



CITY OF VENICE
Vested Rights Determination
Edgewood Gardens Corp.
914, 934, 950, 968 and 988 E. Venice Avenue, Venice FL
Staff Report

Alleged Vested Right:

Jackson Boone from the Boone, Boone, Boone, and Koda law firm representing the property owners, Edgewood Gardens Corp., has submitted for a vested rights determination for their clients property located at 914, 934, 950, 968 and 988, E. Venice Avenue Venice FL. For this determination, the owner desires to confirm the legal status of permissible residential uses for the subject properties. A vested rights determination is subject to the City Code of Ordinances Chapter 86 Section 86-48 as indicated below:

Sec. 86-48. - Vested rights.

(a) Nothing contained in this chapter shall be construed as affecting existing vested rights. It shall be the duty and responsibility of any person alleging vested rights to affirmatively demonstrate to city council the following:

- (1) A reliance in good faith upon some act or omission of the government; and*
- (2) A substantial change in position or the incurrence of such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that have been acquired.*

In response to this “duty and responsibility to affirmatively demonstrate” vested rights to City Council, Mr. Boone, has indicated:

“The above-referenced properties ("Properties") are zoned OPI (Office, Professional and Institutional) under the City Zoning Code ("Zoning Code"), which allows Townhouse residential use as a principal use pursuant to Section 86-90(b)(6). This OPI designation was in place prior to the adoption of the new City of Venice Comprehensive Plan (Comprehensive Plan) and has remained in effect without change.

The new Comprehensive Plan has a Future Land Use Map (FLUM) designation for the Properties is labelled as "OPI" (Office, Professional and Institutional). This "OPI" FLUM designation does not recognize residential uses, thus creating the situation at hand.

The potential for this situation, where a property owner would have a permitted use under the City's Zoning Code that is not recognized under the newly adopted FLUM designations, was raised during the new Comprehensive Plan adoption hearings and workshops. The direction applicants were provided was to seek one of two options that are available: (1) Vested Rights Determination or (2) Comprehensive Plan Amendment. ”

The applicant has also submitted the appropriate application, cover letter and associated documentation to support their request, which have been included in the file of record and in the agenda meeting packet.

Existing Zoning (see Exhibit C below):

The potential permissible residential uses are the subject of this vested rights determination. This is important due to the current zoning of the property, which is Office, Professional and Institutional District (OPI). An excerpt from this pertinent OPI zoning district (permitted and special exception uses) of the City's Land Development Code is shown below:

Sec. 86-90. - OPI office, professional and institutional district.

(b) *Permitted principal uses and structures.* Permitted principal uses and structures in the OPI district are:

(6) Townhouses.

(e) *Special exceptions.* The following special exceptions are permissible in the OPI district after public notice and hearing by the planning commission:

(2) Multiple-family dwellings.

Comprehensive Plan Information:

2010 Comprehensive Plan (see Exhibit A below): Allowed commercial and residential uses using the following development scenario as indicated in Policy 16.16:

Policy 16.16 Eastern Gateway Corridor Standards. Development in the Eastern Gateway Corridor shall be built according to the following development scenario:

A. The density range for the corridor shall be up to 7 dwelling units per acre, except for density as provided for special needs housing.

B. The maximum residential density average in this corridor will not exceed 7 units per acre, calculated on a gross acreage basis.

C. Up to 75% of the acreage in this corridor will be allowable for commercial (retail and office space) uses. The total square footage of commercial uses allowed in this corridor shall not exceed a floor area ratio (FAR) of 0.5.

2017 Comprehensive Plan (see Exhibit B below): The subject properties resided in a Planning Area (Eastern Gateway) under the 2010 Comprehensive Plan. The change in direction for the 2017 Comprehensive Plan for this area was to not establish a mixed use district for the Eastern Gateway Planning Area but rather utilize underlying zoning to establish the appropriate Land Use District for properties in this area of the City. The primary rationale for this approach was (with the exception of a few undeveloped properties), the Eastern Gateway is mostly developed at this time. The OPI Land Use designation for the subject properties in the 2017 comprehensive plan does not allow for residential uses as indicated by the Land Use District indicated in Strategy LU 1.2.4.b below. Strategy LU 1.2.5 provides

further definitive restriction for residential uses in non-residential land use districts. It is also important to note that the primary rationale behind Strategy LU 1.2.5 was to provide more predictability in the Plan. To clarify, predictability was to be achieved by establishing the appropriate land use district with the implementing/corresponding zoning district(s) e.g. residential land use has implementing residential zoning districts only, non-residential land use has implementing non-residential zoning only, and the mixed use districts were intended to provide opportunity where a mix of residential and non-residential zoning/uses may occur. This is important to ensure a development pattern to implement the vision of the City and provide predictability to property owners and citizens alike.

Strategy LU 1.2.4.b - Institutional-Professional:

1. Provides areas within the City for professional offices, educational, healthcare, religious or similar uses

Strategy LU 1.2.5 - Residential Uses in Non-Residential Designations

In order to provide predictable land uses, residential uses previously provided for or permitted through the conversion factor, including its allocation ratio, have been removed from this Comprehensive Plan.

Staff Review and Findings:

In review of the submitted petition for vested rights for the subject properties located at 914, 934, 950, 968 and 988, E. Venice Avenue Venice FL, the following findings are noted for consideration:

- The 2010 Comprehensive Plan did allow for residential uses for the Eastern Gateway Planning Area which the subject properties were included in.
- As noted by the applicant, records do reflect that the applicant did raise this residential use issue for the subject properties during the development of the City of Venice 2017 Comprehensive Plan.
- The 2017 Comprehensive Plan designated the subject properties with the Institutional - Professional Land Use District does not allow for residential uses.
- The applicant correctly stated that there are two possible resolutions to recognize residential uses as permissible uses on the subject properties: 1) vested rights and 2) submittal/approval of a comprehensive plan map amendment (and zoning map amendment as may be required) to a land use district and corresponding zoning district that allows for residential uses.
- The applicant is relying on “*A substantial change in position*” for vested rights determination criteria #2 (indicated above) as no information has been provided indicating a response to “*the incurrence of such extensive obligations and expenses*” required to provide for an affirmative finding by City Council for this vested rights determination criteria.

Exhibit A: 2010 Comprehensive Plan FLU Map:

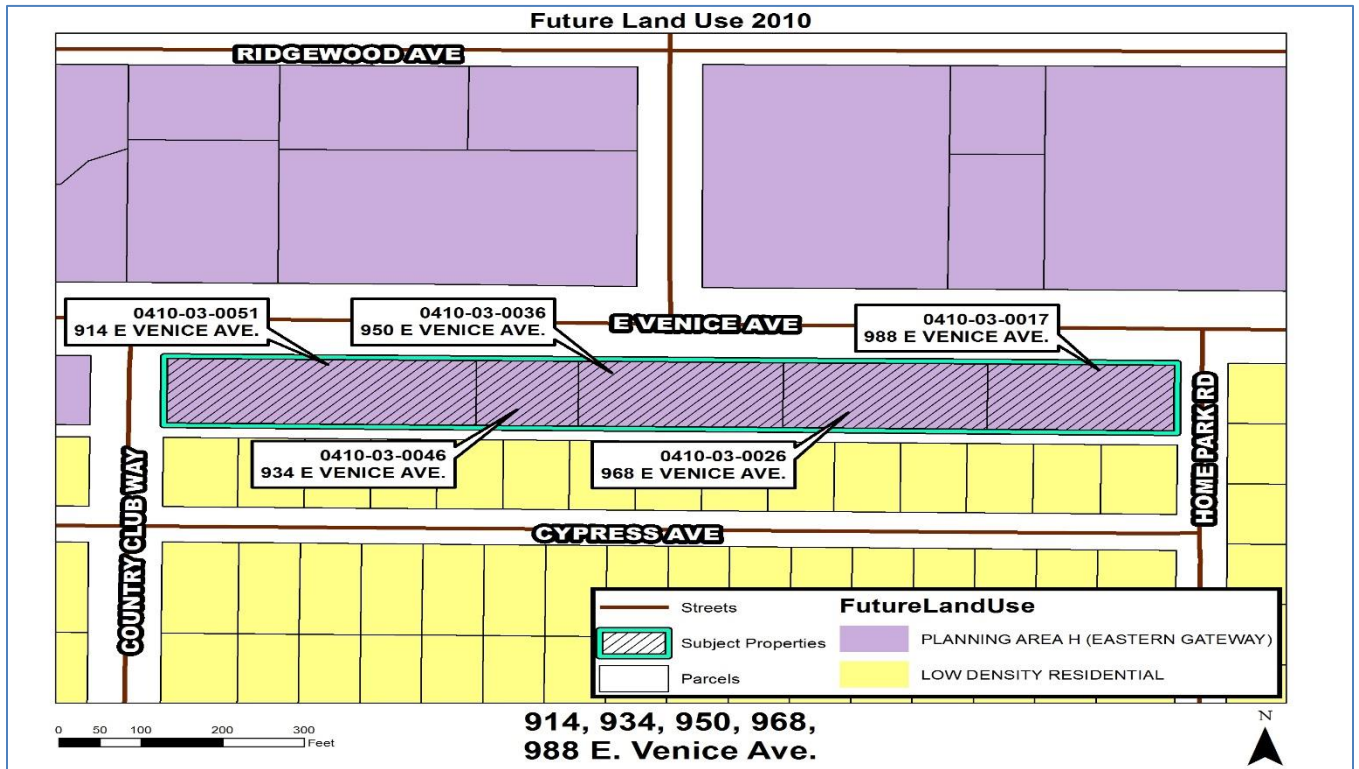


Exhibit B: 2017 Comprehensive Plan FLU Map:

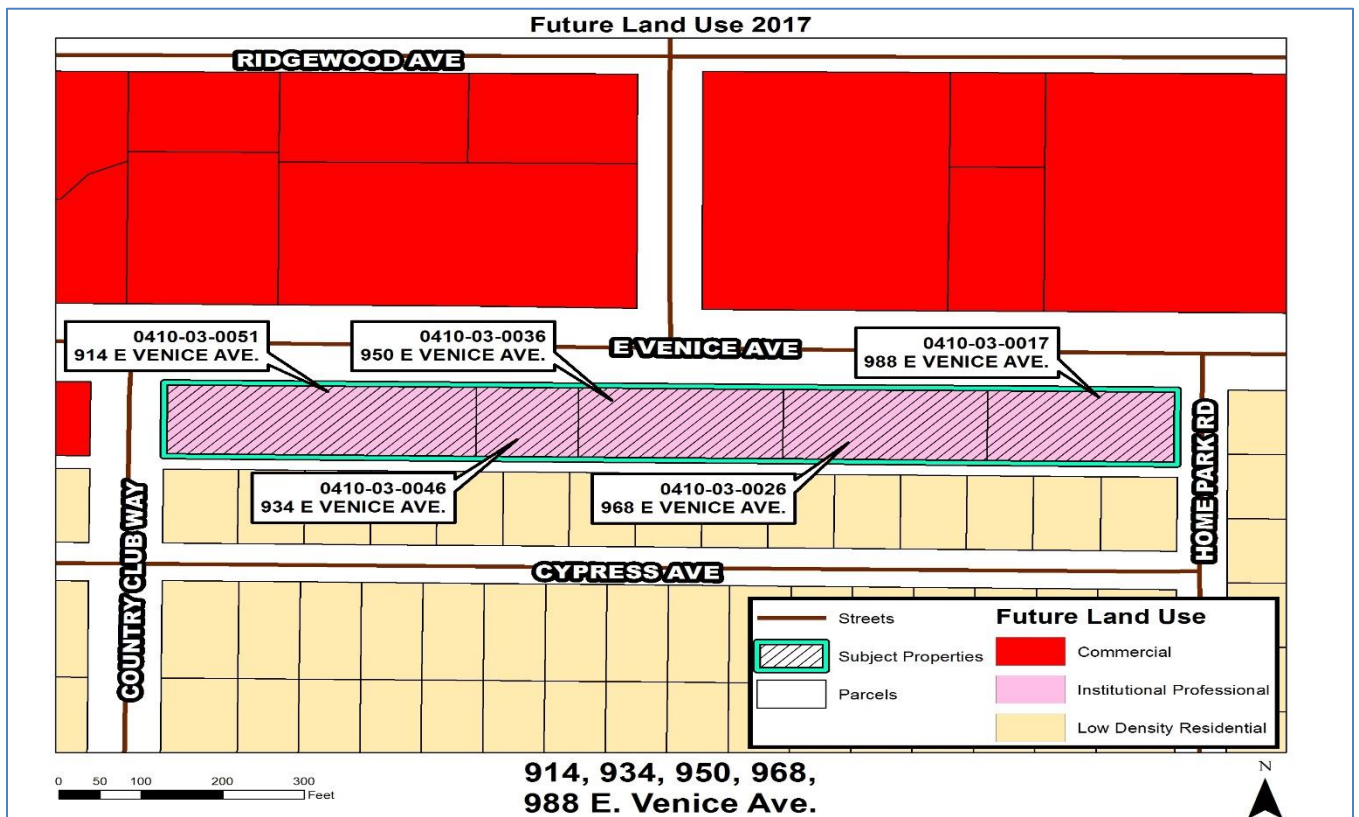


Exhibit C: Current Zoning Map:

