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Mayor and City Council
City of Venice
401 W. Venice Ave.
Venice Florida 34285

June 28, 2024

Re: Amendment of Planned Unit Developments (PUDs)

Dear Mayor and City Council:

BACKGROUND

As you may know, I have been retained by the City of Venice ("City") as special land-use counsel to review and analyze the City's current process in connection with requested changes to a PUD. During the course of the last 35 years of land use practice in Florida, my representation of local governments throughout the state has included Highlands County; Lake County Value Adjustment Board; Seminole County Charter Review Commission and the City of Apopka (Code Enforcement Board Special Magistrate since 1999). Past work experience includes both the public sector (former Assistant Orange County Attorney), and private sector (partner in the state wide law firm of Gray Robinson). I became a Board Certified Attorney in City, County, and Local Government Law in 2000, and have been a member of the Florida Bar since 1988. Current law practice is with the law firm of Alison Yurko PA (since 2012).

I have had the opportunity to review section 1.7.C of the City Code, along with other relevant code sections, statutes, and case law. I have also reviewed at length the April 4, 2024 memo from Roger Clark which looked at PUD amendment processes in place in other jurisdictions. I understand that one of the primary issues that the City Council is seeking clarity on is who, within an existing PUD, must consent to a PUD amendment application, and what the approval process should be.

ANALYSIS

Under the existing City Code section 1.7.C, any deviation to a PUD approval not expressly authorized by City Code requires that there be a rezoning of the entire PUD. This would effectively require the consent of 100% of the property owners within the PUD.

While the City Council could certainly add parameters to guide the approval process for situations that are not expressly allowed by City Code as a change to the PUD, it could be problematic to require that there be "consents" from property owners within the PUD that are not actual owners of the land area that is the subject of the specific land use change request. Creating this type of requirement as a precondition to the application itself (without any corresponding "up front" record consent to such a process by the parent tract owner as part of the initial PUD land use approval) introduces concerns including unlawful delegation of

legislative authority to a private party, since the practical effect of the current approach in this situation would be to give a "veto power" to other property owners within the PUD.

CRITERIA FOR PUD AMENDMENT REQUEST

That said, there are criteria that could be imposed as part of a process to allow consideration of a PUD amendment request (which is not otherwise expressly allowed by City Code as being "non-substantial") that could afford significant input by, and consideration of, the impact to other owners within the PUD as follows:

- 1) compatibility with adjacent uses within the PUD;
- 2) whether the proposed PUD amendment request is consistent with the common scheme of development contemplated in the original PUD;
- 3) whether the proposed amendment request is consistent with the reasonable expectations of other residents within the PUD with regard to how the PUD would be built out over time;
- 4) whether the proposed amendment request can be adequately serviced by the infrastructure in place within the PUD, including drainage infrastructure;
- 5) a consideration of covenants and restrictions or other matters of record, including matters shown on a recorded plat, that are relevant to the determination;
- 6) whether the approval request is consistent with the City's comprehensive plan, including a determination of whether a comprehensive plan amendment would be necessary to accommodate the approval request;
- 7) the extent to which the proposed use deviates from allowable uses initially allocated for the parcel within the PUD that is the subject of the PUD amendment; and
- 8) whether the proposed use can be accommodated by any conversion, flex use or related similar PUD allocation chart included within the original PUD approval.

PROCESS FOR PUD AMENDMENT REQUEST

In addition, there could be guardrails incorporated into the process for making a determination as to whether a change to a PUD (that is not otherwise expressly allowed by code as "non-substantial") should be approved, as follows:

- 1) Notification by US Mail to all property owners within the PUD of any neighborhood workshop and all required hearings.
- 2) Rather than a full rezoning, the creation of a process whereby a change that is determined to be a "substantial deviation" to a PUD, would undergo a special review and approval. The process could mirror the City's typical process for a land use application, including, review and comments by the staff technical review committee; followed by review and recommendation at public hearing by the Planning Commission; followed by a final decision by the Council. This would involve an application by the owners of the

parcel that is the subject of the change request, and be limited to the land area that is the subject of the request in question, not the entire land area of the PUD.

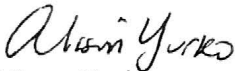
3) As to new PUD's only, criteria could be added to the approval process allowing for a conversion/flex chart of uses along with the corresponding table of conversions for trips so that there are a range of uses allowed upfront, thereby lowering the possibility of after the fact "surprise" change requests to other owners within the PUD. This concept is part of the PUD amendment regulations in Pinellas County and Maitland.

4) As to new PUD's only, a process could be added requiring a master HOA/ "Unified Controller" (created by documents that are recorded and binding on successors in title) to: a) ensure completion of infrastructure; and b) to provide consent to subsequent PUD amendment requests to the City. This is the concept utilized in Okaloosa County as part of its PUD amendment process.

HOUSE BILL 1C

I have had the opportunity to review Section 14 of House Bill 1C passed by the Florida legislature in 2023, which prohibits the City from proposing or adopting more restrictive or burdensome amendments to its land development regulations. While it is impossible to predict how a court would rule, it is my opinion that the imposition of a substantial deviation process similar to that outlined above is not more restrictive or burdensome than your existing process which categorically prohibits any consideration of a PUD amendment without the requisite consent of other owners within the PUD.

I look forward to review and discussion of this information in further detail during your meeting of July 9.



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CC: Roger Clark, City Planning Director
Kelly Fernandez, Esq. City Attorney
Ed Lavallee, City Manager