

CITY OF ORLANDO QUASI-JUDICIAL HEARING
Case No. QJ2016-005 (ZON2015-00056)

JNS REAL PROPERTIES, LLC,
a Florida limited liability company,

Petitioner/Applicant,

v.

**UNIVERSAL CITY DEVELOPMENT
PARTNERS, LTD.,** a Florida limited
partnership, and **CITY OF ORLANDO,**
a Florida municipal corporation,

Respondents.

RECOMMENDED ORDER

The quasi-judicial hearing in this matter was held on October 19, 2016, in Orlando, Florida, before Hearing Officer Frederick T. Reeves.

APPEARANCES

For Petitioner/Applicant **JNS
Real Properties, LLC:**

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Orlando, FL 32801

For Respondent, **City of Orlando:**

Kyle Shephard, Esquire
Chief Assistant City Attorney
City of Orlando
400 South Orange Avenue
Orlando, FL 32801

For Respondent, **Universal City
Development Partners, Ltd.:**

Michael J. Beaudine, Esquire
Peter G. Latham, Esquire
Cindy Campbell, Esquire

Latham, Shuker, Eden & Beaudine, LLP
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DESCRIPTION OF SUBJECT PROPERTY

The subject property is located within the boundaries of the City of Orlando (the "City") at 5787 Vineland Road, Orlando, Florida 32819. It is located west of Kirkman Road, north of Vineland Road, south of Windhover Drive and east of Peregrine Avenue. The property contains approximately 3.15 acres, is comprised of one (1) legal parcel identified as Parcel Identification Number 13-23-28-8864-01-000, and has the following legal description (the "Subject Property"):

Lot 1 of VINELAND KIRKMAN CENTER, according to the Plat thereof recorded in Plat Book 66, Page 122, Public Records of Orange County, Florida

STATEMENT OF THE ISSUES

The issue to be determined in this matter is whether the recommended denial by the City's Municipal Planning Board (the "MPB") of JNS Real Properties, LLC's (the "Applicant") quasi-judicial application (the "2015 Application") to amend the Shah Planned Development ordinance (City of Orlando Ordinance 0605011002; hereinafter the "Shah PD") in Case No. ZON2015-00056 should be approved or overturned. In Case No. ZON2015-00056, the MPB recommended denial of the Applicant's request to amend the Shah PD to (1) increase the height of a previously approved 175-room hotel building from 75 feet to 130 feet; (2) amend locations of onsite signage to allow a high rise sign on the southern façade of the hotel building; (3) increase allowable sign copy area by 350 square feet on the hotel building; (4) change the "footprint" of the hotel to be consistent with a development plan submitted by the

Applicant; and (5) reduce the parking requirements for the Shah PD.

PRELIMINARY STATEMENT

On December 21, 2015, Petitioner/Applicant, JNS Real Properties, LLC, filed an application (the "2015 Application") seeking various amendments (identified above) to the Shah Planned Development ordinance, City of Orlando Ordinance 0605011002 (the "Shah PD").

On July 19, 2016, the MPB voted to recommend denial of the application.

Pursuant to City Code Section 2.205, JNS timely filed the Petition in Opposition to the Municipal Planning Board's Recommendation of Request for Amendment to the Shah Planned Development Ordinance (the "Petition in Opposition"). Pursuant to City Code Section 2.205(4), the City and Universal each timely filed a separate and unrelated response to the Petition in Opposition.

At the hearing, the Applicant presented the expert testimony of Mohammad Abdullah, who was accepted as an expert in parking and traffic engineering, and Kathy Hattaway, who was accepted as an expert in land use planning.

The City presented the expert testimony of Kathleen Magruder, who was accepted as an expert in urban planning.

Universal presented the lay testimony of Harry Collison and John McReynolds.

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

1. JNS Exhibit 1 – Shah PD Power Point Presentation
2. JNS Exhibit 2 - Traffic and Mobility Consultants Shared Parking Analysis
3. JNS Exhibit 3 – City Zoning District Maps 11
4. JNS Exhibit 4 – Sunbrook Condominium Assn. Letter dated July 7, 2016
5. JNS Exhibit 5 – Development Plan for Shah Property PD
6. JNS Exhibit 6 – Proposed Hotel Images

7. JNS Exhibit 7 – Transcript of July 19, 2016 Municipal Planning Board Meeting
8. City Exhibit 1 – Policy 1.7.2 Growth Management Plan Amendments
9. City Exhibit 2 – Policy 2.1.7 Land Development Regulations
10. City Exhibit 3 – Subarea Policy S.26.1
11. City Exhibit 4 – Section 58.361 LDC – Purpose of the District
12. City Exhibit 5 – July 19, 2016 Staff Report to MPB – Shah PD Amendment
13. Universal Exhibit 1A – 2006 Aerial View of Shah PD
14. Universal Exhibit 1B – 2016 Aerial View of Shah PD
15. Universal Exhibit 2 – August 16, 2005 MPB Agenda Item 15 - Shah
16. Universal Exhibit 3 – email correspondence JoAnna M. Sweeney/Sharon Windsor
17. Universal Exhibit 4 – McKinley Letter dated October 4, 2016
18. Universal Exhibit 5 - Shad PD Ordinance - City of Orlando Ordinance 0605011002

The transcript of the hearing was provided to the Hearing Officer. JNS and Universal filed proposed orders which were considered by the Hearing Officer in the preparation of this Recommended Order.

FINDINGS OF FACT

A. The Parties

1. Petitioner/Applicant, JNS Real Properties, LLC, owns the property located at 5775 Vineland Road, Orlando, Florida, and is the party that filed the 2015 Application seeking various amendments identified herein to the Shah Planned Development ordinance, City of Orlando Ordinance 0605011002 (the "Shah PD").

2. Respondent, Universal City Development Partners, Ltd., is a Florida limited partnership, and is associated with the Universal Orlando Resort ("UOR"), a theme park resort, which is located near the subject property, along with other UOR-related properties.

3. Respondent, Universal City Development Partners, Ltd., is an adversely-

affected person as defined in City Code Sec. 2.203(1).

4. Respondent, City of Orlando, is a Florida municipal corporation, and is responsible for reviewing and approving or denying the subject application.

B. The Subject Property and Current Approvals

5. The Subject Property is located within the boundaries of the City of Orlando at 5787 Vineland Road, Orlando, Florida 32819. It is located west of Kirkman Road, north of Vineland Road, south of Windhover Drive and east of Peregrine Avenue. The property contains approximately 3.15 acres.

6. The Subject Property is in an area bounded to the east by Interstate 4 and to the north by the Florida Turnpike. It is across the street from part of the Universal Orlando Resort entertainment complex. The surface road immediately to the east, Kirkman Road, is an arterial connector. The surface road immediately to the south, Vineland Road, is a major roadway.

7. The future land use designation of the Subject Property as set forth in the Shah PD is Metropolitan Activity Center. The underlying zoning of the Subject Property as set forth in the Shah PD is AC-3.

8. The neighboring parcels to the east along Kirkman Road are all zoned AC-3 (Metropolitan Activity Center). These are currently a mixture of vacant property, gas stations and restaurants. The nearest neighboring parcel on the south across Vineland Road is zoned AC-3/MA (Metropolitan Activity Center). This is the Lowe's Portofino Bay Hotel, a large resort-style all-inclusive hotel on between 25 and 50 acres of land whose employee parking area is the closest area to the Subject Property. The neighboring parcel to the west is zoned O-2 (Medium Intensity Office-Residential). The

neighboring parcels to the north are zoned R-3B (Residential Medium Intensity). These consist of the Sunbrook Condominiums, a group of residential condominium units, and the Portofino Apartments, rental apartments owned and managed by McKinley.

9. The maximum allowable height for AC-3 zoned parcels is 200 feet as a matter of right. The maximum allowable height for O-2 zoned parcels is 75 feet as a matter of right. The maximum allowable height for R-3B zoned parcels is 40 feet as a matter of right, increasing to 55 feet with an approved conditional use.

10. The Subject Property is subject to the terms of a Planned District ("PD") under Chapter 58, Part 2Q, of the City of Orlando Code of Ordinances. The PD was adopted on May 1, 2006, by the City Council of the City of Orlando as City of Orlando Ordinance 0605011002 (the "Ordinance"), and is more commonly known as the Shah Planned District ("Shah PD").

11. The Ordinance more commonly known as the Shah PD details the permitted uses of the Subject Property and establishes the City's intent with respect to the Subject Property.

12. The terms of Shah PD, *inter alia*, set the default zoning for the Shah PD as AC-3 to allow for a proposed hotel use, and defined its permitted uses as allowing a hotel of up to seventy-five (75) feet in height, with hotel signage not to exceed 350 square feet of total sign copy area.

13. Prior to 2006 and the adoption of the Ordinance, the Subject Property had a zoning designation of AC-N, which did not allow for a hotel on the property.

14. In 2005, the Applicant filed an application with the City requesting the establishment of a Planned Development ("PD") allowing hotels (the "2005

Application”). The City concluded at that time that, although a hotel would be a compatible use for the surrounding area, a structure higher than 75 feet would be incompatible with the surrounding areas.

15. After extended negotiations related to the 2005 Application, the City authorized a default zoning designation of AC-3, subject to the specific conditions of the Shah PD, to allow the Applicant to build a hotel on the Subject Property. A hotel was not a permitted use under its then current zoning of AC-N¹

16. The City granted AC-3 zoning solely to permit the Applicant to build a hotel on the Subject Property, subject to the conditions contained in the Shah PD.

17. The hotel maximum height of 75 feet was also approved by the City to create and confirm a transition area from and between the Metropolitan Activity Center to the south and the multi-family residential development to the north of the Subject Property.

18. Section Two (A) of the Ordinance requires that the Property’s development be consistent with the development plan incorporated as Exhibit “B” to the Ordinance (“Development Plan”). The Development Plan details the “permitted uses” as including “all uses permitted within the AC-N zoning district with the addition of the following uses: Hotel/Motel.”

19. In addition to the change in default zoning, the conditions of the City’s approval of the 2005 Application, to which the Applicant agreed, was to limit the height of the hotel to a maximum of 75 feet, a maximum hotel sign copy area of 350 square feet, and no high rise and/or backlit signage located on the northern, southern, or

¹ Under Sec. 1C.LDC of the Code, by right AC-N zoning permits a building height of 30 feet and AC-3 zoning permits a building height of 200 feet. However, AC-N zoning can be extended up to a height of 75 feet by conditional use permit.

western side of any building located on the Shah PD.

20. The Shah PD was established after lengthy negotiations between the City and the Applicant and final City approval of the 2005 Application on May 1, 2006.

21. Since the establishment of Shah PD, the Applicant has completed Phase II, developing the retail and medical portion of Shah PD; however, Phase I was never commenced.

C. The Current Application and Related Findings of Fact

22. On December 21, 2015, Applicant filed its application for a PD amendment with the MPB requesting changes to the development conditions stated in the Ordinance (the "2015 Application").

23. The 2015 Application was both complete and legally sufficient.

24. The 2015 Application contemplates the development of Phase I as a hotel.

25. The 2015 Application requests changes to the development conditions contained in the Ordinance/Shah PD including (1) increasing the height of a previously approved 175-room hotel building from 75 feet to 130 feet; (2) amending locations of onsite signage to allow a high rise sign on the southern façade of the hotel building; (3) increasing allowable sign copy area by 350 square feet on the hotel building; (4) changing the "footprint" of the hotel to be consistent with a development plan submitted by the Applicant; and (5) reducing the parking requirements for the Shah PD.

26. City staff prepared the "July 19, 2016 Staff Report to MPB – Shah PD Amendment" (City Exhibit 5) recommending denial of the 2015 Application.

27. On July 19, 2016, MPB voted to recommend denial of the 2015

Application.

28. There has been no substantial change in the surrounding area between the time the Shah PD was established in 2006 and the date on which the 2015 Application was filed (or, for that matter, the date the quasi-judicial hearing herein was held). The only significant change from the time of the establishment of Shah PD and the date of the filing of the 2015 Application (or the date the quasi-judicial hearing herein was held) is that Phase II, as contemplated by Shah PD, has been completed. Thus, the surrounding area has not meaningfully changed to support a revisiting or reconsideration of the Applicant's request to increase the height of the proposed hotel, or to justify any of the Applicant's other requested amendments to the Shah PD.

29. The hotel maximum height of 75 feet is still required to maintain a transition area from and between the Metropolitan Activity Center to the south and the multi-family residential development to the north of the Subject Property.

30. Since there has been no substantial change to the surrounding area sufficient to justify the Applicant's amendment to the Shah PD, there is no justification to change the location of onsite signage or to increase the sign copy area on the hotel building required in the Shah PD as originally approved by the City and agreed by the parties. The Applicant submitted no credible evidence to support this specific proposed amendment to the Shah PD.

31. In support of the 2015 Application's request to reduce parking spaces, Applicant has submitted a very generalized Shared Parking Analysis (JNS Exhibit 2) which does not consider the unique nature of a resort development and surrounding communities. Mr. Abdallah and the Shared Parking Analysis (JNS Exhibit 2) also

appear not to have considered tourist parking habits and a proposed restaurant that is to be developed as a part of the Shah PD hotel.

32. In support of the 2015 Application, the Applicant submitted the testimony of Kathy Hattaway, an expert in land use planning, along with a Shadow Study and Line of Sight Study (JNS Exhibit 1). Based on the cross-examination of Ms. Hattaway, the Shadow Study and the Line of Sight Study have serious flaws.

33. Changing the footprint of the building would have been acceptable if the 2015 Application was otherwise subject to being approved, but it is not.

34. It is unclear from the evidence whether there was widespread support for or opposition to the 2015 Application from residents of the residential properties to the north of the Subject Property, though the Sunbrook Condominium Association, Inc., sent a letter supporting the 2015 Application (JNS Exhibit 4).

35. The amendments to the Shah PD contained in the 2015 Application are not compatible with the surrounding land uses and general character of the area.

CONCLUSIONS OF LAW

36. In order to provide adequate due process to applicants seeking quasi-judicial determinations, Chapter 2, Article XXXII of the City of Orlando Code provides procedures for consideration by a Hearing Officer of a decision or recommendation made by various City boards, including the Municipal Planning Board. The Code requires 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 the Code, 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 City of Orlando Code and any applicable administrative, federal and state case law in effect at the time the hearing request was filed. City Code Sec. 2.207.

37. Therefore, at the hearing, the Applicant had the burden of producing competent substantial evidence to justify overturning the MPB's denial of the application in Case No. ZON2015-00056.

38. 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 in 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).

39. At the hearing, Applicant failed to produce the required competent substantial evidence necessary to justify overturning the MPB's denial of the application in Case No. ZON2015-00056, and failed to meet its burden of proof, including its initial burden of proof.

40. The Applicant has failed to show any change in the surrounding area which is different from when the 2005 Application was approved in 2006.

41. Code Section 58.361 provides that PDs are intended to provide a process

for evaluating “unique individually planned developments ... not otherwise permitted” in the zoning districts established in the Code, and reserves to the City Council the authority to establish limitations as it deems necessary to protect the public.

42. Code Section 58.362 authorizes the City Council to approve any PD proposal, along with “any conditions or requirements or limitations thereon which the City Council deems advisable.” Indeed, Code Section 58.367 provides that “[a]ll building codes, housing codes, and other land development regulations of the City of Orlando are applicable to the PD, *except to the extent that they conflict with a specific provision of the planned development ordinance.*” (emphasis added).

43. The record firmly establishes that the City granted AC-3 zoning solely to permit the Petitioner to build a hotel on the Property, subject to the conditions contained in the Shah PD, and the Shah PD should not be amended without competent substantial evidence in the record to support such an amendment or a showing of a change in the surrounding area since the Shah PD was originally approved. Neither was proven at the hearing held on October 19, 2016. *See generally* Code Section 58.368 (providing that “[b]ecause the specific development standards of the PD district are contained in the approved Development Plan for each planned development, and because the Development Plan normally takes into account those matters which might otherwise be the subject of variance review by the Board of Zoning Adjustment, modifications to approved Development Plans by variance or Modification of Standards shall be prohibited unless otherwise specifically provided for in a specific Planned Development Ordinance (emphasis supplied)”),

44. The approval of the Shah PD, after negotiation between the parties and

approval by the City, insured and insures “compatibility” with surrounding land uses and the general character of the area (see Sec. 163.3164(9). Fla. Stat., which defines compatibility as “a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition”). The requested amendments to the Shah PD contained in the 2015 Application do not.

45. The 2015 Application seeks to add signage to the southern façade of the proposed hotel, which is explicitly prohibited in the Shah PD, yet Petitioner failed to submit credible evidence supporting this requested amendment. Further, the Traffic Study relied upon by the Applicant was insufficient. Also, the Shadow Study and Line of Sight Study were insufficient to prove compatibility with the surrounding land uses and general character of the area, and are probably irrelevant in light of the lack of change in the surrounding area since the Shah PD was originally approved.

46. Further, though not having the burden of proof, the City produced competent substantial evidence justifying the City staff’s and the MPB’s recommended denials of the 2015 Application. 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”).

47. The testimony of the City’s witness, Kathleen Magruder, an expert in urban planning, as well as the July 19, 2016 Staff Report to MPB – Shah PD Amendment (City Exhibit 5), as well as the testimony of the other witnesses and evidence received at the hearing, constitute competent substantial evidence that the 2015 Application should have been recommended for denial by the MPB.

48. There was nothing arbitrary, discriminatory or unreasonable in the City’s finding of incompatibility as to surrounding land uses and the general character of the area or the City staff’s and the MPB’s recommended denial of the 2015 Application.

49. Also, based on the foregoing, the 2015 Application fails to meet applicable legal standards, does not accomplish a legitimate public purpose, and is not in the public interest.

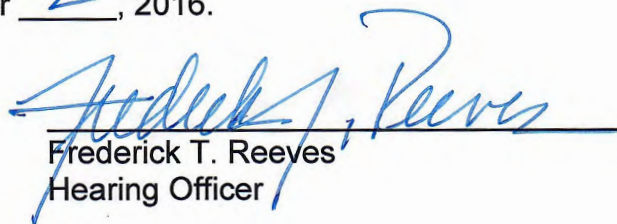
50. The 2015 Application is not consistent with (1) the requirements for approval of Planned Development applications contained in Chapter 65 of the City of Orlando Land Development Code, (2) the City’s Growth Management Plan; or (3) the purpose and intent of the Planned Development zoning district and other applicable requirements of the City’s Land Development Code. Also, the amendments contained in the 2015 Application are not compatible surrounding land uses and the general character of the area.

Recommendation

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Applicant’s request to overturn the MPB’s recommended denial

of the application in Case No. ZON2015-00056 be DENIED in its entirety.

DONE AND ORDERED on December 2, 2016.



Frederick T. Reeves
Hearing Officer

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

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

In accordance with Orlando City Code Section 2.208 all parties have the right to submit written exceptions within 10 working days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the Hearing Administrator before the Hearing Administrator schedules consideration of the Recommended Order by the City Council.