

**ARTICLE XXXII QUASI-JUDICIAL HEARING**  
**IN THE CITY OF ORLANDO, FLORIDA**

**EXCEPTIONS TO THE RECOMMENDED ORDER**

**FRANK SEBESTYEN,  
RONALD CUMELLO AND  
JOHN DALY  
PETITIONERS,**

**CASE NO. QJ2016-001  
LOWER CASE NO. ZON2015-000032**

**v.**

**CITY OF ORLANDO FLORIDA,  
A FLORIDA MUNICIPAL CORPORATION  
RESPONDENT,**

**AND**

**MOCKINGBIRD ORLANDO LLC/  
MIRANDA FITZGERALD, ESQ  
APPLICANT/ RESPONDENT**

Petitioner files an exception to the Recommended Order “Conclusions of Law” Section IV, Page 8, wherein the Hearing Officer states: that “The proposed City Planned Development designation on the property complies with (i) the State of Florida Comprehensive Plan (Chapter 187, Florida Statutes), (ii) County and Municipal Planning Land Development Regulation (Chapter 163 Florida Statutes, Part II), (iii) the City’s Growth Management Plan, (iv) the City’s Comprehensive Plan, and (v) all other applicable codes ordinances and laws at issue.

While the Recommended Order indicates that the proposed actions are in compliance with existing law, this does not indicate that the decision is ethical or moral given the significant concerns raised by current community residents. Moving forward with the proposed changes does not meet the spirit or intent of a collaborative and transparent approach between the City staff and the residents of Vista East. The Recommended Order failed to address a number of issues identified in the Hearing by the Petitioners including:

1. **CITY INABILITY TO DEFINE ADVERSE IMPACT:** The City Staff report (Exhibit 34) indicates that there is "no adverse impact" of the proposed zoning. However, testimony by Mr. Flynn, Ms. Dang and Ms.

Fitzgerald specifically indicated that the City does not have a clear and reasonable definition of "adverse impact". None of the City's subject matter experts could identify a definition of "adverse impact", including those directly responsible for making such assessments. Current residents clearly articulated the adverse impacts of the proposed zoning change on existing neighborhoods in the Vista East area through their comments/ participation in community meetings, presentations at the MPB and City Council meetings (Exhibit 35) and signed petitions (Exhibit 30). The City does not have a systematic and repeatable process to assess adverse impact. Without such a process, they have no way of reaching the conclusion that the proposed zoning change has "no adverse impact". This faulty assessment likely played a key role in the MPB decision-making regarding this proposed zoning change. Audio recordings from the MPB indicate that two of the MPB members shared resident concerns regarding adverse impact, and ultimately voted "no" to this zoning change.

2. **DEFINING COMPATABILITY WITH EXISTING NEIGHBORHOODS:** The City Staff report (Exhibit 34) indicates that the proposed zoning change is compatible with existing neighborhoods in Vista East. However, testimony by Ms. Dang and Ms. Fitzgerald indicated that the City does not have a side-by-side analytical comparison of the proposed zoning with existing neighborhoods in Vista East, as it relates to houses per square acre, size of neighborhood centers, parks, etc. For instance, the proposed zoning could allow for 5-story residential buildings in Vista Park, whereas there are currently no residential buildings higher than 3-Story in a 5 mile radius, with most being 2-story. Furthermore, the size of the proposed neighborhood center and regional parks for Vista Park are not consistent with existing neighborhoods in Vista East, including Vista Lakes. Audio recordings from the MPB indicate that two of the MPB members shared resident concerns regarding compatibility, and ultimately voted "no" to this zoning change.
3. **CITY COMMITMENT TO MEET WITH RESIDENTS NOT MET:** As early as November 2015 (Exhibit 33), neighborhood representatives requested a meeting with the City staff to address community concerns with the proposed project at Vista Park, specifically to address the adverse impacts that the proposed project would have on existing neighborhoods. The City staff did not honor the request, however the staff continued to meet with the property owner and prospective developer on their plans for the property. The City established that Commissioner Jim Gray is a high-ranking public official. In his capacity as a high-ranking public official,

Commissioner Gray publicly committed in three separate meetings, one in December 2015 and two in January 2016 (Exhibit 33), that the City Staff would meet directly with neighborhood representatives to address resident concerns regarding the proposed development in order to achieve acceptable outcomes that mitigated the adverse impact on current residents. Those meetings never occurred, despite resident requests to hold such meetings. This was corroborated by multiple witness testimonies. It would be irresponsible for the zoning to continue along its current path without adequately addressing resident concerns in a collaborative way.

4. **LACK OF DUE DILIGENCE BY CITY STAFF:** The City and the Applicant engaged in precedent-setting discussions regarding the future development of Vista Park without any input from the public through the Memorandum of Terms (Exhibit 17). This MOT included concessions by the City regarding Vista Park, Starwood and Bal-Bay properties. Interestingly, the City Staff report to the MPB and City Council does not consider the compounding negative impacts of the Starwood and Bal-Bay developments immediately adjacent to the Vista Park property, including the use of existing and proposed infrastructure. Furthermore, the initial community meeting regarding this development was held on November 12th (Exhibit 32), just two working days (one of which was a flexible work day for City Staff) before the MPB meeting and 6 days AFTER the City Staff report (Exhibit 34) was completed/posted. Similar timelines were used for the January community meeting in relation to the MPB meeting. This indicates a clear lack of integrity on the part of the City staff to adequately address resident concerns, including exploring all available options and potential risk assessments of implementing those potential options.
5. **UNRESOLVED ISSUES:** The issue of Passaic as a major thoroughfare, the proposed size of the Vista Park neighborhood center and the lack of a regional park are still issues that remain unresolved. Multiple witness testimonies indicated that the City continues to engage with the property owner and proposed developer on adjusting their plans regarding the neighborhood center and park location, indicating that there is still room for exploring options that may be favorable to current residents and would significantly reduce the adverse impact of the proposed development. With respect to Passaic, the GMP clearly indicates that new roadway plans should limit cut-through routes. The opening of Passaic, as proposed, would create such a condition. In addition, it would create a major intersection less than 500 feet from the entrance of Odyssey Middle School, at the entrance to the

Vista Lakes community center and less than 300 feet from the only ingress/egress point of the Warwick subdivision. These factors will create an unsafe condition for Orlando residents impacted by this change. The Applicant's testimony clearly indicated he did not have a full appreciation for the impact of Passaic as he was not aware that it was the only ingress/egress point for Warwick residents. Furthermore, the Applicant's testimony indicated that the proposed developer is willing to make further adjustments regarding Passaic, the neighborhood center and parks. The City should allow this to happen before moving forward with any zoning for this property.

6. **DOUBLE STANDARD:** Witness testimony at the start of the day considered Vista Park into the plans for Southeast Orlando, which was also noted in the audio recordings of the MPB and City Council meetings. However, when it came to holding the City accountable to the rules and regulations established for the Southeast Orlando District, the City changed its argument claiming that that Vista East was not part of the Southeast Orlando District as noted in Ms. Dang's testimony. This is a double standard that needs to be addressed.

It is clear from all of the available evidence and testimony that there are still viable options that need to be considered before moving forward with the proposed zoning approval in order to mitigate the adverse impact on existing residents in Vista East. The zoning change should be disapproved in order to allow the City staff, owner/developer and current residents to collaborate further to reach mutually agreeable terms to the future development of Vista Park. Based on the above omissions the Petitioner files an exception to the Recommended Order and the conclusion stated in Section IV Page 8.

#### Certificate of Service

I HEREBY CERTIFY that on July 6, 2016, a true and correct copy of the foregoing was filed with Cindy Sanford, City of Orlando's Quasi-Judicial Hearing Administrator, via electronic mail.

/s/ John J. Daly  
Petitioner

Cc: Frank Sebestyen  
Ron Cumello