

**Amanda Hawkins-Brown**

---

**From:** Marshall Happer <happer@happer.com>  
**Sent:** Monday, August 22, 2022 2:46 PM  
**To:** Kelly Fernandez; City Council  
**Cc:** elavellee@venicefl.gov; Kelly Michaels; Planning Commission  
**Subject:** Presentation for August 23 City Council Meeting in Poosition to Petitions 22-06RZ and 22-07RZ

**Caution:** This email originated from an external source. **Be Suspicious of Attachments, Links and Requests for Login Information**

Dear City Attorney Fernandez and members of the City Council:

In addition to my emails dated July 3 and August 13 in opposition to Petitions 22-06RZ and 22-07RZ, I plan to attend the City Council meeting tomorrow to further present my opposition personally in the 5 minutes allotted for me to speak.

In order to provide you with additional time to consider the information I intend to provide personally tomorrow, I am enclosing herewith a copy of my prepared presentation in the event you have time to read and consider it in advance of the meeting.

Thanks for your consideration and the opportunity to speak to you tomorrow.

Here is what I intend to say tomorrow:

\*\*\*\*\*  
\*\*\*\*\*

**City Council August 23**  
**Objection to Petitions 22-06 RZ and 22-07 RZ**

Mr. Mayor, Mr. Vice Mayor and members of the City Council. Thanks for the opportunity to speak to you today.

My name is Marshall Happer and I have been a resident of the Venetian Golf & River Club since 2005. The Venetian PUD contains 1039 acres and was approved in 2002 for up to 1599 residential units with 663.2 acres (64%) of open space. Only 1377 residential units were actually developed.

For reference, I previously served on the Architectural Review Board, the Planning Commission and the Charter Review Committee, which among other things recommended the deleting of the lifetime medical insurance for members of the City Council, recommended against reducing the members of the City Council and all City commissions and committees

from 7 to 5 which was suggested by several then members of the City Council and recommended the revision of the provisions for Citizen Referendums.

**Written Objection to Petitions that may be in Violation of Florida law.**

On July 3, I provided my written objection to these Petitions to the Planning Commission with copies to each member of the City Council and on July 5 the Planning Commission approved these Petitions apparently without considering my written objections. To avoid that happening again, I provided my written objections to the City Attorney and to each member of the City Council on August 13 so you would be aware of my objections in advance and so the City Attorney would have time to consider the various legal issues and provide her opinions to you on the issues I have raised. I provided copies of my written objections to Mr. Clark and to Mr. Boone, counsel for the Petitioners.

**Milano PUD**

The Milano PUD consisting of 537 acres with 291 acres of open space (55.2%) was approved for up to 1350 residential units and no commercial uses in 2014, 2017 and 2020. (Ordinance 2014-16, July 29, 2014, Ordinance 2017-25, March 10, 2017 and Ordinance 2020-40, December 8, 2020).

**Reasons for Disapproval of these Petitions**

I respectfully submit to you that there are two very good reasons for the disapproval of these Petitions.

1. **Reason for Disapproval #1:** The Milano PUD developer could have only offered the minimum 50% of open space in 2014 and 2017 and he could have asked for less or more than 1350 residential units. However, he offered 55.2% in open space and obtained approval for his requested up to 1350 residential units and obtained some Modification to Standards based on the open space offered. The City Council, the homeowners in the Milano PUD, which has now been subdivided into the Milano subdivision, the Aria subdivision, the Cielo subdivision and the Fiore subdivision and the adjoining homeowners like me, and the public were entitled to rely on the 55.2% of open space offered and accepted upon approval of those rezoning requests.

If you permit the developer now 8 years later begin reducing the 55.2% open space, then the approved commitment of 55.2% open space in 2014, 2017 and 2020 means literally nothing. The developer requested and received approval for up to 1350 residential units and various Modifications to Standards in return for his commitment of 55.2% of open space.

**I respectfully recommend that the request for the reduction in the committed and approved 55.2% open space should be denied.**

2. **Reason for Disapproval #2:** Petitions 22-06RZ and 22-07RZ request approval for some kind of “fictional” or “virtual” transfer of 24.106 acres of the open space land from the Milano PUD which was developed by 2 corporations to the adjoining GCCF PUD which is being developed by 5 other corporations.

I would be surprised if any “fictional” or “virtual” transfer of land is legal in Florida. But in addition, the 24.106 acres is no longer undeveloped property. It has been platted and developed as part of the Aria subdivision and as part of the Fiore subdivision.

Further, the 24.106 acres in the Aria and Fiore subdivisions is subject to restrictive covenants and is commons/open space under separate HOA corporations who are not parties to the Petition. I provided the City Attorney and each of you in advance the references for the Plats and Covenants for these subdivisions.

For the Aria subdivision see Plat Book 52-428-438 Phase I and Covenants dated November 14, 2018, (Instrument #20181624290) with Aria Neighborhood Association, Inc., Plat Book 54-132-135 Phase II and Supplemental Covenants dated March 19, 2020 (Instrument #20200054761) and Plat Book 55-359-366 Phase III and Supplemental Covenants dated August 4, 2021 (Instrument #2021171124). For the Fiore subdivision see Plat Book 55-249-257 and Covenants dated February 11, 2021 (Instrument #2021132088) and Fiore Neighborhood Association, Inc.

In addition, the portion of the open space in the Fiore subdivision (Tracts 320 and 321) was dedicated as open space for 99 years on the Fiore subdivision plat (Plat Book 55-249 as shown below) and there is a concrete wall dividing the Fiore subdivision from the GCCF PUD.

**I respectfully recommend that the proposal for some kind of “fictional” or “virtual” transfer of developed and dedicated open space real property should be denied.**

### **Request for City Attorney Legal Advice**

As indicated, I have requested the City Attorney to provide for the members of the City Council, the public and for me a legal opinion on the (1) legality of the proposal for the reduction in the 55.2% of approved and accepted open space 8 years later and (2) on the proposed “fictional” or “virtual” transfer of the subject 24.106 acres:

1. What is the legal basis, if any, for the reduction in the offered, approved and accepted 55.2% in platted open space in the Milano PUD?
2. Is it correct that the Aria Neighborhood Association, Inc., and the Fiore Neighborhood Association, Inc., have an interest in the 24.106 acres as commons and open space in their subdivisions and that they are not parties to the Petition?

3. Is it correct that under the provisions of Florida Real Estate law, the developers of the Fiore and Aria subdivisions cannot subdivide out and convey by deed the 24.106 acres of platted and developed open space to the developers of the GCCF PUD?
4. Is it correct that under the provisions of Florida Real Estate law, the developers of the Fiore and Aria subdivisions cannot convey the 24.106 acres **orally** to the GCCF PUD?
5. What is the legal basis, if any, for approval of this proposed “fictional” or “virtual” transfer of 24.106 acres of open space real estate without any deed or anything?

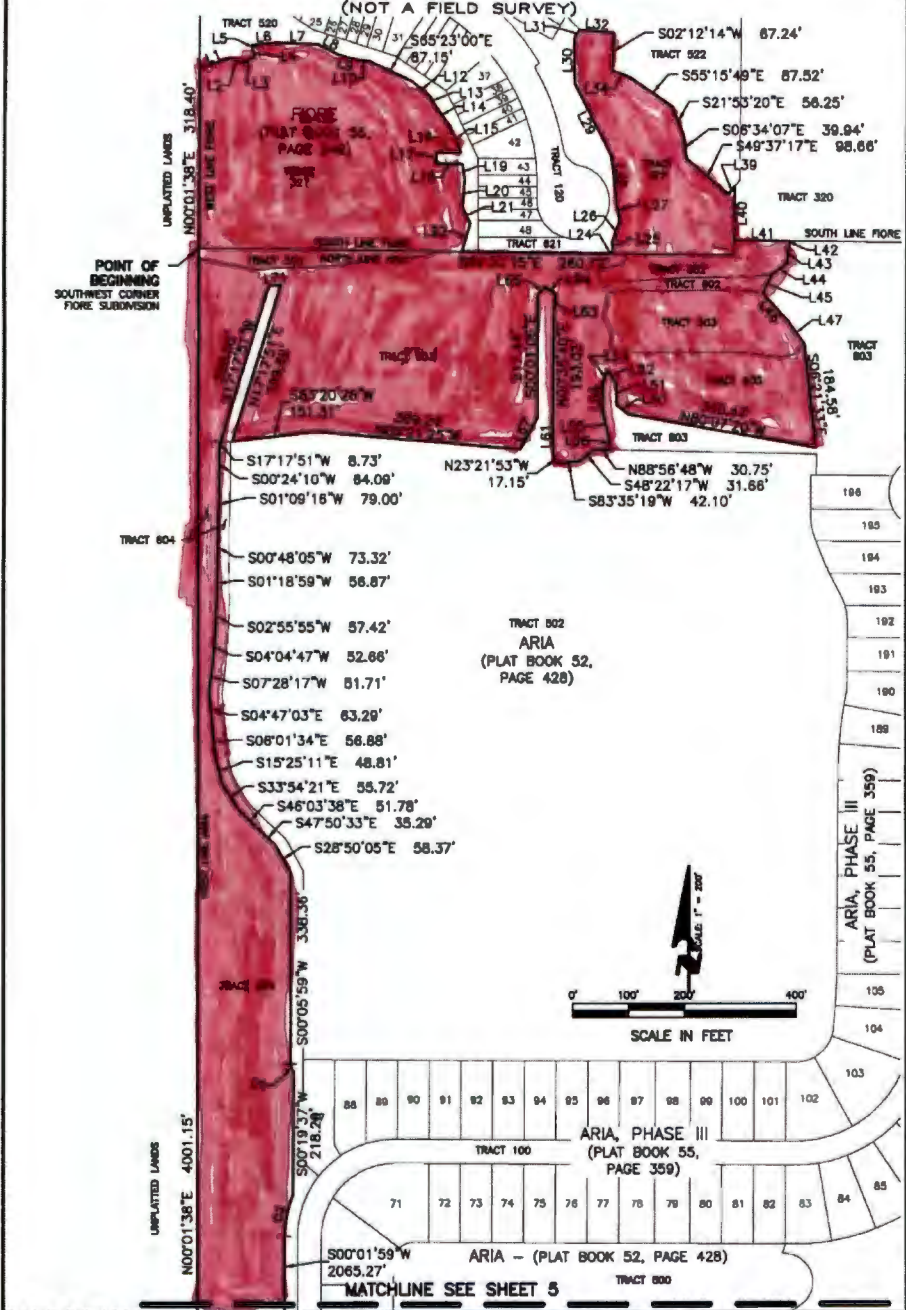
Thanks for your consideration and I look forward to hearing the opinions of the City Attorney on these issues.

Marshall Happer

Attachments: (1) Map of 24.106 acres showing Fiore and Aria subdivision open space; note that Fiore dedicated open space is designated as Tracts 320 and 321.

(2) Certificate of Ownership and Dedication on Fiore Plat (55-249) showing dedication of Tracts 320-321 as open space for 99 years.

**EXHIBIT "A" DESCRIPTION AND SKETCH**  
 A PORTION OF SECTION 34, TOWNSHIP 38 SOUTH,  
 RANGE 19 EAST, SARASOTA COUNTY, FLORIDA  
 (NOT A FIELD SURVEY)



PREPARED FOR:  
**BORDER ROAD INVESTMENTS, LLC**

REVISIONS:

DRAWN BY: BCR    DATE: 2/8/2022    SHEET: 3 OF 5    DRAWING: FL01 DESCRIPTION-024872.DWG    JOB: MBL0018

**ENGINEERING, LLC.**

**CONSULTING ENGINEERS & SURVEYORS, L.L.C. 4334**

8340 CONSUMER COURT  
 SARASOTA, FLORIDA 34240  
 PHONE (841) 377-8178  
 FAX 376-3796

FIORE

PLAT BOOK 55 PAGE 249  
SHEET 1 OF 9 SHEETS

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 2021132090 9 PG(S)  
July 16, 2021 11:39:48 AM  
KAREN E. RUSHING  
CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FL

**CERTIFICATE OF OWNERSHIP AND DEDICATION**

STATE OF FLORIDA)  
COUNTY OF SARASOTA)



I, JAMES R. SCHIER, AS MANAGER OF NCDG MANAGEMENT, LLC, A FLORIDA LIMITED LIABILITY COMPANY, AS MANAGER OF NEAL COMMUNITIES OF SOUTHWEST FLORIDA, LLC, A FLORIDA LIMITED LIABILITY COMPANY, ALL COMPANIES LICENSED TO DO BUSINESS IN THE IN THE STATE OF FLORIDA, ("OWNER"), CERTIFIES OWNERSHIP OF THE PROPERTY DESCRIBED HEREON AND HAS CAUSED THIS PLAT ENTITLED "FIORE" TO BE MADE AND DOES HEREBY DEDICATE THE FOLLOWING:

1. TO THE CITY OF VENICE, ITS SUCCESSORS AND/OR ASSIGNS:
  - A) A NON-EXCLUSIVE EMERGENCY ACCESS EASEMENT ACROSS, OVER AND UNDER THE ROADS AND RIGHT-OF-WAY SHOWN HEREON AS TRACT 120 FOR INGRESS AND EGRESS OF EMERGENCY VEHICLES AND FOR AUTHORIZED GOVERNMENTAL SERVICES.
  - B) ALL POTABLE WATER AND SANITARY SEWER INFRASTRUCTURE FACILITIES, ABOVE GROUND, SURFACE AND UNDERGROUND UTILITIES ALONG AND ADJACENT TO TRACT 120.
  - C) ALL PUBLIC UTILITY EASEMENTS AS SHOWN ON THIS PLAT.
2. TO SARASOTA COUNTY, ITS SUCCESSORS AND/OR ASSIGNS:
  - A) AN EXCLUSIVE LIFT STATION EASEMENT AS SHOWN AND DEPICTED ON THIS PLAT AS "PERMANENT EXCLUSIVE LIFT STATION EASEMENT DEDICATED TO SARASOTA COUNTY" FOR THE PURPOSE OF INSTALLATION MAINTENANCE, AND OPERATION OF A SEWAGE LIFT STATION AND RELATED FACILITIES.
- 3) DEDICATES AND SETS APART TRACTS 320-321, 520-522 & 620-621, AS SHOWN AND DESCRIBED ON THIS PLAT FOR A PERIOD OF 99 YEARS FROM THE RECORDING OF THIS PLAT IN THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA, FOR OPEN SPACE PURPOSES ONLY PURSUANT TO SECTION 86-130(J) OF THE CITY OF VENICE LAND DEVELOPMENT REGULATIONS AND ORDINANCE NO. 2017-05, SUCH OPEN SPACE USE, CONSISTENT WITH THE CURRENT DEFINITION IN THE CITY OF VENICE LAND DEVELOPMENT REGULATIONS, SHALL BE DEEMED TO MEAN THAT THE PROPERTY MUST BE UNOCCUPIED OR PREDOMINATELY UNOCCUPIED BY BUILDINGS OR OTHER IMPERVIOUS SURFACES, AND USED FOR STORMWATER MANAGEMENT, PARKS, RECREATION, CONSERVATION, PRESERVATION OF NATIVE HABITAT AND OTHER NATURAL RESOURCES, OR HISTORIC OR SCENIC PURPOSES. UNOCCUPIED OR PREDOMINATELY UNOCCUPIED BY BUILDINGS OR OTHER IMPERVIOUS SURFACES SHALL MEAN THAT NOT MORE THAN 5% OF THE AREA OF ANY REQUIRED OPEN SPACE, WHEN CALCULATED BY EACH AREA SHALL BE OCCUPIED BY IMPERVIOUS SURFACES.

NEAL COMMUNITIES OF SOUTHWEST FLORIDA, LLC,  
A FLORIDA LIMITED LIABILITY COMPANY

BY: NCDG MANAGEMENT, LLC, A FLORIDA  
LIMITED LIABILITY COMPANY, ITS MANAGER

BY: James R. Schier  
JAMES R. SCHIER, MANAGER

Nikaula Newbergh  
WITNESS  
Nikaula Newbergh  
PRINT NAME OF WITNESS  
Michele Zink  
WITNESS  
Michele Zink  
PRINT NAME OF WITNESS

\*\*\*\*\*  
\*\*\*\*\*

Marshall Happer  
North Venice, FL 34275

## Amanda Hawkins-Brown

---

**From:** Earl Hannum <earl\_hannum@comcast.net>  
**Sent:** Sunday, August 21, 2022 6:15 PM  
**To:** City Council  
**Cc:** schaidwe@email.com; julianne.polston@publix.com  
**Subject:** Land Transfer

Caution: This email originated from an external source. Be Suspicious of Attachments, Links and Requests for Login Information

I am a home owner in the Venetian community and I am expressing a strong, unequivocal opposition to the transfer of 24.106 acres of open space land from the Milano PUD for the use by Pat Neal for a shopping center. Any commercial development in this parcel of land will forever change the residential nature of where I live. It will bring increased traffic, congestion, noise and light intrusion into our community. I ask that the city council not take one step toward giving Pat Neal or any other developed the opportunity to make financial gain at the expense of all home owners in Venetian and surrounding communities. We have more than enough shopping centers in our area, we do not want nor need another.

Earl Hannum  
106 Asti Court

Sent from my iPad

## Amanda Hawkins-Brown

---

**From:** Debbie Gericke <146bella@gmail.com>  
**Sent:** Sunday, August 21, 2022 7:45 AM  
**To:** City Council  
**Subject:** Objection to transfer

**Caution: This email originated from an external source. Be Suspicious of Attachments, Links and Requests for Login Information**

Dear City Attorney Fernandez and members of the Venice City Council.

The Milano PUD consisting of 537 acres with 291 acres of open space (55.2%) was approved for up to 1350 residential units and no commercial uses in 2014, 2017 and 2020. (Ordinance 2014-16, July 29, 2014, Ordinance 2017-25, March 10, 2017 and Ordinance 2020-40, December 8, 2020). At the time of the approvals of the Milano PUD, 55.2% of open space was offered and approved and the developer actually obtained some Modifications to Standards based on the open space included in the rezoning request.

Petitions 22-06RZ and 22-07RZ request approval for some kind of “fictional” or “virtual” transfer of 24.106 acres of the previously approved and platted Milano PUD open space to the GCCF PUD.

On July 3, I sent my objections to Petitions 22-06RZ and 22-07 RZ to the members of the Planning Commission with copies to each member of the City Council. I was disappointed that my objections were not even considered by the Planning Commission. So, to avoid that happening again when the matter is before the City Council, I am respectfully requesting the City Attorney to provide a legal opinion on the legality of the proposal for some kind of “fictional” or “virtual” transfer of the subject 24.106 acres for the members of the City Council, the public and for me.

The 24.106 acres in question is located in the platted Fiore and Aria subdivisions and each is subject to restrictive covenants and is commons/open space under separate HOA corporations who are not parties to the Petition. For the Aria subdivision see Plat Book 52-428-438 Phase I and Covenants dated November 14, 2018, (Instrument #20181624290) with Aria Neighborhood Association, Inc., Plat Book 54-132-135 Phase II and Supplemental Covenants dated March 19, 2020 (Instrument #20200054761) and Plat Book 55-359-366 Phase III and Supplemental Covenants dated August 4, 2021 (Instrument #2021171124). For the Fiore subdivision see Plat Book 55-249-257 and Covenants dated February 11, 2021 (Instrument #2021132088) and Fiore Neighborhood Association, Inc.

Please note that on the Fiore Plat 55-249, the open space in the Fiore Subdivision is dedicated for 99 years.

Please also note that there is a concrete wall along the western line of the Fiore subdivision and the eastern line of the GCCF PUD.

1. Is it correct that the Aria Neighborhood Association, Inc., and the Fiore Neighborhood Association, Inc., have an interest in the commons and open space in their subdivisions and that they are not parties to the Petition?
2. Is it correct that under the provisions of Florida Real Estate law, the developers of the Fiore and Aria subdivisions cannot subdivide out and convey by deed the 24.106 acres of platted and developed open space to the owners of the GCCF PUD?
3. Is it correct that under the provisions of Florida Real Estate law, the developers of the Fiore and Aria subdivisions cannot convey the 24.106 acres orally to the GCCF PUD?
4. What is the legal basis, if any, for the reduction in the offered and approved 55.2% in platted open space in the Milano PUD?



5. What is the legal basis, if any, for approval of this proposed “fictional” or “virtual” transfer of 24.106 acres of open space real estate without any deed or anything?

Thanks for your consideration.

Best  
Debbie Gericke  
146 Bella Vista Terrace  
North Venice , Fl 34275