

**CITY OF ORLANDO
QUASI-JUDICIAL APPEAL**

WANDA JONES,

Petitioner,

v.

**CITY OF ORLANDO, FLORIDA,
a Florida municipal corporation,**

Respondent,

and

JIM HALL,

Applicant/Respondent

Case No. QJ2015-005

Lower Case Nos. ZON2015-00021

MPL2015-00020

RECOMMENDED ORDER

The hearing in this matter was held on November 18, 2015, in Orlando, Florida, before
Frederick T. Reeves, Hearing Officer.

APPEARANCES

For Petitioner Wanda Jones:

Peri Sedigh, Esq.
2443 Grandview Ave.
Sanford, Florida 32771

For Respondent City of Orlando:

Kyle Shephard
Chief Assistant City Attorney
City of Orlando, Florida
Orlando City Hall
400 S. Orange Ave
Orlando, Florida 32801

For Applicant/Respondent Jim Hall:

Rebecca E. Rhoden, Esq.
M. Rebecca Wilson, Esq.
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
P.O. Box 2809
Orlando, Florida 32802-2809

DESCRIPTION OF SUBJECT PROPERTY

The Subject Property is located within the corporate limits of the City of Orlando, Florida (the "City"), north of W.D. Judge Road, west of N. John Young Parkway and south of W. New Hampshire Street. The Subject Property is comprised of three legal parcels identified as Parcel Identification Numbers 21-22-29-5844-00-170, 21-22-29-0000-00-001, and 21-22-29-5844-00-150, and has the following legal description:

LOT 15, 17 THROUGH 27, 41 THROUGH 44 AND PORTION OF 53 THROUGH 56, WILLIS R. MUNGER'S SUBDIVISION AS RECORDED IN PLAT BOOK E, PAGE 3 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND THE SW 1/4 OF THE NW 1/4 OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 29 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 21, RUN SOUTH $00^{\circ}06'43''$ EAST ALONG THE WEST LINE OF SAID SECTION 21, A DISTANCE OF 15.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF NEW HAMPSHIRE STREET; THENCE RUN NORTH $89^{\circ}46'08''$ EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 329.60 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH $89^{\circ}46'08''$ EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 330.93 FEET; TO A POINT BEING THE NORTHEAST CORNER OF SAID LOT 15; THENCE RUN SOUTH $00^{\circ}13'52''$ EAST, ALONG THE EAST LINE OF SAID LOT 15 A DISTANCE OF 642.76 FEET TO THE SOUTHEAST CORNER OF SAID LOT 15; THENCE RUN NORTH $89^{\circ}36'44''$ EAST, ALONG THE NORTHERLY LINE OF SAID LOTS 19 THROUGH 24, A DISTANCE OF 1988.40 FEET TO A POINT ON THE EAST LINE OF THE NW 1/4 OF SAID SECTION 21; THENCE RUN SOUTH $00^{\circ}22'09''$ EAST ALONG SAID SECTION LINE, A DISTANCE OF 1934.16 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF COUNTRY CLUB ROAD; THENCE RUN SOUTH $89^{\circ}17'56''$ WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 2659.07 FEET TO A POINT ON THE AFORESAID WEST LINE OF SAID SECTION 21; THENCE RUN NORTH $00^{\circ}06'43''$ EAST ALONG SAID WEST LINE OF SECTION 21, A DISTANCE OF 1948.72 FEET TO THE NORTHWEST CORNER OF AFORESAID LOT 17; THENCE RUN NORTH $89^{\circ}36'44''$ EAST ALONG THE NORTH LINE OF SAID LOT 17, A DISTANCE OF 330.94 FEET TO THE SOUTHWEST CORNER OF AFORESAID LOT 15; THENCE RUN NORTH $00^{\circ}13'52''$ WEST ALONG THE WEST LINE OF SAID LOT 15, A DISTANCE OF 643.66 FEET TO A POINT OF BEGINNING.

CONTAINING 123.201 ACRES, MORE OR LESS.

STATEMENT OF THE ISSUES

The issues to be determined in this case are whether the City Municipal Planning Board's (hereinafter "MPB") approvals of the Applicant's quasi-judicial applications in Case No. ZON2015-00021 and Case No. MPL2015-00020 should be approved or overturned. In Case No. ZON2015-00021, the MPB recommended approval of an amendment to the land development regulations applicable to the subject property's Planned Development zoning designation in order to permit an industrial, rather than residential, development program. In Case No. MPL2015-00020, the MPB recommended approval of a master plan for the subject property of up to 1.03 million square feet of industrial use in two phases of development.

PRELIMINARY STATEMENT

On June 22, 2015, Jim Hall ("Applicant") filed the following four applications for land development orders with the City to allow for the development of an industrial park, which will be developed in two phases (the "Project"):

1. Case No. GMP2015-00022, seeking an amendment to the City's Growth Management Plan to change the Future Land Use Map designation for the Property from "Residential Low Intensity" to "Industrial";
2. Case No. GMP2015-00028, seeking an amendment to the City's Growth Management Plan Subarea Policy S.3.3 to limit truck access to and from the Property;
3. Case No. ZON2015-00021, seeking an amendment to the land development regulations applicable to the Property's Planned Development zoning designation to permit an industrial development program; and
4. Case No. MPL2015-00020, seeking master plan approval for up to 1.03 million square feet of industrial use in two phases of development.

On August 18, 2015, the MPB voted unanimously to recommend approval of the four applications.

Petitioner timely filed appeals challenging the recommended approvals in Case No. ZON2015-00021 and Case No. MPL2015-00020. Petitioner did not appeal the approvals in Case No. GMP2015-00022 and Case No. GMP2015-00028. The Applicant and the City timely filed written responses to Petitioner's appeal documents.

At the hearing, Petitioner presented the expert and lay testimony of Petitioner, Wanda Jones, who was accepted as an expert in wetlands identification only, but was not accepted as an expert on the issue of the impact of the Project on wetlands located on the Subject Property; and the lay testimony of David Jones, Deborah Green, Marchelle Robinson, Francis ("Buzz") Guilliame, and Lawanna Gelzer.

Applicant presented the expert testimony of Jim Hall, who was accepted as an expert in land planning; Fabricio Ponce, who was accepted as an expert in traffic engineering; and Joel Thomson, who was accepted as an expert in environmental science and wetlands.

The City presented the expert testimony of Michelle Beamon, who was accepted as an expert in city planning; and Matthew Wiesenfeld, who was accepted as an expert in transportation planning.

At the hearing, the Hearing Officer accepted the following numbered exhibits into evidence:

1. The Resume of Jim Hall, AICP, ASLA.
2. Composite Exhibit including all legal documents establishing the Project's existing entitlements:
 - a. August 2, 2006, Boundary Changes to the Property;
 - b. March 21, 2006, Municipal Planning Board Agenda Item Summary for

“Princeton Village”;

c. Ordinance adopted August 28, 2006, establishing the zoning classification of Planned Development (“PD”) for the Property.

3. Master Plan Application, dated June 22, 2015.
4. Planned Development Application, dated June 22, 2015.
5. Environmental Assessment, prepared by Thomson Environmental Consulting, dated June 22, 2015.
6. Traffic Impact Study, prepared by VHB in June 2015.
7. Staff Report to the Municipal Planning Board, dated August 10, 2015.
8. Addendum to the Staff Report, dated August 14, 2015.
9. The Resume of Fabricio Ponce, P.E.
10. The Resume of Joel Thomson.

The two-volume transcript of the hearing was provided to the Hearing Officer. The Petitioner and the Applicant filed proposed orders that were considered by the Hearing Officer in the preparation of this Recommended Order.

Findings of Fact

A. The Parties

1. Petitioner, Dr. Wanda Jones, is an individual who presently resides at 3620 Lake Lawne Avenue, Orlando, Florida 32808, and has resided at that address for over 40 years. The property located at 3620 Lake Lawne Avenue, Orlando, Florida 32808, is located within 200 yards of the Project.

2. Applicant/Respondent, Jim Hall, is the director of the planning and design studio at

VHB, a multidisciplinary firm of engineers, scientists, planners and designers representing the owner or owners of the Subject Property.

3. Respondent, City of Orlando, is a Florida municipal corporation.

B. The Subject Property and Current Approvals

4. The Subject Property consists of approximately 123.2 acres of undeveloped land.
5. Prior to June 2005, the Subject Property was located in Orange County, Florida.
6. While in Orange County, the Subject Property was categorized on the Orange County Comprehensive Plan Future Land Use Map as Industrial, and had a conceptual City Future Land Use category as Industrial.

7. In June 2005, the Subject Property was annexed into the City.

8. After annexation, the future land use designation for the Subject Property was changed from Industrial to Residential Low Intensity, Conservation and Urban Activity Center.

9. In 2006, the zoning for the Subject Property changed from County Industrial to City Planned Development.

10. The future land use designations for the properties surrounding the Subject Property are as follows:

- a. Property to the North – Industrial and Medium Density Residential (within Orange County).
- b. Property to the East – Residential Low Intensity and Conservation.
- c. Property to the South – Residential Medium Intensity, Residential Low Intensity, Low Density Residential (within Orange County) and Conservation.
- d. Property to the West – Residential Medium Intensity and Public, Recreational and Institutional.

11. The zoning designations for the properties surrounding the Subject Property are as follows:

- a. Property to the North – I-P/w and R-1A (within Orange County).
- b. Property to the East – PD/W and H/W.
- c. Property to the South – R-3B/W, PD/W, R-1 (within Orange County) and C/W and R-1A/W.
- d. Property to the West – R-3B/W and P/W.

12. The Subject Property is within the Wekiva Overlay District.

13. A project known as “Princeton Village” is currently approved to be developed under the Subject Property’s current zoning. Princeton Village is approved for 1,275 dwelling units, approximately 300,000 square feet of retail and an elementary school.

C. Wetlands Issues on the Subject Property

14. Under its current zoning, no existing wetlands located on the Subject Property are required to be retained.

15. The approved plans for Princeton Village did not retain any of the wetlands located on the Subject Property.

16. A Wetland Formal Determination permit was obtained from the St. Johns River Water Management District (“SJRWMD”), on February 20, 2008 (the “SJRWMD Permit”), which delineated the onsite jurisdictional wetlands and surface waters according to state methodology.

17. The SJRWMD Permit expired on February 20, 2013.

18. In April and May 2015, SJRWMD assessed the Subject Property and agreed that the prior wetland lines remain valid on the Subject Property, and continue to demarcate the

boundary of uplands and wetlands.

19. In May 2015, the U.S. Army Corps of Engineers agreed to the SJRWMD wetland line.

20. There are 36.48 acres of wetlands on the subject property

21. These wetlands are of low quality (approximately a .3 utilizing the Unified Mitigation Assessment Method ([UMAM]) due to the history of onsite and regional hydrologic impacts.

22. The wetlands are "altered wetlands" under the City of Orlando Code.

23. Approximately 9.31 acres of these wetlands are proposed to be impacted by the Project with the remainder of the wetlands being preserved.

24. The proposed storm water system for the Project will likely improve the natural function of the retained wetlands.

25. The only protected wildlife species documented on the subject property is two potentially occupied gopher tortoise burrows.

26. The subject property will obtain the permits necessary to relocate the potential onsite gopher tortoise population.

27. No indications of bald eagle activity (including nests or preferential nesting trees) or wading bird activity (including preferential nesting habitat or wetland communities) were observed on the subject property or in relevant proximity thereto.

28. While Petitioner presented lay testimony of sporadic, undocumented observations of certain species on or near the wetlands, this evidence was anecdotal at best and Petitioner presented no testimony or other evidence that species were roosting or nesting on the site and

presented no testimony or other evidence related to any identified habitat for any species on the site. Significantly, Petitioner failed to present any competent substantial evidence that the Project will disturb wildlife or endangered species on site.

29. In the Project, approximately 57.1% of the Subject Property will be green space/wetlands.

D. Traffic Issues on the Subject Property

30. In the Project, truck access to the Subject Property will be prohibited from south on W.D. Judge Road.

31. In the Project, truck access will only be permitted at the eastern and western limits of the Subject Property.

32. In the Project, the southern boundary of the Subject Property is a proposed storm water management area providing physical separation of the Subject Property from the residential homes south of W.D. Judge Road.

33. In the Project, there will be 20 feet of City Services Easement conveyed to the City of Orlando for the Lake Lawne Multi Use trail on the north side of W.D. Judge Road.

34. In the Project, there will be a landscaping buffer along the western boundary of the Property in accordance with the City's land development regulations.

35. In the Project, the average daily trips to the Subject Property will be 5,815, with 833 of those trips being during peak hours.

36. In the Project, of those average daily trips, only 765 of those will be truck trips, with 108 of those truck trips being during peak hours.

37. In the Project, the majority of the new trips generated to the Subject Property will

be from passenger cars.

38. The traffic that would have been created by the Princeton Village is higher than that which will be created by the Project.

39. The lighting plan for the Project will comply with the City's outdoor lighting code.

40. There is sufficient capacity in the City to provide the public services necessary for the Project, and the Project will not result in demands on public facilities and services that exceed the capacity of such facilities and services.

41. The testimony of Petitioner's witnesses on the foregoing issues related to traffic (paragraphs 30 through 40 above), while sincere and well-intentioned, was conclusory, speculative, and based in large part on hearsay. Petitioner presented no expert testimony or expert analysis of any kind on these issues. Clearly, no competent substantial evidence was introduced by Petitioner on these issues.

E. Environmental Justice Issues

42. Petitioner attempted to introduce matters into evidence concerning alleged environmental justice or racism issues related to the Project and Case Nos. ZON2015-00021 and MPL2015-00020. As set forth in paragraph 53 below, the Hearing Officer does not have the authority to determine or adjudicate this issue in these proceedings, and does not determine or adjudicate this issue in this Recommended Order.

F. Health Issues

43. Some of Petitioner's witnesses testified as to their concerns that increased pollution created by construction vehicles during construction, and trucks and other traffic after the Project

is developed, will adversely affect their health and the health of other unidentified individuals. The testimony of Petitioner's witnesses on this issue was speculative at best, and no competent substantial evidence necessary to substantiate these concerns was introduced at the hearing.

G. Property Value and Property Related Issues

44. Some of Petitioner's witnesses testified that, if the MPB's approvals of the applications in Case Nos. ZON2015-00021 and MPL2015-00020 are not overturned, the property values of the Petitioner and others will decline and that the failure to overturn these approvals may constitute a taking of their properties. The testimony of Petitioner's witnesses on these issues was speculative at best, these witnesses were not qualified to give such opinions (especially as to the effect of the Project on their property values, and certainly not as to takings), and no competent substantial evidence proving these issues was introduced at the hearing. Also, testimony related to the quiet enjoyment of Petitioner's property was also speculative and no other competent substantial evidence on this issue was presented at the hearing.

H. Notice and Due Process Issues

45. Petitioner received sufficient notice in this matter by seeing a red public-notice sign posted on W.D. Judge Road. In any event, any objections made by Petitioner as to notice are waived due to her participation in the application proceedings prior to this quasi-judicial appeal (the development review process) and by her participation in this quasi-judicial appeal as a party. Otherwise, all notice provisions applicable to Case Nos. ZON2015-00021 and MPL2015-00020, have been fully complied with, and full and sufficient due process in Case Nos. ZON2015-00021 and MPL2015-00020 has been afforded during the development review process and these proceedings.

CONCLUSIONS OF LAW

46. “The party filing the hearing request shall have the burden of coming forward with the evidence and the burden of proof.” Orlando City Code Sec. 2.207(5). Additionally, “the decision of the Hearing Officer must be based upon competent substantial evidence.” Id.

47. Hence, at the hearing, Petitioner, Wanda Jones, had the burden of producing competent substantial evidence to justify overturning the MPB’s approval of the applications in Case Nos. ZON2015-00021 and MPL2015-00020, and had the ultimate burden of proof.

48. The Florida Supreme Court has defined “competent substantial evidence” as follows:

We have used the term ‘competent substantial evidence’ advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective “competent” to modify the word “substantial,” we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.

DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957) (internal citations omitted).

49. At the hearing, Petitioner failed to produce the required competent substantial evidence necessary to justify overturning the MPB’s approval of the applications in Case Nos. ZON2015-00021 and MPL2015-00020, and failed to meet her burden of proof.

50. The testimony of Petitioner’s witnesses was largely conclusory, speculative, and based on hearsay or based on documents which were not introduced into evidence.

51. The MPB’s approvals of the applications in Case Nos. ZON2015-00021 and

MPL2015-00020 are not in violation of any part or subpart of Secs. 187.201(9), 187.201(14), and 187.201(15), Fla. Stat., or City of Orlando Code Secs. 58.101 and 63.100.

52. The MPB's approvals of the applications in Case Nos. ZON2015-00021 and MPL2015-00020 are not in violation of any other local, state or federal act cited by Petitioner at hearing or in the papers filed by Petitioner in this proceeding.

53. As to the environmental justice/racism issue, the Hearing Officer has not located, and the parties have not identified, any legal authority giving a Hearing Officer in this type of proceeding the authority to determine or adjudicate such an issue. Accordingly, the Hearing Officer rules that he has no authority in this type of a proceeding to determine or adjudicate this issue, and makes no determination or adjudication of this issue.

54. Even though Petitioner has the burden of proof of coming forward with the evidence in this proceeding and the ultimate burden of proof, the Applicant and the City produced competent substantial evidence in support of the applications in Case Nos. ZON2015-00021 and MPL2015-00020 at the hearing.

55. The expert testimony and documentary evidence introduced by the Applicant and the City constitute competent substantial evidence that the MPB approvals of the applications in Case Nos. ZON2015-00021 and MPL2015-00020 should be approved and not overturned. See *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So.2d 202, 205 (Fla. 3d DCA 2003) (confirming that the testimony of professional staff, when based on "professional experiences and personal observations, as well as [information contained in an] application, site plan, and traffic study" constitutes competent substantial evidence); *Palm Beach Cnty. v. Allen Morris Co.*, 547 So.2d 690, 694 (Fla. 4th DCA 1989) (confirming that professional staff reports

analyzing a proposed use constituted competent substantial evidence); *Metro. Dade Cnty. v. Fuller*, 515 So.2d 1312, 1314 (Fla. 3d DCA 1987) (stating that staff recommendations constituted evidence); *Dade Cnty. v. United Res., Inc.*, 374 So.2d 1046, 1050 (Fla. 3d DCA 1979) (confirming that the recommendation of professional staff “is probative”).

56. The competent substantial evidence submitted by the Applicant and the City at the hearing demonstrates that the applications in Case Nos. ZON2015-00021 and MPL2015-00020 are consistent with the State of Florida Comprehensive Plan, Chap. 187, Fla. Stat., the East Central Florida Strategic Regional Policy Plan, Part II, Chapter 163, Fla. Stat., the City’s Growth Management Plan (also known as the Growth Management Policy), and the City’s Land Development Code. Additionally, the Applicant and the City, by competent substantial evidence, have established that the applications are consistent with the surrounding land use and development pattern.

57. Applicant’s Motion for Directed Verdict made during the hearing is DENIED.

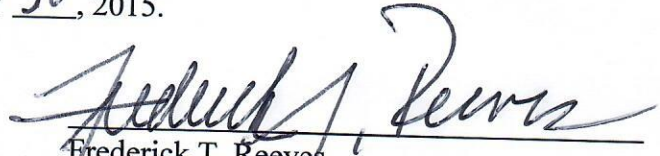
Recommendation

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

A. Petitioner’s request to overturn the MPB’s recommended approval of the application in Case No. ZON2015-00021 be denied in its entirety, and the MPB’s recommended approval of the application in Case No. ZON2015-00021 be approved; and

B. Petitioner’s request to overturn the MPB’s recommended approval of the application in Case No. MPL2015-00020 be denied in its entirety, and the MPB’s recommended approval of the application in Case No. MPL2015-00020 be approved.

DONE AND ORDERED on December 30, 2015.


Frederick T. Reeves
Hearing Officer

Original to Hearing Administrator/
Land Use Paralegal for distribution to
parties.