STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

UNIVERSITY PARK NEIGHBORHOOD ASSOCIATION,	)	
Appellant,	)	
vs.	)	Case No. 06-5153
CITY OF GAINESVILLE,	)	
Appellee,	)	
and	)	
WILLIAM AND JACKIE REICHARDT and STOCK REAL ESTATE DEVELOPERS, INC.,	)	
Intervenors.	)	

WRITTEN OPINION

Appellant, University Park Neighborhood Association (Association or Appellant), seeks review of a decision by the Plan Board (Board) of Appellee, City of Gainesville (City), on November 6, 2006, which approved an application by Intervenors, William and Jackie Reichardt (the Reichardts or applicants), for a special use permit. The Division of Administrative Hearings (DOAH), by contract, and pursuant to Sections 30-234(l) and 30-352.1, Land Development Code (LDC), has jurisdiction to consider this appeal. Appellant submitted an Initial Brief on February 15, 2007. The City and Intervenors submitted Answer

Briefs on February 27, 2007. Finally, Appellant submitted a Reply Brief on March 6, 2007. Prior to the submission of briefs, the parties submitted a Record, which consisted of twelve items and 113 pages, including a digital video disc of the Board's meeting. Because Items 13, 14, and 15 (pages 114-172) were inadvertently omitted in the original filing, an Amended Record was filed by the City on March 14, 2007. In addition, a Transcript of the Board's meeting has been prepared and filed by the parties. Oral argument was presented by the parties during a telephonic hearing held on April 10, 2007.

I. ISSUES

Appellant raises two issues on appeal: (1) whether the Board misconstrued a provision in the Special Area Plan for College Park (Special Area Plan) of the Urban Mixed-Use District 1 (UMU-1) zoning classification, which prescribes the allowable height for Type I buildings within that district; and (2) whether there is competent substantial evidence to support the Board's decision that the development and use of the subject property is compatible with the use and structures on the nearby property.

II. BACKGROUND

The Reichardts are the owners of a .248-acre parcel of property located at 1802 West University Avenue (the northwestern corner of West University Avenue and Northwest 18th

Street), in Gainesville, Florida. Intervenor, Stock Real Estate Developers, Inc. (Stock), is the contract purchaser of the subject property and serves as the agent for the Reichardts with regard to developing the property. If the permit is issued and the sale consummated, Stock proposes to develop a project known as the Stadium Club, a 24-unit, eight-story, mixed-use development containing both multi-family residential units and ground-floor retail/commercial units.

The property is currently zoned UMU-1 and is also subject to the Special Area Plan, which is a special overlay on the UMU-1 zoning district imposing further regulations on the development of property within the district. See City Ordinance No. 3779, June 10, 1992, as amended; Record, pages 83-112. The Special Area Plan is included in the LDC as an Appendix.[1] The intent of the Special Area Plan is two-fold: to "encourage revitalization and redevelopment of the 'College Park' neighborhood" and to "maintain the scale, character and integrity of the 'College Park' neighborhood."

Objective 1.1 of the Comprehensive Plan's (Plan) Urban Design Element encourages "traditional, pedestrian-oriented urban areas," including "[r]elatively high-density mixed use" buildings and multi-stories buildings. Record, page 114. Policy 3.6.2 of the same Element "recognizes the potential of College Park to be a mixed-use liveable neighborhood" by

"promoting urbane, mixed-use development." Record, page 124. Finally, Policy 1.3.4 of the Future Land Use Element requires that mixed-use neighborhoods "should be designed so that densities and building heights cascade from higher densities at the core of mixed-use to lower densities at the edges." Record, page 134.

Under UMU-1 zoning, the minimum height for buildings is two stories, while the maximum height is eight stories, except that a special use permit is required for any height over six stories. See § 30-65.1(d)(5), LDC, Record, page 76. Similarly, the Special Area Plan provides that the "[m]aximum building height shall not exceed six stories by right (and up to eight stories by special use permit), in accordance with Section 30-65.1." (Emphasis added) See Ch. 30, App. A, § 3, LDC; Record, page 98. If a special use permit is requested by an owner to build up to the seventh or eighth floor, the owner is then required to comply with seven criteria for issuance of a special use permit found in Section 30-233(1)-(7), LDC.

The Special Area Plan divides buildings into three classifications for purposes of regulation of new construction: Types I, II, and III. Type II and III buildings include only houses and apartments. The Special Area Plan provides that each story for a Type II building shall "not exceed 13 feet floor to ceiling," while "[t]he overall height of any [Type III] building

shall not exceed 65 feet and five stories". Record, pages 101 and 104. In contrast, Type I buildings incorporate mixed-use residential and commercial spaces and there is no limitation on floor height. The applicants' proposed building, as a mixed-use building with apartments, falls within Type I. The Ordinance provides the following height restriction for Type I buildings within the district:

> Building Height.
> * * * *
> 3. Maximum building height shall not exceed six stories by right (and up to eight stories by special use permit), in accordance with Section 30-65.1. The overall height of the building cannot exceed 104 feet, except by a PD rezoning in conjunction with a PUD land use change, where limitations on building height and maximum stories are set by the PUD land use amendment, or within an existing land use category that allows the desired height, and implemented by the PD layout plan, PD plan report and elevations.

Ch. 30, App. A, § 3, LDC; Record, page 98. The cited provision is at the heart of this dispute.

Under the foregoing regulation, a Type I building may not exceed 104 feet in height, and six stories may be constructed as a matter of "right." If a property owner desires to construct "up to eight stories," that is, a seven or eight-story structure, but still not exceed the 104-foot height limitation, the owner must obtain a special use permit. In no case may a building rise taller than 104 feet unless a change in zoning and

land use classification is obtained. Here, the applicants seek a special use permit for the purpose of adding two stories to their building; they do not seek approval for a particular number of feet of building height since the structure will not exceed 104 feet.

The subject property currently contains a parking lot and a single structure housing three restaurants. The adjacent properties to the east, west, and north, all of which are zoned UMU-1, are a Catholic church, a fraternity house (Delta Upsilon), and a Christian campus center. To the south of the property (and directly across University Avenue) is the University of Florida campus. To the north of the site beyond the Christian campus center and across Northwest First Avenue, which runs parallel to, and one block north of, University Avenue, are a set of two and three-story apartment buildings and a few one-story single-family homes. The parcel appears to be approximately one block east of Ben Hill Griffin Stadium, a large football stadium on the University of Florida campus.

On May 12, 2006, the applicants participated in a "First-Step" meeting to initiate discussion with the City as to the proposed development. On September 11, 2006, the project engineer, project architect, and the Stocks conducted a neighborhood meeting to present the project to residents of the College Park area and to address questions and concerns.

Besides the applicants' representatives, participants included representatives of a fraternity and sorority house, two adjacent property owners, and six other individuals. (Other than the applicants' representatives, only one attendee, Jimmy Harnsberger, later appeared and spoke at the public meeting held by the Board.)

On September 13, 2006, the Reichardts filed their application for a special use permit with the City's Department of Community Development (Department) to construct an eight-story building. Under the process in place, the Department then analyzed the application and submitted a recommendation to the Board. § 30.234(c), LDC. Thereafter, the Board conducted an informal quasi-judicial hearing on the permit application at a public meeting on October 19, 2006. § 30-234(e), LDC. The meeting was properly noticed and advertised. § 30-234(f), LDC.

In conjunction with the Board meeting on October 19, 2006, Ralph Hilliard, Planning Manager for the City, prepared a four and one-half page report recommending approval of the special use permit with certain conditions. In doing so, the staff recommended that design elements of the roof-top terrace be changed to prevent the terrace from being classified as an additional ninth floor. The applicants had no objection to altering the design of the roof-top terrace to remove those elements which caused the terrace to be classified as a story.

Section 30-233(2), LDC, requires that before a special use permit may be issued, there must be a finding "[t]hat the proposed use or development will have general compatibility and harmony with the uses and structures on adjacent and nearby properties." On this issue the staff report made the following findings:

> Staff finds that the proposed project is compatible with the surrounding land uses. In terms of uses, the proposed development is compatible with surrounding development. In terms of structure and height, the proposed building will have the greatest number of stories but will not be significantly higher than surrounding buildings to the east, south and west. The building is not adjacent to single-family residential where the impact would be the greatest. It is surrounded by mostly civic, educational and fraternal organizations, which are not significantly affected by the proximity of higher structures. The building will also incorporate architectural design and components which will enhance its compatibility within the neighborhood. It is also expected that it will act as a catalyst to future compatible development within the neighborhood.

The report went on to say that:

> The development and use continues to be generally compatible and in harmony with the use and structures on adjacent and nearby properties. Land to the south is the University of Florida campus, and the surrounding uses to the east, west and north include a Catholic church, a fraternity house and a Jewish Campus Center, respectively. The proposed [sic] will provide a mix of uses along the University Avenue corridor, and a mixed-use pedestrian

> oriented corridor in close proximity to the University of Florida campus. Updates to the public infrastructure will be included along with pedestrian and bicycle safety improvements provided by the project.

Although not at issue in this appeal, the staff report also found that all other requirements had been met for issuing a special use permit, including the remaining six criteria found in Section 30-233(1) and (3)-(7), LDC.

At the meeting on October 19, 2006, three members of the City staff, Shenley Neely, a Senior Planner for the Department of Community Development, Lawrence Calderon, Chief of Current Planning, and Dean Mimms, Chief of Comprehensive Planning, all of whom are supervised by Mr. Hilliard, spoke on behalf of the staff and/or answered questions posed by Board members. In addition, the following individuals testified in support of the project: Sergio Reyes, the project engineer; Phil and Sharon Stock, who intend to develop the property; Al Santiestiban, the architect; and John Thomas, a local realtor who will market the property once construction begins. Speaking in opposition to the project were Dr. Mark Goldstein, a resident of the area and member of the Association; Jimmy Harnsberger, a nearby resident and Association member; Robert Kurt, a student who attends the Christian campus house; Charles Cook, a student; and Theodore White, who did not give his address or occupation. (One other individual spoke but his comments are not relevant here.)

Mr. Reyes displayed street-level renderings of the proposed building and images of the surrounding properties. He explained that three restaurants now occupy the existing building that will be demolished if the special use permit is granted: Papa Johns, Sloppy Gator, and "the smoothies." He acknowledged that the developer agrees with the staff recommendation to modify the top floor to comply with the eight-story restriction. Even at eight stories, Mr. Reyes advised that the project would not exceed the 104-foot maximum height allowed by the Special Area Plan.

Sharon Stock informed the Board that the applicants had spoken with representatives of the adjacent properties and none had any objections to the project. She also noted the compatibility of the façade design with design elements of the University of Florida campus, and the fact that more parking spaces have been provided than are required by the LDC. Based on conversations with the next door neighbors, Ms. Stock predicted that within three years the Catholic church will have redeveloped its parking lot, and the Delta Upsilon fraternity will be moving and developing its property as well. Finally, she pointed out that she and her husband have worked closely with the staff throughout the process in order to make certain that the project complied with the LDC.

The project architect, Al Santiestiban, described how he would change the terrace area to a trellis, and not a roof bulkhead, to comply with the staff's objection to the bulkhead constituting a ninth floor on the project. He also stated that another project known as the University Corners project (located at "17th" but whose precise location is otherwise unknown) would be built to a height of 115 feet, or even higher than the project here. He further noted that the design of the project "ties in to the local university architecture."

Phil Stock indicated that the first floor of the building would be retail space plus some parking, the second floor would have a small common area for the building residents as well as parking spaces accessed by a lift, and the upper floors would consist of luxury condominium units. He also stated that he has "reservations" on twelve of the twenty-four units, even though no construction or advertising has begun. Finally, he pointed out that if a special use permit is not approved, he intends to construct a six-story (rather than an eight-story) building to a height of 104 feet, the only differences being the six-story building would have higher ceilings for each floor, there would be eighteen rather than twenty-four units, and the units would be more expensive.

The lead realtor for the project, John Thomas, briefly discussed the makeup of a unit, the type of customer who would

purchase a unit, and the fact that the project would be the nicest in the City. He stated that the condominium units will range in price from $400,000.00 to $1,800,000.00.

Dr. Goldstein, who is a member of the Association's Board of Directors and a resident of the neighborhood for 35 years, objected to the project on the ground it was "profoundly out of character with the neighborhood." Dr. Goldstein appeared on behalf of the Association, which is the "adjacent and affected neighborhood group." Dr. Goldstein described the project as an "eyesore" and a "towering monster sitting over the neighborhood for weekend use a few times a year by very wealthy people." He pointed out that the new building will be "at least double over everything else within several blocks." He also stated that the project does not "fit in with the context of the neighborhood, the surrounding buildings, [and] the other activities." Dr. Goldstein stated that "a floor is somewhere between 10 and 12 feet high," "[t]here's a glitch in the code" because "a six-story building by right is something around 70-some feet, not 104," and that "[t]aking advantage of that glitch is not the function of the Board." He added that "it is not by right to have anything you want regardless of the number of feet up," and that this view was "a misunderstanding [by] our plan board."

Jimmy Harnsberger, who stated he was a member of the Association, urged the Board to restrict the project to six

stories. By doing so, this would serve as a precedent for future projects in the area and make the project compatible with the existing buildings and neighborhood.

Robert Kurt, a student who attends the nearby Christian campus center just north of the project but does not live in the neighborhood, was primarily concerned that the project would affect parking in the area by visitors "taking up street parking." He agreed with the comments of Dr. Goldstein and noted that the project would change the character of the neighborhood and provide no affordable housing access for students.

Charles Cook, a student at the University of Florida School of Architecture, stated that this type of project is "a little bit out of place as far as students go" and would "separate and segregate the community" because of the price of the units.

Theodore White, who did not give his occupation or place of residence, stated that the project would be "towering [over] everything" and be "distracting." He also feared that the fraternity next door to the Reichardts' property "might get expelled" and then sell its property "real soon" to a developer who would build another eight-story building.

Finally, the City staff responded to the criticisms raised by Dr. Goldstein regarding the purported ambiguity in the height provision and stated that it did not find the Special Area Plan

height limitation for Type I buildings to be ambiguous. It concluded that the provision clearly provided "by right" a maximum 104-foot allowable height for buildings within the district. Contrary to Mr. Goldstein's assertion, the staff pointed out that it "is not aware of any glitch in the code." The staff added that the project met all of the requirements of the Special Area Plan and design criteria.

At the conclusion of the hearing, the Board, by a 5-2 vote, adopted the staff's recommendation and approved the application for a special use permit with conditions. (The only condition relevant here is the condition to modify the top floor so that a bulkhead would be eliminated and replaced by a trellis; the applicants agreed to comply with this change.)

On November 6, 2006, the Board, through a City Senior Planner, Shenley Neely, advised Mr. Reichardt by letter that the special use permit was being issued with conditions. The letter requested corrected plans to conform with the Board's decision and advised that the approval was valid for one year, or until October 19, 2007.

On November 17, 2006, the Appellant filed its appeal of that decision pursuant to Section 30-352.1, LDC. An Amended Application for Appeal was later filed on January 30, 2007, which more fully complied with the requirements of Sections 30-234(l) and 30-352.1(a)(1)a.-c., LDC.[2]

III. LEGAL DISCUSSION

The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to Sections 30-234(l) and 30-352.1, LDC. The former provision provides in part that "[a]ny affected person may appeal the city plan board's decision on an application for a special use permit to a hearing officer," and that "[t]he procedure for the appeal shall be the same as is provided in subsection 30-352.1(a) for appeals from decisions of the development review board." The latter provision provides that a hearing officer (administrative law judge) is authorized to conduct an "appellate hearing" to review a decision rendered by that board.

Under Section 30-352.1(a)(3)a.1. and 2., LDC, the scope of review by an administrative law judge in an appellate hearing is limited in the following manner:

> 1. The hearing officer's review shall be limited to the record and applicable law;
> 2. The hearing officer shall have the authority to review questions of law only, including interpretations of this chapter, and any rules and regulations implementing this chapter. For this purpose, an allegation that a decision of the decision-maker is not supported by competent substantial evidence in the record as a whole is deemed to be a question of law. The hearing officer may not reweigh the evidence but must decide only whether competent substantial evidence supports the decision under review.

Therefore, this appeal is limited to determining whether the Board departed from the essential requirements of the law in reaching its decision, and whether its findings are supported by competent substantial evidence.

Section 30-352.1(3)d.1., LDC, goes on to provide that "the [administrative law judge] must affirm each contested decision or find it to be an incorrect interpretation of the law or not supported by competent substantial evidence. The [administrative law judge] shall prepare a written opinion stating the legal basis for each ruling. The [administrative law judge] shall submit the opinion to the department, which shall distribute it to the decision-maker and the parties."

In DeGroot v. Sheffield, 95 So. 2d 912, 915 (Fla. 1957), the court discussed the meaning of "competent substantial evidence" and stated:

> 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 and 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 findings should be

> sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent, the "substantial" evidence should also be "competent."

A hearing officer acting in his or her appellate review capacity is without authority to reweigh conflicting testimony presented to the Board or to substitute his or her judgment for that of the Board on the issue of credibility of witnesses. See Haines City Community Development v. Heggs, 658 So. 2d 523, 530 (Fla. 1995).

The question on appeal is not whether the record contains competent substantial evidence supporting the view of Appellant; rather, the question is whether competent substantial evidence supports the findings made by the Board. Collier Medical Center, Inc. v. Department of Health and Rehabilitative Services, 462 So. 2d 83, 85 (Fla. 1st DCA 1985).

The issue of whether the Board "complied with the essential requirements of law" is synonymous with whether the Board "applied the correct law." Haines City Community Development, 658 So. 2d at 530.

The Board's decision approves the issuance of a special use permit, which authorizes the Reichardts to construct an eight-story building on their property (not to exceed the maximum 104-foot height limitation). In its Amended Application for Appeal, Appellant raises two broad arguments in support of its

contention that the decision should not be affirmed: (1) that the Board departed from the essential requirements of the law by misconstruing "the applicable height provision in the College Park Special Area Plan"; and (2) that the Board's decision is not supported by competent substantial evidence. As to the latter ground, Appellant's Initial Brief provides further clarification and argues that there is no competent substantial evidence to support the Board's decision that the project will have general compatibility and harmony with the uses and structures on adjacent and nearby properties, as required by Section 30-233(2), LDC.

A. Was there a departure from the essential requirements of the law?

Appellant argues that the second sentence of the provision governing height limitations for Type I buildings in the Special Area Plan was misconstrued by the Board when it issued the special use permit. That provision reads as follows:

> Building Height.
> * * * *
> 3. Maximum building height shall not exceed six stories by right (and up to eight stories by special use permit), in accordance with Section 30-65.1. The overall height of the building cannot exceed 104 feet, except by a PD rezoning in conjunction with a PUD land use change, where limitations on building height and maximum stories are set by the PUD land use amendment, or within an existing land use category that allows the desired height, and

> implemented by the PD layout plan, PD plan report and elevations.

App. A, § 3, Exh. B, LDC; Record, page 98.

Specifically, Appellant argues that the Board misinterpreted the second sentence in paragraph 3 of the Building Height provision by concluding that property owners within the Special Area Plan have an absolute right to construct a 104-foot building, a position taken by the staff and adopted by the Board when considering this matter. Appellant further argues that by misconstruing this provision, and accepting as fact that an owner by right can construct a building not to exceed 104 feet, the Board did not consider the building's height and scale when it determined that the building was compatible with nearby properties. Secondarily, Appellant argues that the Board's interpretation is in conflict with other parallel provisions of the LDC, namely, the height provisions for Type II buildings, in which a story cannot "exceed 13 feet floor to ceiling" (Record, page 101), and Type III buildings, which cannot "exceed 65 feet and five stories [in height], except if the property is zoned planned development," which equates to a similar maximum floor height of 13 feet. (Record, page 104) (The LDC does not provide a similar limitation for Type I buildings; instead, it simply requires that the first story "shall be at least 10 feet floor to ceiling height.")

During oral argument, Appellant conceded that the height and story limitation language is not ambiguous. At a later point, however, it suggested that the language is ambiguous in that the sentence in which the 104-foot height limitation is found does not specify how or when an owner may construct a building to that height. Appellant appears to suggest that because the words "by right" do not appear in the sentence, there is a resulting ambiguity, and in order to build a structure to 104 feet, an owner would probably need to secure separate approval to do so during the site review process.

Appellant's interpretation of the language in question is not accepted. The Board did not err in construing the provision in the manner that it did. The maximum height language (in terms of stories and feet) for Type I buildings is clear and unambiguous: "maximum building height may not exceed six stories by right (and up to eight stories by special use permit)" (emphasis added), while the "overall height of the building cannot exceed 104 feet." Record, page 98. The fact that these two limitations are not contained in the same sentence does not create an ambiguity. Under established rules of statutory construction, where a statute is plain and unambiguous, it is unnecessary to engage in statutory construction or interpretation. Forsythe et al. v. Longboat Key Beach Erosion Control District, 604 So. 2d 452, 454 (Fla. 1992).

Municipal ordinances are, of course, subject to the same rules of construction as are state statutes. See, e.g., Rinker Materials Corp. v. City of North Miami, 286 So. 2d 552, 553 (Fla. 1973). Therefore, the Board did not act improperly when it construed the statute in the exact way it was written.

Even if one accepts Appellant's argument that the provision is susceptible to more than one interpretation, and the City's intent is unclear, the Board's construction of the height limitation is a reasonable and logical one and is not clearly erroneous. Compare, e.g., Eager et al. v. Fla. Keys Aqueduct Authority, 580 So. 2d 771, 772 (Fla. 3d DCA 1991)(an agency's interpretation of its rules will not be overturned unless the interpretation is clearly erroneous). When the two sentences in the height provision are read in pari materia, it is not unreasonable to construe the language to mean that as a matter of right, property owners in the Special Area Plan may construct buildings not to exceed six stories or 104 feet in height.

Appellant also argues that by construing the provision in the manner that it did, the Board could not consider the building's height and scale when determining whether the structure is compatible with nearby properties. However, the City has established other criteria in Section 30-233, LDC, which require, among other things, that when issuing a special

use permit, the Board must consider the structure's height and scale in terms of compatibility with the neighborhood.[3]

Appellant further argues that the provision governing Type I buildings must be read in pari materia with those provisions in the Special Area Plan which specify that floors in Type II and III buildings may not exceed 13 feet in height. While Appellant says it is not suggesting that a similar 13-foot height limitation be applied to Type I buildings, it argues that these other limitations "support a judicial inference that the City did not intend to grant an absolute 104-by-right foot height to developers seeking to erect Type I structures with six or fewer stories." In other words, Appellant argues that the City intended for there to be a relationship between the number of stories and a building's proposed height, and if the Board's interpretation here is accepted, it would "disaggregate" this relationship. However, there is no inconsistency or conflict between these provisions. Legislative (and local government) provisions are considered inconsistent "only if in order to comply with one provision a violation of the other is required." Phantom of Clearwater, Inc. v. Pinellas County, 894 So. 2d 1011, 1020 (Fla. 2nd DCA 2005). Here, the applicants and the Board have complied with all provisions of the Special Area Plan, the Comprehensive Plan, and the Land Development Code.

Obviously, the City intended a different standard for Type I offices and mixed-use buildings than for Type II and III houses, apartments, and townhouses. Had it intended to apply the same floor height to all three categories, it could have easily done so. As the court noted in Paragon Health Services, Inc. v. Central Palm Beach Community Mental Health Center, Inc. et al., 859 So. 2d 1233, 1235-36 (Fla. 4th DCA 2003), "[w]here the [City] has included a specific provision in one part of a[n] [Ordinance] and omitted it in another part, we must conclude that it knows how to say what it means, and its failure to do so is intentional." Whether or not the City anticipated the occurrence of a particular situation, such as the construction of a six-story, 104-foot building as a matter of right, is not indicative of ambiguity of the Ordinance. Forsythe et al. v. Longboat Key Beach Erosion Control District, 604 So. 2d 452, 456 (Fla. 1992).

Finally, if Appellant's view were accepted, the Board would be modifying the express terms of the Ordinance, which is not permitted where, as here, the language in the Ordinance is clear and unambiguous. See, e.g., Fla. Farm Bureau Casualty Insurance Co. v. Cox, 943 So. 2d 823, 828 (Fla. 1st DCA 2006).

Therefore, it is concluded that the Board did not depart from the essential requirements of the law by misconstruing the height provision for Type I buildings in the Special Area Plan.

B. Is there competent and substantial evidence to support the Board's findings on compatibility?

Appellant next contends that the Board's finding that the project will be compatible with the surrounding area is not supported by competent and substantial evidence. In resolving this contention, one need not determine whether there is competent substantial evidence supporting a finding in Appellant's favor. Rather, the issue is whether there is any competent substantial evidence to support the Board's finding that Section 30-233(2), LDC, has been satisfied. See, e.g., Dorian et al. v. Davis et al., 874 So. 2d 661, 663 (Fla. 5th DCA 2004)(a local government's quasi-judicial decision should be upheld if there is any competent substantial evidence to support it).

In complying with this criterion, which requires compatibility of the proposed structure with "adjacent and nearby properties," it was appropriate for the Board to consider not only the residential uses to the north of the subject property, but also the adjacent University of Florida, with its large public buildings and football stadium, and the adjacent institutional uses. Further, the LDC requires only that there be "general" compatibility and harmony with the neighborhood, and not that the proposed structure be identical to, or a carbon copy of, the existing structures and uses.

Here, there was testimony that the adjacent Catholic church was "happy" with the project; that the adjacent Christian campus center "concurred" with what was being done; that the adjacent fraternity house did not object to the project; that the design elements incorporated into the façade of the proposed building were compatible with the "local university architecture" across the street; that even though the building would be taller than adjacent buildings, the trend in the area is or will be towards larger developments; that the developer worked closely with the City staff to ensure that all LDC requirements were being met; that the project will be near two and three-story apartment buildings and form a stepping stone (or transition) from eight stories to three stories to two stories to the one-story single-family homes which are found further to the north of the project; and that the project serves the purposes of the Special Area Plan, the Comprehensive Plan, and the LDC by introducing residential and retail units in a mixed-use development with on-site parking.

Besides the testimony at the meeting, the staff submitted a report, adopted by the Board, which contains a lengthy section outlining in detail the reasons why the project is compatible with the adjacent areas. Among other things, the report indicates that no single-family homes are adjacent to the site; that the property is surrounded by "mostly civic, educational

and fraternal organizations"; that "the architectural design and components . . . will enhance its compatibility within the neighborhood"; that the project would "provide a mix of uses along the University Avenue corridor, and a mixed-use, pedestrian-oriented corridor in close proximity to the University of Florida campus"; and that the proposed development and use will be "compatible and in harmony with the use and structures on adjacent and nearby properties." Given this factual predicate, which a reasonable mind would accept as adequate to support the conclusion reached, it is concluded that there is competent substantial evidence to support the Board's finding on this issue.

Because the Board did not depart from the essential requirements of the law in construing the building height provision in the Special Area Plan, and there is competent substantial evidence to support the challenged finding, the Board's decision should be affirmed.

DECISION

Based upon the foregoing, the decision of the City Plan Board dated November 6, 2006, to issue a special use permit to William and Jackie Reichardt is AFFIRMED.

DONE AND ORDERED this 17th day of April, 2007, in Tallahassee, Leon County, Florida.

S

DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of April, 2007.

ENDNOTES

1/ The Ordinance states that the Special Area Plan applies to "property generally located north of West University Avenue and south of Northwest 5th Avenue, between Northwest 20th Terrace and Northwest 20th Street between [Northwest] 3d Avenue and [Northwest] 5th Avenue on the west side and Northwest 15th Street on the east side; and that area north of West University Avenue and south of Northwest 7th Avenue, between Northwest 15th Street on the west side and Northwest 13th Street on the east side." (Record, page 83)

2/ The initial Appeal simply stated, without further explication, that it wished to "institute an appeal of a Special Use Permit for an 8 Story Tower in the University Park Neighborhood" on behalf of the University Park Neighborhood Association. However, Section 30-352.1(a)(1)a.-c., LDC, requires that an application for appeal contain, at a minimum, a number of items, including "the specific error alleged as the grounds of the appeal." The required information was included in the Amended Application for Appeal.

3/ The staff considered this issue in its report when it noted in part that "[i]n terms of structure and height, the proposed building will have the greatest number of stories but will not be

significantly higher than surrounding buildings to the east, south and west. The building is not adjacent to single-family residential where the potential impact would be the greatest." (Record, page 16) The Board accepted this recommendation.

COPIES FURNISHED:

Thomas Saunders, Director
Department of Community Development
Thomas Center B
306 Northeast 6th Avenue
Gainesville, Florida 32601-5476

Dr. Mark K. Goldstein
1512 Northwest Seventh Avenue
Gainesville, Florida 32603-1209

Daniel M. Nee, Esquire
Assistant City Attorney
200 East University Avenue, Suite 423
Gainesville, Florida 32601-5456

Patrice F. Boyes, Esquire
Patrice Boyes, P.A.
408 West University Avenue
Suite PH
Gainesville, Florida 32601-5281

NOTICE OF RIGHT TO JUDICIAL REVIEW

Section 30-234(l), LDC, provides that "[j]udicial review shall be available as provided in section 30-352.1." Under that provision, if the decision of the Plan Board is affirmed, the Written Opinion is "deemed to be final action of the decision-maker and shall be subjected to no further review." The Written Opinion "may then be appealed to the appropriate court within 30 days of the order by an action in the nature of a writ of certiorari."