

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 791
Case No. 95-5
(Map Amendment - Springland Valley Tree
and Slope Protection Overlay District)
February 12, 1996

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on October 5, 1995. The Zoning Commission considered a petition from the Friends of Springland (FOS) and the Friends of the Earth (FOE) requesting the Commission to amend the Zoning Map by mapping the tree and slope protection (TSP) overlay in the Springland Valley area on an emergency basis. The Commission declined to amend the Zoning Map on an emergency basis, but set the petition down for a public hearing. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

The petition which was filed on May 22, 1995, requested the Commission to map the Tree and Slope Protection (TSP) overlay district in the Springland Valley area to protect and preserve the natural topography, mature trees, stream beds and the vegetation of the neighborhood from indiscrete developments. The petitioners expressed concern about the loss of major trees, and the negative impacts on the water quality and vegetation from clearing and grading for development.

The Springland Valley area is a residential neighborhood located along Reno Road and Springland Lane. It is bounded by Rodman Street on the south, Idaho Avenue on the west, Tilden Street on the north and Reno Road on the east.

The petitioners characterized the Springland Valley area as an environmentally sensitive area with steep slopes, small streams, and heavily wooded land. The area is presently zoned R-1-B.

The R-1-B District permits matter of right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

The petitioners requested TSP/R-1-B zoning. The TSP/R-1-B would modify the R-1-B zoning subject to Subsection 1511 through 1515 of the Zoning Regulations. The modification would provide for additional standards, which include a maximum lot occupancy of 30

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percent, a maximum impervious surface coverage of 50 percent, specified limitations on removal of trees and a special exception process providing for Board of Zoning Adjustment (BZA) review of site plans that cannot comply with matter of right standards under the TSP/R-1-B zoning.

Amendments to the text of the Zoning Regulations and the Zoning Map of the District of Columbia are authorized, pursuant to the Zoning Act (Act of June 20, 138, 52 Stat. 797, as amended, Section 5-413 et seq., D.C. Code, 1981 Ed).

Pursuant to 11 DCMR 3011 and by memorandum dated May 26, 1995, the Office of Zoning (OZ) referred the petition to the Office of Planning (OP) for a preliminary report and recommendation. The OP was also requested to determine whether the petition has sufficient grounds for the emergency action requested by the applicant.

By memorandum (preliminary report) dated June 9, 1995, the OP analyzed the planning and zoning issues of the TSP, the OP also reviewed the impact study of the proposed grading of a property in the area as a result of subdivision of lots recently approved for the subject area, and the impact of the proposed site development on slopes, trees and the stream beds. Based on all of the factors analyzed and referenced in the report, the Office of Planning reported that the proposed mapping of the TSP District had sufficient merit to be scheduled for a public hearing and recommended that the Commission schedule a public hearing.

The OP further indicated that the staff of the Environmental Regulation Administration of the Department of Consumer and Regulatory Affairs (DCRA) advised OP that the application for a grading permit for the area had triggered an environmental review by DCRA pursuant to the Environmental Policy Act. The water quality, storm water runoff, and the associated issues would be addressed in the environmental review. The DCRA added that the TSP overlay provisions, if enacted, would regulate the extent of tree cutting in the area. It also advised that if the TSP were to be mapped, other lots within the proposed area would also be subject to the TSP provisions.

As regards the petitioners' request for emergency action, the OP noted that the request appeared to be a request for expedited action for a set down which would provide interim controls while the Commission heard and decided the case.

At the public hearing session, the Commission considered the proposed amendment and heard the testimony of the OP, and the presentation of the law firm of Tersh Boasberg on behalf of the petitioners. The Commission heard the testimony of expert witnesses from the following firms in opposition to the proposed

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amendment: the Washington Management and Development Co., Inc.; J.B. Fleming Company; Exploration Research Inc.; Bengtson, Deball and Elkin, Ltd.; E. Hutton Starbuck Co. and the Continental Properties, Ltd. The Commission also heard the testimony of Advisory Neighborhood Commission (ANC) 3C and residents of the area.

The petitioners in presenting their case, commended the Zoning Commission for its foresight in establishing the Tree and Slope Protection overlay policy to preserve and enhance the park-like setting of designated neighborhoods that are adjacent to or characterized by streams, parks, sufficient quantity of steep slopes, mature trees and have undeveloped lots or parcels of land that are subject to terrain alteration and tree removal. The petitioners' representative further testified as follows:

1. The Springland area is a very pleasant residential neighborhood with a variety of lovely mature trees on some very steep and undeveloped hillsides. Directly across the street from the lower or eastern end of the area is the Hazen Arm of Rock Creek National Park. A small stream called Adlum Spring Run flows alongside part of Springland Lane. Many springs can be found in this area, as it is a key part of the headwaters of the Hazen Arm of Rock Creek. Contrary to some assertions, this stream flows year round. Even the record drought this past August did not halt its flow. The stream goes under Reno Road and enters the Park and flows into Rock Creek itself one mile downstream.
2. National environmental organizations are very concerned about the maintenance of high quality waters in the upper reaches of watersheds. Today, a visitor to the Hazen Arm of Rock Creek Park can see some of the damage caused by storm runoff and sedimentation.
3. Rock Creek Park is a national treasure. We need to do our best to maintain its high quality waters and to protect its watershed to the greatest extent we can. The overlay district is the ideal mechanism to help accomplish these objectives. Conversely, in the absence of such an overlay district, development pressures are likely to cause serious harm directly to the forested hillsides and downstream to the national park. The very good water quality in Adlum Spring Run would be impacted if substantial portions of the forested hillsides are cleared and bulldozed.
4. There is a need to protect the steep slopes so as to prevent additional aggravation of the scouring and sedimentation problem. Good forest cover is essential in this endeavor. Loss of forest cover can disrupt the hydrologic cycle, which

can increase the recharge which, in turn, provides stream flow in drier periods. Deforestation can also aggravate the problem of high and low flows by rapidly shuttling water downstream rather than holding the raindrop where it falls.

By memorandum (final report) dated September 28, 1995 and through testimony at the public hearing, the OP reiterated its position in the preliminary report that the proposed TSP/R-1-B has many of the characteristics of areas for which the zone was designed. Nevertheless, the OP stated that there remain the issues of geographic scope, equity in relation to the surrounding properties in the area and the interrelationship between zoning and the environmental impact statement (EIS) of the site which need to be resolved. The OP further testified as follows:

1. The area's characteristics, most of which are identified in Subsection 1511.5 for determining eligibility for mapping TSP zone, have been modified on many of the lots in the area. Sloping conditions are present to varying degrees throughout the area. Tree cutting and grading for home building in the 1930s and 1940s have left the remaining mature trees in scattered groupings or as isolated specimens, with only one location having a forested condition. Opponents are clearly wrong in asserting that the lots represent a fairly standard grid system of urban lots. Some generally rectangular lots have been created, but the predominant pattern is still that of oversized, irregularly-shaped lots.
2. The OP referred to the limited geographic area proposed for the zoning and expressed concern that the proposed overlay zone does not extend beyond the critical area where special regulations are arguably needed. Thus properties further removed from the critical watershed and treeshed are not subject to the overlay regulations. OP added, that if the TSP overlay is adopted, it would only regulate this subdivision.
3. The adoption of the proposal will also raise questions about fairness. The OP noted that apart from the six lots owned by Kennedy and currently proposed for development that there are 19 improved large lots in the subject area, with an average size of 15,684 square feet. These large lots could be subdivided for development under the R-1-B provisions which require a minimum lot size of 5,000 square feet. However, the lots are improved with houses which constitute a disincentive for subdivision.
4. The OP concluded that, a critical fact of the case is that there are no remaining vacant parcels for development in the area. Rather, there are six oversized lots with some effects

as might be expected at first review. This factor must be considered together with the extent of administrative processing that has occurred regarding the proposed subdivision on the Kennedy parcel.

5. As regards the environmental sensitivity of the Kennedy subdivision and its impact on the area, OP stated that the Army Corps of Engineers and the Fish and Wildlife Service have reviewed and approved the proposed development under the R-1-B subdivision approval. It added that an EIS has been required and that the extent of tree cutting that occurred in May was lawful, given the absence of general tree legislation in the city. The 25 remaining, "saved" trees might not be as many as would have been preserved had TSP zoning previously been in place. However, this zoning was not previously in place, and the timing of this map amendment makes adoption difficult to justify. OP recommended against the adoption of the TSP.

A representative of the District of Columbia Environmental Regulation Administration, Department of Consumer and Regulatory Affairs (DCRA) testified that a site investigation was conducted for the proposed Kennedy property at 3820 Reno Road, N.W., and that the development has submitted erosion and sediment control plans to the Soil Resources Management Division for review in an effort to obtain a permit to grade the plot of land.

The DCRA testimony continued that the aforementioned investigation revealed that the site in question has moderate to strong sloping topography with a natural swale draining into a small stream known as "Aldum Spring Run". The stream runs east along Springland Lane and is picked up by a storm sewer which appears to pass under Springland Lane and Reno Road before discharging into a creek. The area along the stream is designated a critical area and disturbance should be avoided if possible. Additionally, care should be taken to control erosion around the swale from any land disturbance. A buffer strip of existing vegetation should be preserved.

The DCRA noted that the erosion control plans submitted to the Soil Resources Management Division were inadequate, and its staff has made the following recommendations to the developers.

1. A Comprehensive Plan must be developed with appropriate base management practices (BMP'S) to control erosion and to protect the stream during and after construction.

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2. An EIS form must be completed and submitted to the Environmental Regulation Administration for the proposed development as part of the building permit process.
3. A stormwater management plan must also be developed for this site in accordance with D.C. Law 5-188.

Concluding, the representative stated that the developers have been very cooperative and have shown a willingness to work along with the District's engineering staff to achieve acceptable solutions to mitigate or reduce the negative impacts of the proposed development on the site. Typically, the District's engineering and inspection staff members pay very close attention to projects of this nature when the site has been subdivided for individual homes. It has been the experience of the District that after the initial development plans have been approved and construction started, in some cases a few of the home sites will later be sold off and developed separately (often without following approved plans). For this reason, inspections become a critical part of assuring compliance with approved controls and management practices.

By letter dated September 28, 1995, Advisory Neighborhood Commission (ANC 3C) passed a resolution in support of the TSP overlay as proposed by the FOE and FOS. In the resolution, the ANC indicated that it would support additional zoning controls that will protect the environmental sensitivity of the area. The ANC also designated its Chairman, Mr. Phil Mendelson, to testify at the hearing on its behalf.

In written testimony presented at the hearing, ANC-3C urged the Commission to adopt the TSP overlay for the Springland Valley area. The ANC highlighted its support for the TSP overlay regulations when they were enacted, and its subsequent support for the application of the regulations to the Woodland-Normanstone area. The ANC likened the Springland Valley area to the Woodland-Normanstone area. It stressed the similarities of the two neighborhoods as regards wooded slopes and environmentally sensitive areas. It stated that without the TSP overlay, traditional subdivision and development could and would result in cutting of trees, loss of vegetation, water runoff and the degradation of the water table, and the natural habitat. To further its support for the proposal, ANC-3C referred to Sections 1200.301 through 1200.302 of the Comprehensive Plan (a portion of the Ward 3 Plan). The following points were made by ANC-3C as reflecting the spirit of the Ward 3 Plan:

1. Areas in Ward 3 that are environmentally valuable and sensitive must be low density in development and shall be restricted beyond R-1 District restrictions to protect the sensitivity of the soil.

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2. Development adjacent to parks which are designated landmarks which includes Rock Creek Park must be low density and shall be further restricted where advisable to protect unstable soils, eliminate runoff potential, and promote a green buffer between the built environment and these natural settings; development must avoid any adverse effect (known or plausibly suspected) on these landmarks, including the water quality, flora, and fauna, and should minimize any intrusion on views from these parks.
3. Encourage retention of natural growth and grades; minimize regrading or the removal of topsoil; establish new vegetation, especially trees; minimize the construction of impervious surfaces.
4. No streams in the ward should be channeled or culverted.

The ANC testimony added that environmental concerns are developed more thoroughly in the environmental and urban design sections of the Ward 3 Plan. This section provided that new development must be targeted, infill development carefully controlled and environmental qualities protected and improved. It highlighted that the Springland Lane TSP Overlay as proposed will not only implement the Ward 3 Plan provision, but would respect the existing environment and minimize impact on nearby parkland. The ANC urged the Commission to adopt the proposed Springland Valley TSP Overlay as proposed.

A representative of the National Park Service (NPS) testified in support of the proposal that there is no substitute for tree preservation in addressing the issues relating to water runoff and water quality. That, TSP with its regulatory effects on tree cutting has multiple environmental benefits.

About three residents of the area testified in support of the proposal. The proponents' testimony was based on the same concerns expressed by ANC-3C. They added that Mrs. Kennedy who owns the 1.6 acre-parcel which is currently subdivided into multiple properties for development has not lived in the neighborhood for years and does not know the extent of damage the development will do to the neighborhood. They argued that to let the development of this subdivision proceed without the TSP overlay will destroy the support system for Washington's historic park area.

Ms. Marthajane Kennedy, the owner of the Kennedy property which is the target for the TSP proposal testified in opposition and gave the chronological history of the developments in the area. Testimony included the following points:

1. The subdivision known as the Kennedy Property is zoned for the intended purpose of allowing for a density of 13 lots of 5,000 square feet each. Some years ago, the Kennedy family was offered well in excess of 1.2 million dollars for the property. The purchaser intended to build 13 houses. Neighbors complained and she agreed with the neighbors that 13 houses would be excessive and voluntarily forfeited the offer, which resulted in a substantial loss to her family.
2. With this forfeiture, she indicated that she had sacrificed a lot to please the neighbors. She added that it would be very unreasonable for the neighbors to oppose the present proposal to build less than 50 percent of the original 13 homes, a mere six houses.
3. Ms. Kennedy pointed out that all through the years, neighbors have dumped trash, Christmas trees, fall leaves etc. on the property and in the brook. She indicated that the family has experienced constant annoyance with trespassing by neighbors on their property.
4. In regard to the brook, she asserted that the brook is bone dry frequently, and added that if 80,000 gallons of water flooded through this brook as the neighbors claim, the culvert would obviously have to be much larger than the one now in place. The developers do not propose to interfere with the flow (when it does have water) of the brook.
5. The houses to be built on this site will be priced somewhere around \$800,000 - \$850,000 each. Manifestly, persons in a position to buy and occupy these houses will be affluent people in the high income brackets. This will be to the benefit of the D.C. Treasury.
6. The Kennedy family has been paying taxes and insurance on this land for decades. This cannot continue for the pleasure of the neighbors. The property has been on the market for years, and any reasonable offer from anyone including the neighbors, would have been thoughtfully considered.

The law firm of Kass and Skalet presented evidence on behalf of Ms. Kennedy in opposition to the proposal to map the TSP Overlay at Springland. The Washington Management and Development Company, E. Hutton Starbuck Co., Inc., J.B. Fleming Company, Exploration Research, Inc., The Continental Properties Ltd. and four residents of the area, all testified in opposition to the proposal. The above opponents of the proposal, through various written statements introduced into the record of the case and by testimony at the public hearing, advanced the following, as the basis of their opposition:

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1. The petition to map a TSP overlay district in the fully developed Springland neighborhood which purports to protect the environment is clearly intended to block the sale and development of the Kennedy Parcel.
2. The Kennedy Parcel is owned by the Clephane Arnot Kennedy Charitable Remainder Unitrust, on which the contract purchasers have long been planning to build six luxury homes. These homes could generate millions of desperately needed new tax dollars for the District, and create many desperately needed jobs for District residents.
3. The project site is urban in character and does not meet the criteria for a TSP Overlay District. It is located in a densely settled, fully developed neighborhood, appropriately zoned for residential development, subdivided and recorded in a rectangular grid system, and surrounded by old single-family homes. In November, 1994, the D.C. Zoning Administrator determined that the property could be subdivided into six lots as a matter of right and it was so subdivided and recorded in May, 1995. The site is ready to be developed with normal clearing, grading, storm water management and sediment control.
4. Although, historically the site has been treated as a public park and dumping ground by the "Friends of Springland," it is important to emphasize that the Kennedy Parcel is a private property located in a residential neighborhood of luxury homes, and zoned R-1-B for residential development.
5. Despite the new-found interest of the "Friends" in preserving the trees and stream on the Kennedy Parcel, the record clearly demonstrates that the true goal of the "Friends" is to preserve the private Kennedy Parcel, at public expense, as the private playground and dumping ground for a few neighbors.
6. Given the dire need of the District for new sources of revenue, the sale of the Kennedy Parcel would generate millions of dollars in desperately needed property taxes for D.C. and create jobs for dozens of D.C. citizens. Blocking the sale of this private property, already zoned for residential development, by mapping a TSP overlay district further contradicts D.C.'s urgent need to attract new, wealthy families to live in the District and contribute to the economic base of the city.
7. The Commission should not map the TSP overlay district on emergency basis as was requested. The City has not adequately studied this issue. Incredibly, the D.C. Office of Planning has taken no position on this matter. This is not surprising,

for any close examination of this matter would reveal that the petition blatantly constitutes "spot zoning" since it only affects the Kennedy Parcel.

8. Furthermore, mapping the TSP overlay district under the present circumstance would constitute a "taking" in violation of the property owner's constitutional rights under the 5th and 14th Amendments. It represents a transparent effort by a few neighbors to achieve a public taking for the private benefit of few individuals. Mapping of the TSP overlay district is unfair, punitive and irrational.
9. The developers have repeatedly solicited input from the neighbors, providing them with the plans and meeting with them individually and in groups in the presence of ANC-3C. Unfortunately, the FOE and FOS refused to meet with the developers.
10. The petition for a TSP overlay district was submitted after the contract for the sale of the Kennedy Parcel was signed and after the developers submitted relevant permit applications. The developers have been in the permit process since last February. Mapping the TSP overlay district will send a loud, clear signal to property owners and business persons that it is virtually impossible to do business with D.C.
11. The environment will be protected without mapping a TSP overlay district. After first obtaining the personal assurances of the Chief of the D.C. Zoning Review Branch that the site did not lie within a TSP overlay district, the Kennedy Parcel already has been lawfully cleared of interior trees for the proposed development, rendering a TSP overlay district moot. The TSP overlay district is irrelevant, since the developers do not plan to cut down more trees and have carefully preserved the remaining street and yard trees, consistent with the remainder of the neighborhood.
12. The developers have worked carefully with their engineers, environmental consultants, the U.S. Army Corps of Engineers and the D.C. Environmental Regulation Administration to carefully protect the integrity of the swale, which may be a "stream," running through the property. The developers have prepared and submitted to the District of Columbia a detailed Engineering Site Plan, Earthwork and Grading Plan, Stormwater Management Plan, Sediment and Erosion Control Plan, Storm Drain and Paving Plan and a Water and Sewer Plan.

The opposition also introduced evidence to the record indicating that on July 5, 1995, the U.S. Army Corp of Engineers certified that the protective measures taken by the developers insured that no significant impact would occur to the water quality, and on May

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16, 1995, the U.S. Fish and Wildlife Service certified that no endangered species existed in the project area.

At the close of the public hearing, the Commission left the record of the case open for 26 days for witnesses to submit additional information or supplemental testimony, addressing some of the issues that arose during the course of the hearing.

The law firm of Tersh Boasberg, on behalf of the petitioners and in a post-hearing submission reinforced its position and addressed the issues raised by the opposition as follows:

1. The key question here is whether or not the Springland Valley area is an appropriate area for mapping a TSP overlay. This case is not about the Kennedy property. While the hearing on the TSP overlay is related to the Kennedy property development, the subject of the petition that triggered the hearing is not the Kennedy property or any other private property.
2. The appropriateness of the area for a TSP overlay is clear as indicated by the OP report, and the testimony of the applicant's expert witness. The significant quantity of steep slopes, several large mature trees, the presence of Adlum Spring Run, the Hazen Run and the Rock Creek make the Springland area suitable for a TSP overlay. All of these features have been recognized and documented by the OP and the National Park Service as deserving protection.
3. As to the issue of taking, the post-hearing submission argued that there is no taking whatsoever. If the Commission maps a TSP overlay in the Springland Valley area, none of the property owners will lose complete value of their property. There would be only an administrative requirement that owners go through a special exception if they wish to remove an extensive number of trees.
4. Addressing the "Spot Zoning" issue, the opposition argued that there is no spot zoning here, that all property owners in the area are treated equally. There are many lots in the area which have development potential and would be subjected to the TSP provisions if mapped.
5. In regard to the fact that other D.C. Agency environmental review, if adhered to, would protect the Springland Valley area, the submission indicated that those environmental protection provisions should be reviewed by the Commission in addition to TSP provisions

and not in substitution for the TSP provisions. It highlighted the Environmental Regulatory Administration's (ERA) testimony that ERA has no authority to change matter of right zoning, but to enhance the environment.

6. The post-hearing submission challenged the opposition's testimony that efforts were made to meet with the neighbors and the ANC-3C. However, it acknowledged that the developers met with the neighbors on April 25, 1995. The meeting did not go well. The developers angrily left the meeting convinced that the neighbors were going to challenge the development.
7. Following this unpleasant meeting, the developers, without any warning and without obtaining grading and building permits, cut 40 specimen trees. Calls were made to the developers' attorney and the developers themselves imploring them to stop this senseless act, but they ignored the calls.

The law firm of Kass and Skalet, in a post-hearing submission, responded to the issues that were raised during the public hearing. In discussing the issues raised, it submitted additional reports from various government agencies in opposition to the proposed TSP overlay, recapitulated its testimony and offered the following rebuttal:

1. The project site is subject to environmental review, grading review, zoning, electrical, structural, fire, water and sewer reviews. Developers are complying with all these requirements. The U.S. Fish and Wildlife Service, and the Army Corps of Engineers have reviewed and considered the project and determined that it meets federal regulations.
2. The Springland Valley area does not meet the criteria of the TSP regulations. The neighborhood is fully developed on a rectangular grid system. The TSP is not suitable for a neighborhood where nearly all the lots are already developed on a rectangular grid system.
3. The regulation is not intended to overlay individual parcels on a spot basis but is appropriate for areas like Normanstone/Woodland where there are substantial vacant lots and large tracks encompassing several square blocks mapped on a curvilinear basis for development on sensitive environment.
4. The six recorded lots constitute a typical infill site lacking the characteristics spelled out by the regula-

tions for a TSP overlay and exhaustive studies have resulted in the following documentation:

- a. Trees. There are no stands of mature trees. The site has been substantially cleared of trees and the few mature trees remaining are of the character of yard or street trees, many of which constitute a hazard or are otherwise in danger due to their proximity to the stream or due to their condition.
- b. Slopes. The subdivided lots contain slopes which are for the most part under 20 percent, ranging up to no more than 30 percent except in less than one percent of the site. As reflected in the submission of the engineers, the slopes are of a character found throughout the District which have already been developed without problems and which are suited for normal development and construction utilizing normal construction methods.

Reference to the Normanstone/Woodland tract reflects concern with slopes ranging for the most part above 30 percent and running up to 50 percent.

- c. Soils. The engineers have studied soil maps for the area and for the subject site. Test borings and site analysis over the last six months reflect suitable soil conditions for development with no characteristics of unstable soil conditions. As a result of the geotechnical studies and site visits, the engineers concluded that the overall subsurface conditions of this area appear generally suitable for both structures and pavements.
5. The post-hearing submission also contained statements which disagreed with the testimony of the OP at the hearing. It observed that the OP departed from the even handed reasoning of its written reports to the same arguments used by the petitioners. It also noted that the OP showed little respect for or confidence in the review and assessment capabilities of other District Government agencies.
 6. Additionally, it challenged the testimony of the representative of the National Park Service (NPS), in support of the petition on the ground that they had no knowledge that the NPS was considering the merits of the case and would take a position in it. The opponents opined in the post-hearing submission that the interests of the NPS are represented on the Zoning Commission itself through Commissioner Parsons. The NPS has neither reviewed nor

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assessed the development proposal, or heard from any of the experts before taking a position to support one party over another in an administrative proceeding.

By letter dated October 31, 1995, ANC-3C reaffirmed its support for the proposal and offered supplemental comments to its testimony rebutting the issues of "Taking" and "spot zoning" raised by the opposition as follows:

1. ANC-3C is particularly concerned with the canard put forth by the sole property owner who is in opposition to this case, that the overlay "constitutes a 'taking' in violation of the property owner's Constitutional rights and will expose D.C. to liability potentially exceeding \$1 million..." The Lucas case cited by the property owner only states that there "may" be a taking were the state regulation deprives land of all economically beneficial use. That is not the situation here.
2. Moreover, it has long been the case law in D.C. that "if there is a reasonable alternative economic use for the property after the imposition of the restriction on that property, there is no taking ... no matter how diminished the property may be in cash value and no matter if 'higher' or 'more beneficial' uses of the property have been proscribed." 900 G Street Associates v. Department of Housing and Community Development, 430 A.2d 1387, 1390 (D.C. 1981). The proposed tree and slope protection overlay would allow new construction on a number of lots and, therefore, cannot be characterized as taking.
3. This case is about more than one development project. The one property owner in opposition has attempted to paint this case as solely about its development project. But ANC-3C is on record supporting the proposed overlay because it is good for the Springland Lane area as a whole. The ANC fully recognizes that it will affect a great many individual property owners, and is impressed that virtually every affected property owner in the area is on record in support of the proposed overlay restriction.
4. A careful reading of the Office of Planning reports buttresses the point that the area as a whole has characteristics that qualify for the overlay. "From field observations, OP staff confirmed that the area proposed for TSP/R-1-B zoning is characterized by unusually steep slopes." Perhaps the major reason for the overlay is to enhance the environmental sensitivity of future development in this area, particularly given its proximity to Melvin C. Hazen Park. OP acknowledges that "The area proposed for this zoning appears to present significant issues regarding future loss of environmental

quality." The overlay is an important tool to protect the sensitive environment which matter of right zoning does not. The EIS process can be insufficient. The environmental review process does not directly regulate removal of major trees. On the other hand, the TSP zone provides standards up front to guide development along suitable lines vis-a-vis ground coverage, preservation of major trees, etc.

6. This zoning case is consistent with the Comprehensive Plan. Zoning must not be inconsistent with the Comprehensive Plan (see D.C. Code Subsection 5-414). ANC-3C's testimony enumerated the bases in the Plan for mapping the tree and slopes protection overlay in the Springland Lane area. The Ward 3 Plan (unlike most ward plans) specifically interprets the first 12 elements of the Comprehensive Plan with regard to the Ward and explicitly calls for wider mapping of the overlay. The fact that "Springland Lane" is not specifically mentioned in the Ward 3 Plan is irrelevant; most Ward 3 neighborhoods are not specifically named but nevertheless fall within the general descriptions in the Plan.
7. The developer's chronology is disingenuous and irrelevant. ANC-3C first learned of the John Pyles development proposal from Springland Lane residents in late April. A Commissioner attended a community meeting with Mr. Pyles on April 25 and requested that the developer present his plans to the ANC. However, the developer has never attended an ANC meeting nor contacted the ANC in any way. Further, although the ANC was assured at the April 25th meeting that a subdivision would not be made until June, with development commencing sometime thereafter, the ANC learned -- again, from Springland Lane residents -- that the subdivision had already been applied for and was recorded May 2nd. Insofar as this ANC is concerned, the developer had made no effort to work with the community and, in fact, has rushed to co-opt the neighborhood.

The OP, by a memorandum dated November 6, 1995 (Summary Abstract and Final Comments) highlighted the points made by the witnesses at the public hearing. The report restated the substantive issues in the case and urged the Commission to base its decision on the suitability of the whole area for TSP zoning. It urged the Commission to take into consideration the presence of steep slopes, major tree cover, adjacent to public open space/streams, and availability of additional vacant parcels of land for development. The OP recommended that the Commission deny the TSP for the area and further stated as follows:

1. The area exhibits most of the characteristics identified in 1511.5 as determining eligibility for mapping the zone. However, several of the characteristics have been

modified on many of the lots in the area. Sloping conditions are present to varying degrees throughout the area. Tree cutting and grading for home building in the 1930s and 1940s have left the remaining mature trees in scattered groupings or as isolated specimens, with only one location having a forested condition.

2. The predominant lot pattern is that of oversized, irregularly-shaped lots. Most of these large lots have areas of significant slopes. A number of the lots have large landscaped yards, including scattered trees. Significant stands of mature trees only occur in one or two locations outside the boundaries of the recent subdivision, which still has a significant number of large trees. A few clusters of large, apparently native trees, remain at some lot boundaries. The remaining large trees, whether native or planted, are isolated and can be characterized as yard trees.
3. It is true that the neighborhood is fully built-up except for the recently subdivided Kennedy parcel and that the improvements on several of the petitioners' lots have damaged the stream bed as a result of removal of trees, grading, and converting the stream. The mistakes of the past cannot be mitigated or controlled by TSP zoning.
4. The extent of the tree cutting that occurred in May was lawful, given the absence of general tree legislation in the city. The 25 remaining, "saved" trees might not be as many as would have been preserved had TSP zoning previously been in place. However, this zoning was not previously in place, and the timing of this map amendment makes adoption difficult to justify.
5. All the lots in the area are irregular in shape, reflecting the sloping topography of the area. Nearly all of the 19 lots in the area, exclusive of the Kennedy parcel, are developed with houses, but the largest eight lots which range in sizes from 12,000 to 46,000 square feet indicate significant potential for further subdivision. However, the houses on the lots constitute disincentives for subdivisions, and there are no remaining vacant parcels for development in the area.

Friends of the Earth, one of the petitioners in conjunction with the Sierra Club submitted supplemental testimony which criticized and observed some inconsistencies and misrepresentations in the opposition's testimony. It disputed the contention that the Springland Valley neighborhood is fully developed and subdivided in a rectangular grid system, that the proposal only targets the

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Kennedy parcel and that TSP in the area will constitute spot zoning and taking.

The supplemental testimony indicated that the need for the TSP overlay involves the protection of public resources enjoyed by a large number of Washingtonians. The fact that the stream has been degraded should not preclude action since restoration and protection of the natural resource base that now exists is particularly urgent before further degradation makes recovery and restoration too difficult to achieve.

At its regular monthly meeting, the Zoning Commission discussed the Springland Valley TSP Overlay proposal in the context of the October 5, 1995, public hearing. The Commission evaluated all of the testimony presented at the hearing and reviewed all of the post-hearing submissions both in support and in opposition. The Commission also reviewed, discussed, and evaluated the OP summary abstract and final comments dated November 6, 1995, and the ANC-3C report dated October 31, 1995, and finds as follows:

1. The crux of the case before the Commission is to determine the suitability of the Springland Valley area for a TSP overlay based on the provisions of Sections 1511 through Section 1515 of the Zoning Regulations and not on any particular piece of property or development in the area.
2. The Commission acknowledges that the area has steep slopes and some other characteristics that could qualify the neighborhood for a TSP overlay.
3. The Commission was concerned about the limited geographic area targeted by the proposal where nearly all of the adjacent lots in the area are already developed with yard grass, landscaping and scattered trees.
4. The sloping land and soil type are presumed developable with single-family homes with reasonable environmental measures, as evidenced by the development and terrain alteration in most of the lots in the area.
5. With respect to the Kennedy development, the Commission finds that the environmental sensitivity of the parcel, the cutting of mature trees and the effects of the defoliation of the subdivision on the stream, together with the number of trees preserved by the developers makes the subdivision in conformity with the surrounding properties. The developers and their engineers have made reasonable efforts to mitigate any foreseeable damage to the soil and the stream, as evidenced by several technical studies introduced into the record of the case.

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6. The Commission, after considering ANC-3C testimony and the post-hearing comments, is of the opinion that the ANC has been accorded the "great weight" to which it is entitled.

Based on the above findings, the Commission noted that the present characteristics of the neighborhood do not comply with the criteria for a TSP overlay, since home building of the mid 1930's and 40's have left generally rectangular lots which are interspersed with large irregularly shaped lots and too few remaining mature stands of trees to warrant the application of the overlay. Those mature trees which do exist are either yard trees or street trees. The land area of the proposed TSP is limited geographically and not comparable to other neighborhoods in the city that have the TSP overlay.

The Zoning Commission believes this area lacks the virgin forested qualities the Ward 3 Plan intended to protect in its anticipation of the further mapping of the TSP.

The Commission concurred with the OP recommendations and the testimony of the opposition that a TSP overlay is inappropriate for the area and is not in the best interest of the District of Columbia.

With the approval of the Army Corps of Engineers and the Fish and Wildlife Service in terms of wetland impact, the requirement of EIS and the written statement of the District of Columbia Environmental Regulation Administration Division of Department of Consumer and Regulatory Affairs (DCRA), the Commission was persuaded that the area is developable without adverse impact on the environmental fragility of the area.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS DENIAL** of the petition to map the Tree and Slope Protection (TSP) Overlay District in the Springland Valley area.

Vote of the Commission taken at the regular monthly meeting on November 13, 1995: 3-1 (Maybelle Taylor Bennett, Jerrily R. Kress and William L. Ensign to deny - John G. Parsons, opposed to the motion).

This order was adopted by the Zoning Commission at its regular monthly meeting on February 12, 1996, by a vote of 3-1: (Maybelle Taylor Bennett, William L. Ensign, and Jerrily R. Kress, to adopt the order - John G. Parsons, opposed to the motion).

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In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on APR 19 1996.


JERRILY R. KRESS
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning

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