CITY OF ORLANDO
QUASI-JUDICIAL HEARING

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

JOEL THEARD,

Petitioner,

v.

CITY OF ORLANDO, Florida, a Florida Municipal Corporation,

Respondent,

and

REBECCA WILSON, ESQUIRE

Applicant/Respondent.
_____/

PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER

COMES NOW the Petitioner, by and through his undersigned attorney, and files the following exceptions to the Recommended Order Denying Petition issued by the Hearing Officer, Derek A. Schroth, Esq., on October 12, 2020.

EXCEPTION #1

Section III, Findings of Fact, page 7, paragraph numbered 27, states: "Under the GMP, 710 dwelling units can be developed in the OLT PD." The Petitioner takes exception to this finding, which is not supported by competent substantial evidence nor supported by the applicable law. The reasons are more fully set forth in subsequent exceptions.

EXCEPTION #2

Section IV, Conclusions, page 9, states the following: "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." The Petitioner takes exception to this conclusion. First, it does not accurately reflect the Petitioner's argument, as clearly laid out in the Petition, at the hearing, and in Petitioner's proposed Recommended Order. Petitioner's position was based upon the plain language of the Section 66.200 which provides, in pertinent part, as follows: "The permitted density is measured after platting but before any additional right-of-way dedication on an already-platted lot." Petitioner's position was that the vacated right-of-way was NEVER part of an "already-platted lot." The testimony at the hearing, from the City's own witness, was clear and uncontroverted that the vacated right-of-way was never part of an already-platted lot.

EXCEPTION #3

Section IV, Conclusions, page 10, states the following: "In this case, the ROW was vacated and became private property on a lot that was part of a previous plat." The Petitioner takes exception to this conclusion. First, it is not supported by any evidence. The City's Planning Division Manager, Elisabeth Dang, testified at the hearing as follows regarding the vacated right-of-way:

Q. The .26 acres, was it ever in a platted lot at any time since 1907?

A. It was not, but it was privately held property, much like any other vacated right-of-way that we have paper streets all over the City.

Q. I understand. I just want -- and I'm not badgering you. I just want to be very clear on the record. Your answer to the question of whether .26 acres of right-of-way, the answer to that question, no, it was never part of any platted lot, correct?

A. Right.

Hearing transcript page 33.

Second, this conclusion, which was not raised, argued or otherwise discussed at the hearing, is contrary to the law. The Hearing Officer has provided no legal basis for his conclusion that "the ROW was vacated and became private property on a lot that was part of a previous plat". Section 177.085, Florida Statutes, governs the disposition of title to vacated rights-of-way. Although that statute provides that adjoining landowners acquire title to centerline of a vacated street abutting the landowners lot, the statute does not provide that the vacated street becomes a part of that lot. To the contrary, the vacated portion of the street is then owned as a separate parcel. Accordingly, the Hearing Officer has misapplied the law in reaching this conclusion, which is the linchpin of the Recommended Order.

Respectfully submitted this 16th day of October, 2020.

/s/ *Darren J. Elkind*
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[Certificate of Service to Follow]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 16th day of October, 2020, by electronic mail to all persons listed below.

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