement (Attachment 4-Option 1a).

Option 2—Do not Approve the Policy and Procedures for the High Wage Employment Slope Exception.

Option 3—Provide further direction.

ATTACHMENTS/REFERENCES

Attachment 1—Ordinance No. 01-O-37 (See Paragraph 3.1(2)(e)2.c. on Page 4)

Attachment 2—Summary of Differences Between Policy Option 1 (Attachment 3) and Policy Option 1a (Attachment 4)

Attachment 3—Proposed Policy and Procedures for the High Wage Employment Slope Exception-Option 1

Attachment 4—Proposed Policy and Procedures for the High Wage Employment Slope Exception with a Bond Requirement-Option 1a

ORDINANCE NO. 01-O-37

AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA, RELATED TO CHAPTER 28, PART I OF THE CITY OF TALLAHASSEE CODE OF ORDINANCES (THE ENVIRONMENTAL MANAGEMENT ORDINANCE); AMENDING ARTICLE 3, SUBSECTION 3.1(2)(E), REGARDING SIGNIFICANT GRADE AREAS; AMENDING ARTICLE 7, SECTION 7.2, REGARDING ENVIRONMENTAL VARIANCES, AND SECTION 7.5, DEFINITIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF TALLAHASSEE, FLORIDA, AS FOLLOWS:

Section 1. Subsection 3.1(2)(e), of Chapter 28 of the City of Tallahassee Code of Ordinances, regarding Significant Grade Areas, is amended by deleting it in its entirety and substituting the following:

~~(e) Significant Grade Areas (10-20%) where soil type presents a threat of erosion; Development will be allowed at a density reflective of the density permitted by the existing land use. Development density can be transferred to areas that are not environmentally sensitive at the density allowed by the existing land use category. Development will be permitted provided the following are done:~~

~~1. Minimization of any topographical changes. Minimal grade changes typically associated with site development include those necessary for the safety of a building, parking area, road right of way, handicapped access, or associated utilities, including stormwater management systems.~~

~~2. Use of best management practices (off grade construction, design the building to take advantage of the slope, etc.).~~

~~3. 50% of the grade must be left natural and shall be best placed to provide downhill buffers, protect forested areas, and buffer more protected features such as wetlands, etc.~~

Words in underlined text represent additions to and words in ~~strike through~~ text represent deletions from the existing Environmental Management Ordinance

1 (e) *Severe Grade Areas and Significant Grade Areas:* The
2 intent of protecting severe and significant grades is to maintain local
3 topography and minimize erosion, maintain existing vegetation, and protect
4 water quality. Severe and significant grades shall be depicted on any
5 Natural Features Inventory required under this Chapter using contour
6 intervals of no greater than 2 feet. Maps shall be prepared in accordance
7 with the minimum technical standards for topographic surveys set forth in
8 Chapter 61G17-6, Florida Administrative Code (FAC), as it may be amended
9 from time to time. Alternatively, the City of Tallahassee's Geographic
10 Information System (GIS) 2-foot contour maps may be used to determine the
11 grades until such time that site-specific topographic survey information is
12 available. Site-specific topographic survey information shall use 1 foot
13 contour intervals and shall be provided no later than at the time the
14 Environmental Impact Analysis required under this Chapter is submitted for
15 review.

16 1. *Severe Grade Areas (natural grades greater than 20*
17 *percent).* If the slope between any 2 adjacent one foot interval contour lines is
18 greater than 20 percent, then a severe grade area exists. All naturally
19 occurring severe grades shall be regulated regardless of size or dimension.

20 a. *Standard.* Except as noted in Subsection
21 3.1(2)(e)1.b. below, one hundred percent (100%) of severe grade areas shall be
22 left undisturbed and shall be placed in a conservation easement dedicated to
23 the City of Tallahassee. Development activity in the conservation easement
24 is prohibited, except that vegetation management activities that enhance the
25 vegetation and are specifically allowed in a vegetation management plan
26 approved by the Director may be permitted. Examples of vegetation
27 management activities include, but are not limited to, pruning of dead and
28 hazardous tree limbs and control of invasive vegetation.

29 b. *Exception.* When small fragments of severe grades,
30 not to exceed $\frac{1}{4}$ acre in size, are located within a significant grade area, the
31 standard set forth for significant grade areas in Subsection 3.1(2)(e)2.a. below
32 may be authorized by the Director. If an applicant intends to petition the
33 Director to utilize the development criteria for significant grades, the
34 applicant shall provide justification for granting the petition in the form of a
35 narrative and contour map delineating the significant and severe grade
36 areas. This petition shall be submitted after completion of the Natural

1 Features Inventory and prior to approval of the Environmental Impact
2 Analysis.

3 c. *Sediment and Erosion Controls for Properties with*
4 *Severe Grades.* Properties containing severe grade areas shall install a
5 "Heavy Duty Silt Barrier" for sediment and erosion control. The "Heavy Duty
6 Silt Barrier" shall consist of a double row of Type IV silt fence (as referenced
7 in the Florida Department of Transportation's "Roadway Traffic Design
8 Standards" and the Florida Department of Environmental Regulation's "The
9 Florida Development Manual: A Guide to Sound Land and Water
10 Management"). One row shall be placed at the toe of the slope. The other
11 row shall be placed 10 feet beyond the toe. The silt fence placed beyond the
12 toe shall be a silt barrier that consists of a Type IV silt fence supported by
13 "hogwire" fence. Wooden posts shall be 6 foot long and 4 inches in diameter
14 to support the "hogwire" fence. A continuous row of haybales staked 2 feet
15 on-center shall face the toe of the slope. All silt fences and hogwire fences
16 shall be trenched and extended 6 inches below grade. Wooden posts shall be
17 installed 8 feet on-center on the downhill side of the trench. The Director
18 may approve an alternative sediment and erosion control plan if it is
19 demonstrated by the applicant that such alternative provides a higher level
20 of protection.

21 2. *Significant Grade Areas (natural grades between and*
22 *inclusive of 10% and 20% of at least ¼ acre in size).* If the slope between any
23 2 adjacent one foot interval contour lines is greater than or equal to 10
24 percent but less than or equal to 20 percent, then a significant grade area
25 exists and shall be regulated as set forth below.

26 a. *Standard.* Except as noted in Subsection
27 3.1(2)(e)2.b. below, a minimum of 50 percent of significant grade areas shall
28 be left undisturbed and shall be placed in a conservation easement dedicated
29 to the City of Tallahassee. Development activity in the conservation
30 easement is prohibited, except that vegetation management activities that
31 enhance the vegetation and are specifically allowed in a vegetation
32 management plan approved by the Director may be permitted. Examples of
33 vegetation management activities include, but are not limited to, pruning of
34 dead and hazardous tree limbs and control of invasive vegetation. The
35 significant grades placed in a conservation easement shall be those
36 significant grade areas that provide the greatest environmental benefit as

*Words in underlined text represent additions to and words in ~~strike-through~~ text represent deletions from
the existing Environmental Management Ordinance*

1 determined by the Director (i.e. provides downhill buffers, protects forested
2 areas, buffers other protected conservation or preservation areas, or provides
3 similar environmental benefits). In order to minimize topographic changes,
4 development within the significant grade areas not placed in a conservation
5 easement shall utilize off-grade construction (including stem wall
6 construction), use best management practices (design the building to take
7 advantage of the natural topography, etc.) and shall limit the height of
8 retaining walls to 15 feet.

9 b. *Urban Core Exception.* Development in more than
10 50 percent of significant grade areas may be permitted as of right for any
11 proposed development located in the urban core (refer to Attachment #1 for a
12 map of the urban core).

13 c. *High Wage Employment Exception.* Development
14 in more than 50 percent of the significant grade areas may be permitted at
15 the discretion of the City Commission for any proposed development (no
16 matter where it is located) that exclusively contains industrial and/or office
17 uses that create a significant number of new high wage employment. In
18 deciding whether to grant such an exception, the City Commission shall
19 conduct a public hearing and may consider factors like the number of jobs
20 that are proposed to be created, the average annual wage of the jobs that are
21 proposed to be created in comparison to the average annual wage of Leon
22 County, and the applicant's long-term level of commitment and ability to
23 provide the jobs. *

24 d. *Sediment and Erosion Controls for Properties with*
25 *Significant Grades.* Properties containing significant grade areas shall
26 install a "Heavy Duty Silt Barrier" for sediment and erosion control. The
27 "Heavy Duty Silt Barrier" shall consist of a double row of Type IV silt fence
28 (as referenced in the Florida Department of Transportation's "Roadway
29 Traffic Design Standards" and the Florida Department of Environmental
30 Regulation's "The Florida Development Manual: A Guide to Sound Land and
31 Water Management"). One row shall be placed at the toe of the slope. The
32 other row shall be placed 10 feet beyond the toe. The silt fence placed beyond
33 the toe shall be a silt barrier that consists of a Type IV silt fence supported by
34 "hogwire" fence. Wooden posts shall be 6 foot long and 4 inches in diameter
35 to support the "hogwire" fence. A continuous row of haybales staked 2 feet
36 on-center shall face the toe of the slope. All silt fences and hogwire fences

1 shall be trenched and extended 6 inches below grade. Wooden posts shall be
2 installed 8 feet on-center on the downhill side of the trench. The Director
3 may approve an alternative sediment and erosion control plan if it is
4 demonstrated by the applicant that such alternative provides a higher level
5 of protection.

6
7 **Section 2. Section 7.2, of Chapter 28 of the City of Tallahassee Code**
8 **of Ordinances, regarding the Environmental Variance Board, is**
9 hereby amended as follows:

10
11 **Section 7.2 Environmental Variances Board.**

12
13 **(1) Environmental Variance Board Variances.**

14 **~~(1)~~ (a) *Standards and Procedures of the Board.***

15 ~~(a)~~1. The An applicant may petition the Environmental Variance
16 Board for a variance from the provisions of this ordinance prior to permit
17 approval or denial. However, in accordance with Conservation Policy 1.3.7 of
18 the Comprehensive Plan, the Environmental Variance Board shall not grant
19 a variance that exceeds 5% of the development standard associated with
20 conservation or preservation areas identified in Article 3 of this ordinance.

21 2. A petition for a variance shall be made after the approval of a
22 Natural Features Inventory and after review of an Environmental Impact
23 Analysis, as applicable, by the Growth Management Department.

24 3. Evaluation of other feasible alternatives and determination of
25 appropriate mitigation shall be explored during the Environmental Impact
26 Analysis. Mitigation proposals shall include a cost/benefit analysis.

27 ~~(b)~~4. Following receipt of the variance application, the
28 Environmental Variance Board shall, at its next regularly scheduled
29 meeting, but in no event more than 30 days:

- 30 1a. Approve the variance request or any portion thereof; or
31 2b. Approve the variance request subject to conditions; or
32 3c. Disapprove the variance request, specifying the reasons
33 therefore in writing; or
34 4d. Continue consideration of the variance request to a time
35 certain agreed upon by the applicant and the director.

1 ~~(2)~~ (b) *Criteria for Granting Variances.*

2 The Environmental Variance Board may grant the request if it
3 determines:

4 ~~(a)~~1. The land contained within the area which is the subject of an
5 environmental permit application is of such size, shape, topography, location
6 or condition that it is impossible for the applicant to conform to the provisions
7 of this ordinance, provided the conditions cited as causing the need for the
8 variance are not the result of action or inaction of the applicant, or

9 ~~(b)~~2. That conditions exist where the health, welfare, and safety
10 of the public are seriously jeopardized and the jeopardy cannot be eliminated
11 unless a variance from the provisions of this ordinance is approved, or

12 ~~(c)~~3. The applicant satisfactorily demonstrates that a deviation
13 from the standards associated with preservation and conservation areas set
14 forth in this Chapter will not substantially impact the function of the
15 preservation or conservation areas, or

16 ~~(d)~~4. The provisions of this Chapter, excluding those applicable
17 only to vested development, prohibit the construction of vested development
18 on vested property. Any variance granted under this subparagraph shall not
19 authorize more development than is vested.

20
21 ~~(3)~~ ~~(c)~~ *Decisions of Board:*

22 ~~All decisions of the Environmental Variance Board shall be consistent~~
23 ~~with the specific intent of this ordinance.~~

24
25 (2) **Public Sector Linear Infrastructure Variances.**

26 (a) *Standards and Procedures.*

27 1. *Less than or equal to 2 acres of development activity:* A
28 governmental entity may petition the **City Manager** for a variance from the
29 provisions of this ordinance prior to permit approval or denial of an existing
30 or new public sector infrastructure project that contains no more than 2 acres
31 of development activity and will become a component of a public sector linear
32 infrastructure system.

33 2. *More than 2 acres of development activity:* A governmental
34 entity may petition the **City Commission** for a variance from the provisions
35 of this ordinance prior to permit approval or denial of an existing or new
36 public sector infrastructure project that contains more than 2 acres of
*Words in underlined text represent additions to and words in strike-through text represent deletions from
the existing Environmental Management Ordinance*

1 development activity and will become a component of a public sector linear
2 infrastructure system.

3 3. *Public sector linear infrastructure systems:* Examples of public
4 sector linear infrastructure systems include, but are not limited to
5 transportation systems such as roads, sidewalks and bikeways, water and
6 sewer distribution and collection systems, stormwater conveyance and
7 impoundment systems, telecommunication lines, gas and electric distribution
8 and transmission systems. Ancillary components or subsystems of linear
9 infrastructure systems, which functionally must be located adjacent to or
10 near the linear system may also request a variance under this subsection.

11 4. *Exemption:* Variances for these types of public sector projects
12 approved as provided herein are exempt from the restrictions in Policy 1.3.7
13 of the Comprehensive Plan Conservation Element, and are not limited to the
14 maximum 5% threshold associated with conservation or preservation areas.

15 5. *Growth Management Department review:* A petition for a
16 variance under this subsection shall be made after the approval of a Natural
17 Features Inventory and after review of an Environmental Impact Analysis by
18 the Growth Management Department, as applicable.

19 6. *Mitigation:* Evaluation of other feasible alternatives and
20 determination of appropriate mitigation shall be explored during the
21 Environmental Impact Analysis. Mitigation proposals shall include a
22 cost/benefit analysis.

23 7. *Action on the petition:* Following receipt of a variance petition,
24 the City Manager or City Commission shall review the petition, and either:

- 25 a. Approve the variance request or any portion thereof; or
26 b. Approve the variance request subject to conditions; or
27 c. Disapprove the variance request, specifying the reasons
28 therefore in writing.

29
30 **(b) *Criteria for Granting Variance.***

31 The City Manager or City Commission may grant the petition if it is
32 determined that:

33 1. The applicant satisfactorily demonstrates that all
34 practical alternatives have been evaluated and the public sector project
35 cannot practically be completed within the 5% threshold in Policy 1.3.7 of the

1 Comprehensive Plan Conservation Element or cannot be redesigned to avoid
2 impacting the conservation or preservation area, and

3 2. The applicant satisfactorily demonstrates that impacts to
4 the conservation and preservation areas are minimized, and adequate
5 mitigation will be provided which results in a net environmental benefit.
6

7 **Section 3. Subsection 7.5, of Chapter 28 of the City of Tallahassee**
8 **Code of Ordinances, regarding Definitions, is hereby amended by**
9 **adding the following definitions:**

10

11 **Severe Grades:** Natural grades (not man-made) greater than 20 percent.
12

13 **Significant Grades:** Natural grades (not man-made) between and
14 inclusive of 10 and 20 percent, of at least ¼ acre in size.
15

15

16 **Section 4. Conflicts.**

17 All ordinances or parts of ordinances in conflict with this ordinance are
18 hereby repealed to the extent of such conflicts, as of the effective date of this
19 ordinance, except to the extent of any conflicts with the Tallahassee-Leon
20 County Comprehensive Plan as amended, which provisions shall prevail over
21 any parts of this ordinance which are inconsistent, either in whole or in part,
22 with the said Comprehensive Plan.
23

23

24 **Section 5. Severability.**

25 If any word, phrase, clause, section or portion of this ordinance shall be held
26 invalid or unconstitutional by a court of competent jurisdiction, such portion
27 or words shall be deemed as a separate, distinct and independent provision
28 and such holding shall not affect the validity of the remaining portion of the
29 ordinance.
30

30

31 **Section 6. Effective Date.**

32 This ordinance shall become effective immediately upon its passage.
33

33

34

35

36