

**CITY OF ORLANDO
QUASI-JUDICIAL HEARING**

JNS REAL PROPERTIES, LLC,
a Florida limited liability company

Petitioner,

Case No.: QJ2016-005

v.

**CITY OF ORLANDO MUNICIPAL
PLANNING BOARD,**

Respondent.

**PETITIONER'S EXCEPTIONS TO
THE HEARING OFFICER'S RECOMMENDED ORDER**

Petitioner, JNS REAL PROPERTIES, LLC, a Florida limited liability company ("JNS"), by and through the undersigned counsel, and pursuant to Section 2.208 of the Code of the City of Orlando, Florida (the "Code"), hereby submits the following exceptions to the Hearing Officer's Recommended Order of December 2, 2016.

1. JNS takes exception to the finding of fact contained in paragraph 28, located on page 9 of the Recommended Order, and the related conclusion of law contained in paragraph 40 on page 11 of the Recommended Order. The Hearing Officer incorrectly concluded that there has been no substantial change in the surrounding area between the time the current Shah PD ordinance was approved in 2006 and the date of JNS's current application to amend the Shah PD ordinance (the "Amendment"). The representative for Universal City Development Partners Limited ("Universal"), who opposed the Amendment, admitted that Universal has undertaken significant expansion and redevelopment since the original Shah PD ordinance's approval. During this time, Universal has either completed or commenced construction of approximately

3,200 new hotel units, a water park, and two phases of the Wizarding World of Harry Potter. Transcript at p. 177 line 22 to page 179 line 10. Universal also acknowledged that it “cannot build hotels quick enough in this marketplace and welcome more hotel capacity openly.” Transcript at p. 174, lines 13-14. The fact that the addition of 3,200 hotel units since 2006 cannot satisfy current demand proves that there has been a significant change in the area. Any other finding is contradicted by the testimony of the Amendment’s only non-governmental opponent. Accordingly, there is no competent substantial evidence to support the Hearing Officer’s conclusion. Without this necessary factual support, any related conclusion of law is clearly erroneous.

2. JNS takes exception to the finding of fact contained in paragraph 29, located on page 9 of the Recommended Order, and the related conclusion of law contained in paragraph 44, located on page 12 of the Recommended Order. The Hearing Officer incorrectly concluded that 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.

First, Universal presented no expert evidence to support any of its arguments. Kathleen Magruder, the expert in urban planning who testified on behalf of the City of Orlando (“City”) and the only expert to provide evidence against the Amendment, concluded multiple times that a hotel height of greater than 75 feet would still be compatible with surrounding land uses. On direct examination, Ms. Magruder stated that she believed that she would have supported Amendment if the height of the hotel was set at 80 or 85 feet. Transcript at p. 144, lines 20-25. Later, on cross examination, Ms. Magruder restated her conclusion that a hotel height above 75

feet would still be compatible with abutting residential neighborhoods. Transcript at p. 153, lines 7-18.

Additionally, the urban planning expert for JNS presented detailed testimony and other evidence that the Amendment would be compatible with surrounding land uses. Transcript at p. 41 line 24 to p. 57 line 21. This testimony comes from a highly qualified and experienced expert. JNS's expert, Kathy Hattaway, has approximately 20 years of experience in real estate and land use planning matters. Transcript at p. 29, lines 14-22. The City's expert has three years of experience, including time spent in graduate school for urban planning. Transcript at p. 117 line 21 to p. 118 line 4. Additionally, Ms. Hattaway has significant experience evaluating compatibility of proposed developments, based on her roles as chair of the City of Maitland Planning and Zoning Commission, a former planning commissioner for Osceola County, and a former member of the Osceola County Board of Adjustment. Transcript at p. 30 line 21 to p. 31 line 14. The City's expert does not have this body of experience. JNS also presented the expert testimony of Mohammed Abdullah, PE, in support of the proposed reduction in parking spaces. No other party presented expert testimony on this subject matter.

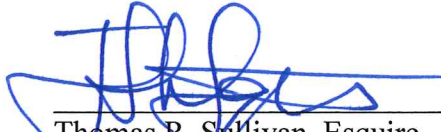
Therefore, the testimony of Mr. Abdullah and Ms. Hattaway qualifies as competent substantial evidence in support of the Amendment, based on the standard set forth by the Hearing Officer in paragraph 38 of the Recommended Order. Accordingly, the conclusion of paragraph 39 of the Recommended Order that "Applicant failed to produce the required competent substantial evidence necessary to justify overturning the MPB's denial of the application . . . and failed to meet its burden of proof, including its initial burden of proof" is factually and legally incorrect. Additionally, because evidence from both the City's expert and JNS's expert that an increase in height above 75 feet is not incompatible with surrounding land uses, there is no

competent substantial evidence in the record to support the Hearing Officer's contrary conclusion. Without this necessary factual support, any related conclusion of law is clearly erroneous

3. JNS takes exception to the conclusion of law set forth in paragraph 47, located on page 14 of the Recommended Order. Specifically, JNS takes exception to the contradiction between paragraph 39 and paragraph 47 of the Recommended Order. As the adjudicator, the Hearing Officer may weigh to the conclusions of experts against one another in issuing a Recommended Order. However, it is inaccurate and inappropriate for the Hearing Officer to conclude that expert testimony from the City's expert constitutes competent, substantial evidence while testimony from a more experienced expert in the same subject area on behalf of JNS is not competent substantial evidence. JNS clearly submitted competent substantial evidence in support of its argument, regardless of the weight that the Hearing Officer may accord to this evidence. Accordingly, there is no competent substantial evidence in the record to support the conclusion of paragraph 47 in the Recommended Order. This lack of support results in an incorrect application of law by the Hearing Officer, and any related conclusion of law is clearly erroneous.

WHEREFORE, JNS respectfully requests, pursuant to the Code, that the City Council (i) reject the listed findings of fact and conclusions of law pursuant to these exceptions because the findings of fact were not based on competent substantial evidence and the conclusions of law were clearly erroneous; and (ii) enter a final order concluding that the MPB's recommended denial of the Amendment be overturned and the an affirmative amendment application be approved for the Subject Property.

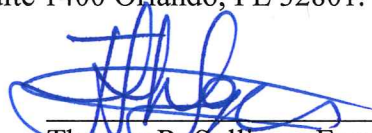
Respectfully submitted this 19th day of December 2016.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY an original was furnished on December 19, 2016 by hand delivery to Cynthia E. Sanford, Hearing Administrator, City of Orlando, Office of Legal Affairs, 400 South Orange Avenue, Orlando, Florida 32801 and a copy delivered by U.S. Mail to: Kyle Shephard, Esquire, Chief Assistant City Attorney, City of Orlando, Florida 400 South Orange Avenue, Orlando, FL 32801 and to Peter G. Latham, Esquire, Latham, Shuker, Eden & Beaudine, LLP, 111 North Magnolia Avenue, Suite 1400 Orlando, FL 32801.



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