

CITY OF ORLANDO
QUASI-JUDICIAL HEARING

JOEL THEARD,
Petitioner,

CASE NO.: QJ 2020-001
MPL2020-10037; ZON2020-10008;
ZON2020-10009

v.

CITY OF ORLANDO, Florida, a Florida
Municipal Corporation,

Respondent, and

REBECCA WILSON, Esquire,

Applicant/Respondent.

RECOMMENDED ORDER
DENYING PETITION

This case was heard at a de novo quasi-judicial hearing on September 24, 2020. After consideration of all the arguments and evidence, this Recommended Order Denying Petition is issued pursuant to Orlando City Code Chapter 2, Article XXXII, Section 2.208.

I. SUBJECT PROPERTY.

AGPM Acquisitions LLC (“AGPM”) owns 0.22 acres of property located on the South side of Mariposa Street between S. Osceola Avenue and Lake Avenue, and Fl Jacksonoffice, LLC owns approximately 0.47 acres of property located between S. Osceola Avenue and Lake Avenue (collectively the “Mariposa Grove Property”). The legal description of the Mariposa Grove Property is attached hereto as Exhibit “A.”

II. BACKGROUND AND EVIDENCE.

On April 20, 2020, Applicant, Rebecca Wilson, Esq., filed three applications for land development orders with the City in order to allow for the development of a mixed-use senior affordable housing development that will be known as Mariposa Grove (the “Applications”). Case # ZON2020-10008 seeks an amendment to the Orlando Lutheran Towers Planned Development to remove AGPM’s 0.22 acres, which are located at 410 and 416 Mariposa Street, from the Orlando Lutheran Planned Development. Case # ZON2020-10009 seeks an amendment to the City’s zoning maps to change the zoning designation of the Mariposa Grove Property from Planned Development with the “Traditional City” zoning overlay district, in part, and Mixed Residential-Office with the “Traditional City” overlay district, in part, to Planned Development with the “Traditional City” zoning overlay district. Case # MPL2020-10037 seeks approval of a Master Plan for the overall site to develop a 138 unit, 14-story, mixed-use senior affordable housing development with ground floor commercial and amenity space and an integrated parking garage. On July 21, 2020, the City’s MPB voted to recommend approval of the Applications.

Petitioner timely appealed the MPB’s recommended approval of the Applications and a quasi-judicial hearing was held on September 24, 2020. Ms. Elisabeth Dang, an expert in the area of planning and the City of Orlando Division Manager for City Planning, was the only witness to testify.

At the hearing, the following was entered into evidence:

1. J.H. Smith’s Subdivision Plat dated June 3, 1907,

2. October 13, 2003, Ordinance vacating the East Seven (7) feet of the Lake Avenue right-of-way between Mariposa Street and East Church Street (OR Book 7504, Page 3606),
3. July 30, 2004, Ordinance vacating 275 feet of right-of-way of Mariposa Street (OR Book 7556, Page 3313),
4. June 19, 2006, Ordinance amending the PD Zoning District,
5. March 28, 2007, letter from Sean Nelson, Vice President, OLT II, Inc., to Dean Grandin,
6. June 7, 2007, Quitclaim Deed (OR Book 9291, Page 2110),
7. August 20, 2007, Orlando Lutheran Towers PD Amendment,
8. Staff Report to the Municipal Planning Board, July 16, 2013, ZON2013-00014 Addendum,
9. September 23, 2013, Ordinance No. 2013-49,
10. February 4, 2014, email from Rebecca Wilson to David J. Bass,
11. Staff Report to the Municipal Planning Board, February 18, 2014, ZON2013-00031, including Addendum,
12. June 2, 2014, Ordinance No. 2014-13 (Orlando Lutheran Towers) PD Amendment,
13. Staff Report to the Municipal Planning Board, July 21, 2020; ZON2020-1008, including Addendum,
14. Staff Report to the Municipal Planning Board, July 21, 2020; ZON2020-1009, MPL2020-10037,
15. The City of Orlando Code, including the Florida Land Development Code,
16. The City of Orlando Growth Management Plan (GMP),

17. Materials included within the Applicant's applications, including any materials, plans, depictions, exhibits, photographs, or other documents provided by the Applicant to the City of Orlando as they relate to case numbers ZON2020-10008, ZON2020-10009, and MPL2020-10037,
18. City's staff report, including supporting materials presented during the Municipal Planning Board (the "MPB") hearing of case numbers ZON2020-10008, ZON2020-10009, and MPL2020-10037,
19. The minutes, audio recordings, and transcripts from the MPB hearing of case numbers ZON2020-10008, ZON2020-10009, and MPL2020-10037, and
20. August 10, 2007, Replat of OLT ALF-A (OR Book 69, Page 143).

III. FINDINGS OF FACT.

1. AGPM and FL Jacksonville, LLC collectively own five (5) parcels of real property located in the City.
2. AGPM owns two (2) of the five (5) parcels, which are 0.22 acres of property (the "Property"), located in the Orlando Lutheran Towers Planned Development ("OLT PD"). The OLT PD was originally approved by the City on October 13, 2003, and was previously part of the J.H. Smith's Subdivision Plat dated June 3, 1907, as recorded in Plat Book "C," Page 68, Public Records of Orange County also recorded in Plat Book "D," Page 16, Public Records of Orange County.
3. The OLT PD is zoned Planned Development with the Traditional City overlay district (PD/T) with the Future Land Use Designation of Residential High Intensity (RES-HIGH).

4. Pursuant to the City's Growth Management Plan (the "GMP"), property designated RES-HIGH can be developed at a density up to 200 units per acre.

5. The OLT PD was divided into three (3) phases: Phase A, Phase B, and Phase C.

6. In 2007, Phase C was divided into Phases C-1 and C-2. The Phase C-2 property, which is the 0.22 acres Property, is the subject of the recommended approvals and the Petition.

7. In 2003, the OLT PD consisted of 1.96 acres and the development plan allowed up to 200 dwelling units.

8. In 2003, 0.23 acres of right-of-way ("ROW") along Mariposa Street was vacated by Ordinance recorded at Official Records Book 07556, Page 3313, which, by operation of law, became the property of the then owners of the OLT PD.

9. The ordinance vacating the 0.23 acres of ROW contained a reverter provision providing the now private property would revert to the City as designated and dedicated right-of-way if development was not undertaken within five (5) years.

10. In 2003, 0.03 acres of ROW along Lake Avenue was vacated by the City of Orlando by Ordinance recorded at Official Records Book 07504, Page 3606, which, by operation of law, became the property of the then owners of the OLT PD.

11. The ordinance vacating the 0.03 acres of ROW contained a reverter provision providing the private property would revert to the City as designated and dedicated right-of-way if development were not undertaken within five (5) years.

12. Phase C-1 was the first phase developed and consists of 108 residential units located on 0.54 acres of the OLT PD.

13. In 2006, the OLT PD was amended to add additional property that resulted in a total site of 3.55 acres, and allowed for the development of up to 676 dwelling units within the PD.

14. The map of the OLT PD that accompanied the 2006 amendment contained new lot lines that merged the abandoned ROW into the abutting lots.

15. In 2006, 156 residential units were approved in Phase A, 366 residential units were approved in Phase B, and 154 residential units were approved in Phase C.

16. Phase B transferred 45 of its approved residential units, in writing, to Phase A.

17. In 2007, the OLT PD was amended to revise Phase A, which allowed for a total development program of 690 residential units within the PD.

18. The 2007 ordinance provided that the Phase C-2 Property “shall remain entitled to future development as previously set forth in the previously existing planned development zoning ordinances related to the Property, and nothing in this ordinance shall be interpreted or construed to transfer existing development entitlements from the Phase C-2 Property to any other portion of the Property.”

19. None of the ordinances adopted after 2007 relating to the OLT PD amended this provision of the 2007 Ordinance to authorize the transfer of any of the Phase C-2 Property’s development entitlements to any other phase of the OLT PD.

20. On June 6, 2007, the owner of the OLT PD issued a quit claim deed granting the 0.23 acres to the City as dedicated ROW.

21. On October 13, 2008, the 0.03 acres of private property reverted back to the City as dedicated ROW.

22. In 2013, the OLT PD was amended to allow for the development of 299 residential units in Phase B with the Phase C-2 property being used only for parking and open space with an alternative use would require a PD amendment through the adoption of Ordinance No. 2013-49.

23. In the 2013 amendment, the text that accompanied the legal description of the OLT PD identified the property as consisting of 3.552 acres in size.

24. The adoption of Ordinance No. 2013-49 was not appealed.

25. In 2014, the OLT PD was amended to revise Phase A to allow for the development of 233 residential units, which revised the overall development program to 710 units within the PD through the adoption of Ordinance No. 2014-13.

26. The adoption of Ordinance No. 2014-13 was not appealed.

27. Under the GMP, 710 dwelling units can be developed in the OLT PD.

28. Phases A, B and C-1 have all been built out.

29. There are currently 640 residential units built in the OLT PD.

IV. CONCLUSIONS OF LAW.

The burden of proof in this proceeding is on the Petitioner. See Orlando City Code Chapter 2, Article XXXII, Section 2.207 (4). The decision of the Hearing Officer must be based upon competent substantial evidence. See id. In *DeGroot v. Sheffield*, 95 So. 2d 912 (Fla. 1957), the Florida Supreme Court further defined competent substantial evidence:

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.

Id. at 916 (internal citations omitted). Professional staff reports constitute competent, substantial evidence. See *City of Hialeah Gardens v. Miami–Dade Charter Found., Inc.*, 857 So.2d 202, 205 (Fla. 3d DCA 2003) (confirming 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”).

The Hearing Officer must also apply “the Orlando City Code and any applicable administrative, federal and state case law in effect at the time the hearing request was filed.” See Section 2.207 (4), Orlando City Code. As Petitioner notes, the facts are not in dispute and the sole legal issue in this proceeding is whether the removal of AGPM’s .22 acres of property from the OLT PD creates a violation of density limitations under the Orlando City Code for the remaining portion of the OLT PD.

Section 66.200 of the Orlando City Code contains the following provision regarding the calculation of residential density:

Density, Gross Residential: The number of residential dwelling units permitted per acre of land, and is determined by dividing the number of dwelling units by the net area of the Building Site or Development Site. The permitted density is measured after platting but before any additional right-of-way dedication on an

already-platted lot. When the calculation of permitted density results in a fractional number of dwelling units, any fraction up to and including 0.5 shall be disregarded and any fraction over 0.5 shall be rounded up to 1.0 unit. However, in no case shall the density exceed the zoning district or the density bonus maximums.

The City interprets Section 66.200 to include .26 acres of vacated ROW which became part of the Development Site in 2003 in the total acreage of the OLT PD. Applying the City's interpretation results in the OLT PD's residential density calculated on 3.33 acres if the Property is removed from the OLT PD resulting in a maximum allowable density of 666 units in the OLT PD (26 more than the existing density of 640 units).

Petitioner argues Section 66.200 should be interpreted to exclude the 0.26 acres of ROW when calculating density of the OLT PD Development Site. Under Petitioner's argument, because the dedicated ROW was part of private property, which was previously platted, but not platted at the time, the dedicated ROW should not have been included in the Development Site for calculating density. Under Petitioner's interpretation of Section 66.200, there would be 3.072 acres in the OLT PD Development Site if the Property is removed from the OLT PD. This results in a maximum allowable density of 614 units in the OLT PD, which is less than the existing density of 640 units.¹

The City's own interpretation of its ordinances must be accepted unless the interpretation is unreasonable or clearly erroneous.

“Generally, a reviewing court should defer to the interpretation given a statute or ordinance by the agency responsible for its administration. Of course, that deference is not absolute, and when the agency's construction of a statute amounts to an unreasonable interpretation, or is clearly erroneous, it cannot

¹ Petitioner's attorney argued before the MPB the acreage and density calculations were incorrect under Petitioner's interpretation. The MPB voted to continue the hearing until its July 21, 2020, hearing to obtain more information. In response, the City submitted its Addendum to the July 21, 2020, Staff Report to the Municipal Planning Board ZON2020-10008. The Addendum provides a detailed history of the City's decisions and interpretations concerning the vested density on the Development Site since adoption of the OLT PD in 2003 and numerous parties' reliance thereon for 17 years.

stand.” *Las Olas Tower Co. v. City of Ft. Lauderdale*, 742 So. 2d 308, 312 (Fla. 4th DCA 1999) (citations omitted). “Municipal zoning ordinances are subject to the same rules of construction as are state statutes.” *Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552, 553 (Fla. 1973); *Halifax Area Council on Alcoholism v. City of Daytona Beach*, 385 So. 2d 184, 187 (Fla. 5th DCA 1980). Thus, an ordinance should be given its plain meaning and any doubts should be construed in favor of the property owner.

Shamrock-Shamrock, Inc. v. City of Daytona Beach, 169 So. 3d 1253, 1256 (Fla. 5th DCA 2015).

The Hearing Officer must defer to the City staff’s interpretation of Section 66.200 and any doubts should be construed in favor of the property owner applicant.

Section 66.200 allows a property owner, who dedicates right-of-way, entitlement to include the dedicated right-of-way as part of its property when calculating density. In this case, the ROW was vacated and became private property on a lot that was part of a previous plat. The private property later became dedicated ROW. The City’s interpretation and application of Section 66.200 is not unreasonable or clearly erroneous. Based upon the evidence submitted and the expert testimony provided, the competent substantial evidence demonstrates the Applications are consistent with the State of Florida Comprehensive Plan, Ch. 187, Florida Statutes, the East Central Florida Strategic Regional Policy Plan, Part II, Chapter 163, Florida Statutes, the City’s Growth Management Plan, and the City’s Land Development Code. The Petition should be denied.

V. RECOMMENDATION.

Based on the Findings of Fact and Conclusions of Law, I recommend the Orlando City Council:

A. DENY Petitioner’s Petition and APPROVE the Owner’s Application in Case # ZON2020-10008 with all staff recommended conditions as approved by the MPB.

B. DENY Petitioner’s Petition and APPROVE the Owner’s Application in Case # ZON2020-10009 with all staff recommended conditions as approved by the MPB.

C. DENY Petitioner's petition and APPROVE the Owner's Application in Case # MPL2020-10037 with all staff recommended conditions as approved by the MPB.

RESPECTFULLY SUBMITTED this 12th day of October, 2020.



DEREK A. SCHROTH, ESQ.
Hearing Officer
Florida Bar No. 0352070
*Board Certified Expert in City, County and
Local Government Law and Business Litigation*

Pursuant to Section 2.208 of the Orlando City Code, the parties have five (5) days from the date of receipt of this Recommended Order to file exceptions to this Recommended Order with the Hearing Administrator before the Hearing Administrator schedules consideration of the Recommended Order by the City Council.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 12th day of October, 2020, by electronic mail to all persons listed below.

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Derek Schroth

Mariposa Groves: 420, 416, and 410 Mariposa St., 417 and 411 E Jackson St.:

Parcel 1:

Lot 1, JEWEL OF JACKSON, according to the plat thereof, as recorded in Plat Book 36, Page 103, Public Records of Orange County, Florida.

Parcel 2:

The South 120 feet of Lot 12, J.H. SMITH'S SUBDIVISION OF BLOCK 9 SUMMERLIN'S ADDITION TO ORLANDO, according to the plat thereof, as recorded in Plat Book D, Page 16, Public Records of Orange County, Florida.

Parcel 3:

The West 33 feet of the East 50 feet of Lot 10, J.H. SMITH'S SUBDIVISION OF BLOCK 9 SUMMERLIN'S ADDITION TO ORLANDO, according to the plat thereof, as recorded in Plat Book D, Page 16, Public Records of Orange County, Florida, together with that portion of the South One-Half (1/2) of vacated Mariposa Street lying North of said parcel, as vacated, closed and abandoned by Ordinance recorded July 30, 2004, in Official Records Book 7556, Page 3313, Public Records of Orange County, Florida.

Parcel A (410 Mariposa):

The North 70 feet of Lot 12 less the West 11 feet, J.H. SMITH'S SUBDIVISION OF BLOCK 9, SUMMERLINS ADDITION TO ORLANDO, FLA, according to the Plat thereof as recorded in Plat Book D, Page 16, Public Records of Orange County, Florida.

Parcel B (416 Mariposa):

The North 90 feet of Lot 11 and the North 90 feet of the West 10 feet of Lot 10, J.H. SMITH'S SUBDIVISION OF BLOCK 9, SUMMERLINS ADDITION TO ORLANDO, FLA, according to the Plat thereof as recorded in Plat Book D, Page 16, Public Records of Orange County, Florida.

"C-2": 411 and 417 E Jackson St.

Parcel A (410 Mariposa):

The North 70 feet of Lot 12 less the West 11 feet, J.H. SMITH'S SUBDIVISION OF BLOCK 9, SUMMERLINS ADDITION TO ORLANDO, FLA, according to the Plat thereof as recorded in Plat Book D, Page 16, Public Records of Orange County, Florida.

Parcel B (416 Mariposa):

The North 90 feet of Lot 11 and the North 90 feet of the West 10 feet of Lot 10, J.H. SMITH'S SUBDIVISION OF BLOCK 9, SUMMERLINS ADDITION TO ORLANDO, FLA, according to the Plat thereof as recorded in Plat Book D, Page 16, Public Records of Orange County, Florida.