



City of Venice

401 West Venice Avenue
Venice, FL 34285
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Meeting Minutes City Council

Friday, June 16, 2023

9:00 AM

Council Chambers

Continuation of Public Hearing for Ordinance No. 2023-11 Milano PUD Zoning Map Amendment Petition No. 22-38RZ

[23-6154](#) Meeting Instructions and Request to Speak Form

Broadcast

CALL TO ORDER

Mayor Pachota called the meeting to order at 9:00 a.m.

ROLL CALL

Present: 6 - Mayor Nick Pachota, Dr. Mitzie Fiedler, Vice Mayor Jim Boldt, Ms. Helen Moore, Mr. Dick Longo and Mr. Rick Howard

Excused: 1 - Mrs. Rachel Frank

ROLL CALL

A motion was made by Dr. Fiedler, seconded by Mr. Longo, that Mrs. Frank's absence be excused. The motion carried unanimously by voice vote.

ALSO PRESENT

City Attorney Maggie Mooney, City Clerk Kelly Michaels, City Manager Ed Lavallee, Deputy City Clerk Toni Cone, and for certain items on the agenda: Planning and Zoning Director Roger Clark.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mr. Longo.

I. PUBLIC HEARINGS

ORDINANCES - FIRST READING

[ORD. NO. 2023-11](#) An Ordinance of the City of Venice, Florida, Granting Zoning Map Amendment Petition No. 22-38RZ for the Milano Planned Unit Development (PUD) Located at Laurel Road and Jacaranda Boulevard, by Changing the Land Use Designation for an Approximately 10.42 Acres Parcel from Open Space to Commercial and Amending the Milano PUD Binding Master Plan (BMP) to Allow for Commercial Development;

Providing for Repeal of all Ordinances in Conflict Herewith; Providing for Severability; and Providing an Effective Date (Quasi-judicial)

Planning and Zoning Director Clark, being duly sworn, provided the staff summary and rebuttal, stating that Unified Control must be established at the point of adoption, not at the time of amendment of a Planned Unit Development (PUD). He stated staff does not believe this is a regional shopping center. The applicant's request is to modify the binding master plan to identify a 10 acre portion of the PUD as commercial, which is within the guidelines and standards. This petition gives the applicant the opportunity to seek development, and compatibility is examined at the point of development. He further addressed Section 8.2 guidelines for compatibility, general traffic study, Section 86-130(r), evidence in the community with other PUDs and commercial development. He answered a Council question regarding Unified Control evidence and responded that Unified Control was established in 2017 at the time of the Milano PUD adoption.

Attorney Dan Loebeck, being duly sworn, on behalf of Cielo, spoke on the proposed commercial development traffic signal, convenience store, peak hour trip generation by type, transportation, Jacaranda Boulevard, County application of capacity numbers, not Florida Department of Transportation (FDOT), road being a County road, wetlands, open space and lakes. He discussed commercial uses in Section 86-130(r), reviewed a quote from a news article from Mr. Neal, who the commercial development will serve, the staff report, wetlands, Comprehensive Plan, and regional versus neighborhood scope of commercial uses.

Attorney Loebeck, on behalf of North Venice Neighborhood Alliance (NVNA), being duly sworn, provided a summary and rebuttal reviewing Tract 306 wetland, private drainage, and flowage easement, Tract 501 private lake, drainage, and flowage easement, and Tract 600 open space, private drainage, and flowage easement. He showed a document of Cielo Preserve, and a contract of parcel examples of three homes in the preserve, Neighborhood commercial uses, evidence of Unified Control, change in plat, replat conformity, cited Florida statues, final plat, memo from Becker law firm regarding violating the Comprehensive Plan, and showed a transcript from the Planning Commission meeting citing quotes from Planning Commissioners.

Jill Pozarek, NVNA, being duly sworn, reviewed a map of the Venetian Golf and River Club (VGRC), intersection, left turns, traffic, and commercial activity.

Attorney Jeffery Boone, being duly sworn, objected to the combination of time for the affected parties and stated the applicant is okay with NVNA be

allowed more time to finish Ms. Pozarek's statement.

City Attorney Mooney stated there should not be new evidence presented, but encouraged allowing the lay witness to continue.

Ms. Pozarek presented a sales document from Cielo and cited Section 86-130.

Attorney Loebeck reviewed a document from the current binding master plan, open space, wetlands proposed for commercial development with no protection, and noted the Planning Commission recommended denial.

Marshall Happer, on behalf of VGRC, being duly sworn, thanked City staff and Council Members for their time on the case. He commented homeowners have no way to work with wealthy developers and hoped for protection by City Council and City laws. He stated at time of approval in 2017 no commercial rights were requested or reserved. The 538 acres of Milano PUD are owned by Neal, four HOAs and hundreds of homeowners, and the proposed shopping center is intended to attract 8,000 homeowners on the east side of I-75. He stated the four way, seven lane, Veneto-Laurel intersection proposed with only stop signs, with a shopping center for 8,000 homeowners will be more dangerous than a three-way Veneto-Laurel intersection with no shopping center, and if the proposed shopping center is installed Jacaranda Boulevard between Laurel and Border Road will fail, based on their engineer's testimony. Mr. Happer declared this makes the development incompatible with existing property, and the applicant does not have Unified Control.

Attorney Loebeck commented on amending declaration, burdens, binding master plan, and urged Council to deny the application.

Recess was taken from 10:25 a.m. to 10:35 a.m.

Gary Scott, Affected Party, being duly sworn, offered rebuttal stating this application is unprecedented; it is not just another PUD amendment, the applicant is attempting to develop open space to a commercial use after almost all the residential lots are sold. He noted the Planning Commission had recommended denial based on commercial activity not being limited to the Milano PUD. He stated this application was filed under the previous LDR and evidence of Unified Control is not proven. He referenced Sec 86-570 and Open Space definition, and stated the open space is owned in common by the homeowners of the Milano PUD. He showed Cielo covenants "Removal from Declaration" document, stated Cielo was unaware of this document, commented on unilateral agreements, open space dedication issues, Unified Control, final plats, and urged Council to

apply the law.

Attorney Boone introduced the applicant's first rebuttal witness Frank Domingo, Engineer for Stantec, being duly sworn, who addressed the traffic studies, with and without convenience store and gas station, and stated the proposed speed limit on Laurel Road is 40 miles per hour. He also covered Jacaranda Boulevard capacity, noted between Laurel and Border there are three dedicated right turn lanes, stated Jacaranda Boulevard will not fail, average daily traffic, 20% traffic growth rate per year, projected growth, Laurel-Veneto intersection, shopping, percentage of total daily trips, percentage of PM Peak period trips, and nearby intersections at Jacaranda/Venice, and Laurel/Pinebrook.

Attorney Ed Vogler, witness, being duly sworn, continued speaking in favor of Neal Communities improving the community. He stated opposing counsel does not have to be accurate when they make objections, open space zoning concept 50% requirement, common property, this is a private law matter, HOA documents are a contract, common property, and developer's right to change the common property prior to turnover of the property.

Attorney Vogler continued speaking on real estate markets changing, developers being flexible, providing expert testimony, the question of land use for 10 acres, consistence with codes and ordinances for the City, the development being sustainable and practical, and requested approval of the application.

Attorney Boone questioned Jim Collins, Planner, Boone Law Firm, being duly sworn, regarding testimony from Mr. Scott, other PUDs with commercial designation, three PUDs with commercial on perimeter and more recent preannexation agreements, VGRC commercial activity, map of VGRC, Laurel Road access, 2011 staff report for Toscana Isles PUD, Capri Isles PUD plan map approved after an annexation agreement included commercial, portion annexed in the 1970s, portion annexed in early 2000s with commercial on perimeter, and stated the City has been consistent in application of Section 86-130(r).

Mr. Collins cited the Planning Commission's memo that recommended denial of the application, disputed comment from a Planning Commissioner regarding the opportunity for a Publix in Mirasol, and showed a map of the 50-acre Mirasol development with only four one-acre parcels remaining. He also displayed a map of residential properties adjacent to commercial development, and discussed compatibility and buffers.

Mr. Colins responded to Mr. Jan Norsoph's testimony regarding grocery stores, and gave testimony as to why a grocery store is a permitted use in the code.

Mr. Collins stated the Milano PUD will have internal access to the commercial area because Jacaranda bisects the PUD with the exception of the Fiore subdivision.

Mr. Collins agreed with the testimony of Planning and Zoning Director Clark regarding Unified Control. He cited evidence of Unified Control development agreements, there is a Developers Agreement in place, and listed three provisions and evidence of Unified Control. He confirmed his opinion the PUD Amendment application complies with, and is consistent with, the City's land development regulations, the Milano PUD zoning, and the Comprehensive Plan.

Attorney Boone declared Attorney Loebeck's comments are not testimony or evidence, but legal argument. He summarized traffic, wetland impact, and Mr. Neal's clarified testimony.

Council allowed 20 additional minutes for the applicant's rebuttal and summary.

Attorney Boone reaffirmed the City's consistent interpretation of Section 86-130(r), and spoke regarding dedication of open space, compatibility, Unified Control, disputed testimony that Jacaranda would fail, Planning Commission comments regarding compatibility and the City as a whole.

Attorney Loebeck objected, stating Attorney Boone was not going to give factual testimony.

Attorney Boone referenced a referendum on annexation regarding Henry Ranch appeal in regards to the state constitution and credibility.

Pat Neal, applicant, being duly sworn, stated Laurel Road funding was approved by the State. He spoke on lakes, waterfowl, 90 acres of new lakes, wetlands, no one in Cielo can see wetland from home due to trees, number of trips, diversion of trips, reducing total traffic on Laurel Road, and stormwater detained as required by law. He thanked Council for their time and requested approval.

Attorney Boone stated all testimony and evidence shows the application is consistent with LDRs, zoning of the Milano PUD, and with the City's Comprehensive Plan, and requested stipulations and withdrawal of previous buffer modification request.

Recess was taken from 12:15 p.m. until 12:27 p.m.

Planning and Zoning Director Clark answered Council questions regarding compatibility and other shopping centers in the area.

Mr. Scott objected that affected parties were not able to cross examine rebuttal witnesses and new items were introduced. Attorney Boone's statement regarding Planning Commission hearing was testified to, not legal argument.

Mayor Pachota closed the public hearing.

City Attorney Mooney clarified the process for Council's determination. She stated quasi-judicial decisions must be evaluated based on three things: whether procedural due process was afforded in the proceedings, whether the essential requirements of law were followed, and whether the decision was based on any competent substantial evidence in the record.

The applicant has the burden of demonstrating, through competent, substantial evidence they have complied with the City's land use regulations and Comprehensive Plan. Once that has been met, the burden shifts to anyone opposing the application, to prove by competent and substantial evidence there is legitimate public reason to deny the request. She defined competent and substantial evidence, and noted if there is a denial there must be specific reasons to support denial. If there is a tie vote, according to the City code, the application moves to the next regular City Council meeting.

A motion was made by Mr. Longo, seconded by Vice Mayor Boldt, that Ordinance No. 2023-11 be approved on first reading and scheduled for final reading. The motion carried by the following vote:

Yes: 5 - Dr. Fiedler, Vice Mayor Boldt, Ms. Moore, Mr. Longo and Mr. Howard

No: 1 - Mayor Pachota

Excused: 1 - Mrs. Frank

Council Member Longo noted the need to follow the law, due process and evidence, supposed to be "judges", but they are not attorneys, will do the best they can, argue about definitions of many items, traffic, helping the rest of the city, roads will change, Laurel Road widening, promises not kept, this is not the forum for those complaints, this is a zoning amendment, believes there are changes that were unexpected, legality, has heard from everyone and listened.

Vice Mayor Boldt thanked everyone for their diligence, and noted information provided was valuable, respect for the Planning staff and

Planning Commission, this PUD Zoning amendment is under old LDRs, this does not set a precedent, there is a change of conditions, concerns about traffic, disappointment for division on this topic, and responsibility.

Dr. Fiedler agreed with colleagues, and noted reading everything, listened, expert testimony, must follow laws, Comprehensive Plan and LDRs, PUDs allow for 5% commercial development shows compatibility, Policy 8.2 gives tools to assist, developers are allowed to amend a PUD, Unified Control definition, wetland mitigation, expert testimony, traffic, traffic study for all of Venice, and County roads.

Council Member Moore acknowledged everyone, noted Planning Commission meetings, their recommendation was very close, much presented was not facts or evidence, arguments, opinions, fear, repetition, quasi-judicial hearings, and noted Council listened to everything, but must only consider competent and substantial evidence.

Council Member Howard stated his colleagues made excellent points, and commented on traffic, wildlife, wetlands, development, balance, divisiveness, Planning Commission, new LDRs, feels bad if someone was a victim of bait-and-switch, and concern about making the right decision.

Mayor Pachota expressed disappointment in the divisiveness of this petition, and spoke regarding land, accusations via email, LDR updates, business decisions, attacks on council, traffic concerns, LDR concerns, traffic will be addressed at site and development plan, promises to preserve and change, not sure of compatibility, not a fan of destroying wetlands, and encouraged respectfulness.

II. ADJOURNMENT

There being no further business to come before Council, the meeting was adjourned at 1:21 p.m.

ATTEST:



Mayor - City of Venice



City Clerk