

DRAFT ORDINANCE NO. 2023- ____

AN ORDINANCE AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF VENICE, FLORIDA, PURSUANT TO REZONE PETITION NO. 22-38RZ, RELATING TO THE REDESIGNATING OF A 10.42 ACRE PARCEL AT THE SOUTHWEST CORNER OF THE JACARANDA BOULEVARD AND LAUREL ROAD, WITHIN THE MILANO PUD, FROM OPEN SPACE TO COMMERCIAL, TO ADD ACCESS POINTS FOR THE COMMERCIAL PARCEL, AND ESTABLISH DEVELOPMENT STANDARDS FOR THE COMMERCIAL PARCEL; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Rezone Petition No. 22-38RZ to rezone property described in Section 3 below, has been filed with the City of Venice to change the official City of Venice Zoning Map designation for the subject property from Open Space to Commercial; and

WHEREAS, the subject property described in Section 3 below has been found to be located in the corporate limits of the City of Venice; and

WHEREAS, the City of Venice Planning Commission has been designated as the local planning agency in accordance with F.S. 163.7134; and

WHEREAS, the planning commission held a public hearing on January 17 and March 17, 2023 for which public notice was provided regarding the Petition and based upon the evidence and public comment received at the public hearing, the staff report, and discussion by the Planning Commission, the Planning Commission voted not to recommend approval of rezone Petition No. 22-28RZ; and

WHEREAS, the Venice City Council has received and considered the report of the Planning Commission concerning rezone Petition No. 22-38RZ; and

WHEREAS, the City Council held a public hearing on the proposed rezoning of the property described herein on May 23-24 and June 15-16, 2023, all in accordance with the City's Code of Ordinances, and has considered the information received at said public hearing; and

WHEREAS, pursuant to the Findings of Facts and Conclusions of Law set forth below, the City Council finds that Rezone Petition No. 22-38RZ is in compliance with and meets the standards of the City's Land Development Regulations and Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA:

SECTION 1. The Whereas clauses above are ratified and confirmed as correct.

SECTION 2. The City Council finds as follows:

A. The City Council has received and considered the report of the Planning Commission not recommending approval of Zoning Map Amendment Petition No. 22-38RZ.

B. The City Council has held a public hearing on the Petition and has considered the information received at said public hearing.

Findings of Facts

C. The City Council has made the following Findings of Facts:

1. In 2017, the Petitioner (Neal) asked and obtained approval for a Binding Master Plan for up to 1,350 dwelling units with no commercial uses and with 55.2% open space. This made the 537 acre Milano PUD 100% residential.
2. The 2017 Binding Master Plan stated that “where the PUD Master Plan identifies areas for residential uses, the developer shall have the option to convert such residential uses to open space uses.”
3. As part of the 2017 Milano PUD zoning, Neal obtained several modifications to standards “based upon the low intensity of the development plan, the extensive perimeter buffers and the significant amount of open space otherwise provided.”
4. Subsequent to 2017, the Milano PUD has been developed into 4 residential subdivisions with 1,021 platted dwelling units (769 single-family detached and 252 single family attached): Milano, Aria, Cielo and Fiore.
5. In 2019, the Plat of the Cielo Subdivision was recorded showing 71 lots and various Open Space Tracts with only one small reserved Tract for the widening of Laurel Road.
6. The 10.42 acres proposed by Neal for rezoning for commercial use was shown on the Cielo Subdivision Plat as part of 3 Tracts labeled as Open Space, Private Lake and Wetland private Flowage Easements.
7. The Cielo Subdivision Covenants provided that the Flowage Easements were Common Property subject to the “power, authority and responsibility to operate and maintain,” by the Cielo HOA.
8. The Milano PUD was amended in 2020 and 2022, but no new development rights were requested or approved. The 2022 amendment reduced the open space by 24.1 acres leaving the Milano PUD with 503.9 acres and 266.9 acres or 53% of open space.
9. In October of 2022, after the filing of this Petition in June, without any notice to the homeowners in the Cielo Subdivision, Neal along with the Cielo HOA, which Neal still controlled, executed and filed a Release purporting to release the 10.42 acres from the Covenants and easements of the Cielo Subdivision stating that it was “in the best interests of the landowners within the Cielo Subdivision.”

10. The proposed shopping center is located directly across from the current 3-way Veneto/Laurel entrance/exit intersection used by the 1,377 homeowners in the Venetian Golf & River Club PUD.

11. The 10.42 acre proposed shopping center will destroy and replace open space wetlands shown on the Cielo Subdivision Plat, including a 6 acre lake, and numerous native wild life habitats, but the Applicant proposes to make a deposit into a Mitigation Bank as compensation.

12. The proposed shopping center is planned to attract shoppers from the 8,000+ homes on the east side of I-75.

13. The proposed shopping center would convert the Veneto/Laurel intersection from a 3-way intersection into a 4-way intersection and with the widening of Laurel Road it would have 7 lanes with stop signs on each side of Veneto Boulevard.

14. Traffic congestion at the Veneto/Laurel intersection will naturally be increased by the proposed shopping center.

15. Today, the 500+ acres of the Milano PUD are owned in part by Neal and by hundreds of individual homeowners in 3 of the subdivisions and several homeowner associations and includes 50+- acres of dedicated private streets.

Conclusions of Law

D. Upon the foregoing Findings of Facts, the City Council hereby makes the following Conclusions of Law:

1. The term “Neighborhood Commercial Uses” in Section 86-130(b)(8) may include all of the planned 8,000+ homes on the east side of I-75.

2. Section 86-130(b)(8) did not require that commercial uses in the Milano PUD had to be determined at the time of approval of the Milano PUD in 2017.

3. Section 86-130(b)(8) permitted the Milano PUD to be developed between 2017 and 2023 as a 100% residential PUD and, after the sale of numerous homes, it permitted the Milano PUD to be changed in 2023, without the consent of the various homeowners and homeowner associations, by converting platted open space to a shopping center.

4. Section 86-130(b)(8) permits up to 5% for commercial uses in a residential PUD and therefore the proposed shopping center is compatible as a matter of law with adjacent and nearby residential lands.

5. The Section 86-130(r) language “intended to serve the needs of the PUD and not the general needs of the surrounding area” is hereby interpreted to mean that the proposed shopping center can serve the planned 8,000+ homes on the east side of I-75.

6. The Section 86-130(r) language “Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD” is hereby interpreted to mean that the proposed shopping center streets do not have to be centrally located in the Milano PUD and that the proposed shopping center may be located at northeast corner of the Cielo Subdivision at the intersection of Laurel Road and Jacaranda Boulevard and have the proposed exits onto both of those exterior streets.

7. Section 86-47(b)(1)(d) does not require the 100s of homeowners in the Milano PUD to join in the application for the rezoning of the Milano PUD in 2022-2023.

8. Section 86-130(k) is hereby interpreted to mean that the evidence of unified control submitted in 2017 for approval of a 100% residential PUD gave the Petitioner the right of unified control to unilaterally change the scheme of development in 2022-2023 to convert platted open space for commercial uses as a shopping center.

9. Section 86-130(k) does not permit any involvement of the 100s of homeowners and the homeowner associations in the 100% residential Milano PUD in the application for the proposed amendment for a shopping center in 2022-2023.

10. The failure of the City so far to require the dedications of open space shown in the Cielo subdivision plat specified in Section 86-130(j) and Section 86-231(c)(2)(n) is immaterial.

11. The conversion of 10.42 acres of open space which includes the destruction of platted and zoned wetlands and wildlife habitats with paving and their replacement with a shopping center is permitted because there was 131 acres of Wetlands in the 500+ acre Milano PUD.

E. The proposed rezoning of the property described herein is in accordance with and meets the requirements of the Land Development Code and is consistent with the City of Venice Comprehensive Plan.

SECTION 3. The official Zoning Atlas is hereby amended, by changing the zoning classification for the following described property located in the City of Venice from Open Space to Commercial, subject to the following stipulations:

1. There shall be an Advisory Board (herein, “Advisory Board”) which shall consist of residents of the Milano Subdivision, the Aria Subdivision, the Cielo Subdivision, the Fiore Subdivision, the Venetian Golf & River Club Subdivision and the Willow Chase Subdivision (in equal numbers from each) and shall be chosen by those residents, to advise Petitioner on the development of the proposed shopping center, including without limitation, all issues relating to the proper buffering of the Commercial development from those Subdivisions.

2. The entire perimeter of the Commercial center along the south side of Laurel Road and the west side of Jacaranda Boulevard, not included in access right of ways, shall be buffered with soil berms with a minimum height of 4’ high, plus 4’ shrubs and 12’-18’ trees on top of the berms.

3. The parking lot lights shall be shielded and of a height and type that does not spill over light outside of the shopping center. No lighting from the Commercial property shall be spilled over into any of the adjoining residential properties of the Milano, Aria, Cielo, Venetian Golf & River Club and Willow Chase Subdivisions.
4. Security cameras shall cover all parking lots and shall be monitored at all times.
5. All overnight parking, including but not limited to boats and recreational vehicles, shall be prohibited and that restriction shall be noted by appropriate signage, with compliance monitored by security cameras and enforced by the Venice Police.
6. Reasonable commercial efforts shall be exercised to restrict all deliveries to daylight hours only.
7. Reasonable commercial efforts shall be exercised to restrict all back-up alarms on delivery vehicles to silent laser type alarms or similar silent alarms.
8. The Advisory Board shall be consulted to determine, implement and provide the best combination of walls and/or landscaping to surround the delivery areas to buffer to the greatest extent commercially reasonable any noise emanating therefrom.
9. No gas station shall be allowed.
10. Petitioner shall, at its expense, install street lighting along Laurel Road and Jacaranda Boulevard approved by the City of Venice and Sarasota County.
11. The Site and Development Plan for the property shall require that prior to any building permit being issued by the City for the subject Commercial property, a Variance shall be obtained from the County for a full traffic signal at the intersection of Laurel Road and Veneto Boulevard and that traffic signal shall be installed, all at the expense of the owner of the Commercial property.
12. An automatic entrance gate must be provided by the owner of the Commercial property for the Cielo Subdivision, subject to the approval of the Cielo Neighborhood Association, Inc., after its control is turned over to the Cielo homeowners.
13. The operating hours for businesses on the Commercial property shall be limited to being between 8:00 AM and 11:00 PM unless otherwise approved by the City Council.
14. No noise from the Commercial property shall be spilled over into any of the adjoining residential properties of the Milano, Aria, Cielo, Venetian Golf & River Club and Willow Chase Subdivisions.
15. All commercial activities on the Commercial property shall be conducted inside of buildings and no such activities shall be conducted outside of buildings.

16. The Mitigation Bank deposit to be submitted by Neal shall be subject to the approval of the City Council.

Property Description:

EXHIBIT "A"

LEGAL DESCRIPTION OF THE RELEASED LANDS:

(BY SURVEYOR) COMMENCING AT THE NORTHEASTERLY CORNER OF TRACT 700, CIELO SUBDIVISION AS RECORDED IN PLAT BOOK 53, PAGE 288 OF SARASOTA COUNTY OFFICIAL RECORDS THENCE SOUTH 00°00'06" WEST, A DISTANCE OF 55.04 FEET ALONG THE WEST RIGHT OF WAY LINE OF JACARANDA BOULEVARD TO THE POINT OF BEGINNING THENCE CONTINUE ALONG THE SAID RIGHT OF WAY SOUTH 00°00'06" WEST, 478.24 FEET; THENCE NORTH 89°14'10" WEST, 935.70 FEET; THENCE NORTH 00°45'50" EAST, 72.60 FEET; TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 17.60 FEET AND WHOSE CHORD BEARS NORTH 11°25'30" WEST, 7.43 FEET; THENCE NORTH 7.49 FEET ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 24°22'40"; TO A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 110.67 FEET AND WHOSE CHORD BEARS NORTH 11°23'08" WEST, 46.88 FEET; THENCE NORTH 47.24 FEET ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 24°27'24"; THENCE NORTH 00°50'34" EAST, A DISTANCE OF 130.16 FEET; TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 25.19 FEET AND WHOSE CHORD BEARS NORTH 09°09'26" WEST, 13.66 FEET; THENCE NORTH 13.83 FEET ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 31°27'54"; TO A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 121.73 FEET AND WHOSE CHORD BEARS NORTH 12°28'38" WEST, 52.33 FEET; THENCE NORTH 52.74 FEET ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 24°49'31"; THENCE NORTH 00°03'52" WEST, A DISTANCE OF 159.00 FEET TO THE SOUTH LINE OF TRACT 700 OF SAID CIELO SUBDIVISION; THENCE ALONG SAID SOUTH LINE, SOUTH 89°10'25" EAST, 957.24 FEET TO THE POINT OF BEGINNING. CONTAINING 10.42 ACRES OR 453,769 SQUARE FEET, MORE OR LESS.

SECTION 4. Effective Date. This Ordinance shall take effect immediately upon its approval and adoption as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA, THIS 11TH DAY OF JULY, 2023.

First Reading: June 16, 2023

Second Reading: July 11, 2023

Adoption: July 11, 2023

Nick Pachota, Mayor

ATTEST:

Kelly Michaels, City Clerk

I, Kelly Michaels, City Clerk of the City of Venice a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of an Ordinance duly adopted by the City Council of the City of Venice, Florida, at a meeting thereof duly convened and held on the 11th day of July, 2023, a quorum being present.

WITNESS my hand and the official seal of said City this 11th day of July, 2023.

Kelly Michaels, City Clerk

Approved as to form:

Kelly M. Fernandez, City Attorney

References

1. 2017 Binding Master Plan. Petition 16-07RZ dated March 10, 2017, and Ordinance 2017-25 dated August 22, 2017.
2. Cielo Subdivision Plat. Cielo Subdivision Plat was dated December 10, 2019, and recorded in Plat Book 53-288. The 10.42 acres of the proposed shopping center was shown on the Cielo Subdivision Plat as open space as part of:

Tract 600: Open space, Private Drainage & Flowage Easement;
Tract 501: Private Lake, Drainage & Flowage Easement and
Tract 306: Wetland, Private Drainage & Flowage Easement.

The Cielo Plat said: “All other easements on this plat are hereby reserved in perpetuity for the purposes noted. All easements on this plat are private unless otherwise specifically noted.”

The Cielo Plat also said: “Tract 700 Reserved for Owner as future development.” Tract 700 was a small narrow Tract obviously for the proposed widening of Laurel Road. No other Tracts were reserved.
3. Cielo Covenants. October 2, 2019, Instrument #2019169159: Section 4.01(a) provided that the Flowage Easements were Common Property subject to the “power, authority and responsibility to operate and maintain,” by the Cielo HOA.
4. Cielo Release. October 1, 2022, Instrument #2022165138.
5. 2020 Milano PUD Amendment #1. On December 8, 2020, the Milano PUD was amended by Petition 19-41 RZ and Ordinance 2020-40, to provide the addition of one access point along Laurel Road for the Fiore subdivision and the restriction of the existing access point to egress only, the addition of project signage at the new access point, the addition of lot standards for townhomes, a modification of driveway standards for townhomes, the addition of an Amenity Area, the addition of alternative roadway sections to allow for on street parking, and minor modifications to conceptual stormwater pond configurations. There was no mention of any commercial uses in the Milano PUD.
6. 2022 Milano PUD Amendment #2. In 2022, The Milano PUD was amended again by Petition 22-07RZ and Ordinance 2022-23 to approve the transfer of 24.1 acres of open space to the GCCF PUD thereby reducing the acreage in the Milano PUD from 538 (originally called 537 acres) acres to 503.9 acres and the open space from 291 acres to 266.90 acres. No additional development rights were requested or approved for the Milano PUD or the GCCF PUD.
7. Section 86-130(b)(8). “Neighborhood commercial uses which are determined at the time of approval for the PUD to be compatible with the existing and future development of adjacent and nearby lands outside the PUD.”]

8. Section 86-130(r). “*Commercial uses*. Commercial uses located in a PUD are intended to serve the needs of the PUD and not the general needs of the surrounding area. Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD.”]

9. Section 86-47(b)(1)(d). “...no such person shall propose an amendment for the rezoning of property which he does not own except as agent or attorney for an owner.”

10. Section 86-130(k). “Evidence of unified control; development agreements. All land in a PUD shall be under the control of the applicant, whether that applicant is an individual, partnership or corporation or a group of individuals, partnerships or corporations. The applicant shall present firm evidence of the unified control of the entire area within the proposed PUD.” See also Section 86-130(t)(3)(a).]

11. Section 86-130(j). “Land in a PUD designated as open space will be restricted by appropriate legal instrument satisfactory to the city attorney as open space perpetually, or for a period of not less than 99years. Such instrument shall be binding upon the developer, his successor and assigns and shall constitute a covenant running with the land, and be in recordable form,” and Section 86-231(c)(2)(n): “Signature and acknowledgement of the owners to the plat and restrictions, including dedication to public use of all streets, alleys, parks or other open spaces shown thereon and the granting of easements. The dedication must be executed by all persons, corporations, or entities whose signature would be required to convey record fee simple title to the lands being dedicated in the same manner in which deeds are required to be executed. All mortgagees having a record interest in the lands subdivided shall execute, in the same manner in which deeds are required to be executed, either the dedication contained on the plat or a separate instrument joining in and ratifying the plat and all dedications and reservations thereon. (See exhibit 1 to Ordinance No. 2018-28.)]