

Loe Bee

Jeremy B. Shir, Esq.
Attorney at Law
Phone: (954) 364-6028 Fax: (954) 985-4176
jshir@beckerlawyers.com

Becker

Becker & Poliakoff
1 East Broward Blvd., Suite 1800
Ft. Lauderdale, FL 33301

January 17, 2023

City of Venice Planning Commission
401 West Venice Avenue
Venice, FL 34285

RE: Venetian Golf & River Club POA (“VGRC” or “Venetian Golf”) Concerns with and Opposition to Proposed Milano PUD Amendment (Village at Laurel and Jacaranda) Zoning Map Amendment Petition No. 22-38RZ

Dear Planning Commission:

This Firm represents the Venetian Golf & River Club POA (“VGRC” or “Venetian Golf”), a community of some 1300 plus homeowners located within the City of Venice and adjacent to the proposed Milano PUD Amendment. VGRC has recently determined that the subject application for Proposed Milano PUD Amendment (Village at Laurel and Jacaranda) Zoning Map Amendment Petition No. 22-38RZ, seeking to amend a portion of the Milano PUD from Open Space to Commercial will detrimentally impact the community and must be rejected. Below we highlight obvious and fundamental reasons compelling denial. We trust that as stewards of the City, the Commission will listen to the multitude of residents, civic groups, Associations and other stakeholders who have raised numerous legal and public policy reasons, and accordingly deny the application.

The commercial use in the proposed PUD amendment violates the City’s Land Development Code and Comprehensive Plan. The applicant cannot establish competent and substantial evidence to the contrary. Any approval would be a departure from the essential requirements of the law according to the plain and unambiguous requirements of

January 17, 2023

Page 2

Section 86-130(b)(8) which specifies the permitted uses in PUD Districts. The proposed commercial use is also starkly incompatible with the character of the neighborhood. The application does not provide justification as to changed or changing conditions that make the passage of the proposed amendment necessary; this contravenes Section 86-47(f)(1)(f) of the City's previous Land Development Code, under which the application is proceeding as it was filed prior to the codification of the new Land Development Code. The application and record submitted by the applicant completely overlooks and miscalculates significant traffic impacts to be caused by the amendment. The proposed change will lead to excessively increased traffic and otherwise affect public safety, in contravention of Section 86-47(f)(1)(h) of the City's previous Land Development Code. The applicant cannot establish through competent and substantial evidence that it is impossible to find other adequate sites in the city for the proposed use in districts already permitting such use, in contravention of Section 86-47(f)(1)p) of the City's previous Land Development Code. The application is inconsistent and does not comply with the City's Comprehensive Plan, Open Space Element, as indicated by the City's own environmental consultant. And finally, there are numerous other quality of life and public policy concerns that remain unaddressed, such as noise & loading nuisance issues. This letter, along with testimony of adversely affected neighbors who live in the community and surrounding areas as well as their counsel, amplify the inadequacy of the submittals by the applicant. Approval on the record developed violates controlling law, and would pay short shrift to long-term impacts to the surrounding area. The application should and must be denied.

Legal Standard for Rezoning Not Met by Applicant

Consideration of the rezoning/zoning map amendment application and the other entitlements sought by the applicant with respect to the subject property are quasi-judicial. *Board of County Commissioners v. Snyder*, 627 So.2d 469 (Fla. 1993). The Supreme Court of Florida stated that “[R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action...” This is in contrast to initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, which are considered legislative in nature.

To be valid, quasi-Judicial actions are will be upheld only if they are supported by substantial competent evidence, which is a higher burden of proof. *De Groot v. Sheffield*, 95 So. 2d 912 (Fla. 1957). Competent substantial evidence has been defined to be “such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. It is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), as cited by *Verizon Florida, Inc. v. Jaber*, 889 So.2d 712, 721, fn.1 (Fla. 2004).

“Substantial” means there must be “real, material, pertinent and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, “tending to prove”) as to each essential element. *Lonergan v. Estate of Budahazi*, 669 So.2d 1062, 1064 (Fla. 5th

DCA 1996). “Relevant” evidence tends to prove or disprove a material fact. Fla. Stat. §90.401; *Sims v. Brown*, 574 So.2d 131, 134 (Fla. 1991). In sum, competent and substantial evidence must be: reliable and credible; fact-based; resting upon more than mere probabilities, guesses, whims or caprices but rather support a reasonable foundation for the conclusion reached, *Dept of Highway Safety & Motor Vehicles v. Trimble*, 821 So.2d 1084, 1086-87 (Fla. 1st DCA 2002); and not consisting of “vague, uncertain, or irrelevant matter not carrying the quality of proof *Florida Rate Conference v. Florida R.R. & Pub. Utilities Commission*, 108 So.2d 601, 607 (Fla. 1959); must be more than surmise, conjecture or speculation *Id.*;

Failure to meet City’s Land Development Code Requirements for a Rezoning/Zoning Map Amendment and Demonstrate Consistency with the Comprehensive Plan

1. The commercial use in the proposed PUD amendment violates the City’s Land Development Code and Comprehensive Plan. The applicant cannot establish competent and substantial evidence to the contrary, because fundamentally approval would be depart from the essential requirements. The plain language of Section 86-130(b)(8) which lists the permitted uses in PUD Districts. Section 86-130(r) of the Land Development Code states that “**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.”

Here, the application seeks amendment on the perimeter of the PUD, not centrally within. It does so, at a scale and mass that is disproportionate with any needs of the existing

community. It is intended to attract customers outside the community, and for a community which does not currently exist. The commercial use in the proposed PUD amendment will not serve the needs of the PUD in contravention of the Land Development Code & the Comprehensive Plan. Various residents have indicated in emails to City staff, there are already two Publix grocery stores within a 3 mile vicinity of the proposed commercial use that would house a shopping center including a new Publix. Additionally, it is unclear at this point if the proposed shopping center will include a gas station, but if it does, it is important to note that there are already 3 existing gas stations to the south of the proposed shopping center, as well as one existing gas station to the west, with two more likely to be built (Wawa and 7-11) within 3 miles. Regardless the site plan is not before you today and could be amended prior to submittal. It is notable that the new/existing Land Development Regulations no longer permit gas stations in PUD commercial areas. In its own presentation at the Public Workshop for this application, the applicant noted that the proposed commercial development is significant for the communities east and north of I-75, claiming that it will serve nearly 7,000 homes in multiple divisions, of which barely over 800 are located within the Milano PUD. That is to say, 89% of the estimated customers of the proposed commercial usage will come from outside the PUD. It is clear from the developer's own statements this proposal seeks to serve the general needs of the surrounding area.

Amending the PUD Open Space to Commercial is prohibited by Section 86-130(b)(8) of the City's Land Development Regulations, which permits 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.” The Milano PUD did not include commercial uses at the time it was originally approved in 2014 under the VICA PUD and thereafter when it was merged into the Milano PUD in 2017. The fundamental requirements of the Land Development Regulations indicates clear intent on the part of the City Council to disallow (neighborhood) commercial uses not compatible at the time of approval of the PUD. If the intent was to allow for (neighborhood) commercial upon any request for modification of the PUD, there would not be clear language stating that it had to be at the time of PUD approval. Approval of the application would therefore rest upon a failure follow the essential requirements of the City’s own Code.

2. There is no basis to conclude that changed or changing conditions make the passage of the proposed amendment necessary, as required. The applicant’s response to this requirement is self-serving: “The need for commercial services in close proximity to the neighborhood in order to limit required vehicle trip lengths currently required to obtain such services makes the proposed change necessary. The statement is pure conjecture. No competent substantial evidence supports this speculative, self-serving declaration. No explanation is made as to what commercial services are in general proximity that applicant claims are currently lacking, nor how the proposed amendment would remedy the deficiency. There are already numerous grocery stores and readily available commercial service within a short vicinity of the PUD, and applicant is unable to make a rationale case to the contrary.

3. The application and record submitted by the applicant completely overlooks and miscalculates significant traffic impacts to be caused by the amendment. The proposed change will lead to excessively increased traffic and otherwise affect public safety, in contravention of Section 86-47(f)(1)(h) of the City's previous Land Development Code. The location of the proposed shopping center is directly across from the main entrance to VGRC, off of Veneto Drive. That entrance is used by the 1377 homeowners in the Venetian for ingress and egress to Laurel Road. Adding a major shopping center will significantly exacerbate traffic from the main Veneto Drive exit for Venetian Golf and will, in time, delay emergency services.

Importantly, the applicant's traffic report specifically avoided using the formulas found in the Institute of Transportation Engineers manual, as historically mandated by the City and uniformly performed. As the revised Staff Report states: "The data used by the applicant results in a lower trip generation number than would be found using ITE data. The ITE trip generation rates have historically been used for Transportation Impact Analysis in the city, including the original analysis for the Milano PUD, **making the proposed methodology inconsistent with the methods used in the previous study.**"

Approval of the amendment will all but guarantee an unbearable number of trips on the roads and failing Level of Service as a result of the commercial amendment. That is because trips associated with this amendment will be vested if approved. Traffic impacts must be assessed on the maximum allowed number of trips allowed under the amended PUD, not the proposed site plan, which is not before you today.

Multiple residents have entered into the record testimony that the addition of a shopping center at this location will significantly exacerbate traffic, that the proposed entrance across from Veneto Boulevard will create a dangerous intersection and possible backup on Laurel Road. The applicant has suggested that building the shopping center will actually reduce traffic by 27%, even though the Traffic Study their consultant submitted indicates a 814 peak hour trip addition. Of course, the construction of a shopping center is going to have a drastic impact on traffic, yet the applicant seeks approval without proper vetting as required.

4. The application can advance no competent substantial evidence demonstrating that it is no possible to find other adequate sites in the city for the proposed use in districts already permitting such use. There is an existing shopping plaza at Laurel Road and Knights Trail that is has many vacant spaces and other commercial areas where this application would be as of right. The applicant has not addressed this requirement, though it is their duty to do so.

5. The application is inconsistent and does not comply with the City's Comprehensive Plan, Open Space Element, as indicated by the City's own environmental consultant. The overwhelming percentage of the subject area is wetlands, with habitats supporting eagles, American white pelicans, wood storks and spoonbills. The Florida Natural Areas Inventory concluded through its evaluation of the site that the wetlands provide a habitat for wading birds and other wetland dependent species. Strategy OS 1.2.2 of the Open Space Element of the City's Comprehensive Plan addresses Environmental Impact Mitigation. This strategy states that the City will use the Code and review processes

to ensure the applicant evaluates environmental impact and provides any necessary mitigation. No mitigation for loss of habitat for protected bird species and other wildlife is proposed. To the contrary, the applicant has made clear their intention to proceed despite the manifest inconsistency with the Comprehensive Plan and environmental red flags that have been raised.

6. Finally, there are additional quality of life and nuisance concerns that remain unaddressed such as the location and access of service vehicles, the increase in noise, and 24/7 lighting that will detrimentally impact the quality of life.

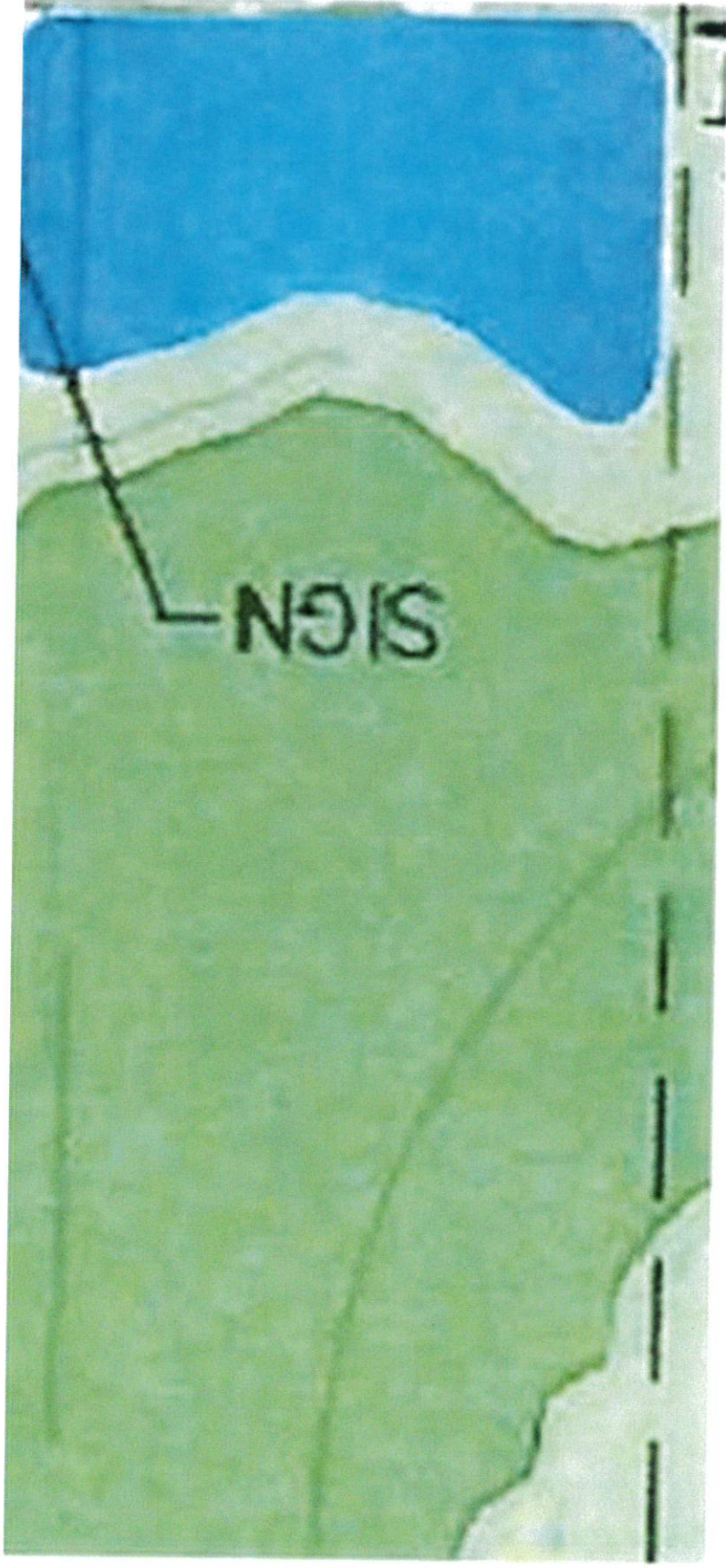
The application before you does not meet controlling law and the applicant cannot and has not established through competent, substantial evidence that its application is consistent with the Comprehensive Plan or that it meets the City's Code requirements for a rezoning/Zoning Map Amendment. The only assertions made are self-serving, conclusory assertions contained in the applications themselves, which offer no support upon which the Commission can reasonably rely.

To summarize, the application before the Commission must be denied. The submittals by applicants fail to meet the criteria for the approvals sought. The essential requirements of the City's Code and Comprehensive Plan require denial. The applicant cannot meet its burden of establishing by competent and substantial evidence that the application is consistent with the Comprehensive Plan or the criteria for rezoning. For all of the above reasons, we respectfully request that the Commission deny this application.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jeremy Shir".

Jeremy B. Shir
For the Firm



Green: Wetlands

Light Green: Other Open Space

Blue: Lakes



Approximate Project Boundary
 Approximate FLUCCS Project Lines

FLUCCS Code	Description	Acres
100	Open Land	1.98
SS4	Restorations less than 10 Acres	2.34
041	Restoration Marshes	6.60
Total Project Acreage		10.92



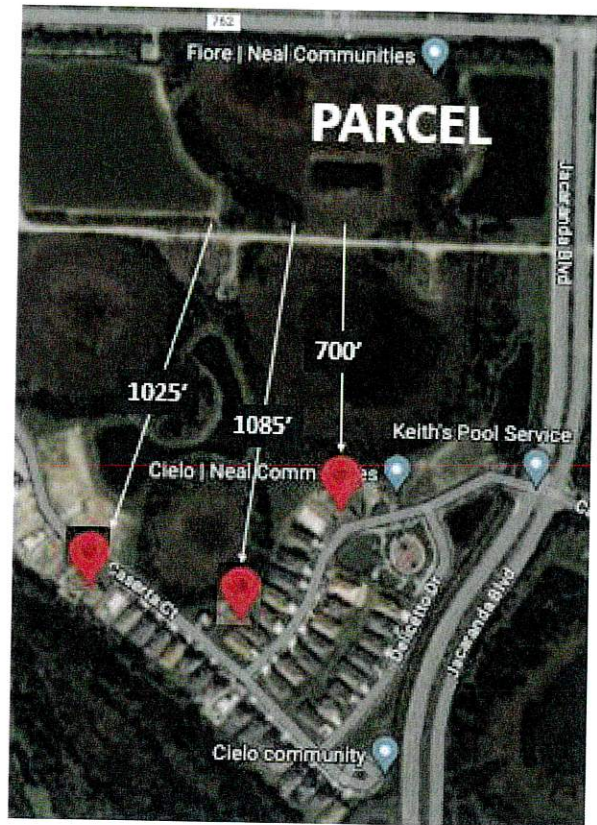
Client: Hill Communities
Project: The Village at Laurel & Innsbrook
Location: Seminole County, Florida
TRC: San 20 Top 245 Reg. 118
Title: FLUCCS Habitat Map
Source: Seminole County Inventory (2021)

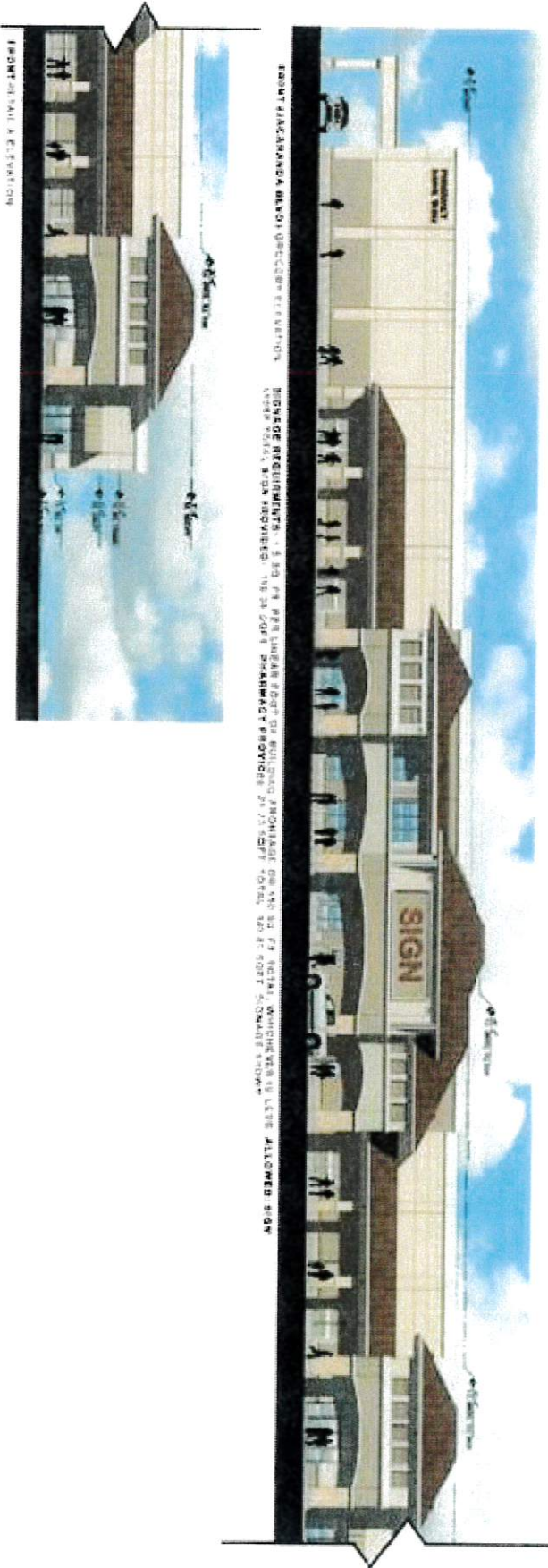
Drawn By: CS
Date: 4/7/2022
Sheet: 1



Scale: 1" = 100'
 0 50 100

- 260 Corsano Dr – (dated 9/20/20) 1085'
- 268 Caserta Court – (1/2/21) 1025'
- 232 Corsano Dr – (2/8/22) 700'
- Examples of three homes with contracts showing PRESERVE





FRONT ELEVATION AND EXTERIOR
 SIGNAGE REQUIREMENTS - 5' TO 7' PER LINEAR FOOT OF BUILDING FRONTAGE OR 4' TO 6' PER SIGN, WHICHEVER IS LATER. ALLOWED SIGN
 AREA 100%, SIGN HEIGHTS: 10' TO 20' OVER DRIVEWAY SIGNAGE OR 11' TO 20' OVER 40' TO 45' SIGN. SIGNAGE SHALL BE 100%

FRONT ELEVATION & EXTERIOR

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.

CHAPTER 177
LAND BOUNDARIES

PART I
PLATTING

(ss. 177.011-177.151)

177.051 Name and replat of subdivision.—

- (2) Any change in a plat, except as provided in s. 177.141, shall be labeled a “replat,” and a replat **must conform with this part**. After the effective date of this act, the terms “amended plat,” “revised plat,” “corrected plat,” and “resubdivision” may not be used to describe the process by which a plat is changed.

Section 177.081(2), Florida Statutes:

Every plat of a subdivision filed for record must contain a dedication by the owner or owners of record. 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.

Kathleen Weeden

From: Jonathan Kramer
Sent: Thursday, March 16, 2023 10:19 AM
To: bob.cunningham@stantec.com
Cc: Kathleen Weeden; Roger Clark; Nicole Tremblay
Subject: Cielo Replat (ENFP23-00054) Review Comments

Bob,

Below are the review comments on the Cielo Replat (ENFP23-00054) submittal. Note that this submittal has not been sent for outside surveyor reviewer at this time.

1. The proposed amendment to the final plat is inconsistent with the Milano PUD Binding Master Plan and the approved preliminary plat; the tract proposed on this replat is identified as open space in the Binding Master Plan. If the pending PUD amendment to the Binding Master Plan (Petition No. 22-38RZ) is approved by Council, then the preliminary plat will need to be amended to be consistent with the proposed final plat.
2. Since this would be the last final plat for Milano, it must include a dedication of all the open space included within the PUD. This newly proposed tract would also have to be dedicated as open space, since it is not approved for any other use at this time. As indicated above, if the PUD amendment to the Binding Master Plan is approved, the preliminary plat will need to be amended to reflect that approval before the proposed final plat can move forward.
3. Please address F.S. § 177.081(2) regarding the requirement for all property owners included in the recorded final plat for Cielo to execute the dedication on the proposed revised plat (or through separate instrument).

Jon Kramer, PE
Assistant City Engineer
City of Venice
401 W. Venice Avenue
Venice, FL 34285
941-882-7410
941-468-2272 cell
jkramer@venicefl.gov



CITY OF VENICE
PLANNING AND ZONING DEPARTMENT

MEMORANDUM

TO: Rebecca Paul, Planning Coordinator

FROM: Nicole Tremblay, Senior Planner

DATE: August 1, 2022

SUBJECT: Petition No. 22-39PP – Milano Preliminary Plat Amendment – Village at Laurel and Jacaranda
(Initial Submittal)

Upon review of the above referenced application, staff provides the following review comments.

REQUIRED REVISIONS

Application Materials

1. Please complete a concurrency application that reflects the entire PUD rather than just this parcel.
2. Similarly, please provide stormwater calculations regarding impacts of the proposed development on the overall stormwater system approved through the PUD. The concurrency application says “See Drainage Narrative,” but none was provided.
3. The transportation analysis does not match the proposed site plan regarding proposed uses and should be revised. Further, the analysis is done for the commercial proposal only and should include analysis regarding the impact of the proposed development on the overall approved traffic study for the entire PUD, which was only approved for 673 PM Peak Hour trips.
4. Please provide a more descriptive narrative referencing the tracts being affected through this plat amendment.
5. Please address F.S. § 177.081(2) regarding the requirement for all property owners included in the recorded final plat for Cielo to execute the dedication on the proposed revised plat (or through separate instrument).

Preliminary Plat Plans

1. Please provide one sheet showing the approved final plat as recorded.
2. General Note #2 states that Cielo will be a commercial development; this is a replat and includes the residential area of the subdivision. Please revise to include all uses.
3. General Note #3 references “The Village at Laurel and Jacaranda;” please provide either documents confirming that this entity exists currently or an explanation of the process through which it will be created.
4. General Note #4 states that Cielo in its entirety is vacant. Please revise to reflect accurate conditions.
5. General Note #7 only addresses the site coverages for the commercial portion; Please revise to include all of Cielo. Site coverages are known based on the site and development plan application – please add.
6. General Note #8 does not include the known parking calculations for both the residential and nonresidential areas of Cielo.
7. General Note #9 does not reflect the setbacks that apply throughout Cielo.
8. General Note #10 does not list the maximum building height determined through the Binding Master Plan for the Milano PUD.
9. General Note A should reflect the open space for Cielo. Additionally, the notes were numbered and then switched to lettering; please correct.

10. Please update the land use table from the original Cielo preliminary plat, shown below:

LAND USE	PUD REZONE		SUM OF PLATTED UNITS WITHIN MILANO PUD		PRELIMINARY PLAT AREA		PRELIMINARY PLAT CIELO PHASE 1 & 2	
	AREA (AC)	%	AREA (AC)	%	AREA (AC)	%	AREA (AC)	%
RESIDENTIAL	182	34.5%	66.08	28%	42.43	24%	22.61	18%
AMENITY AREA	4	0.8%	2.26	1.29%	2.61	1.5%	1.05	0.8%
ROAD ROW	50	9.5%	20.34	8%	12.07	6.82%	6.91	5.5%
WETLANDS	131		55.11		19.22		48.14	
CONSERVATION	9		14.14		4.34		9.31	
LAKES	94		33.29		82.26		13.35	
OTHER OPEN SPACE	57		22.37		56.48		24.13	
TOTAL OPEN SPACE	291	62%	125.41	60%	142.30	81%	94.93	76%
IMPERVIOUS	N/A		67.98	25%	35.18	20%	18.01	14%
TOTAL AREA	527.32	100%	225.43	100%	176.39	100%	125.50	100%

* % ARE BASED ON THE "TOTAL AREA" I.E. RESIDENTIAL AREA = 22.61/125.50AC = 18%

LOT TYPE	#	#	#	#
SINGLE FAMILY DETACHED A LOTS	N/A	239	0	0
SINGLE FAMILY DETACHED B LOTS	N/A	99	0	126
SINGLE FAMILY ATTACHED (PAIRED VILLA)	N/A	126	0	0
MULTI FAMILY	N/A	0	0	0
SINGLE FAMILY DETACHED D LOTS	N/A	0	107	0
SINGLE FAMILY DETACHED E LOTS	N/A	0	73	0
LOT TOTAL	1,350	646	180	126
DU/AC	2.56	1.61	1.02	1.00

For your convenience, the site data from the Fiore preliminary plat is also shown here:

LAND USE	PUD REZONE		SUM OF PLATTED UNITS WITHIN MILANO PUD		PRELIMINARY PLAT CIELO PHASE 1		PRELIMINARY PLAT FIORE (AKA CIELO) PHASE 2	
	AREA (AC.)	%	AREA (AC.)	%	AREA (AC.)	%	AREA (AC.)	%
RESIDENTIAL	182	34.5%	108.51	27.0%	15.63	17.4%	6.65	18.7%
AMENITY AREA	4	0.8%	4.87	1.2%	1.05	1.2%	0.52	1.5%
ROAD ROW	50	9.5%	32.41	8.1%	4.56	5.1%	2.35	6.6%
WETLANDS	131		74.33		39.58		8.56	
CONSERVATION	9		18.48		6.06		3.25	
LAKES	94		95.55		10.213		4.347	
OTHER OPEN SPACE	57		78.85		13.077		9.84	
TOTAL OPEN SPACE	291	55.2%	267.71	66.6%	68.93	76.6%	26.00	73.2%
IMPERVIOUS	N/A		103.16	25.7%	8.623	9.6%	10.597	29.8%
TOTAL AREA	527.32	100%	401.82	100%	89.98	100%	35.52	100%

LOT TYPE	#	#	#	#
SINGLE FAMILY DETACHED A LOTS	N/A	239	0	0
SINGLE FAMILY DETACHED B LOTS	N/A	99	71	0
SINGLE FAMILY ATTACHED (PAIRED VILLAS)	N/A	126	0	0
MULTI FAMILY	N/A	0	0	0
SINGLE FAMILY DETACHED D LOTS	N/A	107	0	0
SINGLE FAMILY DETACHED E LOTS	N/A	73	0	0
SINGLE FAMILY ATTACHED (TOWNHOME)	N/A	0	0	126
LOT TOTAL	1350	644	71	126
DU/AC	2.56	1.63	0.79	3.55

in Section 86-130(j)(3) of the LDR's, as follows:

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 99 years. 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.

Section 86-570 of the LDR's defines "Open Space" as that term is used in the LDR's as follows:

Open space means property which is unoccupied or predominantly unoccupied by buildings or other impervious surfaces and which is used for parks, recreation, conservation, preservation of native habitat and other natural resources, or historic or scenic purposes. It is intended that this space be park-like in use. The term "unoccupied or predominantly unoccupied by buildings or other impervious surfaces," as used in this definition, shall mean that not more than five percent of the area of any required open space, when calculated by each area shall be occupied by such surfaces. Such open space shall be held in common ownership by all owners within the development for which the open space is required. Any property within 20 feet of any structure (except accessory structures within the designated open space) or any proposed open space area having any dimension of less than 15 feet, shall not be considered open space in meeting the requirements of this chapter. Where areas within a development are identified as native habitat, such areas shall be utilized to fulfill the open space requirements of this chapter.

Sec. 86-130. - PUD planned unit development district.

(b) *Permitted principal uses and structures.* **Permitted principal uses and structures in PUD districts are:**

- (1) Single-family dwellings, cluster housing and patio houses.
- (2) Townhouses.
- (3) Multiple-family dwellings.
- (4) Private clubs, community centers, and civic and social organization facilities.
- (5) Parks, playgrounds, putting greens and golf courses.
- (6) Essential services.
- (7) Houses of worship, schools, nursing homes and child care centers.
- (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.**
- (9) Other uses of a nature similar to those listed, after determination and recommendation by the planning commission, and determination by the city council at the time of rezoning that such uses are appropriate to the PUD development.

Cielo Declaration of Covenants and Restrictions

Section 4.01(d) includes:

Declarant reserves the right to amend and alter the development plan and/or scheme of development of the Common Property, in Declarant's sole and absolute discretion, provided such amendment does not delete or convey to another party any Common Property designated, submitted or committed to common usage if such deletion or conveyance would materially and adversely change the nature, size and quality of the Common Property.

Section 12.6. This Declaration may be amended only in accordance with this Section.

- (a) Prior to the Turnover Date, Declarant reserves the right to amend this Declaration, the Articles and By-Laws in any reasonable manner whatsoever, without the requirement of Association consent or the consent of any Loy Owner or the mortgagee of any Lot, so long as such amendments do not delete or convey to another party any Common Property designated, submitted or committed to common usage if such deletion or conveyance would materially and adversely change the nature, size and quality of the Common Property; provided however, this provision shall not limit or affect the Developer's ability to re-plat and/or reconfigure all or part of the Subdivision's Common Property and amend the Declaration in connection therewith. Notwithstanding anything to the contrary herein, the Declarant reserves the right to relocate or reconfigure the Common Areas, including the right to substitute relocated or similar Common Areas in other locations within the Subdivision, thereby deleting the Common Areas in the prior location. The right of Declarant to amend as herein set forth shall prevail, anything else contained herein to the contrary notwithstanding.

From: [Giacherio, Aimee](#)
To: [Rebecca Paul](#); [Roger Clark](#)
Subject: RE: Milano PUD Amendment Transportation
Date: Tuesday, February 28, 2023 10:52:31 AM
Attachments: [image009.png](#)
[image010.png](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.jpg](#)
[image016.jpg](#)
[image018.png](#)
[image019.png](#)
[image020.png](#)
[image021.png](#)
[image022.png](#)
[image023.png](#)
[image024.jpg](#)

Good morning Roger,

I have reviewed the response to comments and updated analysis for the Milano PUD Amendment project. All our comments were addressed and updated in the report.

The traffic impact statement submitted was a very generalized traffic assessment that conducted a road segment analysis only to determine if the adjacent road segments could accommodate the proposed amended plan. This type of study does not look at intersection operations or site access. A detailed traffic impact analysis would be prepared when the applicant is ready to submit the site and development plan application for the commercial development.

* The results of this generalized traffic statement indicate that the addition of the proposed PUD Amendment traffic does not create any additional roadway deficiencies when using the latest FDOT 2023 Multimodal Quality/Level of Service Handbook. This statement/results are based on the Laurel Road widening project, which will increase the service volume of Laurel Road, and is also based on the updated FDOT 2023 Multimodal Quality/Level of Service Handbook, which results in a different service volume for Jacaranda Boulevard between Laurel Road and Border Road. The project is anticipated to create a deficiency on Jacaranda Boulevard from Laurel Road to Border Road by exceeding its generalized service volume according to the Sarasota County 2021 Generalized LOS Volumes. However, when applying the updated FDOT 2023 service volumes to this segment, the project traffic does not result in a deficiency for this segment.

Please let me know if you have any questions or need anything further.

Thanks,
Aimée



Aimée L. Giacherio, PE, Senior Project Manager, Vice President

2851 Charlevoix Drive SE, Suite 108, Grand Rapids, MI 49546
616.900.9132 office
616.304.6942 cell



From: Rebecca Paul <RPaul@Venicefl.gov>
Sent: Wednesday, February 15, 2023 10:22 AM
To: Giacherio, Aimee <AGiacherio@WadeTrim.com>
Subject: FW: Milano PUD Amendment Transportation

This message originated from outside of Wade Trim

Good morning, Aimée,

Please see attached responses and updated analysis from your 2/7/23 comments.

Thank you,

Rebecca

Rebecca Paul
Planning Coordinator
City of Venice
401 W. Venice Ave.
Venice, FL 34285
(941) 882-7434
rpaul@venicefl.gov

logo medium



From: Jim Collins <JCollins@boone-law.com>
Sent: Wednesday, February 15, 2023 10:13 AM
To: Rebecca Paul <RPaul@Venicefl.gov>; annette.boone@boone-law.com; Jackson Boone <jackson.boone@boone-law.com>; Jeffery A. Boone <JBoone@boone-law.com>; Lee Fosco <LFosco@boone-law.com>
Cc: Nicole Tremblay <NTremblay@venicefl.gov>; Roger Clark <RClark@venicefl.gov>
Subject: RE: Milano PUD Amendment Transportation

Rebecca:

In response to the review comments from Wade Trim transmitted in your below email, attached please find our comment response letter and updated analysis.

Jim

From: Rebecca Paul <RPaul@Venicefl.gov>
Sent: Wednesday, February 8, 2023 7:43 AM

To: Annette Boone <Annette.Boone@boone-law.com>; Jim Collins <JCollins@boone-law.com>; Jackson Boone <Jackson.Boone@boone-law.com>; Jeffery A. Boone <JBoone@boone-law.com>; Lee Fosco <LFosco@boone-law.com>
Cc: Nicole Tremblay <NTremblay@venicefl.gov>; Roger Clark <RClark@venicefl.gov>
Subject: FW: Milano PUD Amendment Transportation

Good morning,

Please see comment below and attached document from Wade Trim for your submission of TIS evaluating the roadway segments in the study area with ITE trip generation data on January 16, 2023.

Thank you,
Rebecca

Rebecca Paul
Planning Coordinator
City of Venice
401 W. Venice Ave.
Venice, FL 34285
(941) 882-7434
rpaul@venicefl.gov

logo medium



From: Giacherio, Aimee <AGiacherio@WadeTrim.com>
Sent: Tuesday, February 7, 2023 4:28 PM
To: Roger Clark <RClark@venicefl.gov>
Cc: Nicole Tremblay <NTremblay@venicefl.gov>; Rebecca Paul <RPaul@Venicefl.gov>
Subject: RE: Milano PUD Amendment Transportation

Hi Roger,

I have reviewed the Milano PUD traffic impact statement for the amendment. The intent of this new study was not to compare the commercial development to the approved trips for the original Milano PUD. They cannot stay within the originally approved trips for Milano. Their intent was to do a new generalized study that examined the road segments to see if they could handle the additional development traffic. Similar to what we allowed Stantec to do for the Cows & Turkeys parcel. When they come back in for site and development, they would submit a full traffic impact study that examines the intersections and access points.

My comments are attached. Please let me know if you have any questions or need anything further. I should be around most of tomorrow if you want to discuss this prior to issuing comments.

From: Jim Collins <JCollins@boone-law.com>

Sent: Monday, January 16, 2023 5:14 PM

To: Roger Clark <RClark@venicefl.gov>; Nicole Tremblay <NTremblay@venicefl.gov>; Rebecca Paul <RPaul@Venicefl.gov>

Cc: Jeffery A. Boone <JBoone@boone-law.com>; Jackson Boone <jackson.boone@boone-law.com>; annette.boone@boone-law.com

Subject: Milano PUD Amendment Transportation

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

Roger:

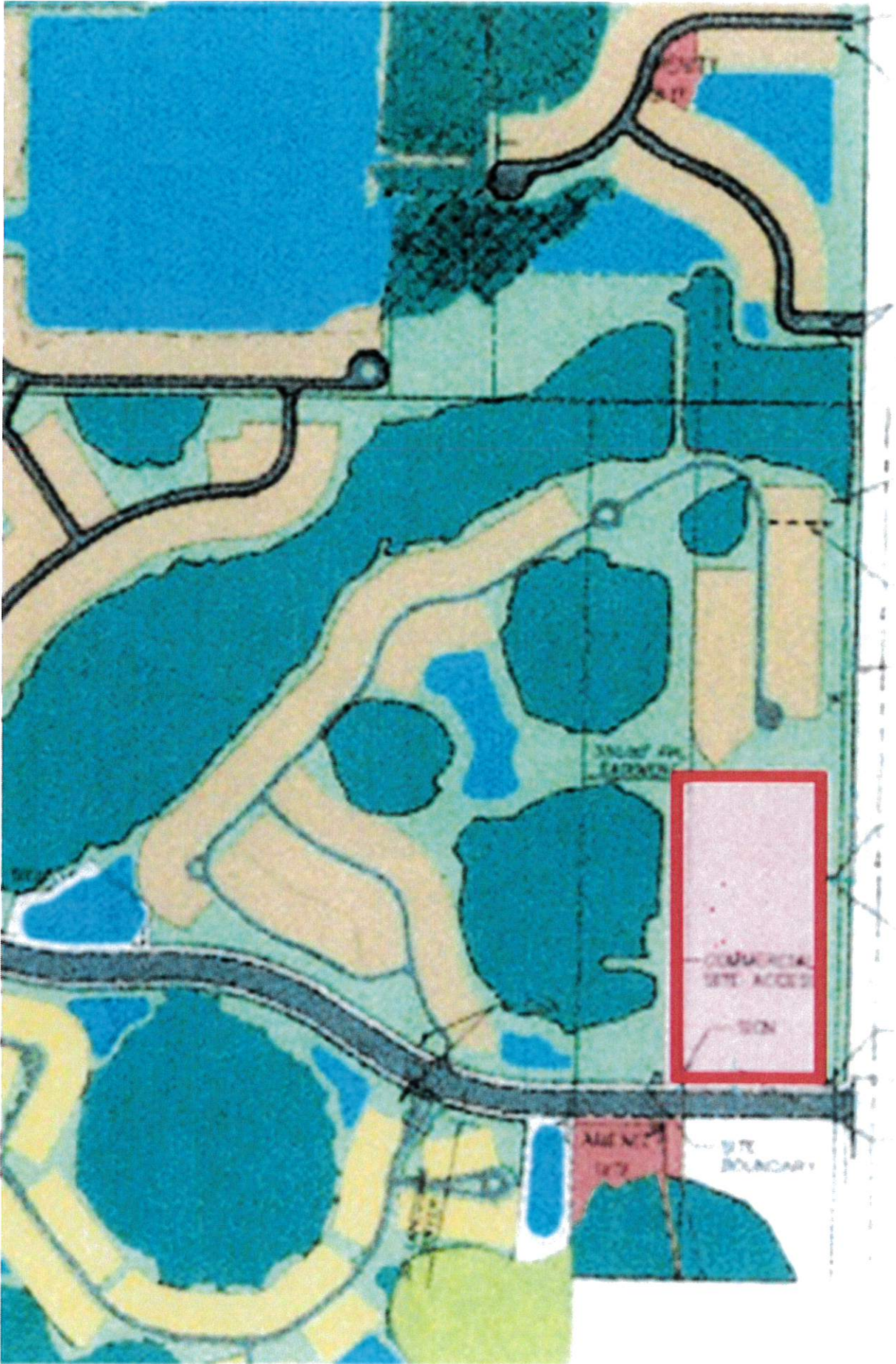
Attached please find the TIS evaluating the roadway segments in the study area with ITE trip generation data in connection with the above-referenced matter.

Jim

James T. Collins, Planner
Boone Law Firm P.A.
P.O. Box 1596
1001 Avenida del Circo
Venice, FL 34285
(941) 488-6716 phone
(941) 488-7079 fax
e-mail: jcollins@boone-law.com

Need to Report an Issue? SeeClickFix Venice Connect is available as an app for Android and iPhone. Select SeeClickFix from your app store on your device and choose Venice, Florida. There is also a link to the program on the city's website, www.venicegov.com, or go directly to SeeClickFix at <https://venice.seeclickfix.com/venice>

PLEASE NOTE: This agency is a public entity and is subject to Chapter 119, Florida Statutes, concerning public records. Email communications are covered under such laws; therefore, email sent or received on this entity's computer system, including your email address, may be disclosed to the public and media upon request. If you do not want your email address released to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



TOP

NARRATIVE FOR LAUREL ROAD INVESTMENTS LLC.
REQUEST – LAUREL RD. AND VENETO BLVD. TRAFFIC SIGNAL

In accordance with Section 124-253 of the Sarasota County Unified Development Code (UDC), Laurel Road Investments LLC., ("Applicant") requests an administrative adjustment from the provisions of Section 124-253(d)(4)a.1., Access Standards Table. The Applicant seeks relief from the requirement to provide traffic signal spacing at no less than 1,320 feet on a Class 5 roadway with a posted speed of 45 mph or less. The Applicant requests to provide a traffic signal on Laurel Road at the intersection of Veneto Boulevard. This traffic signal will be located approximately 690 feet to the west of the future Laurel Road and Jacaranda Boulevard traffic signal. The request is to serve both the residents of the Venetian Golf and River Club on the north side of Laurel Road and the proposed commercial development on the south side of Laurel Road.

The Applicant is the contract purchaser of a portion of Parcel 0391041000, located at the southwest corner of the Laurel Road and Jacaranda Boulevard intersection within the City of Venice ("the Property"). As shown in Exhibit A, the Applicant proposes to develop a 47,000 SF grocery store, 18,000 SF of retail, and a 5,000 SF restaurant. Two full access points and two right-in/right-out access points are proposed for this project. One right-in/right-out access point and one full access point are proposed along Laurel Road; one right-in/right-out access point and one full access point are proposed along Jacaranda Boulevard. These proposed access points were previously approved by Sarasota County via Variance Nos. 21-167588 DV and 21-167593 DV.

The Applicant requests that the County grant relief from the provisions of Section 124-253(d)(4)a.1. of the UDC to allow for a traffic signal to serve this proposed development as well as the residents of the Venetian Golf and River Club spaced at less than the required 1,320 feet for a Class 5 roadway. The proposed traffic signal on Laurel Road at Veneto Boulevard located approximately 690 feet west of the future Laurel Road and Jacaranda Boulevard traffic signal is needed for safe and efficient access.

Applicable Code Provisions re: Traffic Signal Spacing

UDC Section 124-253(d)(4)a.1., Access Standards Table provides that an Access Classification of 5 roadway with travel speeds at 45 mph or less have traffic signals spaced at a minimum of 1,320 feet. Laurel Road is a two-lane undivided roadway, classified as a Minor Collector. The proposed development would provide a traffic signal approximately 690 feet west of the future traffic signal at the Laurel Road and Jacaranda Boulevard intersection. The latter traffic signal is to be constructed as part of the Laurel Road widening project currently being designed/permitted via an agreement between the City of Venice and the Laurel Road Community Development District.

Requested Relief

Determine Proposed Traffic Signal Spacing complies with the UDC. The Applicant submits that the proposed spacing for the traffic signal at Veneto Boulevard and Laurel Road represents safe and reliable access, and thus, may be administratively approved by the County Engineer. If the County is satisfied that safe and reliable access would be provided based upon the information contained in this Application, as well as the accompanying Traffic Analysis, we respectfully request such a determination to authorize and approve it. If relief from the traffic signal spacing standards are not granted, there will be a greater risk to pedestrians, bicyclists, and vehicles crossing Laurel Road between the complimentary residential and commercial land uses.

Alternatively, grant Variance from the UDC. The Applicant, alternatively, requests a variance be granted from Section 124-253(d)(4)a.1. of the UDC, based upon the following information:

- a. That special conditions and circumstances exist which are peculiar to the land, structures, or required improvements involved:

The Property is located at the southwest corner of the intersection of Laurel Road and Jacaranda Boulevard. This intersection is the northern end of Jacaranda Boulevard which terminates at Laurel Road. Approximately 5,800 feet to the east, Laurel Road terminates at the Venice Myakka River Park. Residential development exists to the north, west, and south of the subject property. A fire station exists to the east, across Jacaranda Boulevard.

The boundary conditions of the Property limit how far a traffic signal can be located from the Laurel Road and Jacaranda Boulevard intersection. Because of that, aligning it with Veneto Boulevard, makes the most sense operationally. Along Laurel Road, the site's frontage is approximately 930 feet from the Jacaranda Boulevard intersection. Meeting the 1,320 feet spacing requirement is not possible due to the site constraints. Constructing a traffic signal at the Veneto Boulevard intersection will provide the safest and most efficient location for bicyclists and pedestrians to interact between the residential and commercial land uses at both development's main access point. This will further encourage the concentration and organization of vehicular and non-vehicular traffic flow on the roadway network. It will provide the safest and most efficient location for bicyclists and pedestrians to interact between the residential and commercial land uses. Thus, this qualifies as a special condition or circumstance that inhibits compliance with the UDC requirement to provide traffic signal spacing at 1,320 feet.

- b. That a literal interpretation of the provisions of these regulations would deprive the applicant of reasonable use of this property:

Prohibiting the Property from being served by a traffic signal would limit and restrict the development on the Property and, in combination with the other site constraints and regulatory requirements, make the construction of the proposed commercial project significantly less financially feasible. According to the Traffic Analysis, a majority of the project traffic (60%) accesses the site to/from the south while 35% accesses it from the west/north (Venetian Golf and River Club).

Although the subject property is located within the City of Venice, Jacaranda Boulevard and Laurel Road are Sarasota County roads; thus, a variance is needed. The variance being requested is necessary to provide the proposed intensities for commercial and retail uses for which the property is planned.

Additionally, Sarasota County has granted similar relief from this UDC requirement for a number of projects. Interpreting the UDC requirement to prohibit the proposed traffic signal would serve to deprive the neighboring residents in Venetian Golf and River Club safe access to the proposed development and also not allow it to be developed in a manner consistent with the City of Venice's plans. Providing uses that meet the daily or weekly needs in proximity to residential uses, and to limit traffic, as well as to provide safe travel, are goals of both Sarasota County and the City of Venice.

- c. That the special conditions and circumstances do not result from the actions of the applicant:

While the four-lane widening of Laurel Road includes a 30-ft wide refuge area, the property is located within the City of Venice. According to the US Census Bureau, the median age is 68.7 years with 70% of the population over the age of 65 years (reference: Table S0101, 2020 ACS 5-Year Estimate.) Moreover, our public outreach with the communities to the north identified the southbound left and southbound through movements as of great concern, i.e., there is high discomfort for making these maneuvers without a traffic signal and protected phases. The residents of Venetian Golf and River Club, the community to the north of the proposed development, will be the primary users of the development. In addition to using their vehicles, residents of Venetian Golf and River Club will have the option to walk, bike, and travel in golf carts to interact with the project site. Further, the planned Multi-Use Recreational Trail (MURT) system in this area will be enhanced with the MURT included in the Laurel Road Widening Project. This effectively connects to the existing system on Jacaranda Boulevard and Border Road. The existing facilities are already used,

and usage is expected to increase over time along with active transportation crossings of Laurel Road. A traffic signal provides safer access to the project site. Otherwise, in order for pedestrians and bicyclists to cross Laurel Road at a traffic signal, residents from Venetian Golf and River Club will need to travel east to the future traffic light at Laurel Road and Jacaranda Boulevard. The most efficient and safe location to access the project site is via a traffic signal directly at the entrance to the Venetian Golf and River Club development, providing direct access to the proposed project.

The project site lacks the necessary frontage to provide the spacing requirements for a traffic signal required by the UDC. None of these result from actions of the Applicant. The site location and conditions, as well as the aging population of the immediate users, limit access opportunities for the development.

- d. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, structures, or required improvements under similar conditions. No pre-existing conditions on neighboring lands, which are contrary to these regulations, shall be considered grounds for the issuance of a variance;

Similar traffic signal spacing has been permitted within the County. Specifically, the Cattlemen Road and Packinghouse Road signalized intersections on Palmer Boulevard are spaced at +/-475 feet and the Cattleridge Boulevard and Bee Ridge Road signalized intersections on Cattlemen Road are spaced at ±745 feet.

Most significantly, the Applicant contends that the proposed traffic signal provides for safe and reliable travel for neighboring residents, thus meeting the standard that is applied by the County to every other development. As a result, the Applicant would be conferred no special privilege that is denied to other lands.

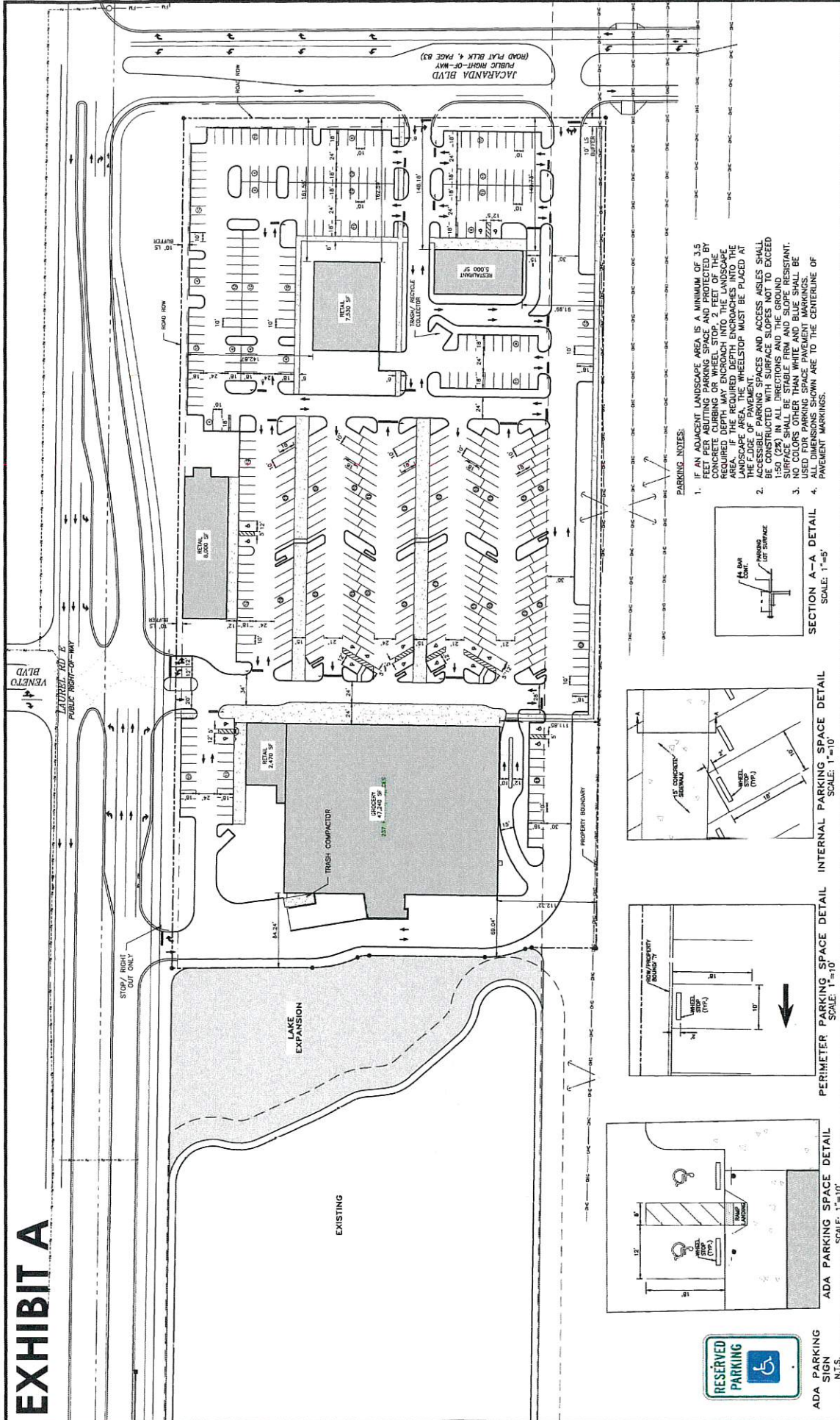
- e. That, with respect to a right-of-way or improvement requirement, such requirement does not bear a reasonable relationship or rational nexus between the need for additional capital facilities and the demands generated by the development along with other development within the area.

There are no additional capital facilities or demands created by the granting of this variance.

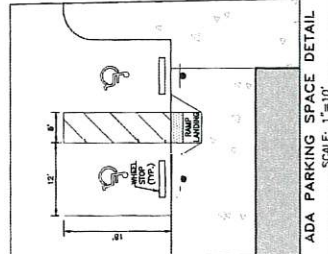
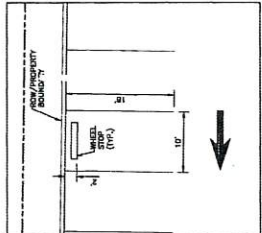
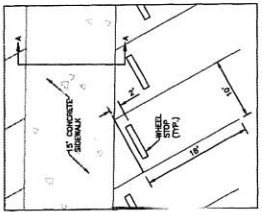
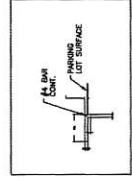
Conclusion

The Applicant requests that the County determine the traffic signal at Laurel Road and Veneto Boulevard satisfies the terms of Section 124-253 and, therefore, represents safe and reliable travel for neighboring residents which shall be administratively approved by the County Engineer. Alternatively, if the request is denied, the Applicant requests a variance be granted from Section 124-253(d)(4)a.1. of the Unified Development Code.

EXHIBIT A



- PARKING NOTES:**
- IF AN ADJACENT LANDSCAPE AREA IS A MINIMUM OF 7.5 FEET PER ABUTTING PARKING SPACE AND PROTECTED BY CONCRETE CURBING OR WHEEL STOP, 2 FEET OF THE REQUIRED DEPTH MAY ENDOACH INTO THE LANDSCAPE AREA. THE WHEELSTOP MUST BE PLACED AT THE EDGE OF PAVEMENT.
 - ACCESSIBLE PARKING SPACES AND ACCESS AISLES SHALL BE CONCRETE OR STABLE FIRM AND SLOPE SHALL EXCEED 1:50 (2%) IN ALL DIRECTIONS AND THE GROUND SURFACE SHALL BE STABLE FIRM AND SLOPE RESISTANT. NO COLORS OTHER THAN WHITE AND BLUE SHALL BE USED FOR MARKINGS. DIMENSIONS SHOWN ARE TO THE CENTERLINE OF PAVEMENT MARKINGS.



ADA PARKING SIGN N.T.S.

<p>NEAL COMMUNITIES THE VILLAGE AT LAUREL AND JACARANDA</p>		<p>1"=50'</p> <p>N/A</p> <p>MAY 1988</p> <p>NEAL0206</p> <p>3</p>
<p>MASTER SITE PLAN</p>		<p>0 25 50 100</p> <p>SCALE IN FEET</p>
<p>ENGINEERING, LLC.</p> <p>4400 Colton Ave, Suite 100 San Diego, CA 92115 Tel: 619.444.4444</p>		<p>CALL BEFORE YOU DIG! "SUNSHINE STATE ONE-CALL CENTER" 1-800-432-4770 FOR CONSTRUCTION PROJECTS, CALL CITY AND COUNTY ONE-CALL CENTERS FOR UTILITY LOCATIONS.</p> <p>06/07/2022</p> <p>PERMITTING</p>

57

1 in after that change, to the extent there was any
2 open space on the underlying Master -- or binding
3 Master Plan, it was dedicated and it was a final,
4 final plat.
5 * * *

6 CHAIRMAN WILLSON: With that, I will close the
7 public hearing. Do I have a motion? As I have said
8 before, we cannot discuss something until we have a
9 motion. Let's get something on the table.
10 Ms. Schierberg.
11 COMMISSIONER SCHIERBERG: I will make the
12 motion. Based on the review of the application
13 materials, the staff report and testimony provided
14 during the public hearings, the Planning Commission
15 sitting a local planning agency finds this petition
16 consistent with the Comprehensive Plan and
17 compliance with the Land Development Code and with
18 the affirmative findings of fact in the record
19 recommends to City Council approval of Zoning Map
20 Amendment Petition 22-26RZ.
21 CHAIRMAN WILLSON: Can I have a second?
22 COMMISSIONER HALE: I will second for the
23 purposes of discussion.
24 CHAIRMAN WILLSON: We have a motion and a
25 second. Now, discussion.

58

1 COMMISSIONER SNYDER: Well, I have lots to
2 say. I am stuck.
3 THE CLERK: Excuse me, Chair. The Petition
4 number stated does not have match the petition
5 number of the petition. I just want to clear that
6 up before you go further.
7 MS. FERNANDEZ: The intention was that it
8 should be 38RZ?
9 THE CLERK: Yes.
10 CHAIRMAN WILLSON: Yes, 38RZ. It was a typo
11 error. Not your fault.
12 COMMISSIONER SNYDER: I am having trouble
13 getting past that -- this commercial activity is
14 only for the PUD when the presentation has been made
15 that it's to service all of the PUDs in the area.
16 And the staff report says that is something that the
17 Planning Commission and the City Council will have
18 to make a determination as to how to do that.
19 Now, I realize that there were other PUDs that
20 had commercial activities that served the others.
21 As I understand them, they were done a long time
22 ago. They -- we have heard testimony that the
23 commercial activities preceded in publications the
24 residential development that went with it. I know
25 one of them -- I think it is Capri Isles -- its PUD

59

1 requirements are not the same as what the PUD
2 requirements are today. It has a density higher
3 than 4.5 units per acre that is out there.
4 So, I am having trouble with that. I am
5 having trouble with this unified control, because I
6 don't know that the City has really got this
7 resolved. But only the PUD shall be under the
8 control of the Applicant, I am having trouble with
9 that, given that lots have been sold and there are
10 other owners of those lots. And that may be the
11 wording of this code, but we are operating under the
12 old code. We are not operating under the new code.
13 We took great pains, all of us, for almost
14 four years of our lives, dealing with the new code.
15 A large portion of it was dealing with the PUD and
16 some of these questions. And it comes down to me,
17 particularly as it relates to serving the PUD, and
18 the surrounding areas, that was taken out on the new
19 code. What we are doing today, there was a reason
20 for taking it out, for the very reasons that other
21 people talk about. You try to put a commercial
22 development inside a PUD, it's not going to work
23 very well and probably won't survive.
24 I think Mr. Neal showed an example up in
25 Sarasota County as to one that was there in the

60

1 Meadows, as I recall, and has not done very well.
2 To do this, in this particular case -- which I don't
3 think anybody is going to agree to -- we would
4 stipulate that there would be no entrance across
5 from Venetian. That is the only way there into
6 this, would be to come in off of Jacaranda through
7 CDL PUD to get there. And I don't think anybody is
8 going to stand up and salute that one, including Mr.
9 Neal, because that is how people get there.
10 So, I have trouble with that. I have trouble
11 with this unified control. That is the requirements
12 of 130. When I also go to, what is supposed to be
13 -- we stumped over this since the first day I was on
14 the Planning Commission. The contents of the
15 Planning Commission report. It almost implies that
16 we put together this nice document, but that is not
17 what occurred. Whether the proposed changes in
18 conformity with the Comprehensive Plan, I am okay
19 with what the Comp Plan says about regional versus
20 neighborhood, because in implementing the LDRs, to
21 implement the Comp Plan we try to keep our
22 definition to that. And our definition originally
23 was 45,000 square feet of retail neighborhood, and
24 so reflected in PUD. It was changed by the City
25 Council to 65,000 square feet as their thing. That

61

1 was the best definition we could come up with
2 through this international shopping center. The
3 neighborhood was 30,000, a number, and regional was
4 much bigger. But it was a range. And as you heard
5 me suggest to the staff on our first half of piece
6 of the today, there should be definitions of that in
7 our -- both the Comp Plan and the LDRs, quote,
8 unquote.
9 What I have a trouble with is on the
10 environmental part, which has been a large
11 discussion. And the Comp Plan says that we are to
12 first avoid messing with wetlands. And the expert
13 from the Applicant has said, well, this particular
14 wetland has degraded over time. I think he said
15 today it's been degraded by -- I think the
16 construction of Laurel Road, all of the way to the
17 construction of the entrance of Venetian Golf &
18 River Club, probably, by the FPL power line. I saw
19 no indication in their application that they looked
20 at potentially rehabilitating that. But instead of
21 covering it over.
22 So, I am a little concerned whether or not we
23 are following the intent of the Comp Plan as it
24 relates to wetlands and trying to avoid impact.
25 Whether change or changing conditions -- this

62

1 is number F. I am on page 647, F is the contents of
2 the Commission report number 1, (f). Whether change
3 or changing conditions make a passage of the
4 proposed amendment necessary? And I am trying to
5 get at what were those changing conditions that
6 required that, and I don't see anything that has
7 been presented along those lines. Would the
8 proposed change adversely influence living
9 conditions in the neighborhood? We heard both sides
10 of that story. Whether the code change will create
11 an excessive increase in traffic congestion, or
12 otherwise affect public safety? You know, I asked
13 the question about the traffic study. Their
14 original one talked about trips -- trip avoidance,
15 for the most part. To me, the folks will go across
16 the street as opposed to driving nearly three miles.
17 And if I recall, I think I have five Publix within
18 five miles of me today. Given the one on Venice
19 Avenue, given the one on 41 and Laurel Road and
20 there is another one -- a smaller one in Osprey that
21 sometimes we stop at if we are coming south, and
22 what have you.
23 But the traffic study talked about trip
24 generation during peak hours, but I think what we
25 heard from a lot of the residents, what have you, is

63

1 anticipated congestion at that intersection. And we
2 have been told that the traffic light will be at
3 Jacaranda and Laurel and if you recall, that traffic
4 light at Jacaranda and Laurel the County has
5 regulations that says you can't put another one at
6 Venetian. Now, I know they are going to try to do a
7 traffic study to justify doing that, to talk to the
8 county about it. But that is what the rules say
9 today.
10 I know trying to think about this as a
11 roundabout instead of that, create all kinds of
12 pains by people. I think at one point in time there
13 was even a discussion of an oval roundabout. That
14 way it would encompass both the intersection and
15 Jacaranda and Laurel and Venetian Golf & River Club
16 in this project entrance. But I think there is a
17 need to make that oval work will need to require
18 more land on both the south and north side of Laurel
19 Road.
20 But I have heard a lot that is going to tell
21 me about how that congestion is handled potentially.
22 I asked a lot of questions about whether there is a
23 draining problem. I think they testified that we
24 have got the capacity.
25 Whether there is a substantial reason why the

64

1 property cannot be used in accordance with its
2 existing zone.
3 MR. BOONE: Change the zone.
4 COMMISSIONER SNYDER: If you are going to
5 change the zoning, then why are we even here. It's
6 a zoning amendment and we always treated changes in
7 zoning as new zoning. So, there is a change in
8 zoning in terms of what is being used. We are going
9 to open space to commercial. So this creates a
10 question for me there.
11 And the last one is -- and I know all of these
12 folks talked about it out here. And I am impressed,
13 by the way, of the research that the public is doing
14 in the way that they look at things. Whether it is
15 impossible to find other sites in the City not PUD,
16 in the City with the proposed use in the district
17 already permitting such use. And what they tell you
18 -- and what you heard one mile down at the amount
19 M/PHAEUR /RAE sole, there are commercial activities
20 that are in commercial mixed use zoning. Then, as I
21 recall, 22, maybe 23 different uses have been
22 approved for that. And I am sure a Publix would be
23 acceptable in there, provided they still have the
24 room.
25 So I am having trouble with the criteria that

65

1 is here. I am having some specific trouble with the
2 two elements in 130. We spent a lot of time on the
3 Comp Plan in 2017. They made some changes to that,
4 established mix used areas in various parts of the
5 City. The areas commercial the Laurel corridor
6 mixed use area is one that we specifically
7 established out there, recognizing that the
8 residential development around it was going to
9 recreate a lot of the demand for services. And we
10 were concerned about not having all of that go to
11 residential, as well. So we put percentages in
12 there. I know in the last couple of months you
13 debated whether those percentages are still valid.
14 It was intent as to what the City was looking for in
15 doing those to mixed use areas.
16 I don't think it was ever anticipated this
17 size of a commercial activity would be put on the
18 corner of Jacaranda and Laurel Road. But the Comp
19 Plan also says there are lots of reasons. You want
20 water. You want the integration. You want to try
21 to cut down on the roads and what have you. And so
22 I understand the pros of wanting to do this kind of
23 development in the area.
24 I am hung up on some technical aspects that,
25 according to them, that require me to follow the

66

1 law, at least as far as those two pieces are
2 concerned. And so when you make the motion that we
3 are in compliance with the Comp Plan and the LDRs, I
4 can't say yes to that.
5 CHAIRMAN WILLSON: Are you done?
6 COMMISSIONER SNYDER: I am done. I could give
7 you more, but I am done.
8 CHAIRMAN WILLSON: I will jump in on that. I
9 was having all of the same kind of crepitations that
10 you were having, the same type of thing. And, you
11 know, I fully understand the intent of the PUD, and
12 that is to provide predictability, you know, for
13 these large projects, extend over a number of years,
14 and the developer rightly needs to know if they are
15 going to let me finish the job that we started doing
16 without changing it on me at the last minute
17 unexpectedly. I get that. I understand the need
18 for that.
19 But I also see this as a two-way street. I
20 mean, those residents and perspective residents that
21 have bought homes in there and are buying homes in
22 there, they have that same expectation of
23 predictability that you are not going to change it
24 on me after the fact. We are halfway through the
25 project. I understand why the developer needs that,

67

1 but so does the resident.
2 And, you know, we have heard several people
3 say they felt like bait and switch. Well, I can
4 understand why they feel that way. And, you know,
5 to me I look at it as a binding Master Plan. Well,
6 that should be what it says, a binding Master Plan,
7 you know. And I get the idea that -- you know, I
8 mean, there are times that we have to amend a PUD,
9 and we have done it. I mean, we have all been part
10 of doing that. But generally it's a case of, like,
11 market conditions change. So, originally we were
12 all going to build single-family homes, but instead
13 now the market wants multi-families.
14 But there it's going from residential to
15 residential, and it's what the people want. This is
16 a case of, it's not that. Here we are going from
17 open space, what they consider preserve. And I
18 think they have a right to think it was preserved --
19 it was everything presented to them -- to now that
20 is going to be commercial. That to seems to me not
21 adhering to a Master Plan. It is really, kind of,
22 pulling the rug out from under people.
23 So, you know, I have issues with 86.47,
24 several different parts of it. I have issues with
25 86.130. I just really have great concerns on this.

68

1 COMMISSIONER SCHIERBERG: So let me add in.
2 CHAIRMAN WILLSON: Sure.
3 COMMISSIONER SCHIERBERG: Thank you. These
4 are just my thoughts. I saw the words -- I think it
5 was in Mr. Clark's report -- that what we think of
6 as North Venice has a substantial population. And I
7 go back to January when we received the numbers that
8 were showing as of 2017 and 2027, this area known as
9 North Venice currently has nearly 7,000 homes --
10 6,960 something. My guess is that equates to 10,000
11 vehicles at a minimum. 10,000 vehicles that are
12 driving either down Jacaranda, down Laurel, Border,
13 you name it. Would this not minimize some of the
14 traffic that we are seeing throughout the City? So
15 that is one point.
16 COMMISSIONER SNYDER: Can I talk to that
17 first?
18 COMMISSIONER SCHIERBERG: Sure.
19 COMMISSIONER SNYDER: The traffic engineer --
20 I think he is still here -- talked about his model,
21 and something about in each one of the segments you
22 have to sort of predict where the cars are going to
23 go. So, yeah, if I am in Venetian and I drive
24 across the road to this project, I am reducing my
25 travel to either one of the other Publix, just for

69

1 the purpose of going to the grocery store. But that
 2 is usually not the only purpose that I go out. The
 3 grocery store is, probably, the third place I am
 4 going to visit. But that is not my point.
 5 My point is this; where will the (inaudible)
 6 go. Where will the apartments in that we have done
 7 in Mirasol go. Where will everybody who is down
 8 Milano and Aria and even the subdivision that is on
 9 Border Road, where will they go? They will go up to
 10 this proposed project, according to him. But it's
 11 still adding travel onto those roads, where before
 12 that travel may have gone south to the Jacaranda
 13 shopping center.
 14 The ones to the east, the new subdivisions
 15 that Mr. Neal is building, where will they go? Will
 16 they go right or will they go left? Some of that
 17 may depend on whether they have a traffic light or
 18 not.
 19 And then I also get to everything that is up
 20 Knights Trail. We did rustic road. I don't know
 21 how many are out there. Plus a couple of other
 22 multi-families that are up there. So if I am up
 23 there now and I come down again, do I make a left or
 24 do I make a right? Do I go over the interstate or
 25 do I not go over the interstate. And some day we

70

1 will know the impact of Lorraine Road and everything
 2 else that is potentially go down Knights Trail.
 3 Point is, I can see that there would be some
 4 savings, but there also is going to be some
 5 increases. And it works both sides of the story.
 6 And I can understand why staff wasn't necessarily
 7 satisfied with how that worked. It's -- it's
 8 difficult for me to say that we are actually going
 9 to save drive times. The engineer will say that.
 10 That is out there, and hours in gasoline and what
 11 have you. Because I don't know what people's --
 12 depends on the quality of the Publix. I will tell
 13 you that go to four different Publix for four
 14 different reasons, because they have different
 15 stuff. They are not all the same that is out there.
 16 I can tell you which one that has the best popcorn,
 17 but we will leave that to another discussion.
 18 COMMISSIONER SCHIERBERG: Another point then,
 19 is that the 7,000 homes that are there today are
 20 going to grow in the next few years to more than
 21 12,000. So now how many vehicles are we talking
 22 about on the roads? 15,000, 18,000. So that is my
 23 concern on traffic, is that we have an opportunity
 24 to -- perhaps Publix isn't the right venue there.
 25 Perhaps it's another commercial development. But I

71

1 can't imagine 12,000 homes in a sea of roofs without
 2 some other services available to them, without
 3 putting that pressure on our roadways. So, that is
 4 just one point.
 5 The other point is that the land was
 6 disturbed. And I know that this 10 acres is
 7 important to everyone. Every acre is. But when I
 8 bought here 20 some years ago, Laurel Road was a
 9 dirt road. It was pastures, it was wetlands, ponds,
 10 natural ponds, wildlife. We didn't use the word
 11 porter at that time because there was so much open
 12 land. So that northeastern section of this City was
 13 disturbed.
 14 My understanding from the testimony is that
 15 this 10 acres has been disturbed multiple times; not
 16 just because of the dirt road becoming a paved road,
 17 but also because some of it was actually part of
 18 VGRC. So we disturbed this land multiple times.
 19 And if we protect it now -- and it's not part of the
 20 stormwater management system -- what will it become?
 21 So environmentally I don't think that we have -- we,
 22 obviously, do not have a concern about that land or
 23 we wouldn't put 7,000 rooftops, not to mention some
 24 of the commercials there.
 25 So I do have difficulty when the two questions

72

1 that I asked of counsel, do we have unified control?
 2 Are we certain of that? Are we certain that the
 3 documents that have been brought up, whether or not
 4 it is legal, we are not certain of that. So I don't
 5 know that we have all of our answers. But I do
 6 think that we removing some transportation pressure
 7 off of our roadways is absolutely the right thing to
 8 do. And, quite frankly, going forward, I would like
 9 to see communities that are well thought out 20
 10 years in advance, 25 years in advance. If Wellen
 11 Park is an example. If the Villages is the example,
 12 then by all means the city needs to begin embracing
 13 it and making sure as we go forward we are truly
 14 defining what is the neighborhood, what is the
 15 community, what is regional. Those are my thoughts.
 16 CHAIRMAN WILLSON: I will just respond to a
 17 couple of those. Do two wrongs make a right or
 18 three or a four because I have disturbed it somewhat
 19 already; therefore, I just forget about it. I have
 20 a little trouble with that.
 21 And we have also heard that, yes, there would
 22 be some commercial, but does it have to be on that
 23 10 acres. There is other places around there. And
 24 just because in this case the developer wants to do
 25 it because, you know, that is where he can do it.

73

1 But there could be other places where he can go. So
2 it doesn't necessarily have to be on that.
3 COMMISSIONER JASPER: Chairman.
4 CHAIRMAN WILLSON: Yes, sir.
5 COMMISSIONER JASPER: First of all, let me
6 make a clarification. My name was brought up many
7 times today about access off of Laurel Road. Well,
8 those comments were made way back before there was
9 even a thought of even imaging 8,000 homes out
10 there. So it was a whole different set of
11 circumstances.
12 Another topic, we are talking a lot about
13 traffic and how many trips there are going to be.
14 The traffic out there, this is not going to be the
15 major impact of traffic. It's going to be 8,000,
16 9,000 homes. It is going to be where Knights Trail
17 connects to Clark Road and so on. The traffic, in
18 my mind, one way or the other here, impact is going
19 to be minor compared to the major increase in
20 population and becoming a new corridor.
21 So -- and also, I realize a lot of
22 technicalities. We have had a lot of legal
23 arguments one way or the other here, that,
24 basically, really most of them outside the four
25 corners of the LDRs and the Comp Plan. They are

74

1 complete.
2 So, from a -- not from a technical point of
3 view. From a practical point of view, if the
4 parties don't get together here -- if people
5 opposing this, and the Applicant can somehow try to
6 reach an agreement. It's not going to be the
7 Planning Commission that is going to make the final
8 decision here. It is going to be an administrative
9 judge or circuit court. So what I would like to
10 throw out as to amend in your motion is, some items
11 -- a proposed binding Master Plan revisions where it
12 could possibly cause the parties to sit down and
13 talk. There may be need to be some deal killers in
14 here. I don't know. But at least it gets to a
15 point that hopefully things can be discussed before
16 it gets to the Planning Commission. And as I say,
17 if it goes just straight "yes" or "no", it's going
18 to end up in the courts.
19 Again, I would add some. Again, this is just
20 a list I come up with. It can be added to, taken
21 away from, and so on. But one would be add gas and
22 diesel filling stations as a prohibited use.
23 Second, maintain the Laurel Road buffer as
24 originally proposed. Now it's been decreased. And
25 I think as Richard -- it was important too -- that

75

1 no exception to the southern buffer -- or Cielo
2 direction.
3 Now, all of this idea, are we regional? Are
4 we local? We had a lot of discussion on FAR before
5 you. Right now you are allowed 5.0. Decrease that
6 to 2.0. That throws it into, I think, a lot more
7 into, okay, it is a neighborhood type of situation.
8 And here is a big one. There, obviously, is an
9 appeal now, as I understand it, in front of the
10 Sarasota Board County Commissioners about putting a
11 light at Bonita. If that is not successful I would
12 suggest that a stipulation say that the intersection
13 at Bonita maintain its present three-way and make
14 the main access on Jacaranda at the three-way
15 intersection section now, which is backed up to the
16 -- actually, the wetlands of the fire department.
17 So there again -- and when you look at that, that is
18 really the same layout as you have at Publix at
19 Venezia where the main entrance comes in facing the
20 Publix supermarket.
21 So, it gives -- if we get the parties together
22 and start chewing on some of these things I think
23 it's going to be a lot easier for when it gets to
24 City Council; because today, as I say, it's headed
25 to the courts, in my mind.

76

1 Now, again, as far as what is appropriate in
2 our neighborhood, which is northeast Venice
3 neighborhood, the Comp Plan allows 2.2 million
4 square feet of commercial in the northeast Venice.
5 That is east of the -- basically, east of I75 and
6 north of Border. Well, we are a long, long way from
7 that.
8 So, and the compatibility of commercial with
9 residential. First of all, these wouldn't be mixed
10 use residential. They would be residential
11 districts. And secondly, if the -- if this
12 commercial and residential is not compatible, there
13 just would not be a provision for commercial and
14 PUDs. So, again, we can tie it down. We have got
15 two PUDs that are not complete in the northeast
16 neighborhood where the commercial areas, where
17 Vistera are on Laurel Road and Knights Trail. So
18 they are not in there hidden. Their access is off
19 the main roads.
20 So, in I think being practical, from my point
21 of view, if we can put these revisions in there --
22 again, because my recommendations, or added them,
23 subtract to them, as the Commissioners feel fit --
24 that is a better chance to a final decision will be
25 made by City Council, not by the attorneys.

77

1 CHAIRMAN WILLSON: Mr. McKeon.
 2 VICE-CHAIRMAN MCKEON: I like your discussion
 3 of the points you brought up. We had originally
 4 talked about potentially amending Pam's motion. Are
 5 you talking about putting all of that in?
 6 COMMISSIONER JASPER: I am proposing this as
 7 to an amendment to the motion. I mean, it's a
 8 discussion. Maybe some people want more or some
 9 want less or something. But that would be my
 10 proposal to add as, again, revisions to the proposed
 11 binding Master Plan, which is what is in front of
 12 us.
 13 CHAIRMAN WILLSON: Mr. Snyder.
 14 COMMISSIONER SNYDER: Mr. Chairman, I don't
 15 think that is our role.
 16 CHAIRMAN WILLSON: I was about to say the same
 17 thing.
 18 COMMISSIONER WILLSON: If they want to go back
 19 and do that and come back and offer another version
 20 of this, worked out with the folks that are out
 21 there. If that is what they want to do, they can do
 22 that. But I think they will tell you that they held
 23 neighborhood discussions -- multiple ones. I saw a
 24 of six or seven of them that have occurred with
 25 various groups that are out there. They presented

78

1 what they want. They heard what the objections are.
 2 They brought forward their position as to what they
 3 want to do. And I don't see its our role to rewrite
 4 their binding Master Plan. So I would not be in
 5 favor of any amendment that would go that way to the
 6 motion.
 7 So I am not in agreement with that.
 8 CHAIRMAN WILLSON: I am the same way. You
 9 know, if they want to make those kind of changes,
 10 and hopefully they do their research and clear
 11 things up to discuss here. But that is a decision
 12 that if they are going to be changing, that type of
 13 thing, that would be their role. That is not ours.
 14 COMMISSIONER SNYDER: I don't have a question
 15 of residential that in that upper track up there, is
 16 it still going to be residential. And trying to
 17 judge how serious they were about that as whether or
 18 not they would stipulate to that, to add a
 19 stipulation to that motion that is out there.
 20 But I pointed out for people to understand
 21 that that land is still left there and may come
 22 back, may not come back. But that would get us into
 23 stipulating to a motion as to what is in their
 24 binding Master Plan, and I don't comfortable with
 25 that.

79

1 CHAIRMAN WILLSON: I agree.
 2 Mr. Hale.
 3 COMMISSIONER HALE: Just to offer one or two
 4 comments on traffic. I am sure that if they would
 5 release the information, Publix can tell you very
 6 specifically what they expect the traffic to be. As
 7 part of their staffing plan they have a computer
 8 program that prints out every 15 minutes of every
 9 day whether dependent on the number of customers;
 10 therefore, the number of staff they expect to be
 11 there. So I think if they would be cooperative, you
 12 can define specifically what the impact of Publix is
 13 and separate that from the rest of the people who
 14 would be using that road. I think that is a
 15 possibility, if Publix is willing to provide that
 16 information.
 17 Also, I have to say, I started today thinking
 18 that a final plat was a final plat. And I was
 19 basing my -- part of my decision on that. Finding
 20 out that that is wrong, I am reconsidering, based on
 21 the conversations.
 22 COMMISSIONER SNYDER: Yeah, that one for me
 23 was a tough one.
 24 Let me go back to one comment Jerry made.
 25 Yes, the Comp Plan does show a large number of

80

1 square footage for the neighborhood out there. But
 2 I think the vision of that was the shopping center
 3 that is at Laurel and Knights Trail. It's Laurel
 4 Road, but not northeast. I think that was the
 5 intent out there, was to use this as mixed use
 6 neighborhoods to do that. Yeah, if you take the
 7 total acreage and the 5 percent, you get a big
 8 number. But it is the same big number that I talked
 9 about that Mr. Lobeck was using that is not
 10 realistic in terms of how much parking.
 11 CHAIRMAN WILLSON: Anymore comments?
 12 COMMISSIONER MACDONALD: So, in reviewing all
 13 of the testimony and our discussions, I think it's
 14 important to note that this area is future land use
 15 designated as mixed use residential; however, given
 16 that we have to determine whether or not this is the
 17 right location and whether it's compatible with the
 18 existing neighborhoods, I don't think this
 19 particular parcel of land is appropriate.
 20 There is problems, as other commissioners have
 21 stated, about the landscape buffer wanting to be
 22 modified, which I don't agree with, as well. So I
 23 think at this time, as presented, I would not
 24 support the motion.
 25 CHAIRMAN WILLSON: Thank you. Anymore?

1 Seeing none, we will take role call.
 2 THE CLERK: Mr. Hale.
 3 COMMISSIONER HALE: Yes.
 4 THE CLERK: Mr. McKeon.
 5 VICE-CHAIRMAN MCKEON: No. From a
 6 compatibility issue, no.
 7 THE CLERK: Mr. Schierberg.
 8 COMMISSIONER SCHIERBERG: Yes.
 9 THE CLERK: Ms. MacDonald?
 10 COMMISSIONER MACDONALD: No.
 11 THE CLERK: Mr. Snyder.
 12 COMMISSIONER SNYDER: No.
 13 THE CLERK: Mr. Jasper.
 14 COMMISSIONER JASPER: Yes.
 15 THE CLERK: And, Mr. Willson.
 16 CHAIRMAN WILLSON: No.
 17 That is four no's and three yes's.
 18 (Excerpt concluded)
 19
 20
 21
 22
 23
 24
 25

1 TRANSCRIPTION CERTIFICATE
 2 STATE OF FLORIDA)
 3 COUNTY OF SARASOTA)
 4
 5 I, Patricia Cabo, FPR, do hereby certify that I was
 6 authorized to and did report the excerpts of the
 7 foregoing proceedings, and that the transcript is a true
 8 and complete record of my stenographic notes.
 9 I further certify that I am not a relative,
 10 employee, attorney, or counsel of any of the parties,
 11 nor relative or employee of such attorney or counsel,
 12 nor financially interested in this action.
 13 Dated this 19TH day of May, 2023.
 14
 15
 16 Patricia A. Cabo
 PATRICIA A. CABO, FPR
 Notary Public
 State of Florida
 Commission #HH305340
 17
 18 My Commission Expires:8/25/2026
 19
 20
 21
 22
 23
 24
 25



CITY OF VENICE, FLORIDA
CITY COUNCIL PUBLIC MEETING

ORDINANCE NO. 2023-11

MILANO PUD ZONING MAP AMENDMENT
(Quasi-Judicial)

EXCERPT OF PROCEEDINGS - DAY 2

BEFORE: CITY OF VENICE CITY COUNCIL MEMBERS

NICK PACHOTA, Mayor
JIM BOLDT, Vice-Mayor
MITZIE FIEDLER, Council Member
RACHEL FRANK, Council Member
RICK HOWARD, Council Member
RICHARD LONGO, Council Member
HELEN MOORE, Council Member

DATE: Wednesday, May 24, 2023

TIME: 9:00 a.m. - 8:24 p.m.

WHERE: Venice City Hall
401 West Venice Avenue
Council Chambers
Venice, Florida

REPORTED BY: AMY E. ROBERTS
Registered Professional Reporter
Registered Merit Reporter

3

I N D E X

		PAGE
1		
2		
3	WITNESS	
4	ROGER CLARK	
5	Direct Examination, by Mr. Boone	4
6		
7	PAT NEAL	
8	Statement by Mr. Neal	6
	Cross-Examination by Mr. Lobeck	12
9	Cross-Examination by Mr. Scott	54
10		
11		
12		
13		
14	CERTIFICATE OF REPORTER	90
15		
16	* * * * *	
17		
18		
19		
20		
21		
22		
23		
24		
25		

2

APPEARANCES

1 MAGGIE MOONEY, Esquire
2 Persson, Cohen, Mooney, Fernandez & Jackson, P.A.
3 236 Pedro Street
4 Venice, Florida 34285-2322
5 941-306-4730
6 mmooney@flgovlaw.com
7 Attorney for City of Venice

8 JEFFERY A. BOONE, Esquire
9 The Boone Law Firm, P.A.
10 1001 Avenida del Circo
11 Venice, Florida 34285
12 941-488-6716
13 jboone@boone-law.com
14 Attorney for Owner/Applicant
15 Border and Jacaranda Holdings, LLC

16 DAN LOBECK, Esquire
17 The Law Offices of Lobeck & Hanson, P.A.
18 2033 Main Street
19 Suite 403
20 Sarasota, Florida 34237
21 941-955-5622
22 dlobeck@lobeckhanson.com
23 Attorney for Affected Parties
24 Suzanne Metzger, Richard Cordner,
25 Kenneth Baron, Jill Pozarek, and
North Venice Neighborhood Alliance

GARY SCOTT, Pro Se
156 Persaro Drive
North Venice, Florida 34275
307-630-3624
grscott@gmail.com
Appearing on His Own Behalf as an
Affected Party

4

EXCERPT FROM PROCEEDINGS

MAYOR PACHOTA: So we will move forward then, if the applicant would like to come forward and give your presentation.

MR. BOONE: The first -- let me start off, I guess, for the record Jeffery Boone, Boone Law Firm, representing the applicant, and the first witness that I'd like to call for our presentation is Roger Clark.

DIRECT EXAMINATION OF ROGER CLARK
BY MR. BOONE:

Q. All right. Mr. Clark, just -- you're the same Roger Clark who testified yesterday, correct?

A. I think so.

Q. Okay. And I'm sure you enjoyed, hopefully, a good night's sleep. I just have a couple of questions for you, Roger. Yesterday after you finished with all the questions by the two attorneys who questioned you following your presentation, did your answers to any of those two attorneys' questions change any of the testimony you gave during your presentation or in your answers to the City Council members yesterday?

A. No.

Q. And then there was a lot of, I thought,

5

1 kind of confusion yesterday between a final plat, the
2 final plat, and a final-final plat. So when it comes
3 to dedication of open space, let me ask it to you
4 this way. Historically, the way that -- isn't it
5 true that the way the City of Venice has looked at
6 the time to dedicate or when the final-final plat
7 truly is done is either when a PUD has hit its 50
8 percent open space, which means no more development
9 can happen, or the entitlements for the PUD, the
10 density and other types of development rights, have
11 been exhausted?
12 A. Well, my understanding is that it has
13 typically been with the final-final plat, which
14 typically would be identified when the development is
15 finished. The current development we have has other
16 areas of development possible at this point.
17 Q. And final plats in the City of Venice
18 and -- the State of Florida, but in the City of
19 Venice final plats can be amended or replatted?
20 A. Correct.
21 Q. And if there's additional development
22 rights in a PUD, a final plat can be replatted and,
23 as long as the 50 percent open space is still
24 preserved, whatever the development that the replat
25 allows can go forward, assuming, of course, the City

6

1 Council approves whatever needs to be approved?
2 A. Correct.
3 MR. BOONE: All right. Mr. Clark, thank
4 you. That's all the questions I'd have.
5 The next witness we have is Mr. Pat Neal.
6 Pat, if you want to sit -- do you want to sit
7 here, I think. And then do we have the
8 PowerPoint up on the screen, please?
9 MR. NEAL: I think Maryann's running the
10 PowerPoint.
11 MR. BOONE: She is. I just want to make
12 sure everybody here can see it and the City
13 Council members can see it.
14 MR. NEAL: Good morning, Mr. Mayor.
15 MAYOR PACHOTA: Good morning.
16 MR. NEAL: Thanks for letting us have a
17 start on this beautiful bright Venice morning.
18 MR. BOONE: If you could just identify
19 yourself, Mr. Neal, and then --
20 MR. NEAL: I'm Pat Neal. I'm the
21 principal of the applicant. In the next three
22 minutes I'm going to talk a little bit about our
23 company and its relationship with the people of
24 Venice. I want to talk only 30 seconds or 45
25 about this proceeding and, quote, how unusual it

7

1 seems to me, and then I'll speak for about a
2 minute on how we'll prove under Snyder your
3 comprehensive plan and land development --
4 MAYOR PACHOTA: I'm going to stop you
5 there. Are we supposed to be seeing a
6 presentation right now?
7 THE CLERK: Mr. Boone, can you close the
8 lid of the laptop to bring it up?
9 MR. BOONE: Okay.
10 MR. NEAL: Bingo, bingo.
11 MAYOR PACHOTA: Okay.
12 MR. BOONE: Thank you, Mr. Mayor.
13 MR. NEAL: Thank you very much, Kelly.
14 Of course, the relationship with the City.
15 Our company has been in this business 53 years.
16 We build in 10 or 11 jurisdictions in southwest
17 Florida at this time from Hillsborough to
18 Collier County and, to be clear, our
19 relationship with the city or county or any
20 jurisdiction with which we work is very
21 important to us and our relationship in Venice
22 is important. We still have perhaps 1,300 homes
23 to build here in Venice. We still have to
24 complete the Milano PUD, and I've brought you
25 pictures of the uncompleted portions of the

8

1 Milano PUD. I hope somebody asks me the
2 question and I'll tell you clearly why we have
3 not finished the dedication of the --
4 dedication, not designation, of all of the lands
5 to be preserved, and we'll have a very good
6 explanation for that.
7 In the last 12 years that we've built here
8 in Venice we have contributed to the following
9 16 organizations. We spend about \$10 million a
10 year in support of philanthropic organizations
11 and, as I say, anybody who calls us from Venice
12 we try to reach out and make a friend with them.
13 That hasn't been the case over the last year,
14 and I hope that we can, after this is all done,
15 resume our normal good relationships with
16 everybody. Our company principle is to improve
17 the lives of the people with whom we deal and
18 that means cities and communities and customers
19 and trade partners and all of the above.
20 So now to the business of today. Today
21 we'll prove that this is an appropriate site for
22 the grocery store in the PUD which we had
23 initial approval for seven years ago. We will
24 show that the traffic diverts drive-by traffic
25 and that the total traffic will be reduced.

9

1 This is going to be obvious to you for many a
2 reason. This is in a developed residential area
3 where all the gen -- the generators are being
4 generated -- that's people driving from their
5 home -- and that the attractors are far away, so
6 we'll prove beyond, quote, any reasonable
7 question that the traffic will be reduced to
8 this site.
9 We'll talk about the current condition of
10 the greater wetland and we'll talk about how
11 we'll replace the wetland, and I'll say --
12 Maryann worries when I go off script, but here
13 you go. Of course, I wrote our state's first
14 wetland law in 1983. I've won every award given
15 to members of the legislature. I put in a
16 public interest standard which says that when we
17 modify wetlands in our state, it has to be in
18 the public interest and the purpose -- and I
19 might have been present at the creation of the
20 idea that mitigation of better quality wetlands
21 which would preserve and protect it improve
22 water quality in our state and also improve
23 habitat function and, thus, we'll prove that
24 this wetland will be replaced with a better
25 quality wetland that serves our state, and we'll

10

1 explain how this all happened in the first
2 place, how a piece of property almost 2,000 feet
3 from our basic property and 800 feet from
4 Mr. Keller's home, a property he can't see,
5 somehow got platted, and we'll explain how that
6 happened and how we're going to unwind that
7 mistake.
8 We'll prove that this land use is legally
9 permissible. We'll show our reason for doing
10 so, which is that a grocery store is an amenity
11 of the citizens. It's something that people
12 want. We think it's important for us, Neal the
13 applicant, to sell the remaining 1,300 homes.
14 Of course, our many lawyers and experts
15 will demonstrate that this applicant --
16 application is compliant with the comprehensive
17 plan and Land Development Code and we'll prove
18 that for any other jurisdiction that might need
19 to be involved in reviewing the application.
20 Of course, we've met with 16 different
21 meetings on the following three items: The
22 smart lighting, the southern boundary, and the
23 Venetian traffic light. But, of course, the
24 reason that we're here today is because the
25 opponents have refused to talk to us. In the

11

1 124 completed properties that I have, and the 29
2 that are under construction in accordance with
3 this map that you have, and the 12 or 15
4 commercial properties and all the properties of
5 Neal and the neighborhoods and of our value
6 product, we have about 200 completed or under
7 construction projects.
8 Mr. Mayor, we've never had a hearing like
9 the one that was conducted yesterday where every
10 word was being parsed and reviewed and discussed
11 and every fine point, let's just say, litigated.
12 I might say we're going to give a clear
13 presentation as to why this grocery store is in
14 the public interest and meets your law. At
15 least for me, we're going to pick on -- we're
16 going to work on the big picture and prove to
17 you that this is worthy of your approval.
18 So thanks for your patience. I thought
19 yesterday's meeting was very well conducted by
20 your team and we intend to follow your rules and
21 prove up the application being made.
22 Thanks for all this time, Mr. Mayor.
23 MR. BOONE: Thank you, Mr. Neal. Our next
24 witness is Mr. Ed Vogler.
25 *****

12

1 EXCERPT FROM PROCEEDINGS
2 MR. NEAL: I didn't mean to do that.
3 MAYOR PACHOTA: And, Mr. Lobeck, you'll
4 probably want to get that microphone as well.
5 MR. LOBECK: I will. Test, test.
6 MAYOR PACHOTA: Working good.
7 CROSS-EXAMINATION OF PAT NEAL
8 BY MR. LOBECK:
9 Q. Good morning, Pat.
10 A. Good morning.
11 Q. Or good afternoon, right?
12 A. Good morning. I'll just say good morning.
13 Q. Good to see you. All right. Mr. Neal, do
14 you recall at the beginning of your testimony today
15 that you stated the shopping center, referring to the
16 planned commercial center at issue here, is needed
17 and wanted?
18 A. I'm sure I said something like that.
19 Q. And do you recall when you came back up
20 indicating -- you indicated that you had taken a poll
21 asking whether people are in favor of building new
22 commercial zones broadly, right?
23 A. Yes.
24 Q. And who did you poll for that opinion?
25 A. We polled a sample of residents north of

13

1 I-75 and east of I-75 in northeast Venice, Florida,
 2 including citizens of the City of Venice for the most
 3 part and also citizens of Sarasota County that lived
 4 in that region because that's what's in the TAZ.
 5 MAYOR PACHOTA: Mr. Neal, I need you just
 6 to speak closer to the microphone so that it's
 7 on the record clearly. Okay?
 8 MR. LOBECK: Did the court reporter get
 9 all of that?
 10 THE COURT REPORTER: Yes.
 11 MR. LOBECK: Thank you very much, and
 12 thank you for your patience, Court Reporter.
 13 Q. (BY MR. LOBECK) So why -- what conclusion
 14 do you draw from that survey?
 15 A. It was -- my heading was the silent
 16 majority. I've seen a lot of blue shirts here.
 17 Based on our other petitions, quote, word of mouth,
 18 e-mails that come to me, and I'll just say my 53
 19 years in the development business, I was trying to
 20 demonstrate that most of the people who come to
 21 public hearings are those who aren't completely in
 22 love with the development application and, as you
 23 know, quote, I know you. I know you well. I've
 24 known you since 1979 and I mostly see you in settings
 25 like this. So I was trying to demonstrate, and I did

14

1 demonstrate to the members of Council, that there's
 2 lots of people who are not here, and in the poll we
 3 did in the last four days a majority found they would
 4 like to see the shopping area in part to reduce
 5 traffic and save gas.
 6 Q. Now, is your point that this shopping
 7 center, this commercial center, would serve the needs
 8 of those various people and that's why you want to
 9 see if they agree with you that it's needed?
 10 A. No, not at all.
 11 Q. All right.
 12 A. My point was to demonstrate -- remember I
 13 talked about the Vietnam War and President Nixon? My
 14 point was there's always a silent majority.
 15 Q. And what's the relevance to these
 16 proceedings of that?
 17 A. I'm not sure it's -- the relevance is our
 18 job, your job and my job, is to create competent and
 19 substantial evidence. Notwithstanding that, people
 20 do express their views, and I wanted to demonstrate
 21 that there were views expressed that might not be
 22 heard today in this public hearing.
 23 Q. Now, it's your testimony, I'm sure you can
 24 confirm this, that your intent with this commercial
 25 center is to serve the needs of the Milano planned

15

1 unit development; is that correct?
 2 A. You said that almost perfectly. The
 3 commercial center is intended to serve the needs of
 4 the Milano PUD. Perfect. Good job. Thank you.
 5 Q. I just wanted to elicit that testimony
 6 from you, give you an opportunity to say it.
 7 Will this commercial center also serve the needs
 8 of the surrounding area?
 9 A. As we've now spoken for four, five or six
 10 hours, I think there is an expectation that people
 11 who arrive around the Milano PUD may use the
 12 opportunity to go to this shopping center, also.
 13 Q. And in presenting this amendment, seeking
 14 its approval, is it for the purpose of serving that
 15 surrounding area --
 16 A. No.
 17 Q. -- or only the PUD?
 18 A. That's a compound question. I guess the
 19 answer is yes and no. You asked two questions there.
 20 Q. So you're answering "no" to the question
 21 as to whether this commercial center will serve the
 22 surrounding area?
 23 MR. BOONE: I'm going to object to the
 24 form of the question. It's not relevant. The
 25 code at issue here is the intent as opposed to

16

1 what it will serve. It's the intent.
 2 MAYOR PACHOTA: Mr. Boone, your
 3 objection's noted for the record.
 4 Mr. Lobeck, I feel like we're doing the
 5 dance again. If we can just get to the point of
 6 what you're trying to ask.
 7 MR. LOBECK: Well, he said "no." I wanted
 8 to make sure we all knew what "no" was, and I
 9 think he's clarified it.
 10 THE WITNESS: Would you be good enough to
 11 answer -- ask the question in two pieces? Ask
 12 the first question, I'll give you an answer, and
 13 ask the second question, I'll give you an
 14 answer.
 15 Q. (BY MR. LOBECK) All right. So I'd like
 16 to show you a letter.
 17 A. Just want to say you didn't do that --
 18 Q. Yes.
 19 A. -- so I'm not sure my answer to you is
 20 correct, if I got the yes's and no's in the right
 21 order. It could be no and yes.
 22 MR. LOBECK: That's why I was asking for
 23 clarification.
 24 MAYOR PACHOTA: If you would like to ask
 25 the questions separately, go right ahead and do

17

1 that.

2 MR. LOBECK: Thank you.

3 Q. (BY MR. LOBECK) Do you intend that this

4 commercial center will serve the needs of the

5 surrounding area beyond just the PUD?

6 A. This is part of the Milano PUD. As I've

7 testified many times before, as a residential

8 developer -- almost entirely a residential

9 developer -- my thought process mostly has to do with

10 how to sell houses. A grocery store, a convenience

11 center with flowers and a realtor and a coffee shop

12 and a casual eat-in restaurant, is an amenity for the

13 sale of homes.

14 MAYOR PACHOTA: Mr. Neal, I need you to

15 come closer to the microphone.

16 THE WITNESS: We still have three and a

17 half years in Aria in the Milano PUD. I want to

18 sell homes. I've been almost a year and a half

19 on this project. I want to sell homes in the

20 Milano PUD. It could be that this will serve

21 residents of the surrounding areas, but it was

22 intended primarily to serve people in the Milano

23 PUD because I want to sell houses.

24 Q. (BY MR. LOBECK) Primarily?

25 A. Because I want to sell houses --

18

1 Q. Primarily?

2 A. -- in the Milano PUD.

3 Q. Sure. Primarily but not exclusively

4 intended to serve them.

5 A. Same question. Same answer.

6 Q. So I'd like to show you a letter, and I'll

7 be entering this into the record. Just received it

8 yesterday. Do you recognize that as being from Neal

9 Communities?

10 A. Just because it came from Neal Communities

11 doesn't mean I wrote it, Mr. Lobeck, just so that --

12 Q. Well, we'll get to that.

13 A. All right. In fact, I know I didn't write

14 it and I have no clue what it says.

15 Q. Well, we'll get into that. From Neal

16 Communities to Venetian Golf and River Club resident,

17 correct?

18 A. Sounds like a very personal letter to me.

19 Q. Are you aware of this letter having been

20 mass mailed to the Venetian Golf and River Club

21 residents?

22 A. You're telling me that it was and it's

23 clear on the address that it probably was.

24 Q. You're aware of this letter, aren't you,

25 Mr. Neal?

19

1 A. I'm not aware of everything that happens

2 in my company. I'm not doubting it, but I just -- to

3 give you a specific answer, I don't know.

4 Q. Do you see, Mr. Neal, that this letter is

5 from you?

6 A. It bears a facsimile to my signature, yes.

7 Q. Is that your signature?

8 A. It's close.

9 Q. Is this a letter from you --

10 MAYOR PACHOTA: Gentlemen, I need that on

11 the document camera so we can see what we're

12 talking about.

13 Q. (BY MR. LOBECK) Yeah. This is a letter

14 from you to residents of the Venetian Golf and River

15 Club community, correct?

16 A. As you say.

17 Q. Correct?

18 A. As you say.

19 Q. It's another way of saying "yes"?

20 A. You say it is.

21 Q. I'm asking you.

22 MAYOR PACHOTA: Mr. Lobeck.

23 MR. LOBECK: I'm not testifying.

24 MAYOR PACHOTA: Mr. Lobeck, let's move

25 along.

20

1 MR. LOBECK: Well, can I get a straight

2 answer?

3 MR. BOONE: Objection. The letter speaks

4 for itself.

5 MAYOR PACHOTA: Your objection's on the

6 record, Mr. Boone.

7 Q. (BY MR. LOBECK) And could you please read

8 from the top of this letter where it says, "There are

9 many benefits to this proposal." The benefits would

10 express your intentions with regard to doing this

11 project, correct?

12 A. The writer of this letter was certainly

13 involved in trying to build support for this

14 application among the people of Venetian Golf and

15 River Club.

16 Q. Okay. Please read for the record the

17 highlighted portion, the first bullet, expressing the

18 benefits of the proposal before Council today.

19 Please read that.

20 A. "The neighborhood center will provide

21 convenience to residents in the surrounding area who

22 currently have to travel west or south of the

23 interstate to do their grocery shopping."

24 Q. And do you recognize this as being the

25 current Milano -- thank you, sir -- the current

21

1 Milano planned unit development Binding Master
2 Plan --
3 A. It's the title page.
4 Q. -- amendment?
5 A. It looks like the title page.
6 Q. All right. And --
7 MAYOR PACHOTA: So, Mr. Lobeck, I'm going
8 to caution you again. You're introducing a lot
9 of new stuff, so if you're cross-examining him
10 let's get to the point of what you're trying to
11 make here.
12 MR. LOBECK: Thank you. I'm sorry. What
13 was that about the point I'm trying to make
14 here?
15 MAYOR PACHOTA: I said let's get to the
16 point that you're trying to make.
17 MR. LOBECK: To get to the point I'm
18 trying to make?
19 MAYOR PACHOTA: Yes.
20 MR. LOBECK: It will be abundantly clear,
21 Mr. Mayor, with all respect.
22 MAYOR PACHOTA: Let's get there, please.
23 MR. LOBECK: And this is already in the
24 record. The letter is being introduced.
25 Q. (BY MR. LOBECK) So in your Milano PUD

22

1 amendment could you please read under the project
2 narrative the sentence that I've highlighted?
3 A. "The density approved in Milano PUD is up
4 to 1,350 dwelling units."
5 Q. I'd like to now brought (sic) to your
6 attention a portion of the transcript of the Planning
7 Commission hearing at which you testified, and I'm
8 going to be using, Mr. Boone, the full copy that you
9 attached as Exhibit B to your Motion to Strike --
10 MR. BOONE: Where you just --
11 MR. LOBECK: -- so there's no question --
12 there's no question about the completeness of
13 this.
14 MR. BOONE: Okay. Mr. Lobeck, this is the
15 Motion to Strike. You're talking about the one
16 where our position is that you
17 mischaracterized -- the way you mischaracterized
18 Mr. Neal's testimony, correct?
19 MR. LOBECK: By not quoting --
20 MS. MOONEY: Once again, gentlemen.
21 MR. LOBECK: By not quoting it 100
22 percent?
23 MAYOR PACHOTA: Guys, stop.
24 MR. LOBECK: Yes.
25 MAYOR PACHOTA: Madam Attorney.

23

1 MS. MOONEY: Any argument needs to go
2 through the mayor, guys. We've made that clear.
3 It should be the mayor. Any objections, any
4 arguments, any discussions need to be directed
5 through the mayor.
6 MR. LOBECK: Thank you.
7 MS. MOONEY: We're not going to have you
8 guys talk over each other, and we need the court
9 reporter to capture all of the arguments,
10 objections and issues that you guys are
11 presenting. So please be mindful of that.
12 MR. LOBECK: Thank you, Madam.
13 MR. BOONE: So, Mr. Mayor, there is a way
14 that these types of questions about prior
15 testimony are handled properly and, if the
16 witness cannot recall exactly what he said, he
17 is to be shown the transcript so he can read --
18 refresh his recollection is the legal term -- of
19 what he said before he -- before he is asked
20 questions about what he said previously, and as
21 long as we follow that process I won't have to
22 object.
23 MS. MOONEY: Again, I'm a little bit
24 confused as to the nature of the testimony
25 that's being presented here with respect to a

24

1 transcript. Are you trying to impeach the
2 witness, Mr. Lobeck? Is that what you're
3 purporting to do? Because he's here being
4 cross-examined, so we don't need testimony from
5 an outside proceeding unless you're using it for
6 impeachment purposes, and so I'm a little
7 unclear as to the nature of what you're doing.
8 MR. LOBECK: I'm hearing you and I'm
9 hearing Mr. Boone, so let me phrase it this way.
10 Q. (BY MR. LOBECK) Mr. Neal, as to this
11 project, the proposed commercial center --
12 MR. BOONE: Objection.
13 MAYOR PACHOTA: What's your objection,
14 Mr. Boone?
15 MR. BOONE: City Council's counsel did not
16 get a response to her question --
17 MR. LOBECK: I said I --
18 MR. BOONE: -- which is directly related
19 to moving forward here.
20 MR. LOBECK: And I said I agree.
21 MAYOR PACHOTA: Hold on. Your objection's
22 noted for the record. Mr. Lobeck said he was
23 going to restate the question. I'm okay with
24 that. Are you okay with that?
25 MS. MOONEY: I'm okay with that.

25

1 MAYOR PACHOTA: Okay. So, Mr. Lobeck,
2 please restate the question.
3 MR. LOBECK: Well, thank you.
4 Q. (BY MR. LOBECK) Mr. Neal, how many -- you
5 just read that the Milano PUD is approved for up to
6 1,350 dwelling units, correct?
7 A. I read it, yes.
8 Q. How many dwelling units --
9 THE CLERK: Mr. Lobeck --
10 MS. MOONEY: Mr. Neal, you have to get
11 closer to the microphone.
12 THE CLERK: -- we're not catching
13 (inaudible).
14 THE WITNESS: I'm sorry. I'll talk a lot
15 louder, Kelly.
16 THE CLERK: Otherwise, there is another
17 hand-held mic for you.
18 THE WITNESS: I'm going to talk right into
19 this machine right now, right here.
20 THE CLERK: Fabulous. Thank you.
21 THE WITNESS: I'm going to get real close
22 to Mr. Lobeck. I hope he doesn't mind my
23 spitting on him a little.
24 Q. (BY MR. LOBECK) All right. So my
25 question is -- so you answered yes to that question,

26

1 correct?
2 A. Yes.
3 Q. So 1,350 dwelling units in the PUD. How
4 many dwelling units is your commercial center
5 intended to serve?
6 A. As I testified this morning, I may have
7 200 zonings and I have not been -- I'm not trained as
8 a lawyer as you and Mr. Boone, and I have not
9 learned, but I have made -- learned in this process
10 that every word that I might say is subject to being
11 parsed and may be induced to a different meaning, so
12 it's possible that I testified inaccurately in my
13 earlier hearing. We're apparently discussing that
14 right now.
15 Q. What is your answer today?
16 A. In this case my goal was to create an
17 amenity to the purchasers in Milano. Although the
18 commercial activity may serve the residents of
19 communities other than Milano, my primary goal was to
20 sell homes with this amenity in Milano. As to how
21 many homes a grocery store serves, that really isn't
22 my business. If I choose to sell a piece of property
23 for a grocery store, that fulfills my objective.
24 That's my correct and more accurate testimony.
25 Q. I understand, but your predominant area of

27

1 service, but -- so in promoting this project, okay,
2 in seeking its approval from the Planning Commission
3 and now to Council, how many homes approximately do
4 you represent that this is intended to serve?
5 MR. BOONE: Objection. Asked and
6 answered.
7 MAYOR PACHOTA: Mr. Boone, your --
8 MR. LOBECK: I don't think I got a
9 number.
10 MAYOR PACHOTA: Me talking again.
11 MR. LOBECK: Thank you.
12 MAYOR PACHOTA: Mr. Boone, your
13 objection's noted for the record.
14 Mr. Lobeck, I've heard him say the number
15 two or three times. I've heard him say that
16 he's doing this for Milano and that it may serve
17 other commercial entities. We heard that this
18 morning. We've got the point. Is there another
19 point other than that you're trying to make?
20 MR. LOBECK: Okay. So this is directed
21 to that testimony and to his prior testimony
22 which provides a different response.
23 MR. BOONE: Objection. Mr. Lobeck's
24 making a statement about -- he just can't make a
25 statement about prior testimony.

28

1 MAYOR PACHOTA: All right. Your
2 objection's noted for the record.
3 MR. LOBECK: Let's let it speak for
4 itself, shall we, the prior testimony.
5 MAYOR PACHOTA: Mr. Lobeck, I've asked
6 five times now --
7 MR. LOBECK: Yes.
8 MAYOR PACHOTA: -- to get to the point.
9 You're not doing it, so please get --
10 MR. LOBECK: I'm not doing what, sir?
11 MAYOR PACHOTA: You're not getting to the
12 point. You keep trying to re-ask the same
13 question of Mr. Neal. Okay?
14 MR. LOBECK: I'm not. This is different,
15 a different question.
16 MAYOR PACHOTA: I don't see that it's any
17 different than what you've been doing for the
18 past 17 minutes.
19 MR. LOBECK: And in these circumstances,
20 Mr. Mayor, although we're not bound by the
21 strict rules of evidence -- this is
22 quasi-judicial, not judicial. But given the
23 testimony we just heard and given the differing
24 testimony at the Planning Commission under oath
25 by Mr. Neal, I am entitled to present him with

29

1 that -- that testimony and ask him whether he
2 was being truthful at that time or not.
3 MAYOR PACHOTA: Hold on, Mr. Lobeck. So,
4 Madam Attorney, my understanding is that he's
5 cross-examining based on today's testimony, not
6 on the Planning Commission's testimony.
7 MS. MOONEY: I think Mr. Lobeck's
8 intention is to ask Mr. Neal if he testified --
9 if he made certain statements at a prior
10 proceeding.
11 If that's your question, Mr. Lobeck, then
12 ask it that way and let's move on, but pointing
13 out that he might have used different
14 terminology here versus terminology there, I
15 think we are -- we are going in circles. So I
16 don't have the transcript in front of me. If
17 you want to ask Mr. Neal -- if you want to read
18 it and ask Mr. Neal if he said it, and if he
19 said it on such a date, have at it, but then --
20 MR. LOBECK: I asked him to read. That's
21 normally how I see it done.
22 MS. MOONEY: Okay. But let's do that --
23 MR. LOBECK: Okay.
24 MS. MOONEY: -- because we're not -- we're
25 not doing that.

30

1 MR. LOBECK: That's what I've been
2 attempting to do for the last three minutes.
3 Thank you.
4 Q. (BY MR. LOBECK) Mr. Neal, from your
5 transcript at the Planning Commission would you
6 please read, and for the benefit of Mr. Boone's prior
7 objection, the entire paragraph from your direct
8 testimony to the Planning Commission?
9 A. Mr. Lobeck, you hurt my feelings a little
10 bit on Friday because you both mischaracterized my
11 testimony and you left my testimony out, so here you
12 go. "I think this will be a good project."
13 That one's true.
14 "I think when we're done you'll be able to
15 approve it." You will be able to approve it. "And
16 I think you'll be proud of it when you see it."
17 Here's the point where --
18 Q. Now please keep reading. Now this is the
19 important part.
20 A. Here's the point where you're trying to
21 trap me into some --
22 MAYOR PACHOTA: Gentlemen, don't talk over
23 each other.
24 THE WITNESS: -- silly sentence. I think
25 it's a true sentence, but it's not --

31

1 MR. LOBECK: Please read it.
2 THE WITNESS: -- it's not in conformance
3 with the policy of the City of Venice.
4 MR. LOBECK: Mr. Neal, you're not being
5 responsive to my question.
6 MAYOR PACHOTA: Mr. Lobeck, he's -- you've
7 asked him a question. He's trying to answer
8 your question. Let him have a chance to answer
9 the question.
10 MR. LOBECK: Please continue reading.
11 MS. MOONEY: Mr. Mayor, if I can interject
12 here. This is not a cross-examination and this
13 is not a reading of the transcript. This is
14 neither. Okay? If you're going to
15 cross-examine the witness with prior testimony,
16 typically the way it is done is you read it and
17 you ask him if he said it. Why can't we just
18 get to that simple point and ask Mr. Neal if he
19 made those statements on a specified date.
20 MR. LOBECK: I agree 100 percent.
21 MS. MOONEY: Can we please do that?
22 MR. LOBECK: Absolutely.
23 MS. MOONEY: Okay. If that is the nature
24 of your question, let's get there.
25 MR. LOBECK: Because he doesn't want to

32

1 read it, so I'll read it.
2 MS. MOONEY: Well, okay.
3 MR. LOBECK: Thank you. I will.
4 MS. MOONEY: That is a cross-examination
5 question, Mr. Lobeck.
6 MR. LOBECK: Let's do that.
7 MS. MOONEY: So please let's get there.
8 MR. LOBECK: Thank you, Ms. Mooney. I
9 agree.
10 Q. (BY MR. LOBECK) So reading from the
11 transcript of the proceedings of the Planning
12 Commission in this matter prior to cross-examination
13 in your direct testimony, I'm reading from page 7 of
14 the transcript that's from Exhibit B to Mr. Boone's
15 Motion to Strike. Quote, "I think this is a good
16 project. I think when we're done you'll be able to
17 approve it and I think you'll be proud to see it when
18 it's done. It will serve roughly 6,900 existing
19 homes, about 12,000 people, not including land that
20 isn't built on yet, and we'll testify both as to the
21 need and the local nature of the shopping center."
22 Was that your testimony under oath at the
23 Planning Commission --
24 A. Yes --
25 Q. -- Mr. Neal?

33

1 A. -- but I forgot to say although the
2 commercial development within the property
3 (inaudible) --
4 Q. I don't have another question, Mr. Neal.
5 A. -- the needs of residents --
6 MS. MOONEY: Okay. One person at a time,
7 please.
8 MAYOR PACHOTA: All right. We're coming
9 back at 25 after.
10 (Recess taken from 2:21 - 2:26 p.m.)
11 MAYOR PACHOTA: All right. Mr. Lobeck,
12 you've made your point about the previous
13 testimony that Mr. Neal gave. How much longer
14 do you need for questioning?
15 MR. LOBECK: It depends entirely on the
16 witness's cooperation in answering the
17 questions, Mr. Mayor.
18 THE CLERK: Can you hold the mic?
19 MAYOR PACHOTA: Can you hold the mic in
20 your hand?
21 MR. LOBECK: Mr. Mayor, to answer your
22 good question, it depends entirely on the
23 witness's willingness to directly answer a
24 question.
25 MAYOR PACHOTA: Madam Attorney.

34

1 MS. MOONEY: Mr. Lobeck, you told us at
2 the commencement of this that this wouldn't go
3 as long as Mr. Domingo. Now, understanding
4 we've already been at this for over 20, 25
5 minutes and we really only got to one point.
6 How -- I think the Mayor's request is
7 reasonable. How much more do you have to go?
8 MR. LOBECK: I have a few more excerpts
9 from the transcript --
10 MS. MOONEY: Okay.
11 MR. LOBECK: -- and ask Mr. Neal about,
12 and then I have a -- an excerpt from the website
13 that he referred to, responding to supposed
14 misstatements, and I have three pages of that to
15 ask him about, and I think that is probably
16 going to be it. So this is not interminable and
17 I would hope to have fewer interruptions from
18 Mr. Boone, more direct answers from the witness,
19 and that would certainly move this along.
20 MS. MOONEY: Can we please do this
21 efficiently and just, you know, take it
22 efficiently up one by one?
23 MR. LOBECK: Yes.
24 MS. MOONEY: And, Mr. Boone, if you have a
25 standing objection to this, maybe that's how we

35

1 can address it so that we don't have to get into
2 a back and forth. I believe that's probably
3 where you're going to go with this, so if we can
4 put that on the record, Mr. Mayor and Council
5 members, it may make this move a little bit
6 faster, which is really what I'm trying to do so
7 we don't belabor --
8 MR. LOBECK: Thank you for that.
9 MS. MOONEY: -- this point with lawyers
10 fighting, so.
11 MAYOR PACHOTA: And, Mr. Boone, is that a
12 standing objection you'd like to make?
13 MR. BOONE: At this point I don't have any
14 more objections. If there's a line of
15 questioning, when it first comes up I can make
16 it. That's a great idea. If it would be
17 appropriate -- if I feel like I need to make an
18 objection I'll make a standing -- I'll make a
19 standing objection.
20 MAYOR PACHOTA: Okay. And then I'm going
21 to remind everyone as you're questioning he
22 needs to be able to fully answer the question
23 before you speak again. The court reporter is
24 trying to document this and she's having a very
25 difficult time because both of you are talking

36

1 over each other. So you need to let him answer
2 the question, then ask your next question.
3 MR. LOBECK: Mr. Mayor, for that purpose
4 let me inquire because, you know, I haven't done
5 as much litigation as Mr. Boone by far, but if
6 you ask a question of a witness and they answer
7 it and then they seek to launch into a narrative
8 to, you know, expound on their position,
9 generally that's not permissible. The question
10 asked, then it's answered, move on to the next
11 question. Is that -- is that correct? That's
12 what just happened.
13 MS. MOONEY: We are not stopping anybody
14 from giving their testimony or making their
15 points, Mr. Lobeck. Everybody is given a full
16 opportunity to be heard, including Mr. Neal,
17 including members of the public. I mean, we
18 afford due process to everyone. So we -- if you
19 ask a question, Mr. Neal is going to be duty
20 bound to respond to it, but we cannot control
21 Mr. Neal's -- the rest of his responses.
22 MR. LOBECK: That would be fabulous.
23 MS. MOONEY: Nor can we control
24 anybody's.
25 MR. LOBECK: Thank you. Because I am

1 trying to move this forward and that's just
 2 going to prolong it, but we'll move it forward,
 3 Mr. Mayor. Thank you. And I'll try to be as
 4 quick as we can.
 5 And let me say for this purpose I'm going
 6 to be reading some experts -- excerpts from
 7 Mr. Neal's testimony to the Planning Commission,
 8 included in the Exhibit B to the Motion to
 9 Strike, but I'm not going to be reading the page
 10 after page that follows that Mr. Boone thinks
 11 should be considered as well. I'm going to
 12 leave that to him on cross. If he wants to
 13 raise other comments made by Mr. Neal to try to
 14 rehabilitate his testimony, that's Mr. Boone's
 15 job. It's not mine to include that in my
 16 cross-examination.
 17 MR. BOONE: So, Mr. Mayor --
 18 MR. LOBECK: Hopefully we can agree on
 19 that.
 20 MR. BOONE: Mr. Mayor, then I'll have a
 21 standing objection to any reading of responses
 22 by Mr. Neal that does not include his entire
 23 response --
 24 MAYOR PACHOTA: Your standing
 25 objection's --

1 MAYOR PACHOTA: -- let him answer.
 2 THE WITNESS: And I should have adde
 3 project may have -- may have -- may help serve
 4 the needs of residents from the surrounding
 5 areas. It's intended primarily to serve the
 6 residents of this project. That's the basis on
 7 which the Venetian Golf and River Club was
 8 approved, and I would probably give that to you
 9 in every answer. I misstated the full point in
 10 my discussion before the Planning Commission,
 11 and I regret that, Mr. Lobeck, and I regret the
 12 time of the Council that I have to explain my
 13 poorly-thought-through testimony.
 14 Q. (BY MR. LOBECK) Mr. Neal, you were under
 15 oath at this hearing, correct? You signed a speaker
 16 card saying I'm under oath?
 17 MR. BOONE: We stipulate he's under
 18 oath.
 19 Q. (BY MR. LOBECK) And what we just -- so
 20 again I ask you is this your accurate testimony at
 21 that time?
 22 A. Let's look at the words. I stated the
 23 typical grocery store is in this range, and that's
 24 true. I talked about rooftops and that this exceeds
 25 the number greatly. It's all truthful.

1 MR. BOONE: -- due to mischaracterization
 2 of testimony.
 3 MAYOR PACHOTA: Your standing objection's
 4 noted for the record.
 5 Mr. Lobeck, go ahead.
 6 Q. (BY MR. LOBECK) Mr. Neal, did you state
 7 at the -- let me put it on the overhead so everybody
 8 can see, including you.
 9 Did you state to the Planning Commission that
 10 the area in green, this area, is the only feasible
 11 site for a grocery store north of I-75 and east of
 12 I-75? "I think I further stated," referring to prior
 13 testimony, "that a typical grocery store in the 40-
 14 to 50-thousand-square-foot basis wants to see roughly
 15 6,000 rooftops, and this exceeds that number
 16 greatly."
 17 Did you say that?
 18 A. Very clearly I should have said the only
 19 feasible site --
 20 Q. Did you say that?
 21 A. -- for the grocery store within the Milano
 22 PUD --
 23 Q. Please.
 24 MAYOR PACHOTA: Mr. Lobeck --
 25 THE WITNESS: -- was at this location.

1 Q. And the words speak for themselves. So,
 2 again, do you agree this was your testimony and --
 3 A. I should have added the project may help
 4 serve -- may help to serve the residents, the
 5 residents of surrounding areas, and I add that at
 6 this time.
 7 Q. During your cross-examination -- can we
 8 look together at a certain map, a map of a prior
 9 version that Mr. Domingo and I discussed, and from
 10 your PowerPoint on your website -- and is that the
 11 map that we were pointing to and discussing during
 12 the Planning Commission cross-examination?
 13 MR. BOONE: If you recall.
 14 THE WITNESS: It's similar to that, but
 15 it's probably the same map.
 16 Q. (BY MR. LOBECK) And is this the list of
 17 PUDs that we discussed after discussing this map?
 18 A. Yes.
 19 Q. Read again from the transcript, your
 20 testimony to the Planning Commission, "This is a list
 21 of approved PUDs."
 22 Let me stop. Is that the list that we were just
 23 looking at?
 24 A. Yes.
 25 Q. "This is a list of approved PUDs which are

41

1 either built out or being built out in this
2 neighborhood, and it also shows land that has other
3 PUDs headed toward it, and the purpose is to
4 demonstrate that there is demand for this property
5 and that it's compatible with the neighborhood."
6 Was that truthful and accurate testimony at that
7 time?
8 A. All that was truthful and accurate, and I
9 should have added the words may serve residents of
10 surrounding areas, but was intended primarily to
11 serve the residents of this project. I should have
12 added those words.
13 Q. You say "may" serve residents of
14 surrounding areas. Will serve residents of
15 surrounding area more accurate?
16 A. These are the words of the Venetian Golf
17 and River Club approval, and I think I quoted them
18 correctly.
19 MAYOR PACHOTA: Mr. Neal, I'm going to ask
20 you just wait until Mr. Lobeck asks the question
21 and then respond, so that way the court reporter
22 can copy all the transcript.
23 THE WITNESS: Thank you, Mr. Mayor.
24 Q. (BY MR. LOBECK) All right. And in this
25 sentence the phrase "this property" means the 10.42

42

1 acres at issue, correct?
2 A. Yes.
3 Q. Thank you. Thank you for cooperating
4 in -- both you and Mr. Boone in moving this forward.
5 Further from the testimony did you say, "We
6 think we'll provide a way for walk and bicycle and
7 golf cart trips from the Venetian Golf and River
8 Club?"
9 A. Yes.
10 Q. And did you mean trips to your -- to and
11 from your commercial center?
12 A. Yes.
13 Q. Did you also state, "And that the 2,200
14 homes that we're building in Milano and Vistera and
15 the 1,500 homes in others that we are building" and
16 that's -- and then you continued on, "And that's not
17 really a good sentence, but you get the drift. Add
18 to that the existing homes, and the number will
19 easily approach 6,000 residents by the year 2030.
20 Well, that's before I had this map and it says --
21 that says there's more than that."
22 Is that your accurate testimony?
23 A. It is. If only I should have said it's
24 intended to sell to residents of this project so I
25 can fill the -- finish the Milano plat, and I failed

43

1 to say that and I say it now.
2 Q. So do you recognize this as a policy
3 within the Venice Land Development Code, section
4 86-130(r)?
5 A. I'm sorry. Your question is have I --
6 Q. Do you recognize this --
7 A. I recognize it.
8 Q. -- as the Venice Land Development Code?
9 A. As I am reading it.
10 Q. The answer's yes? Thank you.
11 A. Um-hum, yes.
12 Q. And there's two sentences, correct? One
13 deals with location. The first sentence -- let me
14 ask you just to read it for the record. What does
15 that first sentence say?
16 A. "Commercial uses located in a PUD are
17 intended to serve the needs of the PUD and not the
18 general needs of the surrounding area."
19 Q. So hasn't it been your testimony just now
20 that it serves the needs in the PUD, but it also --
21 and that's the main purpose, but that it also serves
22 the general needs of the surrounding area?
23 A. In the testimony at the Planning
24 Commission I then demonstrated a number of PUDs that
25 had failed because you can't put the commercial uses

44

1 in the middle of the community and bar the use of
2 those facilities by others, and I demonstrated that
3 with pictures and with empty stores. Later on I
4 found the words of the Venetian Golf and River Club
5 that says the project may help serve the needs of the
6 residents from surrounding areas, and my
7 understanding is that that's the principle that's
8 been established in the City of Venice uniformly for
9 a very long time.
10 Q. So I ask the question again. Is it your
11 testimony that it both serves the needs of the PUD --
12 is intended to serve the needs of the PUD and also to
13 serve the general needs of the surrounding area?
14 MR. BOONE: Objection. Asked and
15 answered. If the witness has a different
16 answer, he can give it. But if not --
17 MAYOR PACHOTA: Mr. Boone, your
18 objection's --
19 MR. BOONE: -- I would instruct him to
20 state the same answer.
21 MAYOR PACHOTA: Your objection's noted for
22 the record. He has answered the question
23 already. Let's move on, please.
24 MR. LOBECK: Did he?
25 MAYOR PACHOTA: Yes.

45

1 MR. LOBECK: I see a couple of Neal
2 supporters nodding "yes."
3 MR. BOONE: Objection.
4 MAYOR PACHOTA: Mr. Lobeck. We're
5 supposed to ask questions, Mr. Lobeck. We're
6 not supposed to make snide comments to the
7 Council.
8 MR. LOBECK: Thank you.
9 Q. (BY MR. LOBECK) So this map on your
10 website, this part of the PowerPoint you've been
11 using all along through this project, correct, in
12 various forms?
13 A. In various forms, and so there's some
14 pages that have been added and some have been
15 removed, yes.
16 Q. So page 16, which I would represent is in
17 your current form on your website, do you recognize
18 this saying at the top, "Need for commercial
19 convenience stores"?
20 A. Yes. That's been our presentation.
21 Q. And that's followed, is it not, by this
22 map in this list, "East of I-75/Laurel Road area
23 developments," is it not?
24 A. Yes.
25 Q. Wouldn't it be a reasonable conclusion

46

1 that this first and then this, this is intended to
2 demonstrate the need for commercial stores such as
3 you're proposing?
4 MR. BOONE: Objection.
5 THE WITNESS: I'm not sure if I understand
6 the question.
7 MR. BOONE: Objection on relevance. We've
8 drifted away from the code section and we're
9 using other terms that aren't part of the code.
10 THE WITNESS: Let me try to (inaudible).
11 MAYOR PACHOTA: Mr. Boone, your
12 objection's noted for the record.
13 THE WITNESS: Of course this is a brand
14 new nifty Publix just down the street from this
15 map, and I also have beautiful communities
16 around this Publix. This is a brand new cool
17 store that the people go to from here. I think
18 I was trying to demonstrate at one point that it
19 saved traffic and trips and gas and convenience
20 to have the amenity closer to my existing PUD at
21 Milano. Of course, I didn't create this and I'm
22 not sure what the intent was exactly, but that's
23 my intent at this time.
24 Q. (BY MR. LOBECK) And wouldn't --
25 A. This is an amenity --

47

1 Q. Right.
2 A. -- and I'd rather have the amenity as a
3 part of the existing PUD at Milano.
4 Q. And I think I heard you just say so that
5 people don't have to drive so far from these areas to
6 a Publix?
7 A. To satisfy your principle, yes, for the
8 residents of the Milano PUD not to have to drive all
9 the way down to Wellen Park, as it's my intent to
10 sell new homes.
11 Q. Well, if we're only talking about serving
12 the PUD --
13 MAYOR PACHOTA: Mr. Lobeck, stick to
14 questions.
15 MR. LOBECK: This is a question.
16 MAYOR PACHOTA: Let's not rebuttal. Let's
17 not debate.
18 Q. (BY MR. LOBECK) This is asking a
19 question. So if it's only to serve the existing --
20 well, primarily or whatever your testimony is to
21 serve the existing PUD --
22 A. May serve the needs of residents from
23 surrounding areas, closed paren.
24 Q. Well, this need for commercial convenience
25 stores, and then you got a really wide surrounding

48

1 area after that --
2 MR. BOONE: Objection.
3 MR. LOBECK: -- isn't it a reasonable
4 conclusion --
5 MR. BOONE: Objection. Asked and
6 answered. This has been asked before.
7 MAYOR PACHOTA: Your objection's noted for
8 the record.
9 What's the question, Mr. Lobeck?
10 Q. (BY MR. LOBECK) Isn't it a reasonable
11 conclusion that by its page 16 of your PowerPoint,
12 saying need for commercial, and page 17 of your
13 PowerPoint, showing the very broad surrounding area,
14 that you're making the point that you intend to serve
15 the need for commercial in this demonstrated area?
16 A. No.
17 Q. No? How can it be construed otherwise?
18 A. I'll answer in two pieces. There's a very
19 fine person out in the audience who created this and
20 I don't -- I cannot tell you what was in her mind,
21 but what I see here is a beautiful amenity in Milano,
22 a beautiful amenity in Wellen Park that serves Wellen
23 Park. I wanted to do the same thing at Milano. A
24 grocery store is an amenity to a residential
25 development.

49

1 Q. And then finally page 9. Recognize this
2 as page 9 of that PowerPoint on your website?
3 MAYOR PACHOTA: Mr. Lobeck, move the image
4 up so that we can see it on our screen.
5 Mr. Neal, you can answer.
6 THE WITNESS: I recognize it, yes.
7 Q. (BY MR. LOBECK) And does this state, "The
8 proposed neighborhood commercial will reduce vehicle
9 miles traveled" insignificant -- "it is significant
10 for the communities east and north of I-75."
11 Does it say that?
12 A. Yes, but, of course, that's not my
13 testimony. That's the work of my marketing
14 department and it's not intended and it was never
15 intended to be able to be presented at this
16 meeting.
17 Q. I'm sure not now that we've pointed out
18 that it violates the Land Development Code.
19 A. And it should have said the project may
20 help serve residents from surrounding areas, closed
21 paren.
22 Q. There you go.
23 A. And from now on -- they can hear me --
24 when we're with you we'll parse these words. We've
25 spent four hours parsing these same words and we will

50

1 learn from this experience.
2 Q. So the next paragraph says, "Will be the
3 only grocery store east of I-75 and within 11 miles,"
4 showing this surrounding area. And why would you put
5 that out there to show the need for your commercial
6 project?
7 A. We didn't have the advice of our lawyer in
8 the construction of our marketing materials and, as I
9 said, we'll correct that testimony next time we make
10 a presentation of this type.
11 MAYOR PACHOTA: Mr. Lobeck, we're now at
12 45 minutes. How many more --
13 MR. LOBECK: I'm wrapping this up now.
14 Q. (BY MR. LOBECK) And so, Mr. Neal, did you
15 just tell us that Neal Communities put out these
16 representations as to the intended need of your
17 project before you talked to your lawyers, and then
18 your lawyers, being aware of this binding provision
19 of the Land Development Code, said stop doing that.
20 Is that basically what you just told everybody?
21 A. No, not exactly. I found that the lawyers
22 in Florida, in the City of Venice -- and this is the
23 law in the City of Venice based on more than a
24 handful of previous projects, and the words are
25 almost identical. That the practice in the City of

51

1 Venice is to use words similar to "the project may
2 help surrounding residents" and ended -- and it ends
3 to intended to primarily serve the residents of the
4 project, and I informed the marketing department we
5 would have drawn selling documents in a more precise
6 fashion and, for that, I apologize to you for all the
7 time, Mr. Mayor, and this Council for all the time,
8 and the people outside for all the time of our having
9 to describe now what we intended to meet the
10 standards of the City of Venice.
11 But I say to you now that my goal was to sell
12 homes in the Milano PUD.
13 Q. So your intent has changed?
14 A. My intent is more refined than it was,
15 better stated.
16 THE CLERK: I'm sorry. I didn't hear that
17 last comment.
18 THE WITNESS: It's more refined, better
19 stated, more explicit than our previous
20 statements.
21 Q. (BY MR. LOBECK) And you just testified
22 that everything you said to the Planning Commission
23 before you refined your testimony was truthful,
24 honest and accurate as you're under oath, right?
25 MAYOR PACHOTA: Mr. Lobeck.

52

1 MR. LOBECK: I get to ask this.
2 THE WITNESS: What I said was truthful.
3 MAYOR PACHOTA: Hold on, Mr. Neal.
4 THE WITNESS: Okay.
5 MAYOR PACHOTA: I'll tell you if you get
6 to ask this or not. You don't get to make that
7 decision, and you're just going around this
8 circle again. We're doing the same game that
9 we've been doing the whole day. We are at 46
10 minutes. You made your point. Is there another
11 question you'd like to ask?
12 Q. (BY MR. LOBECK) Last question. Mr. Neal,
13 at the Planning Commission when you were reminded of
14 this binding Land Development Code policy did you say
15 as your defense, "I once again revert to the
16 long-standing City policy which is not to enforce
17 that provision. We were well aware of it at the
18 first beginning, we're well aware of it now, and
19 we'll demonstrate, if necessary, to the elected -- to
20 the Planning Commission and to the Board and any
21 tribunal having jurisdiction that that has never been
22 enforced or not uniformly enforced by the City of
23 Venice."
24 Is that the defense you presented with respect
25 to this policy?



53

1 A. It was a defense and, once again,
 2 Mr. Lobeck, it was wrong and I should have talked
 3 about the long-standing policy adopted over the years
 4 by the City of Venice having to do with project needs
 5 within a PUD and the use by surrounding
 6 neighborhoods, and I refine that testimony with my
 7 testimony today. Thanks for asking that question.
 8 It's helped to educate me on the city code in the
 9 City of Venice. Really.

10 Q. So it's no longer your position that two
 11 wrongs make a right? That just because it hasn't
 12 been enforced before, that it can't be enforced now?
 13 That's no longer your position?

14 MR. BOONE: Objection. Objection to the
 15 form of the question. That's never been his
 16 position.

17 MAYOR PACHOTA: Your objection's noted for
 18 the record. Mr. Boone -- Mr. Lobeck, you've
 19 asked the question. We've gotten an answer.

20 MR. LOBECK: Thank you.

21 THE WITNESS: Thank you, Mr. Mayor.

22 MR. BOONE: Wait for the other gentleman.

23 MAYOR PACHOTA: All right. Before we go
 24 into the next affected party doing his
 25 questioning, we're going to take a -- let's come

54

1 back at 3 o'clock.
 2 (Recess taken from 2:48 - 3:00.)
 3 MAYOR PACHOTA: All right. So before I
 4 let Mr. Scott go on his cross-examination, I'm
 5 going to point to my right and we're going to
 6 look at the pledge of conduct. I am not going
 7 to tolerate any -- any -- belittling, degrading
 8 or attacks on the City Council. This is not an
 9 easy job. This is a very tough decision. I
 10 would expect the attorneys to be even that much
 11 more professional as it relates to my colleagues
 12 sitting on the dais. This is not an easy job.
 13 Please do not attack the Council members or
 14 anyone else for that matter because that doesn't
 15 define Venice. Venice is a group of civil
 16 people and we're going to demonstrate that
 17 today.

18 Mr. Scott, if you'd like to come up and,
 19 again, I'll just ask you to be concise with your
 20 questions if you can.

21 MR. SCOTT: Thank you, Mr. Mayor.

22 CROSS-EXAMINATION OF PAT NEAL
 23 BY MR. SCOTT:
 24 Q. Good afternoon.
 25 A. Hello, Mr. Scott.

55

1 Q. How are you?
 2 A. All is good.
 3 Q. Good, good.
 4 THE CLERK: Mr. Scott -- yes. Thank you.
 5 Q. (BY MR. SCOTT) I'm going to beat this
 6 horse just one more time.
 7 A. Oh, good.
 8 Q. I'm quoting from an article in the
 9 Saratoga -- Sarasota. There's a Saratoga, Wyoming.
 10 Sarasota Herald-Tribune January 15th, 2022, in which
 11 you're quoted as saying, "6,000 homes demand a store
 12 and three different Publix developers have been
 13 trying to buy the property, Neal said."
 14 Is that a correct quote?
 15 A. It is.
 16 MAYOR PACHOTA: Mr. Scott, can you just
 17 move that into the -- where it says "place
 18 document here" --
 19 MR. SCOTT: Yes.
 20 MAYOR PACHOTA: -- so that we can see
 21 that?
 22 MR. SCOTT: Yes, I will.
 23 THE WITNESS: It is correct, Mr. Scott,
 24 but apparently wrong.
 25 MR. SCOTT: I'm not sure --

56

1 MAYOR PACHOTA: I don't think --
 2 MR. SCOTT: Do we have that?
 3 MAYOR PACHOTA: I don't think we're on the
 4 right page.
 5 MR. SCOTT: I'll flip that. I have the
 6 sports page.
 7 THE CLERK: There you go. That's better.
 8 Thank you.
 9 MAYOR PACHOTA: Okay. Thank you.
 10 Q. (BY MR. SCOTT) I'm not sure we've
 11 established actually the official maximum homes that
 12 can be built within Milano. That would be shown on
 13 the certificate of concurrency, correct, that's
 14 attached to the developer's agreement?
 15 A. It might be. That might be correct.
 16 Q. Okay. Let me show you that.
 17 A. That's over my pay grade.
 18 Q. Okay.
 19 MR. BOONE: Mr. Neal, if you know the
 20 answer to a question, answer it. Please don't
 21 guess.
 22 THE WITNESS: I don't know.
 23 MR. BOONE: I'm guessing Mr. Scott has the
 24 actual written document --
 25 THE WITNESS: I don't know, Mr. Scott.

57

1 MR. BOONE: -- that has all the answers on
2 it, so.
3 MR. SCOTT: And I do.
4 Q. (BY MR. SCOTT) This is the City of Venice
5 Certificate of Concurrency. I'll represent that this
6 was attached to the developer's agreement that was
7 part of the Milano 2017 amendment. Okay?
8 A. Okay.
9 Q. It has quite a bit of information on it,
10 including project impact, and it says 1,350
11 residential units total with a population of 2,295.
12 Do those numbers sound about right as far as what the
13 maximum number of houses would be and the estimated
14 population?
15 A. Yes, about right.
16 Q. Okay. All right. Mr. Neal, would you
17 agree that there is already lots of nearby convenient
18 shopping available for the people living in this
19 general neighborhood where this shopping center is to
20 be built?
21 A. Mr. Scott, that's pretty undefined as I do
22 not agree.
23 Q. Isn't that something that you actually
24 advertise in your marketing material to sell homes in
25 Aria as well as Cielo about the --

58

1 A. I cannot --
2 Q. -- about the convenient shopping that's
3 nearby?
4 A. I cannot give you a specific answer
5 to that question.
6 Q. Okay. Let me show you something to
7 refresh your memory. This is from Aria. It's a
8 pamphlet picked up from your Aria sales office just
9 recently.
10 MAYOR PACHOTA: Mr. Scott, please put it
11 on the display so we can all see it.
12 Q. (BY MR. SCOTT) I'm sorry. I'm sorry, Mr.
13 Mayor. And it's entitled actually, "Close to
14 everything. Life in Venice features upscale
15 shopping, elegant dining, and pristine beaches. Aria
16 is centrally located east of I-75 which makes your
17 commute to nearby businesses or the beaches very
18 convenient."
19 And I'll just represent to you I can give
20 something similar for Cielo, if you want to see that,
21 but would you agree that you have been marketing the
22 convenient nearby restaurants and businesses as a
23 sales pitch, I guess I'll say, for --
24 A. Of course, of course.
25 Q. For -- excuse me. Let me finish.

59

1 MAYOR PACHOTA: Gentlemen, one at a time.
2 Ask the question. Mr. Neal, then answer the
3 question.
4 Q. (BY MR. SCOTT) For Aria and Cielo?
5 A. Of course. It's my business to sell
6 homes.
7 Q. But it's also -- you also have some
8 ethical obligations to tell the truth while
9 marketing.
10 MR. BOONE: Object to the form of the
11 question.
12 MAYOR PACHOTA: Mr. Boone, your
13 objection's noted for the record.
14 Mr. Scott, can you fine-tune this?
15 Because we get the point. If you can just get
16 to the -- if you're making a different point,
17 get to that point, but we understand what you're
18 asking. I think he's answered it.
19 MR. SCOTT: I'm not sure he's answered
20 that last question, actually, Mr. Mayor.
21 MAYOR PACHOTA: Go ahead and ask the
22 question.
23 Miss Moore, I can't hear you and him at
24 the same time.
25 Mr. Scott.

60

1 MR. SCOTT: Yes.
2 MAYOR PACHOTA: Ask the question, please.
3 Q. (BY MR. SCOTT) I think you indicated you
4 had a business to sell homes, but my question is
5 don't you also, in regard to selling those homes,
6 have an associated responsibility to be honest and
7 ethical?
8 A. The standard for selling homes in our
9 world is based on convenience. Aria sells because of
10 its proximity to the hospital. The standard at this
11 hearing seems to be over 14 words. At the beginning
12 I did not understand the long-standing policy of the
13 City of Venice having to do with this code provision
14 and the effect on the surrounding neighbors. We
15 built under the old code because the new code, a
16 promise to reduce the size of the building envelopes
17 to 30,000 square feet and we rushed -- I might say
18 rushed an inappropriate application in to get it
19 under the wire. So what we applied for was not
20 perfect and what I have said in the previous
21 testimony is not perfect, and I'm trying to clean it
22 up in this conversation, Mr. Scott.
23 Q. How many times would you estimate since
24 2017 you've represented that there would be no
25 commercial development at this location?

61

1 A. You used the pronoun "you."
 2 Q. Neal Communities.
 3 A. I'm not personally aware of any such
 4 representations.
 5 Q. How about in the July 2017 master plan
 6 where you said there would be no commercial?
 7 A. That's not specific enough to be clear to
 8 me.
 9 Q. I'll put that in front of you. I'll
 10 represent -- I'll represent to you that that is from
 11 the 2017 Milano master plan.
 12 A. Right. First the pronoun "you" apparently
 13 means Jim Collins, a very fine planner, and he opted
 14 -- he manages in accordance with me. I'm fixing to
 15 make a bit of an explanation, Mr. Mayor. May I
 16 continue to try to explain?
 17 MAYOR PACHOTA: Madam Clerk, can you put
 18 the doc cam on so we can see the image?
 19 THE CLERK: (Displays document.)
 20 MAYOR PACHOTA: Okay. All right. Go
 21 ahead, Mr. Neal.
 22 THE WITNESS: I don't know the problem of
 23 being a trial lawyer, Mr. Scott, but the problem
 24 with being a real estate developer is predicting
 25 the future. When we bought Milano it was a

62

1 desert. We actually bought a property called
 2 VICA, Venice Industrial Commerce Association.
 3 It was supposed to be warehouses, and then
 4 it was zoned for 4-, 5-, or 6-story buildings,
 5 and then it was a gravel pit, and then it all
 6 went broke and it was a mess. And the City was
 7 trying to encourage people to move there. They
 8 built a 5-and-a-half-million-dollar road to
 9 encourage people to buy. I bought everything
 10 from -- I might say a real estate developer
 11 should have gone broke and I bought everything
 12 from banks and vulture funds.
 13 So at the time I bought Milano and we
 14 started working on it, it was in the sticks and
 15 the homes sold for less than half what they sell
 16 now and none of these developments existed, and
 17 it is my fault that I didn't say, perceive or
 18 know that there would be the possibility for
 19 commercial uses.
 20 Now, my lawyer, very able man with whom
 21 I've worked a long time, always protects me by
 22 assuring that my team and my people and my legal
 23 documents express that things change along the
 24 way to suit the market, and that's what we did
 25 and that's what we do now.

63

1 Q. (BY MR. SCOTT) But you would agree that
 2 Mr. Collins, apparently on behalf of Neal
 3 Communities, represented in the Milano PUD that there
 4 was no plans for commercial use?
 5 MR. BOONE: The document -- objection.
 6 The document speaks for itself, and Mr. Collins
 7 is the one to answer questions about this
 8 anyway.
 9 MAYOR PACHOTA: Your objection's noted for
 10 the record.
 11 THE WITNESS: We really applied for it in
 12 2013. I'm guessing Mr. Collins copied that. I
 13 certainly didn't have anything to do with this
 14 piece of paper, but I trust and believe
 15 Mr. Collins. I may not have told him that I had
 16 any plans for commercial, and I suspect that at
 17 that time I had no plans. Things were quite
 18 different then than now.
 19 MAYOR PACHOTA: Mr. Scott, I'm just going
 20 to caution you. Mr. Collins is a witness.
 21 You'll be able to ask him questions about his
 22 documents at that time, so if you can restrict
 23 that.
 24 MR. SCOTT: I didn't realize that that was
 25 going to be the answer. I didn't realize he was

64

1 going to --
 2 MAYOR PACHOTA: Okay.
 3 MR. SCOTT: -- defer to Mr. Collins.
 4 MAYOR PACHOTA: And it is, so we can move
 5 on and continue your line of questioning.
 6 Q. (BY MR. SCOTT) Then as far as how many
 7 times have you represented that this parcel, this
 8 10.42 acres, would be open space?
 9 A. Getting back to that pronoun "you." I
 10 have --
 11 Q. Neal Communities.
 12 A. I have 400 people who work for me, 950
 13 people on my job today. I don't know the answer to
 14 your question, sir.
 15 Q. But the buck stops with you, correct?
 16 A. The bucks on planning documents do not
 17 stop with me. I have no real role on planning
 18 documents and no one on my team is charged with
 19 predicting the future.
 20 THE COURT REPORTER: I'm sorry, I'm sorry.
 21 I'm having a difficult time hearing Mr. Neal.
 22 MAYOR PACHOTA: Mr. Neal, if you could
 23 pull that microphone closer again.
 24 THE WITNESS: No one in my company is
 25 charged with predicting the future 5, 6, 7, 8

65

1 years out into the future.

2 Q. (BY MR. SCOTT) And that isn't really my

3 question. My question relates to the occasions in

4 the past when you have -- Neal Communities has

5 represented that this corner would be open space.

6 How many times?

7 A. I can't give you a specific answer or any

8 answer to that question.

9 MAYOR PACHOTA: Mr. Scott, I'm going to

10 ask you to just pull that microphone in a little

11 closer.

12 Q. (BY MR. SCOTT) Would you agree that in

13 September of 2018 the preliminary plat for Cielo

14 showed it as open space?

15 MR. BOONE: Objection. Relevance.

16 THE WITNESS: I can't make any specific --

17 MAYOR PACHOTA: Your objection's noted for

18 the record.

19 THE WITNESS: -- response to that at all.

20 Q. (BY MR. SCOTT) Same question in regard to

21 November 2019, the final plat for Cielo. It also

22 represented this corner as open space; would you --

23 MR. BOONE: I'm sorry, Mr. Scott. I

24 thought you were done. Standing objection to

25 any reference to a plat.

66

1 MAYOR PACHOTA: Your standing objection is

2 noted.

3 THE WITNESS: Mr. Scott, you're not

4 showing me anything. I don't have any personal

5 knowledge or recollection.

6 Q. (BY MR. SCOTT) I think they're already in

7 evidence, so we'll leave it at that.

8 Then between 2020 and 2022 there was marketing

9 material distributed by Neal Communities showing this

10 corner as a preserve. Do you remember that?

11 A. No, sir.

12 Q. Let me put that document in front of you.

13 Do you recognize that document?

14 A. Well, I see the graphic. I don't know

15 where it's from. I suspect it came from a brochure,

16 but I don't know.

17 Q. It came from a Neal Communities brochure

18 of some kind, correct?

19 A. It bears our company name.

20 Q. And you would agree that it's a map of

21 Cielo?

22 A. Yes. It does have a disclaimer of all

23 that right here, but yes.

24 Q. Can you read that disclaimer? It's

25 awfully small.

67

1 A. Well, I'm not sure if it's a very good

2 copy, Mr. Scott, but it says generally everything

3 changes. This, of course, is a preserve 800 feet

4 from the closest house, 2,000 feet from the rest of

5 the subdivision, and it shouldn't have been on that

6 brochure, but it was all subject to changes when the

7 land uses in that area became more evident.

8 Q. What shouldn't have been on that map?

9 A. Based on the discussion we're having

10 today, I regret it being on the map, but it's

11 properly disclaimed in the homeowner documents.

12 We've testified that those are the rules by which

13 people bought. I've been surprised that of the 71

14 people who bought, 152 people, I have heard one

15 person make which I'll testify to be incorrect

16 testimony about his knowledge. We think we have for

17 the most part reached an understanding with the

18 people at Cielo and we have not had objection from

19 Cielo from any large group of people. There's one

20 other person who's here this morning who's not. We

21 think they're satisfied with their bargain and what

22 they got, and Mr. Keller is very happy with his home,

23 his view, his bargain, his lifestyle and, as of last

24 night, you couldn't see this wetland from his house,

25 which I'll -- to which we'll testify later in this

68

1 hearing.

2 Q. Do you know who Seth Thompson is?

3 A. I do. I consider him a friend.

4 Q. And he at one point was the third member

5 of the Board of Directors for the neighborhood

6 association?

7 A. I've had many meetings with Seth Thompson.

8 Q. And in one of those meetings he actually

9 gave you the results of a survey that he had done on

10 whether or not the people of Cielo wanted this

11 shopping center or not, correct?

12 A. I don't remember that, Mr. Scott. I

13 remember quite a few meetings with him, but I don't

14 remember the numbers.

15 Q. But you don't remember that one?

16 A. I don't remember the numbers.

17 Q. Do you remember generally that the people

18 of Cielo were in opposition to the shopping center?

19 MR. BOONE: Objection. Assumes facts not

20 in evidence.

21 THE WITNESS: We've been dealing with the

22 homeowners association, and the homeowners'

23 representation -- representative's name is

24 Jessica. So though I've had dealings with

25 Mr. Thompson, he was a previous homeowners

69

1 association representative and he was -- oh, I
2 don't know what the proper word is -- deselected
3 and a new homeowners association took over, so I
4 have not had extensive dealings with him for
5 perhaps six months.
6 Q. (BY MR. SCOTT) It's true that he actually
7 stepped down.
8 A. I'm not so sure, Mr. Scott.
9 Q. All right.
10 A. In fact, I'm quite sure that was not the
11 circumstances.
12 The CLERK: I didn't hear that comment at
13 all.
14 THE WITNESS: He was not reelected. Nice
15 man, easy to communicate with. He did not
16 choose voluntarily not to be on the board.
17 Q. (BY MR. SCOTT) When did you stop using
18 this Cielo map that's currently on the overhead?
19 A. That's kind of equivalent to when did I
20 stop beating my wife. I don't know.
21 Q. By the time you did stop using that, had
22 you sold nearly all of the lots in Milano PUD?
23 A. I don't even know the beginning nor the
24 end of this. I can't give you any accurate answer.
25 Q. Okay.

70

1 A. Might say I have 29 properties in this
2 brand, a total of 40 properties. I just don't keep
3 track of the brochures, Mr. Scott.
4 Q. I understand some of the lots in the
5 Milano PUD have not been sold, but have
6 substantially --
7 MR. BOONE: Go ahead and finish your
8 question. I just don't want him to answer
9 because I'm going to make an objection, but go
10 ahead and finish your question.
11 MR. SCOTT: You're going to make an
12 objection before I finish my question?
13 MR. BOONE: No, sir.
14 MAYOR PACHOTA: Mr. Boone.
15 MR. BOONE: I said go ahead and finish
16 your question, and then I'm going to make an
17 objection.
18 MAYOR PACHOTA: Mr. Boone, enough.
19 Mr. Scott, ask the question.
20 Q. (BY MR. SCOTT) Sorry. I understand some
21 of the lots in the PUD have not been sold, but have
22 substantially all of the lots in the Milano PUD been
23 at least platted?
24 MR. BOONE: Objection to relevance.
25 I've let -- I'm trying really hard not to

71

1 object, and the basis for the relevance
2 objection is that Mr. Scott lives in the
3 Venetian Golf and River Club. His questions
4 have to do with Milano and how the people in
5 Milano feel and how they were marketed to, and
6 he is an affected party based on his residence
7 in Venetian Golf and River Club, so all of this
8 testimony about Milano, about Cielo is
9 irrelevant.
10 MAYOR PACHOTA: Your objection's noted for
11 the record. Mr. Neal, go ahead and answer the
12 question.
13 THE WITNESS: I forgot the question, but
14 I think the answer is I don't know.
15 Q. (BY MR. SCOTT) Let me re -- let me repeat
16 the question, make sure you're answering the correct
17 question.
18 I understand that some of the lots in the PUD --
19 Milano PUD have not been sold, but would you agree
20 that at least substantially all of the lots in the
21 PUD have at least been platted?
22 A. Yes.
23 Q. Let me show you another --
24 MR. BOONE: While he's looking, Mr. Mayor,
25 I just have a standing objection to all of these

72

1 questions related to Cielo or Milano on the
2 basis that Mr. Scott's affected party status was
3 based on his residency in the Venetian Golf and
4 River Club.
5 MAYOR PACHOTA: Your standing objection's
6 on the record, sir. Thank you.
7 Q. (BY MR. SCOTT) What I have put on the
8 overhead is a map that Mr. Kenny testified to
9 yesterday. You were here and heard Mr. Kenny's
10 testimony?
11 A. I was.
12 Q. And he testified that this was part of his
13 package that he was given, and he was asked to
14 initial all of these documents, including this map.
15 Are you still using this map as a document in the
16 package as given to buyers?
17 A. I do not know.
18 COUNCILMEMBER FIEDLER: Point of order.
19 MAYOR PACHOTA: Point of order. Go ahead,
20 Dr. Fiedler.
21 COUNCILMEMBER FIEDLER: I have a question.
22 THE CLERK: Microphone.
23 COUNCILMEMBER FIEDLER: Oh, no, it is not.
24 I have a question for the attorneys.
25 MAYOR PACHOTA: What's your point of

73

1 order?

2 COUNCILMEMBER FIEDLER: My point of order

3 is if Mr. Scott is an affected party for

4 Venetian Golf and River Club, is it appropriate

5 for him to act as an affected party for Cielo?

6 MAYOR PACHOTA: So far I thought his

7 questions are fairly relevant, but would you

8 agree? I'm not looking at you, Mr. Longo. I'm

9 looking at the attorney.

10 MS. MOONEY: Yes. I believe he's raising

11 issues that have legal bearing on the factors

12 associated with his PUD approval process. That

13 said, you know, I think he's making the same

14 point over and over again, and so perhaps

15 Mr. Scott can move it along a little bit. But I

16 do -- I do think he -- he does have the right to

17 ask this realm -- this realm of questions.

18 COUNCILMEMBER FIEDLER: Thank you.

19 MR. BOONE: Mr. Mayor, if I may, I want --

20 then I will restate my objection. I have a lot

21 of standing objection -- I move to strike all

22 the prior testimony and have a standing

23 objection to questions that have to do with what

24 was marketed to people buying into Cielo or into

25 Milano. Now, I would agree with Counsel that

74

1 technical questions about the PUD

2 applications -- I would agree that's certainly

3 relevant, but this is a private matter between

4 people who bought into Milano and the Neal

5 Corporation, and this gentleman -- his ability

6 to even be able to ask questions is based on his

7 residence within Venetian Golf and River Club.

8 MAYOR PACHOTA: So, again, I'm just going

9 to ask that you put the objection out there. We

10 don't need the long paragraphs. So your

11 objection's noted for the record. We're going

12 to continue forward.

13 I'm just going to ask you, Mr. Scott, to

14 move it along and just let's try to get to these

15 points without 30 questions and just tell us

16 what you're trying to get to and, you know, this

17 isn't a court hearing. It's a quasi-judicial

18 hearing.

19 Q. (BY MR. SCOTT) Mr. Kenny also testified

20 that he signed his purchase agreement in February

21 2022. Do you see that?

22 A. I do.

23 Q. When did you first start, I guess,

24 promoting the shopping center project publicly?

25 MR. BOONE: Objection to the form of the

75

1 question. What does "promoting" mean? Could

2 you be more specific, Mr. Scott?

3 MAYOR PACHOTA: Mr. Boone, your

4 objection's noted for the record.

5 Mr. Neal, you can answer the question.

6 THE WITNESS: I don't think -- may I just

7 say "promoting" is the wrong word. As was

8 quoted in the Herald-Tribune, people were

9 calling me.

10 Q. (BY MR. SCOTT) When did you first have

11 any kind of public workshop in regard to the shopping

12 center?

13 A. I think it was in January 2022.

14 Q. Let me hand you the notice that relates

15 to that public notice, and it is, in fact, dated

16 January 2022. Do you see that?

17 A. Yes.

18 MAYOR PACHOTA: Don't move it just yet so

19 that we can see it as well. All right.

20 Q. (BY MR. SCOTT) So the point, I guess, is

21 in January you were having a workshop in regard to

22 the proposed shopping center. A month later

23 Mr. Kenny was being asked to sign a document that had

24 the map that showed this corner as a preserve. Was

25 that an oversight?

76

1 A. Yes. May I provide more information?

2 Q. Your attorney can do that on redirect,

3 actually.

4 MR. BOONE: I believe -- I believe that,

5 well, the rules we've established, this is a

6 public hearing and Mr. Neal has a right to

7 answer full and fair.

8 MAYOR PACHOTA: So, Mr. Boone, here's

9 where we're at, right? You're rolling your eyes

10 at me when I'm telling you to stop talking

11 because you're not asking me for permission to

12 speak. You're just speaking. So what Mr. Neal

13 can do is what we discussed in the rules is he

14 can answer, so if he -- instead of asking a

15 question back to the affected party, he can just

16 give his answer. He doesn't need to ask that

17 question. He can just say what he wants to say.

18 So, Mr. Neal, if you have something you'd

19 like to add to your statement, please go ahead

20 and do so.

21 THE WITNESS: Well, of course, I went to

22 Mr. Kenny's house last night. He wasn't there.

23 I did take a picture from his back door. I

24 didn't trespass on his property. I put -- I

25 stood next door, but couldn't see anything.

<p style="text-align: right;">77</p> <p>1 This is the view. It's primarily to the west. 2 I then reviewed the correspondence out of 3 our major server, and I'm pretty happy. This is 4 his view, which is to the west. He's not 5 really -- to my mind all of this is irrelevant, 6 Mr. Scott. I'm sorry. All of this is -- 7 constitutes a mistake that we made in 8 representations that have almost no meaning 9 because the people have no access or view to 10 this property. 11 So even though it was an error, I would 12 say it's a minor error and it's based on our 13 having stated that market conditions can change. 14 That they can either see or perceive the 15 existence of a wetland 800 feet away, I'm not 16 sure it's an error, but I'm not sure it's a 17 major error. Mr. Kenny signed this document 18 under the community documents. I asked our star 19 salesperson Mary to come here this morning, and 20 she was here this morning, but she's a 21 commission-paid salesperson. She went back to 22 work. Her testimony to me and several others, 23 that she gave Mr. Kenny these -- these are the 24 USBs for the homeowners documents. He probably 25 didn't recognize them as his homeowner</p>	<p style="text-align: right;">79</p> <p>1 at the beginning. We normally have the 50 percent 2 done at the end, and we will have the 50 percent done 3 at the end. It's just a mistake. 4 Q. Yesterday -- let's move on. Yesterday 5 Mr. Clark -- you were here for Roger Clark's 6 testimony? 7 A. I was. 8 Q. Referenced an agreement between the City 9 and Neal Communities relating to Neal Communities 10 catching up on their required dedication of open 11 space. Do you remember that testimony? 12 A. I do. 13 Q. From actually -- 14 A. I have to turn all these things in to my 15 friend Kelly. 16 Q. Yes, I understand. I understand. I 17 understand. 18 MAYOR PACHOTA: Mr. Scott, we're now at 19 3:30. I just want to know, do you have an idea 20 how much longer you're going to need? 21 MR. SCOTT: 15. 22 Q. (BY MR. SCOTT) Do you recognize -- first 23 of all, without looking at the agreement do you know 24 what agreement Mr. Clark was talking about? 25 A. No.</p>
<p style="text-align: right;">78</p> <p>1 documents, but that's what they are. So we 2 think we did what we were supposed to have done. 3 I think the wetland lies between 800 and 4 2,000 feet away and it's imperceptible, laws 5 that should never have been part of the PUD, and 6 we got out of hand and in this case we're trying 7 to correct the mistake. We do not have 8 objection to the people at Cielo. Mr. Kenny, 9 yes. A very nice person. I haven't talked with 10 him yet. 11 Q. (BY MR. SCOTT) What do you mean it should 12 never have been a part of the PUD? 13 A. I have no clue as to how it got to be a 14 part of the plat. 15 Q. What? What are we talking about? 16 A. The wetland. The wetland, the isolated 17 wetland that's at the north end of the property. 18 Q. We're talking about the 10.42 acres, the 19 wetland on that? 20 A. The 10 acres out of the 500 acres. 21 Q. But you have no idea how that got into the 22 plat? Is that your testimony? 23 A. Yes, sir. Nope, I have no personal idea 24 of how that got on the plat. I think somebody being 25 zealous chose to try to get all the 50 percent done</p>	<p style="text-align: right;">80</p> <p>1 Q. Let me give you that agreement. It's 2 called Agreement Regarding Open Space Restriction and 3 Covenant Pursuant to City of Venice Land Development 4 Regulations. 5 MR. BOONE: Can I see that, please? 6 THE WITNESS: I want to see it first. 7 MR. BOONE: Sure, absolutely. 8 THE WITNESS: It doesn't bear my 9 signature. I will say I get 80 e-mails an hour. 10 There's a lot of stuff I don't see, and I sure 11 don't do things that involve a lot of detail, 12 Mr. Scott, and we have three and a half years 13 more to go to finish Aria and Fiore, so we'll 14 always make up the 50 percent and we will make 15 up the 50 percent and I testified we'll make up 16 the 50 percent, and that just isn't in dispute 17 anywhere. 18 MR. BOONE: I don't have any objection to 19 this document, but I'm not sure this was the 20 document that Mr. Clark was referring to. I 21 think it's probably a -- it should have been a 22 question to ask Mr. Clark yesterday. 23 MAYOR PACHOTA: Mr. Clark will be coming 24 back up as a witness, so, Mr. Scott, if you'd 25 like to save that for Mr. Clark, you can do</p>

81

1 that.

2 MR. SCOTT: But I actually have questions

3 for Mr. Neal about this agreement. Mr. Clark

4 did not sign this agreement. Someone on behalf

5 of Neal Communities did.

6 MR. BOONE: Yes, sir, but --

7 MAYOR PACHOTA: So then -- so then what I

8 would say is if it's part of the record and you

9 have questions for Mr. Neal, then ask the

10 questions of Mr. Neal of the document that's on

11 the record, or introduce it to the record, but I

12 wouldn't get down the road of asking him what

13 Mr. Clark said or his intent or anything of that

14 nature.

15 MR. SCOTT: If Mr. -- it's my

16 understanding Mr. Clark had nothing to do with

17 preparing this document. I'll just --

18 THE WITNESS: Neither did I, Mr. Scott.

19 MR. BOONE: I'm not objecting to the --

20 this is important, so please, please have some

21 patience with me.

22 MAYOR PACHOTA: I'm listening.

23 MR. BOONE: I'm not objecting to that

24 document being relevant or not because it's

25 clearly about this property. At least you're

82

1 representing it is, Mr. Clark, correct? You're

2 representing --

3 MR. SCOTT: Mr. Scott. Yes.

4 MR. BOONE: Mr. Scott, you're representing

5 this has to do with the property that we're here

6 on today, right?

7 MR. SCOTT: That is my understanding.

8 MR. BOONE: Okay. So taking that at face

9 value, reserving the right later to object if

10 that turns out not to be true, then I'm not

11 objecting to the relevance of this document or a

12 line of questioning related to the document, as

13 long as the witness knows anything about it. I

14 just don't want to have us move forward assuming

15 that that was the document that Mr. Clark was

16 referring to. We could get hopelessly lost if,

17 in fact, it's not.

18 MAYOR PACHOTA: Okay.

19 THE WITNESS: And perhaps you should ask

20 your questions.

21 Q. (BY MR. SCOTT) This document was signed

22 by Neal Communities by who?

23 A. James O'Shear.

24 Q. And what was his title?

25 A. Primarily the -- he was the senior

83

1 vice-president of finance; retired 42-year employee.

2 Q. I presume he had the authority to sign

3 this --

4 A. Yes.

5 Q. -- on behalf of the company?

6 This document, this agreement relates to the

7 dedication of open space in the subdivisions that

8 were contained within what was called VICA?

9 A. VICA, Venice Industrial Park of

10 Commerce -- Commerce Association.

11 Q. And that would have involved the

12 subdivisions of Cielo, Milano and Aria?

13 A. And Fiore.

14 Q. Okay. And Fiore. Would you agree that it

15 actually describes a time when the required

16 dedication required by 86-130(j)(3) when that

17 dedication is to be made within those subdivisions?

18 A. I don't agree. At least I don't know what

19 section 86-130 --

20 Q. It's actually -- it's actually referenced

21 in the above paragraph.

22 MAYOR PACHOTA: Mr. Scott, I'm just going

23 to remind you: Let him finish answering the

24 question before you -- so that way the court

25 reporter can get one person at a time.

84

1 THE WITNESS: I'm not familiar with this

2 document or what it says, Mr. Scott. I will

3 tell you that we are still actively developing

4 this property and will be for about three and a

5 half years.

6 Q. (BY MR. SCOTT) But let's just go to

7 paragraph 2 on the second page.

8 MS. MOONEY: Mr. Mayor, this is just --

9 we're belaboring a point. Mr. Neal has said

10 he's not familiar with the document. He hasn't

11 read the document. You're asking him questions

12 about this document. Can we -- can we please

13 move on if --

14 MR. SCOTT: It's a very -- I'm sorry. Go

15 ahead.

16 MS. MOONEY: He has not even fully read

17 the provisions you're putting in front of him.

18 I'm not sure what you're -- what testimony

19 you're expecting to prove here.

20 MR. SCOTT: Can I make an offer of proof?

21 MS. MOONEY: No. Please let me finish

22 speaking. I'm not sure what you're trying to

23 get at with this cross-examination, Mr. Scott,

24 so if you could please move this along.

25 MR. SCOTT: Can I make an offer of proof

85

1 to tell you what I'm getting at?

2 MS. MOONEY: You certainly can, but,

3 again, you're asking somebody to testify about

4 something that he has testified he hasn't seen,

5 read or reviewed.

6 MR. SCOTT: It's a document that was

7 signed on behalf of Neal Communities of which

8 Mr. Neal is the president.

9 THE WITNESS: No, sir. I'm the retired

10 chairman.

11 MR. SCOTT: Retired chairman. It relates

12 to the exact question as to when dedication of

13 open space should have been made in the Cielo

14 subdivision. It's an agreement made by Neal

15 Communities of Southwest Florida.

16 MS. MOONEY: Then, Mr. Scott, I think

17 that's an argument to make later, not on cross,

18 when the individual you're crossing has no

19 personal knowledge of this document.

20 MR. SCOTT: That's fine.

21 MS. MOONEY: So I'm not saying you can't

22 make the argument, but this is just not the

23 appropriate time to belabor this point.

24 MR. SCOTT: But for clarification, this is

25 -- this is in the record now, correct?

86

1 MS. MOONEY: Maybe. Was it presented

2 yesterday? I think there's some confusion as to

3 whether --

4 MR. SCOTT: It was presented to Mr. -- no.

5 Mr. Clark referenced it yesterday. Today we

6 have it.

7 MS. MOONEY: Okay. Well, maybe that's a

8 discussion to have with Mr. Clark, but if we

9 could please move this on. I believe you said

10 you had 15 minutes. Gosh, it feels like 15 has

11 already gone by, Mr. Mayor.

12 MAYOR PACHOTA: He still has 8.

13 MS. MOONEY: Okay.

14 MAYOR PACHOTA: With that, I will say,

15 though, if you're not sure it's in the record,

16 make sure it goes to the clerk so that it

17 becomes part of the record. And, as the

18 attorney said, you'll have your opportunity for

19 presentation. Perhaps some of this that you're

20 asking is part of your presentation, so let's

21 try to move it along. I understand you do have

22 8 more minutes, but we don't need to take it if

23 we don't need to, so try to just get to the

24 point.

25 MR. SCOTT: Actually, I'm asking the

87

1 questions, so let me control that, please.

2 Q. (BY MR. SCOTT) And maybe you don't know

3 anything about this document either, so, but let me

4 put it in front of you. It's a document entitled

5 Release and Termination of Cielo Easements and

6 Restrictive Covenants --

7 MR. BOONE: I'm going to -- I'm going to

8 object now that the document's been stated what

9 it is. This is beyond any testimony that

10 Mr. Neal gave during his direct, and

11 cross-examination can only go to what he -- the

12 subject matters that he covered during his --

13 it was Mr. Vogler who testified about plats.

14 MAYOR PACHOTA: Your objection is noted

15 for the record. Please keep it to what

16 Mr. Neal's testimony was.

17 MR. SCOTT: Will I be permitted to recall

18 Mr. Neal as part of my case?

19 MS. MOONEY: No.

20 MAYOR PACHOTA: No.

21 MS. MOONEY: This is your -- you get one

22 opportunity to do cross-examination, Mr. Scott.

23 This is it.

24 MR. SCOTT: And I'm being told that I

25 can't ask the principal actor certain --

88

1 MS. MOONEY: You have not been told that

2 from the mayor. You have been -- there's an

3 objection on the record. The mayor has noted

4 the objection on the record. We don't even know

5 if this witness has seen this document or knows

6 what this document is.

7 Q. (BY MR. SCOTT) Okay. Let me get as much

8 information from you -- since this is my only chance,

9 let me get as much information from you about this

10 document. All right? Have you seen it before?

11 A. Not that I'm aware.

12 Q. Can you tell us just by reading the

13 document who the three parties to the agreement were?

14 A. I can read the agreement out loud.

15 Q. Just the three parties. That's all I'm

16 interested in.

17 A. The Cielo Neighborhood Association, the

18 Border and Jacaranda Holdings, and Neal

19 Communities.

20 Q. And would it be fair to say that you

21 controlled all three of those entities?

22 A. Yes.

23 MR. BOONE: Objection, Mr. Mayor. This is

24 totally out of order because witnesses are only

25 allowed to be cross-examined on what they

1 testified about, and there is a witness who
 2 testified about these issues, but it's not
 3 Mr. Neal. This affected party has the full and
 4 fair opportunity to ask any question he wants to
 5 ask, as long as it's relevant, about plats to
 6 the witness who testified about plats, who was
 7 Mr. Ed Vogler. This is totally out -- this is
 8 totally out of order and a waste of time.

9 MAYOR PACHOTA: Your objection's noted for
 10 the record.

11 MR. SCOTT: And that's actually my last
 12 question. Thank you.

13 MAYOR PACHOTA: Okay. Let's take five
 14 minutes and come back at 3:45.

15 (Recess taken from 3:41 - 3:46.)

16 (End of requested excerpt from
 17 proceedings.)

18 * * * * *

19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
 2 STATE OF FLORIDA)
 3 COUNTY OF SARASOTA)

4 I, AMY E. ROBERTS, Registered Professional
 5 Reporter and Registered Merit Reporter, and Notary
 6 Public in and for the State of Florida at Large,

7 DO HEREBY CERTIFY that I was present at the
 8 foregoing proceedings at the time and place set forth
 9 in the caption thereof; and that I was employed to
 10 and did stenographically report the proceedings; and
 11 that the foregoing pages, numbered 1 through 163,
 12 inclusive, constitute a true and correct transcript
 13 of said proceedings as herein shown; and that said
 14 proceedings were by me reduced to typewriting by
 15 means of computer-aided transcription.

16 I FURTHER CERTIFY that I am not a relative,
 17 employee, attorney, or counsel of any of the parties,
 18 nor am I a relative or employee of any of the
 19 parties' attorney or counsel connected with the
 20 action, nor am I financially interested in the
 21 action.

22 Dated this 8th day of June, 2023.



23 *Amy E. Roberts*

24 AMY E. ROBERTS, RPR, RMR
 25 Notary Public - State of Florida at Large
 Commission #HH 308928
 Expires: January 5, 2027

20
21
22
23
24
25

As you know, I represent the Venetian Golf & River Club Property Owners Association and the North Venice Neighborhood Alliance, as well as several homeowners in the Cielo Subdivision of the Milano PUD, in opposition to the subject rezoning, an amendment to the PUD Binding Master Plan.

The proposed rezoning violates numerous provisions of the Venice Land Development Regulations and Comprehensive Plan, any one of which is fatal to their approval.

We simply ask that you follow the law.

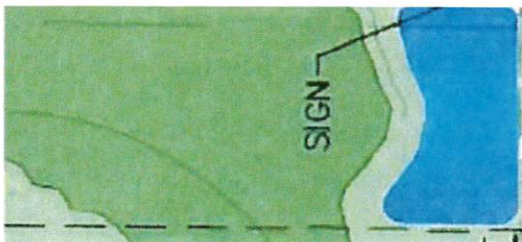
(Worse ever seen in over 35 yrs at. - Venice M. City & Palmetto - its true each time - worse & worse)

What Is Sought by the PUD Amendment

The PUD amendment would change the designation of 10.42 acres at the northwest portion of the Cielo Subdivision from various forms of "Open Space" to "Commercial", together with other amendments to the Binding Master Plan.

This is an excerpt from the current Binding Master Plan showing the current designations for the subject property.

PHOTO



The Legend, again drawn from the Binding Master Plan, shows the dark green as Wetlands, the light green as Open Space and the blue as Lakes.

The applicant seeks to turn all of these 10.42 acres to red, for Commercial, and to pave over the entire property with buildings and parking

Next, this is an aerial photograph of the property, from materials filed with the City by the applicant's environmental consultant.

PHOTO



The table shows the site as 6.6 acres of “Freshwater Marshes”, 2.24 acres of “Reservoirs” and 1.56 acres of “Open Land”, for a total of 10.42 acres. The Freshwater Marshes, a form of Wetlands, cover over 63% of this site

That, in essence, is what is before the City Council. The City’s Land Development Regulations (LDR’s) and Comprehensive Plan determine whether it may lawfully be approved.

Under Chapter 87 of the LDR’s, this amendment is being processed under the regulations in effect at the time of the application, and it is those which we cite.

The Size and Location of the Commercial Site is Unlawfully to Serve the Surrounding Area Rather Than to Serve the PUD

SHOW QUOTE

Venice LDR’s, 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.

The City’s staff report concludes, with respect to the proposed amendment to the PUD Binding Master Plan, **“The character of the use would be commercial development intended to serve the surrounding area”**

SHOW PAGE 7 OF REPORT

The staff report does not address this violation of the first sentence of

Your Planning Commission found the PUD amendment application in violation of this requirement, as one of several reasons for recommending City Council denial, as follows:

“86-130(r) – commercial activity will not be limited to the Milano PUD”

By the way, the Staff Report does not conclude that the proposed amendment complies with all requirements of the Land Development Code and Comprehensive Plan, as Ed Vogler false testified to City Council under oath. Far from it. Generally, such conclusions are avoided.

Read Conclusion on p.11

Cite overwhelming evidence of intent to serve the surrounding area – beginning with:

Show Neal quote in newspaper article

Neal testified to City Council on May 24 that the quote is accurate and he was being truthful.

The following is sworn testimony of Pat Neal at the Planning Commission hearing:

I think this is a good project. I think when we're done you'll be able to approve it and I think you'll be proud to see it when it's done. It will serve roughly 6,900 existing homes, about 12,000 people, not including land that isn't built on yet.

...

[This] is the only feasible site for a grocery store north of I-75 and east of I-75. I think I further stated that a typical grocery store in the 40-50-thousand-square-foot basis wants to see roughly 6,000 rooftops, and this exceeds that number greatly.

[Shown a list of 13 neighborhoods, mainly outside the Milano PUD, that the applicant has claimed in published and website materials would be served by the proposed commercial center]:

This is a list of approved PUDs which are either built out or are being built out in this neighborhood, and it also shows land that has other PUDs headed toward it, and the purpose is to demonstrate that there's a demand for this property and that it's compatible with the neighborhood.

... we think we'll provide a way for walk and bicycle and golf cart trips from the Venetian Golf and River Club." And that the 2,200 homes that we're building in the Milano and Vistera and the 1,500 homes that others are building ... Add to that the existing homes and the number will easily approach 6,000 residents by the year 2030." Well, that's before I had this map that says there's more than that.

The Milano PUD is approved for 1,350 homes.

That of course is far fewer than the 6,000-home market that Mr. Neal claimed for his commercial center. Neal has not disavowed his Planning Commission testimony. He now just asserts, as he said to City Council on May 24, "My intent is more refined than it was, better stated."

The new "more refined" testimony is that he intends to "primarily" serve the Milano PUD even though the shopping center will be open to others.

Note numbers: 1,350 homes in the PUD

6,000 or more outside the PUD

Grocery store needs 6,000 rooftops.

And the Code does not say "primarily" – quote it.

LOBECK:

... everything you said to the Planning Commission before your refined your testimony was truthful, honest and accurate and you're under oath, right?

MR. NEAL: What I said was truthful.

And as to his marketing materials making a similar appeal to serving residents in surrounding areas, 6,000 homes or more, he testified on May 24:

We didn't have the advice of our lawyer in the construction of our marketing materials ...

That could not be a clearer and more blatant violation of Section 86-130(r) of the City's Land Development Regulations.

Then in his testimony under cross-examination, Mr. Neal came down with his excuse: The City has not enforced this Code in other instances so he does not have to comply with it either:

I once again revert to the long-standing City policy which is not to enforce that provision. We were well aware of it at the first beginning, we're well aware of it now, and we'll demonstrate, if necessary, to the elected -- to the Planning Commission and the board and any tribunal having jurisdiction that that has never been enforced or not uniformly enforced by the City of Venice.

That of course – even if it is true – is nonsense.

It is undisputed that the Code is violated by the proposed PUD amendment. As such, it must be denied.

In a May 17, 2023 filing with the City, a planner with the developer's law firm came up with a new argument: The commercial center is less than the total square footage in all of the commercial development allowed in the PUD together so it must be intended to just serve the PUD residents and not the surrounding area.

Again, that is nonsense, and directly contradicted by the size and the location of the proposed commercial center – and the clear testimony of the applicant under oath.

Attention has been focused to date on the Site and Development Plan which the applicant submitted but has pulled from consideration while it seeks approval only for its amendment to the amendment to the PUD Binding Master Plan.

It includes a grocery store of 47,240 square feet, a restaurant of 18,000 square feet and other commercial development of 5,000 square feet, and a parking lot that takes all the rest of the site.

That's no small development. Here is a rendering of the "elevation" of the grocery store frontage provided to the City by the applicant. Note that it is so massive that it runs off the page to include the segment below.

SHOW PHOTO



Section 86-130 (r) of the Land Development Regulations is consistent – although more specific- with Policy LU 1.2.16.7(b) of the Venice Comprehensive Plan for this area, which provides in pertinent part as follows:

The intent of the non-residential portion of the MUR is to provide for neighborhood scale and serving uses; not for regional purposes.

The staff report seems to suggest that all the Comprehensive Plan requires is that the commercial development not be “regional” in scope, by somehow construing that term to mean so vast as to have a “multi-jurisdictional” market area – that is reaching beyond the borders of the City of Venice. That of course is inconsistent with the other part of the Comprehensive Plan policy that nonresidential development in a PUD is limited to a “neighborhood scale.”

Again, though, there is the very clear and restrictive requirement of Section 86-130(r). As to the location restriction of Section 86-130(r), the staff report observes that a majority of other PUD’s have commercial development fronting on exterior, perimeter streets. There is however an important distinction.

Those earlier commercial uses were part of the annexation agreements relating to those lands, and those uses were grandfathered at the time the lands were rezoned as PUDs in accordance with existing land development regulations. The law was followed in those earlier cases.

There is no precedent for the city approving a substantial commercial development designed to serve several thousands of people to be built at a location surrounded by residential neighborhoods, and at the very edge of an already existing PUD, the approved binding master plan for which stated that there would be no commercial property.

Please see the more thorough analysis on this point by Gary Scott which he has independently provided to the City Council.

The Applicant Lacks the “Unified Control” of the PUD Required by the LDR’s

Section 86-130(k) of the LDR’s includes the following:

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.

Also, Section 86-130(t)(3)a of the LDR’s requires that any application for a PUD zoning shall include “Evidence of unified control”. Further, LDR Section 86-23(m)(1) requires that the Planning Commission include among the factors it considers in this application the “Sufficiency of statements on ownership and control of the development ...”.

Section 86-130(v) requires that any amendment to a PUD must comply with the Land Development Regulations governing the PUD. That includes Sections 86-130(k), 86-130(t)(3)a, and 86-23(m)(1), requiring a showing of the applicant's unified control of the PUD. As recited above, that is unified control of "all land in a PUD" and "of the entire area within" the PUD.

That is evidently because a Planned Use Development is planned in advance for the benefit of all property owners in the PUD, so purchasers know what to expect by relying on the "Binding" Master Plan.

The Binding Master Plan says, as to the entire PUD, "Commercial: none."

Now that the developer has lost its Unified Control of the PUD, under the LDR's it's too late to try to change that, even if it could under other constraints identified herein.

The fact that the amendments are to the Binding Master Plan for the entire PUD is shown by the fact that the City required the applicant to produce a new traffic study for the entire PUD, not just the site of the proposed change from Open Space to Commercial.

Indeed, the applicant does not even have Unified Control of the Cielo Subdivision which is sought to be altered. As discussed separately herein, Cielo has been platted of record and lots sold and conveyed, so that the 10.42 acres is committed to open space unless Cielo is replatted with the unanimous joinder of all homeowners explicitly required by section 177.081(2), Florida Statutes.

The only thing that the applicant has presented to the City in response to the City's request for evidence of unified control is a December 13, 2016 deed from the PUD Developer, Neal Communities of Southwest Florida, LLC, conveying the subject property "subject to any restrictions of record and subject to governmental regulations."

The Planning Commission specifically found, "Evidence of unified control was not clearly provided as required by 86-130(t)(3)(a)."

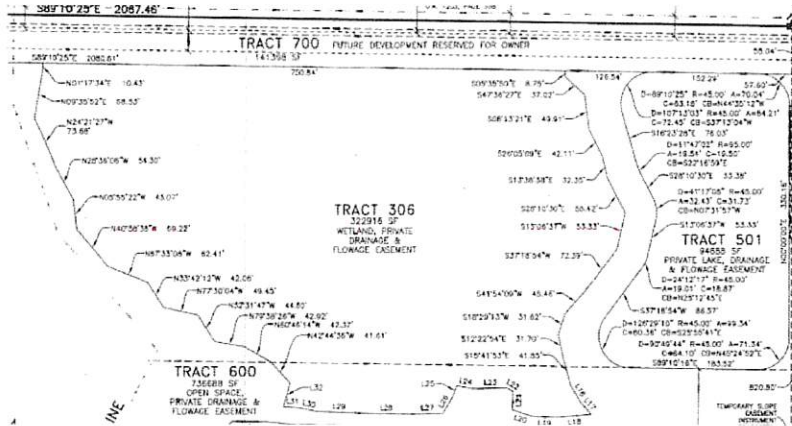
State Law Prevents the Developer from Removing the Cielo Open Space Without a Plat Amendment Executed by All Homeowners

Very importantly and fundamentally, on December 10, 2019 the applicant recorded a final Plat for the Cielo Subdivision, reciting that it was approved by the Venice City Council on November 12, 2019. The minutes of that meeting refer to it as the "final Plat" and the City continues to acknowledge that it is the Cielo final Plat.

The Plat is attached hereto.

Here's a portion of that Plat which includes the site which the applicant now proposes to designate for Commercial development:

SHOW CIELO PLAT EXCERPT



You can see that the proposed “Commercial” property is designated in the Plat for Wetland, Drainage & Flowage, Open Space and Lake.

Specifically, the Tracts which would be taken for the commercial development include all or a part of the following, upon which the Plat – on page 3 of 9 – places the following designations and easements:

Tract 306: Wetland, Private Drainage & Flowage Easement

Tract 501: Private Lake, Drainage & Flowage Easement

Tract 600: Open Space, Private Drainage & Flowage Easement

The only area that the Cielo Plat designates as “Future Development Reserved for Owner” is Tract 700, a narrow strip at the north edge of the Subdivision. It is to the north of the 10.47 acres the applicant now seeks to designate as Commercial and is not within it.

The Cielo homesites were platted to the southwest of this site.

This is how the applicant chose to plat and develop Cielo.

Initially, the applicant sought approval of a Plat amendment and a Site and Development Plan at the same time as the proposed amendment to the PUD Binding Site Plan, for the Commercial designation.

Then on July 13, 2022, I emailed objections to the City for NVNA that included the following:

Written Consent of All Cielo Owners Is Required to Amend the Plat

Section 177.051(2), Florida Statutes provides that once a Plat for a subdivision is recorded, any amendment is deemed to be a "Replat" and is subject to the same requirement as for a Plat in the statutes.

SHOW
CODE

That includes not only approval by the City under section 177.071, Florida Statutes, but also the following, under section 177.081(2), Florida Statutes:

Every plat of a subdivision filed for record must contain a dedication by the owner or owners of record. 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.

Accordingly, the Cielo homeowners cannot have their open space stolen from them by the developer for commercial development without their written consent. That has not been obtained. The statutes prohibit the City from approving the replat until that consent has been obtained.

From what we have learned is a finding by staff in consultation with the City Attorney that this conclusion is correct, on August 1, 2022, City Senior Planner Nicole Tremblay included the following in a letter to the applicant requiring responses to deficiencies found in the applications:

Please address F.S. § 177.081(2) regarding the requirement for all property owners included in the recorded final plat for Cielo to execute the dedication on the proposed revised plat (or through separate instrument).

SHOW
STAFF
LETTERS
IN
APP. -
RECORD

After receiving that letter, the applicant chose not to respond and still to this day has not done so. Instead, it decided to put off its proposed Plat Amendment, as well as its Site and Development Plan, and instead seek approval only of its proposed amendment to the PUD Master Plan. In doing so, the applicant evidently hopes that the City will overlook the applicant's lack of authority to seek and obtain the change. The applicant wants the City to say, "OK we'll give you this change in Milano PUD even though it is against what is now binding on the property and violates what is committed to the Cielo homeowners in their Plat."

Further, the applicant recently applied for approval by the City Engineer of a Plat amendment to change the open space to commercial. The City Engineer rejected the request, pointing out that it is inconsistent with the Milano PUD Binding Master Plan and again asked the applicant to address F.S. § 177.081(2) regarding the requirement for all property owners included in the recorded final plat for Cielo to execute the dedication on the proposed revised plat (or through separate instrument).

Again, the applicant has not responded.

It is also worth considering that after the applicant recorded the Cielo Plat, it sold most of the lots created by the Plat, with representations that the subject site would be preserved Open Space, as provided in the Plat and the PUD Binding Master Plan. (The applicant only stopped doing that very recently, in marketing the remaining platted homesites).

SHOW MAPS FROM TIM KENNY AND THE THREE WITH DISTANCE

Re: Kenny -- This was just after Mr. Neal conducted his required workshop showing plans to convert this Preserve into a commercial center.

-- Why that matters --

Mr. Kenny testified that he can see the subject Parcel.

Mr. Neal said he went there at night and could not see it.

At the Planning Commission hearing the applicant contended that it should be permitted to replat Cielo just like what was done in the Aria and Milano subdivisions.

Regarding those two subdivisions, Neal in those instances reserved specific identified tracts for future residential development on the final plats for those subdivisions. Neal then later replatted those tracts as residential, not commercial. That is not what happened in Cielo.

The Cielo final plat only reserved Tract 700 for future development, which is a very narrow strip of land running adjacent to Laurel Road and which relates to the plan to widen that road. The land upon which the applicant now wants to construct a commercial center was never reserved or intended for development and was always identified as open space.

To Protect Residents, the LDR's Require That Any Commercial in a PUD Be Vetted at the Time the PUD is Approved – Not Later by Amendment

Section 86-130(b)(8) of the Venice Land Development Regulations allows a PUD to designate commercial development at the time when the PUD is approved. That disallows the proposed PUD amendment, now many years after the PUD was approved with no commercial development. (As such, it also renders the proposed Site and Development Plan and Plat amendment inconsistent with the PUD).

SHOW REGULATION

DIVISION 8. - PLANNED DEVELOPMENT ZONING DISTRICTS

Sec. 86-130. - PUD planned unit development district.

(b) *Permitted principal uses and structures.* **Permitted principal uses and structures in PUD districts are:**

- (1) Single-family dwellings, cluster housing and patio houses.
- (2) Townhouses.
- (3) Multiple-family dwellings.
- (4) Private clubs, community centers, and civic and social organization facilities.
- (5) Parks, playgrounds, putting greens and golf courses.
- (6) Essential services.
- (7) Houses of worship, schools, nursing homes and child care centers.
- (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.**
- (9) Other uses of a nature similar to those listed, after determination and recommendation by the planning commission, and determination by the city council at the time of rezoning that such uses are appropriate to the PUD development.

The Milano PUD included no commercial uses at the time it was originally approved as the VICA PUD in 2014 and when it was merged into the Milano PUD by Pat Neal's companies in 2017. When the developer sought that PUD merger in 2017, and kept the PUD free of commercial development, the City Planning staff recommended approval, noting that the land use of the PUD was residential and that the adjacent land use was residential, and as such they were compatible. Staff also found that the PUD protected single family neighborhoods from the intrusion of incompatible uses, thus was consistent with the City's Comprehensive Plan.

The evident purpose of this timing element is so that persons buying into and around the PUD will know the whole package of what will be built, and will not be subject to a bait-and switch, such as is being now proposed, to find that designated open space is to be removed and replaced with the adverse impacts of commercial development.

The PUD Amendment Creates Commercial Impacts Which Are Incompatible with Affected Residences

Policy 8.2 of the Venice Comprehensive Plan provides as follows (emphasis added):

Land Use Compatibility Review Procedures.

Ensure that the character and design of infill and new development are compatible with existing neighborhoods. Compatibility review shall include the evaluation of the following items with regard to annexation, rezoning, conditional use, special exception, and site and development plan petitions:

- A. Land use density and intensity.
- B. Building heights and setbacks.
- C. Character or type of use proposed.
- D. Site and architectural mitigation design techniques. Considerations for determining compatibility shall include, but are not limited to, the following:
- E. Protection of single-family neighborhoods from the intrusion of incompatible uses.**
- F. Prevention of the location of commercial or industrial uses in areas where such uses are incompatible with existing uses.**
- G. The degree to which the development phases out nonconforming uses in order to resolve incompatibilities resulting from development inconsistent with the current Comprehensive Plan.
- H. Densities and intensities of proposed uses as compared to the densities and intensities of existing uses.

Regarding Policy 8.2 of the Comprehensive Plan concerning compatibility, the question is whether a commercial center of this size, which is to include a full-sized supermarket as well as a fast-food restaurant with a drive-through window, and multiple other stores, is compatible with the surrounding neighborhoods.

This Council as well as the Planning Commission has on multiple occasions cited Policy 8.2 to support a decision to deny a developer's application. Multiple times in the past, Policy 8.2 has been utilized as it should be to protect residential neighborhoods from incompatible uses. Just as one example, in May, 2018, an application to amend the Pinebrook South PUD to add a permitted use was before the Council. The applicant wanted to construct rental apartments within the PUD. The Council decided that such a use would be incompatible and denied the application. There are other, similar situations that have also occurred, as the Council is no doubt aware.

Related to the issue of incompatibility are not only the traffic congestion issues addressed otherwise herein, but the issue of whether changing conditions since adoption of the PUD create a need for the commercial center at this location.

The Planning Commission report includes as Reason #4 for denial: Compelling evidence for changing conditions was not presented as required by 86-47(f)(1)(f).

There has been no evidence that this proposed change in use is necessary because of changing conditions. All the evidence by way of speakers at the Planning Commission hearing was that a commercial center at this location is not needed. There has been no evidence that residents are currently inconvenienced as far as their commercial needs or that the nearby retail stores, restaurants, and professional offices are unable to meet the current demand. The proposed commercial center is not needed.

The applicant suggests that this area of Venice is growing, that this commercial center is or will be needed and it will benefit those in the area by providing convenient shopping on the east side of I-75. But the majority of those people, who according to Neal will benefit the most from the commercial center, do not want it. Surveys performed in the Venetian Golf and River Club, Cielo and Aria communities were similar in their results. Approximately 70%+ of those responding are opposed to the commercial center.

And as far as the commercial center providing convenient shopping, there is already a variety of commercial services available nearby. Within three miles of the proposed location there are two significant commercial developments and literally hundreds of stores, shops, restaurants and professional offices. The fact that there is nearby convenient shopping was promoted by Neal in its marketing material that was given to prospective buyers of homes in the Cielo community said:

"Cielo is just minutes away from your everyday destinations-golf courses, shopping, dining...and more are also within a short drive."

"Cielo residents have easy access to the area's best beaches, local schools, shopping and restaurants, ..."

Most of the residents of the area do not want to pay the price of a diminution in their quality of life in exchange for more convenient shopping, and there was no evidence presented showing that more convenient shopping is needed. It matters to those residents where they live, not where they shop

The Open Space Dedication Requirement Is Overdue and Bars the Amendment

A similar protection against a bait-and-switch to develop designated open space in a Planned Unit Development is provided in Section 86-130(j)(3) of the LDR's, as follows:

**SHOW
CODE**

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 99

years. 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.

Section 86-570 of the LDR's defines "Open Space" as that term is used in the LDR's as follows:

Open space means property which is unoccupied or predominantly unoccupied by buildings or other impervious surfaces and which is used for parks, recreation, conservation, preservation of native habitat and other natural resources, or historic or scenic purposes. It is intended that this space be park-like in use. The term "unoccupied or predominantly unoccupied by buildings or other impervious surfaces," as used in this definition, shall mean that not more than five percent of the area of any required open space, when calculated by each area shall be occupied by such surfaces. Such open space shall be held in common ownership by all owners within the development for which the open space is required. Any property within 20 feet of any structure (except accessory structures within the designated open space) or any proposed open space area having any dimension of less than 15 feet, shall not be considered open space in meeting the requirements of this chapter. Where areas within a development are identified as native habitat, such areas shall be utilized to fulfill the open space requirements of this chapter.

The land within Cielo that Neal proposes to use for a shopping center includes land identified on the final plat as open space. (Tract 600). That same land is designated in the PUD Binding Master Plan as "Open Space" (as graphically shown above), with the remainder of the site labeled "Wetland" and "Lake", which are other forms of Open Space under the LDR definition just recited.

The subject land was "designated as open space" when the Milano PUD Binding Master Plan was adopted in 2017, if not before in the preceding PUD in 2014.

As such, it is required by LDR Section 86-130(j)(3) (as recited above) to be restricted as open space perpetually by a recorded legal instrument. Not commercial development. Open Space.

Additionally, Section 86-231(c)(2)(n) of the Land Development Regulations provides that a final plat is to include a dedication to public use "of all streets, alleys, parks or other open spaces shown thereon ..." (emphasis added). "Final plat" is defined in Section 86-230 as the final map of all or a portion of a subdivision which is presented for final approval.

The intention of the LDR's is clear. When a final plat is prepared, any open space shown on that plat is to be protected in the plat for that purpose. The fact that it was not done in regard to the Cielo Subdivision final plat should not result in the open space shown on the plat being allowed to be converted to asphalt and concrete. That open space instead should immediately be dedicated to the city by separate legal instrument as should have been done two and a half years ago.

The staff report states:

The City's position has historically been that this dedication should take place at the final plat of the last phase of a PUD. While a recent policy change has been made to begin requiring this at the final plat of each phase of a PUD, this procedure has not been in place throughout the lifetime of the Milano PUD.

That previous practice of delaying the open space dedication until the final plat in the PUD is not supported by the wording of the applicable LDR's.

Even so, the final plat of the last phase of the Milano PUD has in fact been approved and recorded! As such, the Open Space dedication is due or overdue, and as such is protected by the LDR's from a change of Open Space to Commercial.

Milano PUD is made up of the Milano, Cielo, Aria and Fiore subdivisions. The last final plat within that PUD to be approved by the city was that of the Fiore subdivision on July 13, 2021.

At the Planning Commission meeting of July 5 that related to the transfer of 24 acres of open space within Milano, city attorney Kelly Fernandez spoke of the city's practice, saying, "Our LDR require open space at the time of the final plat to be dedicated for 99 years... At the time of the final plat is when we have on the plat itself the language that protects the open space for 99 years."

The fact that the Cielo subdivision has been fully platted was confirmed in an email by Roger Clark, Director of Planning and Zoning, dated June 17, 2022. There should have by now been a dedication of the open space shown on the Cielo final plat.

The legal instrument required by 86-130(j) and by the stated practice of the department should have been executed and submitted to the city for approval and recording at the time the Cielo final plat was approved, thereby protecting the open space within that subdivision for 99 years. That is what was done with the Fiore subdivision, the last final plat in the PUD, when it was recorded on July 13, 2021. Why it was not also done on the Cielo Plat is unknown. However, any way you look at it the Open Space dedication for Cielo is overdue and is required now.

The requirement of the LDR's for the recorded Open Space protection precludes amending the PUD Binding Master Plan to convert the Open Space in Cielo to Commercial development.

The staff report states:

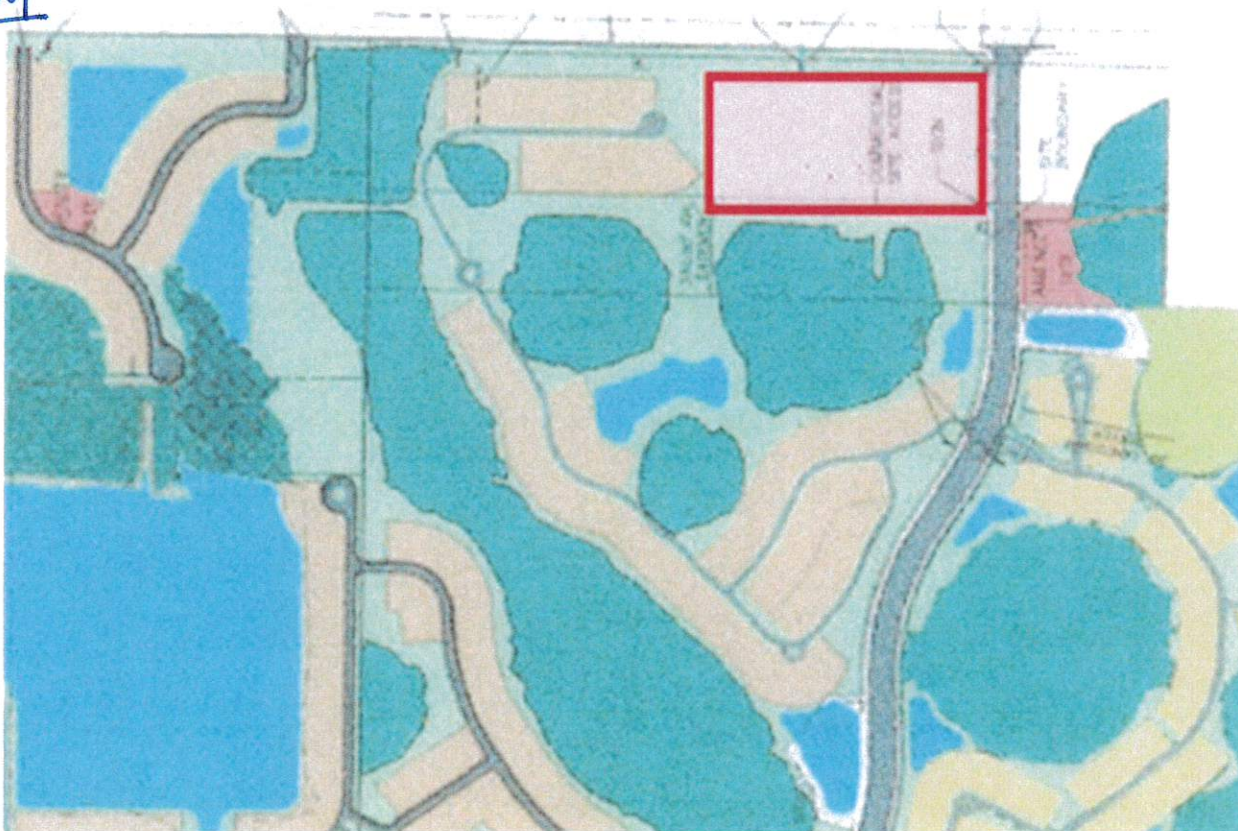
The Binding Master Plan shows a development area of residential lots that have not yet been memorialized through a preliminary or final plat. Therefore, the final recording of the dedication of open space for the entire PUD has not taken place.

Staff has confirmed that this is the position being taken by the applicant and that it refers to an area shown by two rectangles on the Binding Master Plan within what became the Cielo subdivision.

Below are those two rectangles with the proposed Commercial area added to their right (east), for illustration purposes.

The Cielo developer did not choose to include this area of potential residential development in the Cielo Plat, which restricts the uses of that land. Why the developer left out that residential development is unknown. One logical conclusion, however, is that if the proposed PUD amendment is approved, the developer planned to move to convert what is now protected Open Space in this area on the Cielo Plat to a westward extension of that Commercial area. (Although Mr. Neal “promised” to the Planning Commission when pressed on this point that he would not do that, there is no stipulation to that effect in the proposed amendment of the Binding Master Plan). In any event, that consideration is immaterial to the illegality of the current proposed amendment.

JBW



Very significantly, the current Binding Master Plan for the Milano PUD states, “Where the PUD Master Plan identifies areas for residential uses, the developer shall have the option to convert such residential uses to open space.” (There is no mention of an option to convert any open space to additional residential uses or any commercial use).

So this is exactly what the developer did, in recoding the Cielo Plat with the omitted homesites instead converted to open space.

Again, the applicant determined not to include that area for homesites in the Cielo Plat. Therefore, those homesites cannot be added to the site without the joinder of all homeowners in the Subdivision as required by s. 177.081(2), Florida Statutes. There is no “memorializing” of such homesites to be done, whatever that means, through a future amendment of the Cielo Plat for which the applicant lacks the required legal authority.

In any event, City staff acknowledges that a final Plat has been approved and recorded for the entirety of the Milano PUD, including specifically Cielo. As such, even under staff’s excessively liberal interpretation of when the Open Space dedication is due, it is clearly due – past due – today and an amendment of the Binding Master Plan which is inconsistent with the requirement of dedication of the Cielo open space is not allowed.

There have been references to the final Plat of Cielo not being as a “final final Plat.” **There is no such thing**, in the LDR’s or otherwise, **as a “final final Plat.”** Even if it is contemplated that a final Plat can be amended, that does not negate its character as a final Plat. If that was the case, there would never be a final Plat even after a final Plat is recorded, and everyone would have to wait forever for that potential amendment until the final plat becomes “final final.”

If the Open Space dedication was not due for reason of a potential future amendment of the Cielo Plat to add more homes, it may never be due if the developer sought not to pursue that change. Clearly that cannot be the case, and under the LDR’s the Open Space dedication was due at the time of the Cielo plat, and even with staff’s previous historic delay until the final plat for the subdivision is approved, it is due because that final plat has occurred.

Additionally, Section 86-570 of the LDR contains a definition of “open space”, which includes the statement, **“Such open space shall be held in common ownership by all owners within the development for which the open space is required.”** For any meaning to be given to that requirement, the Open Space in Cielo as provided not only in the Binding Master Plan but certainly as provided in the approved and recorded final Plat of the Cielo subdivision must be deemed to be held in common ownership by all owners in the Cielo development.

Cielo Declaration and State Law Protect the Open Space

City staff has indicated that it’s not considered appropriate to look to the Cielo Declaration of Covenants, Conditions and Restrictions for any prohibition on what the applicant seeks to do, in converting designated Open Space to Commercial.

However, because the Declaration operates as a covenant binding the property, and together with the Plat protects the property rights of the Cielo homeowners, it is relevant. It further shows that the applicant does not have the authority to obtain the requested change in the Milano PUD Binding Master Plan as to the subject Cielo property.

Under Section 4.01(a) of the Cielo Declaration of Covenants, Conditions and Restrictions, the Common Property includes the following property listed by reference in Exhibit "E" of the Declaration, as follows:

As set forth on the Plat for Cielo

Tract 100: Private Roadway, Ingress, Egress, Utility, Drainage, Landscape & Hardscape Easement

Tract 200: Amenity Center

Tracts 300-306: Wetland, Private Drainage & Flowage Easement

Tracts 500-504: Private Lake, Drainage and Flowage Easement

Tracts 600-603: Open Space, Private Drainage & Flowage Easement

Operation and Maintenance Responsibilities for Above-Referenced Tracts

Tracts 100 through 603 shall be privately operated and maintained as Common Areas, Common Property and/or Common Elements by the Cielo Neighborhood Association, Inc., in accordance with the Declaration.

(Section 1.11 of the Declaration provides that the terms Common Area, Common Property and Common Elements as they appear are interchangeable).

Exhibit "E" then provides:

Reservation for Owner:

Tract 700: Future Development Has Been Reserved for Owner – Owner has been defined on the Plat at Border and Jacaranda Holdings, LLC and Neal Communities of Southwest Florida, LLC

Again, Tract 700 is the narrow strip of land at the north edge of Cielo, which the applicant is not including in the proposed PUD amendment for commercial development.

Section 4.01(d) of that Declaration provides that the Declarant, Neal Communities of Southwest Florida, LLC, may amend "the development plan and/or scheme of development of the Common Property", provided that such an amendment "does not delete or convey to another party any Common Property designated, submitted or committed to common usage if such deletion or conveyance would materially and adversely change the nature, size and quality of the Common Property." Clearly, the proposed deletion of Open Space through a PUD Master Plan amendment and its replacement with Commercial development would violate that standard.

There are provisions in the Declaration which purport to grant authority to the Declaration to amend the Plat, but they are subject to limits in the Declaration which would prevent what the applicant seeks, such as requiring that any removed Common Area be replaced with comparable new Common Area and others which provide that a Common Area may not be deleted if that would "materially and adversely change the nature, size and quality of the Common Property". The rules of construction require that they be read together to give effect to all where possible and that ambiguities be construed against the drafter, so the limits will prevail.

More important, the Declaration is subject to state statutes in effect at the time. That includes 177.081(2), Florida Statutes, which requires that every property owner in the subdivision execute any replat, before witnesses and a notary the same as for a deed. Neal seeks to address that by including in the Declaration that each owner must sign such an instrument and if an owner does not, it is not needed. It is highly unlikely that a court would order lot owners to sign the replat sought by the applicant and it would violate the statute to replat without it.

And even better, the Declaration is subject to 720.3075, Florida Statutes, which limits Developer amendments. Subsection (5) of that statute provides:

It is declared the public policy of the state that prior to transition of control of a homeowners' association in a community from the developer to the nondeveloper members, as set forth in s. 720.307, the right of the developer to amend the association's governing documents is subject to a test of reasonableness, which prohibits the developer from unilaterally making amendments to the governing documents that are arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of existing nondeveloper members to use and enjoy the benefits of common property; or materially shift economic burdens from the developer to the existing nondeveloper members.

The statutory definition of "governing documents" includes the Declaration and its exhibits, which includes Exhibit E listing the Common Properties.

The "Release"

In their extensive rebuttal arguments before the Planning Commission, the applicant's attorneys spent most or much of their time focusing on a certain "Release and Termination of Cielo Easements & Restrictive Covenants" ("the Release") which was recorded in the public records on October 21, 2022 by the Developer-controlled Association and by Border and Jacaranda Holdings, LLC and Neal Communities of Southwest Florida, LLC (together, for the purposes of this discussion, "the Developer").

The Release purports to remove 10.42 acres of open space located within the Cielo Community at the southeast corner of Jacaranda Boulevard and Laurel Road from the Declaration. It is stated in the Release that those 10.42 acres "shall no longer be deemed Common Property of the Association."

The so-called "Release" is clearly invalid, because there is no basis of authority it to be created (and no such basis is even sought to be recited therein), because it conflicts with and does not seek to amend the Cielo Declaration in which the Common Property is identified, because it conflicts with the governing Plat, and because even if done as a Declaration amendment it conflicts with protections of

the Common Property in the Declaration and violates ss. 177.081(2) and 720.3075(5), Florida Statutes, as recited herein.

Further, the Release was not properly approved by the developer-controlled Association. Upon inquiry, there has never been an Association Board meeting at which the Release was mentioned, much less discussed or voted upon, and the homeowners have been denied any knowledge of the matter until the recent discovery of the Release in the public records.

The Release states that the parties to it, which includes the developer-controlled Association, “agree that it is in the best interests of the landowners within the Cielo Subdivision”, to release the 10.42 acres from the terms of the Declaration, which under the stated terms of the Release includes removing it from the Common Property of the Association. Certainly, again from inquiry, this does not reflect the views of the large majority of Cielo homeowners.

The only aspect of the 10.42 acres addressed in the Release is an assertion by the Developer that “no Association drainage and/or flowage systems or facilities exist” on the property nor are they “necessary” for any such systems or facilities and that their removal from the Common Properties “shall have no material or negative impact on the drainage and flowage of the remaining portions of the Cielo Subdivision.” This is despite the fact that all of the 10.42 acres is designated on the Cielo Plat as being for “drainage and flowage” and include a large wetland area which the Developer’s environmental consultants have labeled “freshwater marshes” and a large lake which those consultants label as a “reservoir.”

The entirety of the Cielo Subdivision is subject to (1) the Cielo Declaration and (2) the Cielo Plat, both of which are recorded in the public records of Sarasota County. The deletion of the 10.42 acres from Cielo’s Open Space, to allow commercial development by the Developer, violates both the Declaration and the Plat.

This is reflected in the fact that, again, despite having several Whereas clauses, nowhere in the Release is any statement of the authority for it to be done.

It is undisputed, and acknowledged in the Release, that the 10.42 acres is Common Property of the Cielo Subdivision. That is clear under Section 4.01 of the Declaration and the Exhibit “E” to the Declaration which it incorporates in the Declaration by reference.

SHOW DEC PAGES

Several provisions in the Cielo Declaration grant broad authority to the Developer to delete Open Space, including in Sections 2.02(c), 2.03, 4.01(d) and 12.04. However, Section 4.01(d) includes the following (emphasis added):

Declarant reserves the right to amend and alter the development plan and/or scheme of development of the Common Property, in Declarant's sole and absolute discretion, provided such amendment does not delete or convey to another party any Common

Property designated, submitted or committed to common usage if such deletion or conveyance would materially and adversely change the nature, size and quality of the Common Property.

Also, because the 10.42 acres are identified as Common Area in the Declaration, including explicitly in Exhibit "E" thereto, its deletion would require a Declaration amendment. Section 12.6 of the Declaration begins, "This Declaration may be amended only in accordance with this Section," and then provides, as subsection (a) (emphasis added):

Prior to the Turnover Date, Declarant reserves the right to amend this Declaration, the Articles and By-Laws in any reasonable manner whatsoever, without the requirement of Association consent or the consent of any Lot Owner or the mortgagee of any Lot, so long as such amendments do not delete or convey to another party any Common Property designated, submitted or committed to common usage if such deletion or conveyance would materially and adversely change the nature, size and quality of the Common Property; provided however, this provision shall not limit or affect the Developer's ability to re-plat and/or reconfigure all or part of the Subdivision's Common Property and amend the Declaration in connection therewith. Notwithstanding anything to the contrary herein, the Declarant reserves the right to relocate or reconfigure the Common Areas, including the right to substitute relocated or similar Common Areas in other locations within the Subdivision, thereby deleting the Common Areas in the prior location. The right of Declarant to amend as herein set forth shall prevail, anything else contained herein to the contrary notwithstanding.

Clearly, the deletion of the 10.42 acres of Open Space for commercial development by the Developer is not "reasonable", "would materially and adversely change the nature, size and quality of the Common Property" and would not "relocate or reconfigure the Common Areas" such as to "substitute relocated or similar Common Areas in other locations within the Subdivision, thereby deleting the Common Areas in the prior location" – as no substitute Common Areas are provided.

Applicable rules of construction mandate that meaning must be given to all language used, on the presumption that unnecessary language is not included. Also, separate provisions must be read together (*in pari materia*), to create a harmonious scheme and avoid inconsistency. Also, more specific provisions prevail over general ones. And despite the Developer's attempt in the Declaration to disavow the rule that ambiguities are construed against the drafter (the Developer), that rule prevails where the document, as here, is not jointly drafted. Accordingly, despite broad grants of authority to the Developer in the Declaration with regard to Open Space, the stated limitations on that authority – as recited above -- must be given effect.

Additionally, the Declaration is subject to 720.3075, Florida Statutes, which limits Developer amendments. Subsection (5) of that statute provides:

It is declared the public policy of the state that prior to transition of control of a homeowners' association in a community from the developer to the nondeveloper members, as set forth in

s. 720.307, the right of the developer to amend the association's governing documents is subject to a test of reasonableness, which prohibits the developer from unilaterally making amendments to the governing documents that are arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of existing nondeveloper members to use and enjoy the benefits of common property; or materially shift economic burdens from the developer to the existing nondeveloper members.

The statutory definition of "governing documents" includes the Declaration and its exhibits, which include Exhibit "E" listing the Common Properties.

Certainly, turning the 10.42 acres of declared Common Property and open space into commercial development for the economic benefit of the Developer would be unreasonable, as well as arbitrary, capricious and in bad faith, would destroy the general plan of development under which the Cielo homeowners bought their homes, and would prejudice the rights of existing nondeveloper members to use and enjoy the benefits of common property. As such, it is unlawful under s. 720.3075(5), Florida Statutes.

Further, because the 10.42 acres is platted as open space on the Cielo Final Plat, its deletion to allow commercial development requires a replat under state law. Section 177.081(2), Florida Statutes requires that every property owner in the subdivision execute any replat, before witnesses and a notary the same as for a deed. The Developer seeks to address that by including in the Declaration that each owner must sign such an instrument and if an owner does not, it is not needed. It is highly unlikely that a court would order lot owners to sign the replat sought by the applicant and it would violate the statute to replat without it.

The Developer has applied for City approval of a replat to change the 10.42 acres from open space to commercial development. City staff has appropriately required the Developer to address the statutory requirement of execution by all Cielo homeowners, which the Developer to date has failed to do.

Accordingly, because the "Release" is inconsistent with the Cielo Plat, it is legally ineffective in removing the 10.42 acres as Open Space.

Apart from the illegality of the Release under the Declaration and state law, this back room maneuver of the Neal companies to take open space that is within the control of the Neighborhood Association and the homeowners of Cielo without their knowledge or consent should not be given effect.

Traffic is a Major Problem and Remains Unresolved

Under Sec. 86-47(f)(1) of the LDR's, the Planning Commission is required to report to the City Council for this proposed rezoning (such as a PUD amendment) that it "has studied and considered the proposed change in relation to several factors, including:

h. Whether the proposed change will create or excessively increase traffic congestion or otherwise affect public safety.

The Planning Commission has reported to you the following, in support of its recommendation for denial: “Congestion may be increased excessively by this proposal.”

The trip generation study prepared by the applicant’s traffic consultant concluded that the “commercial development is expected to generate a total of 704 total trips with 413 new trips after accounting for pass-by trips and internal trips.” The City’s consultant stated that the traffic impact statement submitted by the Applicant “does not look at intersection operations or site access”. At this point the City has not been provided any information as to what traffic congestion is going to result from there being 704 trips generated by the development and with its entrance being directly across Laurel Road from the entrance to the VGRC. But it should not take a traffic consultant to tell a person that there is going to be congestion.

Confirming the idea that the shopping center is going to result in traffic congestion is Appendix A to the Applicant’s traffic consultant’s traffic analysis which is part of the Applicant’s Petition. That attachment, which is identified as a “Site Plan”, shows that **there is going to be seven lanes of traffic on Laurel Road at the entrances to the commercial center and the Venetian Golf and River Club.**

Imagine a resident of the VGRC, elderly or not, exiting the community and wanting to turn left on Laurel or go straight into the commercial center. (That person most likely will not be walking to the super market since that would require him or her to walk across seven lanes of traffic while, at least on the return trip, carrying one sack or more of groceries. Despite what the promotional material of the developer depicts, that is rarely going to happen, and never will walking across seven lanes of traffic twice be a safe proposition.) That driver, while sitting at the stop sign, will need to be accessing what as many as seven different vehicles are doing. There is not only going to be congestion, there is going to be confusion and an increase in the number of accidents. Approval by the City of the proposed regional shopping center at this location will create a dangerous intersection. Would governmental immunity protect the City if such a dangerous intersection were knowingly approved?

The Applicant claims that the total number of trip miles and the number of trips are going to be reduced as a result of people in the area having to travel fewer miles for their shopping needs. And Laurel Road is going to be widened, which will reduce traffic congestion. Common sense tells us that traffic congestion at the entrance to the Venetian and the proposed regional shopping center will be greatly increased not decreased.

Laurel Road may be widened. But in its current state as a two-lane road, it will fail as a result of the increased traffic, according to all of the consultants. And depending upon what underlying traffic data is used, **Jacaranda Boulevard may also fail as a two-lane road according to the City’s traffic**

consultant. These projected road failures provide an idea as to the amount of traffic that would result from the proposed commercial center.

The staff report states that although the City cannot deny the amendment under state law solely for failure to meet “concurrency”, that is exceeding the adopted level of service on affected roads and intersections, the City can validly deny based on factors which include the effect of excessive traffic on compatibility. The functional safety of affected road segments and intersections would be another, including, again, notably the intersection that the commercial entrance and exit would share with Venetian Golf & River Club, on the other side of Laurel Road.

The PUD amendment, with its very sparse limits on the 10.47 acres, allows much more commercial development than the 70,240 square feet on the Site and Development Plan which will not be before the Planning Commission – being sufficient for up to 227,000 square feet of commercial buildings under the .5 FAR provided.

The traffic from the large commercial development depicted in the Site and Development Plan is itself very large even by the traffic study in which the applicant seeks to lowball traffic by its violations of the required Methodology – an increase of 945 PM peak vehicle trips on affected road segments and intersections. It can only be imagined what would be shown by a proper and lawful traffic study – particularly if it includes the traffic allowed by the maximum potential development if the proposed PU

In addition to the deficiencies in the traffic study noted by the City’s experts, there is the fact that it only analyzes traffic from the Site and Development Plan which is not before the City Council, rather than from the proposed amendment to the PUD Binding Master Plan, which is the only proposal actually at issue.

Indeed, the City’s consultant stated that the traffic impact statement submitted by the applicant “does not look at intersection operations or site access.”

Paving Over the Wetlands Violates the Comprehensive Plan

The subject site was left as open space in the proposed and approved Milano PUD Binding Master Plan for an obvious reason. It is among the extensive system of wetlands and wetland buffers throughout the northern part of the Cielo subdivision.

The applicant’s environmental consultant shows the environmental features of the site in the filed materials as follows:



The “Open Land” includes wetland buffers. Even the path around what are elsewhere referred to as “Ponds” includes many trees. The developer proposes to clear the site of trees, as well as the extensive existing heavily treed buffer area to the north of it.

And then there are the wetlands, shown as Freshwater Marshes on this exhibit, 6.6 of the 10.42 acres comprising the site.

The developer explicitly seeks permission from the City to pave over all of it.

Although the developer’s environmental consultant sees no problem with paving the wetlands, another environmental evaluation of the site filed with the application, dated June 13, 2022 by Florida Natural Areas Inventory, rates them a full 7 out of 10 for water environment and wetland plants.

That evaluation also concludes that the “Wetland provides some habitat for wading birds and other wetland dependent species” and “Wading birds have been observed foraging in the wetland.” Even the developer’s consultant acknowledges that the use of the wetlands by wood storks, an endangered species, is “likely” and that there is a “potential” for sandhill cranes and other listed species. If any are observed during construction, the developer’s consultant promises (wink wink) that the developer will respond appropriately.

Further, there is nothing in the developer’s environmental reports which evaluates the impact of paving over the site on adjacent wetlands, which from observation appear to have high environmental value. For example, this is a recent photograph of a wetland area directly to the south of the

site. Wading birds, which include listed species, observed the day of the photo include roseate spoonbill, wood stork, great egret, snowy egret, glossy ibis, white ibis, great blue heron, little blue heron and blue-winged teal.



Policy OS 1.3.1 of the Venice Comprehensive Plan mandates “Requiring development to first avoid impacts to wetlands” and then to minimize impacts and then only mitigate for impacts when impacts to wetlands “are unavoidable.”

More fully, the policy provides as follows (*emphasis added*):

Strategy OS 1.3.1 - Wetland and Aquifer Recharge Areas Protection

The city shall protect its groundwater sources, particularly in wetland and aquifer recharge areas, through its Land Development Code and review processes by:

1. Establishing site plan requirements to ensure developments evaluate natural drainage features, man-made drainage structures, and impact to wetland and aquifer recharge areas
- 2. Requiring development to first avoid impact to wetlands and aquifer recharge areas**
- 3. Requiring development to minimize impact and then mitigate for impacts to wetlands and aquifer recharge areas when impacts to wetlands and aquifer recharge areas are unavoidable**
4. Limiting activities/uses that are known to adversely impact such areas
5. Restoring/mitigating wetlands in connection with new development
6. Maintaining the natural flow of water within and through contiguous wetlands and water bodies

7. Maintaining existing vegetation to serve as buffers to protect the function and values of the wetlands from the adverse impacts of adjacent development
8. Requiring any wetland mitigation be based upon the most current state-approved methodology
9. Prohibiting the dredging, filling, or disturbing of wetlands and wetland habitats in any manner that diminishes their natural functions, unless appropriate mitigation practices are established in coordination with and approved by local, regional, state, and federal agencies
10. Coordinating with Sarasota County, Federal, and State review agencies on wetland designation, mitigation policies, and regulations.

In direct violation of this policy, the developer seeks City approval to go right to destruction of the wetlands and “mitigation” by purchasing four “mitigation credits” from the Myakka Mitigation Bank, to improve wetlands elsewhere, which the applicant’s environmental consultant acknowledged to the Planning Commission is outside the City of Venice.

The developer’s environmental consultant seeks to justify the total wetland destruction by stating that “there are limited alternatives that allow an economically viable project on the subject property.”

How about scaling down the project to the truly neighborhood-serving scope that the LDR’s and Comprehensive Plan can allow in a PUD? How about not building a commercial development there at all, as required for the other reasons we have provided?

The environmental sensitivity of this area is also evidenced by the fact that it is within the protection zone of an identified eagle’s nest just to the south, active when the Neal companies purchased the property in 2014 but now claimed by them to have no eagles.

The wanton destruction of native habitat and foraging (and possible nesting) by listed species also violates Policies OS 1.4.2 and 1.4.3 of the Venice Comprehensive Plan.

It is significant that the 2016 staff report for the Milano PUD (Rezone Petition No. 16-07RZ) stated that “The proposed site plan preserves more than 98% of wetland systems and associated upland buffers creating a significant wildlife corridor system throughout the project area.”

That would be substantially impaired by the proposed PUD amendment if it is approved

Following our initial presentation of the above observations, the City obtained an independent analysis by its environmental and planning consultants.

They found numerous violations of the City’s Comprehensive Plan, concluding among other observations that the applicant’s environmental report “does not consider all wetland impacts and is not first avoiding, minimizing, or mitigating for all impacts or otherwise limiting activities of adverse impact or restoring wetlands in connection with the new development.”

On the basis of its consultants' objections, the City informed the applicant on October 26, 2022 as follows:

There were 5 Comprehensive Plan strategies identified with which the proposed project would conflict:

- OS 1.2.2 – Environmental Impact Mitigation
 - o Does not account for impacts from offsite drainage and road improvements; does not account for all potential listed species
- OS 1.3.1 – Wetland and Aquifer Recharge Areas Protection
 - o Does not account for impacts from offsite drainage and road improvements; does not document maintenance of natural flow or maintenance of existing vegetation, and more
- OS 1.3.2 – Wetland Encroachments
 - o Does not account for impacts from offsite drainage and road improvements; does not identify and delineate all wetland boundaries
- OS 1.4.2 – Protection of Native Habitats and Natural Resources
 - o Does not account for all potential listed species; does not document preservation or protection of significant habitat; does not demonstrate lower quality habitats were considered for impact before higher quality habitats and resources
- OS 1.4.3 – Endangered or Threatened Species
 - o Does not account for all potential listed species; does not identify the habitat of listed species; does not document that habitat fragmentation will be minimized

Further issues identified were the discrepancy in size from the SWFWMD permit and the Kimley- Horn report (8.79AC vs. 6.6AC) and the justifications provided for wetland impacts, which the authors of the report note are not expected to be valid justifications per the applicable state and federal rules.

The applicant remains in violation of Policy OS 1.3.1 of the Venice Comprehensive Plan, which mandates “Requiring development to first avoid impacts to wetlands” and then to minimize impacts and then only mitigate for impacts when impacts to wetlands “are unavoidable.”

The applicant has resorted to the argument that even though it is failing to avoid or minimize wetland impacts by the development which would be newly allowed by its proposed PUD amendment, its complete paving over of extensive wetlands and wetland buffers should be excused because the original PUD plan has a lot of wetland protections.

The problem with that approach is that Policy OS 1.3.1 requires avoidance and minimization before mitigation as measures in any “development” in wetlands. That development here is the proposed commercial development in functional wetlands by amending the Milano PUD Binding Master Plan to

replace wetlands and wetland buffers with development, explicitly with no limit on lot coverage or any other avoidance or minimization.

So what is the “development” addressed in Policy OS 1.3.1 as applied to the proposed PUD amendment? Is it the entire PUD, as the applicant urges, rather than the 10.42 acres to be changed? Even if that absurd prospect is entertained, does the PUD amendment operate to increase adverse wetland impacts of development throughout the PUD without first avoiding or minimizing them, as Policy OS 1.3.1 requires? Is off-site mitigation (even outside the City of Venice) required because the onsite wetland destruction is “unavoidable” as Policy OS 1.3.1 requires.

Obviously not.

The final report to the City on environmental impacts by Wade Trim, the City’s planning consultants, on March 16, 2023, does not find the application in compliance with the City’s environmental protections, in the Comprehensive Plan. Instead, deficiencies are found and questions are raised.

Wade Trim’s final March 16, 2023 report to the City, as well as the companion final report on that date by the City’s expert environmental consultant, Earth Resources Consulting Services should not be mistaken, as they recite the conclusion of compliance by the applicant’s planning consultant, Kimley-Horn, but then followed by the consultant’s response in less prominent italics. An uncareful reading could construe the recited conclusions of the applicant’s consultant as being those of the City’s consultants.

The Wade Trim findings include:

As currently proposed, the project will impact the on-site wetland and a permitted stormwater management pond.

...

Earth Resources Consulting Scientists concluded that the characterization of the existing wetland conditions and the preliminary Uniform Mitigation Assessment Method (UMAM) scores for the wetland are generally accurate. However, additional wetland impacts associated with off-site drainage and road improvements were not accounted for in the KHA report, and the potential for several listed species were not included in the KHA report.

...

With the limited time to evaluate the KHA March 14, 2023, response, Wade Trim and Earth Resources Consulting Scientists can neither verify nor dispute that the subject property is the only location available for commercial development within the Milano PUD.

...

Pertaining to Strategy OS 1.3.1 (2, 3, and 4), the City Council must determine the appropriate interpretation to make on the policy language related to avoidance and minimization of impacts to wetlands and whether based on the overall Milano PUD the KHA response meets the intent of this Strategy.

Very significantly, the City's environmental consultants, Earth Resources Consulting Services, have held firm in their conclusions that the proposed PUD amendment violates the wetland protections of the Policy OS 1.3.1 of the Comprehensive Plan. Their final March 16, 2023 report to the City should not be mistaken, as it recites the conclusion of compliance by the applicant's planning consultant, Kimley-Horn, but that is then followed by the consultant's response in less prominent italics. The position of the City's expert environmental consultant, in that final March 16 report, is as follows:

OS 1.3.1 – Wetland and Aquifer Recharge Areas Protection

Earth Resources Response: The quality of a wetland is not appropriate justification for wetland impacts nor does it alleviate the need for demonstrating avoidance and minimization of wetland impacts through design modifications and/or alternative site analysis. Wetland quality is taken into consideration when determining the amount of mitigation required to offset the impact.

The Planning Commission findings in recommending denial include the following as Reason #3: "The application is inconsistent with the intent of Comprehensive Plan Strategy OS 1.3.1 and Strategy LU 4.1.1, specifically Policy 8.2, and thus not in compliance with 86-47(f)(1)(a)."

Clearly, the proposal to replace functioning wetlands and wetland buffers with commercial development in the 10.42 acres at issue, with absolutely none of the avoidance or minimization in that development required by the Comprehensive Plan requires denial of the application by City Council.

For Good Reasons, Your Planning Commission Recommends Denial

Under Section 86-23(h) of the Land Development Regulations, the Planning Commission had the duty to "determine whether specific proposed developments conform to the principles and requirements of the Comprehensive Plan." And pursuant to Section 86-47, the Planning Commission, when reporting to the City Council concerning the rezoning of land, was required to show that it has studied and considered the proposed change in relation to certain specified factors. The Planning Commission has dutifully fulfilled its obligations and has voted not to recommend approval of the Petition.

In addition to the other reasons for denial referenced herein as cited in the Planning Commission report, there are the following, based on required standards for consideration in the Land Development Regulations:

Commission Reason #6. No substantial reasons why the property cannot be used with the existing zoning were presented. 86-47(f)(1)(n).

At the hearing before the Planning Commission, the Applicant failed to present any evidence as to why the 10.42 acre parcel cannot and should not continue to be used as wetlands, open space and lakes as shown on the Milano PUD Binding Master Plan of 2017.

Planning Commission Reason #7. Compelling evidence for a lack of adequate sites for this use elsewhere in the City was not presented. 86-(f)(1)(p).

No evidence was presented by the Applicant on the question as to whether there are – or are not - other adequate sites available elsewhere in the City for the project. The burden was upon the Applicant to provide that information for the Planning Commission, and it did not do so. There is plenty of property in Venice zoned for business. Large commercial centers belong in areas of the City that are zoned commercial and not in isolate strips in the middle of large residential areas.

The transmittal memo by City Planning to City Council for its public hearing summarizes the Planning Commission's findings as follows:

Comments from the Planning Commissioners that voted against recommending approval included finding that the petition does not demonstrate compliance with the land development code on the following items:

- i. 86-130(r) – commercial activity will not be limited to the Milano PUD;**
- ii. 86-130(t)(3)(a) – evidence of unified control was not clearly provided;**
- iii. 86-47(f)(1)(a) – the application is inconsistent with the intent of Comprehensive Plan Strategy OS 1.3.1 and Strategy LU 4.1.1, specifically Policy 8.2;**
- iv. 86-47(f)(1)(f) – compelling evidence for changing conditions was not presented;**
- v. 86-47(f)(1)(h) – congestion may be increased excessively by this proposal;**
- vi. 86-47(f)(1)(n) – no substantial reasons why the property cannot be used with the existing zoning were presented; and**
- vii. 86-47(f)(1)(p) – compelling evidence for a lack of adequate sites for this use elsewhere in the city was not presented.**