

CITY OF ORLANDO QUASI-JUDICIAL HEARING
CASE NO. QJ2016-003

LAWANNA GELZER,
Petitioner,

v.

**SCOTT NEAL, ORLANDO SPORTS
HOLDINGS, LLC,**
Respondents/Applicants

**ECONOMIC DEVELOPMENT DEPARTMENT,
CITY OF ORLANDO, FLORIDA,**
Respondent.

RECOMMENDED ORDER

This is a quasi-judicial proceeding conducted in accordance with the Code of the City of Orlando, Florida ("Orlando City Code").

A. Parties

The parties are as follows:

1. The Petitioner is Lawanna Gelzer ("Petitioner" or "Gelzer"), the co-owner of Peabo Childcare Center located at 815 Hills Street, Orlando, Florida 32805.
2. The Respondents/Applicants are Scott Neal and Orlando Sports Holdings, LLC ("Applicants" or "Respondents"), the owners of the Orlando Soccer Stadium located at 655 W. Church Street, Orlando, Florida 32805.
3. The Respondent, Economic Development Department, City of Orlando, Florida (the "City"), is the department that includes the Appearance Review Board, which reviews and evaluates major certificate of appearance applications.

B. Address and Legal Description of Subject Property

Address: 655 W. Church Street, Orlando, Florida 32805

Legal Description:

Lots 1, 2, 3, 4 and 5, H.J. Patrick's Subdivision, according to the plat thereof as recorded in Plat Book F, Page 45, Public Records of Orange County, Florida.

Less and except: The right of way taking described in Official Records Book 10016, Page 4264, Public Records of Orange County, Florida.

and:

Lot 21, less the North 5 feet, and Lots 20, 22, and 23, Drew and Phillips Subdivision, according to the plat thereof, as recorded in Plat Book D, Page 128, Public Records of Orange County, Florida.

C. Proceedings Before the City of Orlando

On February 25, 2016, Petitioner, Lawanna Gelzer, filed a request for hearing from the Appearance Review Board's February 18, 2016 decision approving an amendment to an existing certificate of appearance for the Orlando City Soccer Stadium. Petitioner timely filed a Petition in Opposition alleging that approval of the certificate of appearance amendment violated the following:

- a. Downtown Design Guidelines;
- b. Future Land Use Element, Subarea Policy S.6.3;
- c. Future Land Use Element, Subarea Policy S.6.4; and
- d. Future Land Use Element, Subarea Policy S.6.9.

On April 6, 2016, the Respondent City, David J. Bass, Esq., filed a Motion to Dismiss Gelzer's petition alleging that Petitioner did not meet the standing requirements of the City Code, and did not comply with City Code Section 2.205(2)(a) because it failed to explain how Petitioner's substantial interests would be affected by the Architectural Review Board's decision.

On April 6, 2016, the Applicant/Respondent, Scott Neal and Orlando Sports Holdings, LLC filed a Motion to Dismiss Petition in Opposition, also alleging Petitioner's lack of standing.

On April 15, 2016, the City and the Applicant each filed a Response to the Petition in Opposition.

On April 21, 2016, Petitioner filed a (proposed) Amended Petition in Opposition, and on April 22, 2016, she filed a Motion for Leave to Amend Complaint. The proposed Amended Petition in Opposition sought to add Betty Gelzer as a petitioner. Further, the Amended Petition in Opposition contained allegations supporting Petitioner's standing to bring the appeal as an "adversely affected" person, and alleged that approval of the certificate of appearance amendment violated the Downtown Design Guidelines, and Future Land Use Element Subarea Policies S.6.3, S.6.4, and S.6.9. In addition, the proposed Amended Petition in Oppositions questions whether a public applicant can transfer its approved application to a private entity.

Pursuant to Orlando City Code, Chapter 2, Article XXXII, Section 2.206(4), Petitioner, Applicant and its counsel and Counsel for the City of Orlando, participated in a Pre-Hearing Conference on Wednesday, April 27, 2016 before the undersigned hearing officer, who appeared telephonically. The undersigned filed a Pre-Hearing Order on May 2, 2016. In part, the Pre-

Hearing Order required that responses to the Motions to Dismiss and Motion for Leave to Amend Petition be submitted to the Hearing Administrator by 5:00 p.m., Friday, May 6, 2016. In addition, the Order required that all anticipated Motion(s) in Limine and Motion(s) to Expand Scope be filed by 5:00 p.m., Friday, May 6, 2016.

On May 6, 2016, Petitioner timely submitted the following:

- Response to Motion to Dismiss, which alleged that Petitioners, Lawanna Gelzer and Betty Gelzer satisfied the standing requirements under the Code and Florida law.
- Petitioner Opposition of Applicant and Respondent Motion in Limine on May 6, 2016. Therein, Petitioner suggested that the Joint Motion in Limine should not be granted because “the Orlando Soccer Stadium was a public venue spearheaded by the City of Orlando from June 2013 until November 2015,” and that the transfer of the application from the City to Orlando Sports Holdings, LLC was done “at the end of the approval process in November 19, 2015 just before the final vote of approval of the soccer stadium in February 18, 2016.
- Petitioner also timely filed a Motion to Expand Scope and Timeframe, on May 6, 2016, wherein Petitioner alleged that:

[t]he Appearance Review Board’s approval is contingent upon other boards’ approval and processes; however, the City of Orlando is attempting to prevent proper procedure to vet and approve what is now a private venture through all required channels before final approval. The ARB final approval does not address critical concerns voiced by members during previous reviews, and several members on the board have changed since the soccer stadium project was first submitted as a public venue. In various city board approval processes, a public venue does not face the increased scrutiny private ventures face and the soccer stadium proposal has never gone through any city process solely as a “private” project.

Petitioner requested in the Motion to Expand, that the Orlando Soccer Stadium proposal “begin its approval process from the beginning as the private entity it actually is,” and that “ARB final approval be dismissed until complete and proper process is followed for the private stadium project, apart from the public venue project which is now void and nonexistent.” Finally, in the Motion to Expand, Petitioner again alleged that the Orlando Soccer Stadium violated the Downtown Design Guidelines, and Future Land Use Element Subarea Policies S.6.3, S.6.4, and S.6.9.

- Petitioner’s Response to Pending Motion(s) of City of Orlando to Dismiss “Petition in Opposition” which also contained allegations in support of Petitioner’s standing as an “adversely affected person” under the Orlando City Code, to bring this petition.

Also on May 6, 2016, the Applicant and the City timely submitted the following:

- Joint Opposition of the City of Orlando, Scott Neal and Orlando Sports Holdings, LLC to Motion for Leave to Amend Complaint in which the City and the Respondent
- Joint Motion in Limine and to Limit Scope of Final Hearing to the Issues Decided by the Appearance Review Board. The Joint Motion sought to limit the evidence, argument and testimony at the final hearing to only those matters relating to the February 18, 2106 Appearance Review Board decision.
- Joint Conditional Request of City of Orlando, Scott Neal and Orlando Sports Holdings, LLC for Judicial Notice, in which the Respondent and the City asked the undersigned to take judicial notice of Sections 402.3055(1)(a) and 402.308(2), Florida Statutes, and Florida Administrative Code Section 65C-22.001(1) and (2).
- Joint Conditional Motion of City of Orlando, Scott Neal and Orlando Sports Holdings, LLC for Oral Argument on Pending Matters.

On May 16, 2016, the Applicant/Respondent filed a Motion of Scott Neal and Orlando Sports Holdings, LLC to Compel Discovery from Lawanna Gelzer and Betty Gelzer, requesting that they each be compelled to produce their last three years' tax returns.

On May 17, 2016, the undersigned hearing officer entered a Consolidated Order on Respondent City's Motion to Dismiss, Petitioner's Motion to Amend Petitioner in Opposition, Joint Motion of City and Applicant in Limine and to Limit Scope of Final Hearing, and Petitioner's Motion to Expand Scope and Timeframe, which ruled on the various pending motions as follows: 1) Denied City's Motion to Dismiss; 2) Denied Applicant/Respondent's Motion to Dismiss; 3) Granted Petitioner's Motion for Leave to Amend, to the extent that it provided supporting allegations as to Petitioner's standing to bring this appeal, and to the extent that it provided supporting allegations as to the appeal of the February 18, 2016 ARB decision, and Denied all other matters in the Motion for Leave to Amend, including, but not limited to the addition of Betty Gelzer as a Petitioner; 4) Granted the Joint Motion in Limine and to Limit Scope of Final Hearing to the Issues Decided by the Appearance Review Board; and 5) Denied Petitioner's Motion to Expand Scope and Timeframe.

Also on May 17, 2016, the undersigned entered an Order on Applicant's Motion to Compel Discovery from Lawanna Gelzer and Betty Gelzer, which required Lawanna Gelzer to file a response to the Order with the Hearing Administrator on or before noon EST on Monday, May 23, 2016, to show cause why she should not be required to produce the requested Federal income tax returns.

On May 20, 2016, Applicant/Respondent filed Motion of Scott Neal and Orlando Sports Holdings, LLC to Prohibit Petitioner from Presenting Certain Evidence at Final Hearing. Therein, Applicant/Respondent requested that Petitioner be prohibited from introducing any exhibit or eliciting any testimony from any of her witnesses at the final hearing because she failed to comply with the May 2, 2016 Pre-Hearing Order in failing to file an exhibit list and failing to describe the nature of the anticipated testimony of her witnesses.

On May 23, 2016, the undersigned entered an Order denying Applicant's Motion to Prohibit Petitioner from Presenting Certain Evidence at Final Hearing, because it would have prohibited Petitioner from presenting any evidence at the final hearing, a result which the

undersigned considered an extremely harsh remedy, especially for a pro se Petitioner. Instead, the undersigned allowed Petitioner to submit an amended witness list and an amended exhibit list on or before 1:00 p.m. EST on Tuesday, May 24, 2016.

Also, on May 23, 2016, Petitioner filed Petitioner's, Lawanna Gelzer, Response to Order on Applicant's Motion to Compel Discovery from Lawanna Gelzer in which she asserted that she had provided adequate documentation to establish that she had an ownership interest in the business and property located at 815 Hills Street, Orlando, Florida 32805, and that the requirement to disclose the personal, confidential documentation of Petitioner was vexatious, harassing and burdensome.

On May 24, 2016, Applicants filed a Notice of Filing Deposition Transcripts of Lawanna Gelzer and Betty Gelzer.

On May 25, 2016, the undersigned hearing officer entered a Supplemental Order on Applicant's Motion to Compel Discover which directed Petitioner to bring the requested tax returns to the final hearing for an *in camera* inspection.

D. Proceedings Before the Hearing Officer

This quasi-judicial proceeding was assigned to the undersigned Hearing Officer. A quasi-judicial hearing was duly scheduled and conducted in the Manatee-B Conference Room, 6th Floor, Orlando City Hall, on Thursday, May 26, 2016. Petitioner appeared, as did Respondents, along with their attorneys, Daniel C. Johnson, Esq. and Christopher M. Paolini, Esq. The City appeared through its attorney, David J. Bss. The following witnesses appeared for the Petitioner: Ezell Harris, Elbert Bernard Dudley, Betty Gelzer and M.L. Spradley. The following witnesses appeared for the City: Doug Metzger – City Planning Director and Dean Grandin – Appearance Review Board Coordinator. All of the witnesses were sworn.

Petitioner called Ezell Harris, Elbert Bernard Dudley, Betty Gelzer and M.L. Spradley. Petitioner also testified on her own behalf. The City called Doug Metzger and Dean Grandin.

Petitioner's Exhibits 1, 2, 3, and 4 were identified and received as part of the record. Exhibit 1 is a transcript of the May 13, 2016 deposition of Betty Gelzer. Exhibit 2 is a notarized document signed by Betty Gelzer regarding Lawanna Gelzer's co-ownership of Peabo Child Care Center. Exhibit 3 is the City of Orlando Parking & Transportation Study for Orlando City Soccer Stadium dated July 2015. Exhibit 4 is a composite exhibit containing various licensing and certification documents for Peabo Child Care Center.

Applicant's Exhibits 1 through 55 were identified and received as part of the record as follows:

- Exhibit A1 is the Planned Development (PD) Application for the Orlando City Soccer Stadium parcel located at 655 W. Church Street.
- Exhibit A4 is a certified copy of the Staff Report to the Municipal Planning Board of December 16, 2014 for the Orlando Soccer Stadium PD (ZON2014-00028).

- Exhibit A5 is a certified copy of the Staff Report the Municipal Planning Board of December 16, 2014 for the Major League Soccer Stadium GMP Amendment.
- Exhibit A6 is a certified copy of the Staff Report to the Municipal Planning Board of December 16, 2014 for the partial abandonment of Parramore Avenue and Pine Street
- Exhibit A7 is a certified copy of the Municipal Planning Board minutes of December 16, 2014.
- Exhibit A8 is a certified copy of the City Council minutes dated January 26, 2015.
- Exhibit A9 is a certified copy of the City Council Minutes dated February 9, 2015.
- Exhibit A10 is a certified copy of Ordinance #2015-2, documentary #1502091204 dated February 9, 2015.
- Exhibit A11 is a certified copy of Ordinance #2015-3, documentary #1502091202 dated February 9, 2015.
- Exhibit A12 is a certified copy of Ordinance #2015-4, documentary #1502091203 dated February 9, 2015
- Exhibit A15 is a certified copy of the City Council minutes dated January 25, 2015.
- Exhibit A19 is the Appearance Review Board Major Review Application for the Soccer Stadium (18,000 seats)
- Exhibit A20 is the submittal documents for the Major Review Application
- Exhibit A22 is the Staff Report for Appearance Review Board Agenda Item #2 dated December 18, 2014 for 655 W. Church Street, Orlando Soccer Stadium
- Exhibit A23 is a certified copy of the Appearance Review Board Meeting Minutes of December 18, 2014.
- Exhibit A24 is a certified copy of the City Council Minutes dated January 12, 2015.
- Exhibit A26 is a copy of the Appearance Review Board Major Review Application for the Soccer Stadium (25,000 seats).
- Exhibit A29 is the Appearance Review Board Meeting Minutes dated November 19, 2015.
- Exhibit A33 is a PowerPoint presentation displayed at the hearing.
- Exhibit A34 is the Staff Report for the Appearance Review Board Agenda Item #2 dated February 18, 2016 for 655 W. Church Street, Orlando City Soccer Stadium.
- Exhibit A35 is a certified copy of the Appearance Review Board Meeting Minutes of February 18, 2016.
- Exhibit A35 a certified copy of the Appearance Review Board Meeting Minutes of February 18, 2016.
- Exhibit A36 is an illustration of the Sports & Entertainment Corridor.
- Exhibit A37 is a certified copy of the Application for a License to Operate a Child Care Facility for Peabo Child Care Center, License Certificate Number C09OR0337.
- Exhibit A38 is the Child Care Facility Certificate of License for Peabo Child Care Center.
- Exhibit A39 is a copy of the Orlando Local Business Tax Receipt for Peabo Day Care Center.
- Exhibit A40 is a certified copy of the Florida Department of State Application for Registration of Fictitious Name of Peabo Child Care Center, filed on May 21, 2014.
- Exhibit A41 is a certified copy of the Florida Department of State Application for Registration of Fictitious Name of Peabo Child Care Center, filed on January 30, 2008.

- Exhibit A47 is a copy of West's F.S.A. 402.3055.
- Exhibit A48 is a copy of West's F.S.A. 402.308.
- Exhibit A49 is a copy of Rule 65C-22.001, F.A.C.
- Exhibit A54 is a DVD of the Orlando City Soccer Stadium Surroundings Documentation (Mounted Camera Drive Around Property).
- Exhibit A55 is a series of still photographs depicting the properties and area surrounding the soccer stadium.
- Exhibit A59 is a copy of City of Orlando Code Sections 65.120 through 65.124 relating to the Appearance Review Board.

The proceedings were recorded by the City of Orlando.

At the conclusion of the hearing and in lieu of oral closing arguments, the undersigned hearing officer allowed the parties until June 13, 2016 to submit written closing arguments.

On June 13, 2016, Petitioner timely filed Petitioner's Closing Argument and Attachments A, B, and C thereto. Therein, Petitioner stated that through her testimony on May 26, 2016, she had demonstrated that the City's approval of the appearance certificate is not in compliance with Downtown Design Guidelines nor the Future Land Use Element Subarea Policies.

Also on June 13, 2016, the Applicants and the City timely filed Joint Closing Argument of the City of Orlando, Scott Neal and Orlando Sports Holdings, LLC in which they reiterated their arguments regarding Petitioner's lack of standing, and also summarized the evidence and testimony they had presented at the hearing.

On June 16, 2016, the Applicants filed Objection of Scott Neal and Orlando Sports Holdings, LLC to Petitioner's Proposed Recommended Order, in which they objected to the photograph attachments to Petitioner's Closing Argument which depict areas of the stadium other than those considered at the ARB meeting. The Applicants further objected to three documents not introduced into evidence, and to attempts to interject a completely new issue to these proceedings.

Issue

The issue in this proceeding is whether the Appearance Review Board's February 18, 2016 approval of the amendment to the Major Certificate of Appearance for the Orlando City Soccer Stadium violated the Downtown Design Guidelines and/or Future Land Use Element Subarea Policies S.6.3, S.6.4 or S.6.9.

Findings of Fact

1. The subject property of this proceeding is located in the historic Parramore District just west of downtown Orlando. Through a series of land use and other approvals, the site is zoned for use as a professional major league soccer stadium.

2. On December 16, 2014, the MPB unanimously approved a partial abandonment of certain portions of Parramore Avenue and Pine Street to allow for the development of the soccer stadium, and recommended that the Orlando City Council adopt an ordinance to that effect. MPB staff had recommended approval of this abandonment request. On February 9, 2015, the Orlando City Council adopted Ordinance 2015-2 vacating portions of Parramore Avenue and Pine Street.

3. Also, on December 16, 2014, the MPB unanimously approved a request to amend the City's Growth Management Plan Future Land Use designation for some of the land comprising the stadium project. The MPB recommended that the Orlando City Council adopt an ordinance in accordance with that recommendation. MPB staff also recommended approval of this request. On February 9, 2015, the Orlando City Council adopted Ordinance 2015-3, amending the City's Growth Management Plan (GMP) to assign the Future Land Use Map Designation of Public, Recreational, and Institutional to a portion of the subject property. The GMP approval resulted in all of the land comprising the stadium project having the same land use designation.

4. Finally, on December 16, 2014, the City of Orlando's Municipal Planning Board ("MPB") unanimously approved a Planned Development request for a major league soccer stadium and recommended that the Orlando City Council adopt an ordinance rezoning the subject property to Planned Development. MPB staff had also recommended approval of this request. On February 9, 2015, the Orlando City Council adopted Ordinance 2015-4, rezoning the subject property to the Orlando Soccer Stadium Planned Development.

5. The above three ordinances collectively effectuated the use of the subject property for a soccer stadium. No one, including Petitioner challenged any of the Ordinances or the MPB approvals leading to the Ordinances.

6. As part of its consideration of the rezoning application, MPB staff considered whether the proposed rezoning conformed with the City's Growth Management Plan and Land Development Code. Specifically, MPB staff determined that the subject property was within Future Land Use Element Subarea Policies S.6.3, S.6.4 and S.6.9, related to the Parramore area. MPB staff specifically addressed each of these policies in its staff reports for the GMP amendment and rezoning applications dated December 2, 2014 and December 11, 2014, respectively.

7. In finding that the GMP amendment application and the rezoning application were in conformance with the GMP, the MPB staff reports responded to each of these Subarea policies as follows:

- Subarea Policy S.6.3: The City's Land Development Regulations shall protect the residential integrity of the Parramore Heritage area, and increase the opportunities for appropriately located neighborhood-serving retail development.
The subject property is compatible with S.6.3. The development of a new MLS stadium will increase the draw to the Parramore area. This will generate opportunities for new residents as well as new retail development.

- Subarea Policy S.6.4: The City shall support façade improvements in this subarea in accordance with the Parramore Heritage Urban Design Plan.
The subject property is compatible with S.6.4. This project will be revitalizing the site with new development which has undergone Appearance Review.
- Subarea Policy S.6.9: The City of Orlando has determined that the over-concentration of social service uses in the Parramore Heritage Renovation Area has had a negative impact on the area's stability and prosperity. Likewise, the City has determined that the establishment of adult entertainment facilities would further limit the revitalization of the area. In order to protect existing residential areas, encourage reinvestment and promote the fair distribution of social services throughout the region, the City's Land Development Code shall include provisions to appropriately limit or prohibit the establishment, expansion, and relocation of such uses within Subarea 6.
The subject property is compatible with S.6.9. The future land use amendment is for Public/Recreational and Institutional designation in order to development a MLS Stadium and is not related to social services.

8. In addition to the above approvals, the appearance of soccer stadium project also had to be approved by the City of Orlando Appearance Review Board ("ARB").

9. The City ARB is a citizen board established pursuant to Section 65.120 of the City Code. It is comprised primarily of design professionals (e.g. architects, planners, landscape architects) and property owners in the downtown CRA. Pursuant to section 65.121 of the City Code, the primary duty of the ARB is to review applications for certificates of appearance approval and recommend to Council whether to approve, approve with conditions, or deny such applications. The ARB only considers matters related to the appearance of buildings.

10. The Applicant originally filed an ARB Major Review Application in May 2014. That application sought approval for a multi-use facility, designed to accommodate a variety of uses, including major league soccer. The proposed venue would seat approximately 19,000 spectators with infrastructure to expand to approximately 22,000 seats. This application included architectural plans, landscape plans and lighting details for the design of the proposed stadium.

11. City staff prepared a Staff Report for the Major Review Application, dated December 9, 2014. Based on its evaluation of the application and accompanying submittal documents, City staff recommended approval based on the Conditions of Approval contained in the Staff Report.

12. The ARB considered the 2014 Major Review Application at its December 18, 2014 meeting, and unanimously approved the application. This approval was not challenged by anyone.

13. At its January 12, 2015 meeting, the Orlando City Council ratified the ARB decision by accepting the December 18, 2014 ARB Meeting Minutes. City Council's action with respect to this ARB decision was likewise not challenged by anyone.

14. At some point after receiving the original ARB approval, the Applicant decided to expand the stadium from 19,000 to 25,000 seats. This expansion of the stadium changed the external appearance of the stadium, especially along the Church Street side where additional grandstands, a new canopy, and two levels of restrooms and concession structures were added. Thus, the Applicant was required to seek another Major Review Application from the ARB for these changes to the façade.

15. On or about October 9, 2015, the Applicant submitted a Major Review Application to amend the existing approval.

16. The ARB did not have the authority to approve the expansion, and it did not approve the expansion. The ARB was only authorized to approve the changes to the appearance that resulted from the expansion. Petitioner agreed that the ARB's scope of review was limited to appearance issues.

17. The ARB considered this application at its November 2015 meeting. At that meeting, the ARB expressed concerns about some of the façade treatments along Church Street, and therefore deferred the application to a later meeting.

18. Specifically, the ARB concerns were directed at the following three specific features of the revised stadium:

- 1) The location of the Parramore heritage display area;
- 2) Design of the Church Street entry not being a strong enough statement for the front entrance to the soccer stadium; and
- 3) The terminus of Parramore Avenue into Church Street, specifically, the absence of architectural treatment at that level.

19. In response to these concerns, the Applicant made design changes to the Church Street/Parramore Avenue terminus and also made design changes to the Church Street entry based on staff comments from the November 2015 ARB meeting. Additionally, the Applicant identified the location of the Parramore heritage exhibit area.

20. ARB staff prepared a Staff Report recommending approval of the amended application.

21. The ARB considered the amended application at its February 18, 2016 meeting. At that meeting, the ARB unanimously approved the amended application.

22. Pursuant to City Code Section 65.519, in their review of applications for appearance approval the Appearance Review Board must apply relevant appearance standards found in the City's Growth Management Plan, this Code, the city of Orlando Community Redevelopment Agency's community redevelopment plan adopted pursuant to Part III, Chapter 163, Florida Statutes, the adopted Downtown Design Guidelines, the adopted Downtown

Orlando Streetscape Guidelines, and the adopted Façade Guidelines, all as may be amended from time to time.

23. Petitioner's testimony at the hearing along with the testimony of her mother, Betty Gelzer, establish that Petitioner is the co-owner of the Peabo Child Care Center located in Parramore, notwithstanding the fact that they may have not recognized or appreciated errors and/or omissions in certain licensing and certification documents related to the operation of the child care center.

24. Petitioner's challenge to the ARB decision was based in part on her assertion that prior approvals were made when the stadium was a "public venue" which was later converted to a "private venue. Petitioner further asserted that the approval standard would have been different if the stadium had been a private venue from the start. However, Petitioner failed to provide any specifics as to how the standard would have been different.

25. Dean Grandin, the City Planning Director testified that the approval standard is the same regardless of whether the applicant is the City of Orlando or a private entity.

26. Petitioner also asserted that she would have been able to appeal on different levels if the venue had been private from its inception. However, Petitioner again failed to provide any specifics as to how the appeal process would have been different.

27. Petitioner's challenge was also based on her contention that the ARB decision was not in keeping with Future Land Use Element Subarea Policies S.6.3, S.6.4 and S.6.9. Doug Metzger, the ARB coordinator testified that review of these land use policies was outside the scope of ARB focus, which is the appearance of the stadium.

28. Petitioner's challenge was also based on the City's alleged violations of the Downtown Design Guidelines. Again, other than general statements about how these guidelines would have been more stringently applied for a private versus public venue, Petitioner provided no evidence to establish such violations.

29. Neither Petitioner nor any witness called by Petitioner at the hearing were able to identify any architectural or appearance features that did not comply with applicable codes, including Future Land Use Element Subarea Policies S.6.3, S.6.4 and S.6.9, and the Downtown Design Guidelines, as alleged in her Petition in Opposition.

30. Petitioner otherwise failed to introduce any evidence on the appearance changes that were the subject of the February 18, 2016 ARB decision, or how those changes violated any applicable codes.

31. Petitioner's testimony at the hearing made clear that her objection is really to the placement of the stadium on the subject property, regardless of its appearance. However, that issue was not before the ARB on February 18, 2016, and the undersigned hearing officer previously determined that matter was outside the scope of these proceedings.

Conclusions of Law

32. In order to provide adequate due process to applicants seeking quasi-judicial determinations, Chapter 2, Article XXXII of the Orlando City Code provides procedures for consideration by a Hearing Officer of a decision or recommendation made by various City boards, including the Appearance Review Board, when such board decision or recommendation involves subject matter determined by resolution of the City Council to be quasi-judicial in nature. The procedures require the Hearing Officer to consider all relevant evidence, the recommendation of the applicable City staff or board, and argument of the applicant and any other parties of record. Further pursuant to these procedures, the party filing the hearing request has the burden of coming forward with the evidence and the burden of proof, and the decision of the Hearing Officer must be based on competent substantial evidence after applying the criteria set forth in the Orlando City Code and any applicable administrative, federal and state case law in effect at the time the hearing request was filed. *See*: Sec. 2.207 of the City's Code of Ordinances.

33. Following the hearing, the Hearing Officer shall file a recommended order approving, denying, in whole or in part, the request of the applicant. *See*: Sec. 2.208 of the City's Code of Ordinances. The undersigned Hearing Officer has jurisdiction to conduct the hearing and to enter this order in accordance with the City of Orlando Code of Ordinances.

34. In keeping with the Orlando City Code and the quasi-judicial nature of these proceedings, the undersigned hearing officer did not consider any documents or other items which were not considered at the ARB meeting or introduced into evidence at the hearing in this matter. This Recommended Order is based solely on matters that were properly before the undersigned hearing officer.

35. Although somewhat tenuous, Petitioner has standing to challenge the February 18, 2016 decision of the ARB regarding the Major Review Application for the Orlando Soccer Stadium.

36. Petitioner failed to carry her burden of coming forward with evidence to support the alleged violations of Future Land Use Element Subarea Policies S.6.3, S.6.4 and S.6.9, and the Downtown Design Guidelines. Accordingly, Petitioner failed to carry her burden of proof.

Recommended Order

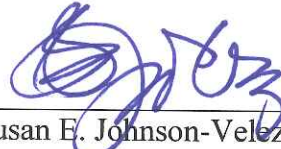
WHEREUPON, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby:

RECOMMENDED:

That the City Council of the City of Orlando deny the petition in opposition in that the Petitioner failed to carry her burden of coming forward with evidence to support the alleged

violations of Future Land Use Element Subarea Policies S.6.3, S.6.4 and S.6.9, and the Downtown Design Guidelines, and failed to carry her burden of proof in these proceedings.

ENTERED this 11th day of July, 2016.



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