



By email: [kmichaels@venicefl.gov](mailto:kmichaels@venicefl.gov)

February 3, 2023

Nick Pachota, Mayor  
City Council, City of Venice  
c/o Kelly Michaels, City Clerk  
401 W. Venice Ave.  
Venice, FL 34285

RE: Bird Bay Community Association, Inc. Objections to Application 22-26 RZ  
Proposed Ordinance 2023-06 (Bird Bay PUD/Hawks Run Development)

Dear Mayor Pachota and City Council Members:

I represent the Bird Bay Community Association, Inc. (“BBCA”), which owns property within the Bird Bay PUD and represents all of the residential unit owners within the PUD. BBCA objects to the amendment to the Bird Bay PUD proposed by Hawks Run Development, LLC (“Hawks Run” or the “Applicant”) in Petition 22-26 RZ (the “Application”), proposing to redevelop 5.3 acres of the existing and approved golf course (the “Golf Course”) to housing and construct an undefined “clubhouse” within the existing Golf Course.

The Planning Commission voted unanimously to recommend denial of the Application. For the reasons set forth below, the City Council must also deny the Application.

**I. The City Council Must Deny the Application Because the Proposed Residential Development of the Golf Course Violates the Original Developer’s Express Commitment to Protect the Golf Course.**

In December 1977, the Developer entered into a Developer’s Agreement and an Amended Annexation Agreement with the City governing the development of Bird Bay. The Amended Annexation Agreement included a Preliminary Site Plan for the project. That Preliminary Site Plan depicted the location and layout for an 18-hole golf course (the “Golf Course”). To obtain approval of the Amended Annexation Agreement, its Preliminary Site Plan, and a proposed Site Plan for “Unit I,” the Developer expressly promised – on multiple occasions – to protect the Golf Course as open space in perpetuity.



The minutes of the October 17, 1977, meeting of the Planning Commission state:

Mr. Morris stated he does not own the golf course but has an option to buy, at some future time. Mr. Edgerton's concern was that the golf course should remain open space for ever and not be built on at some future time. Mr. Morris said the bank owns the golf course and he has an agreement with the bank to buy it in the future. He can provide the city with a document that will make sure that it will be forever more a golf course.

Mr. Sleasman made a motion that the Planning Commission instruct the Chairman to inform City Council that we conceptually approve the proposed revised site plan for Bird Bay Village. Mr. Stemm seconded. Discussion. Mr. Edgerton wanted an assurance that the golf course would remain open space forever more. Mr. Morris stated he could provide the city with such a document. Mr. Sleasman added to his motion, "conditioned upon the presentation to Council of a document proving the golf course as it exists, remain as it appears on the conceptual plan." Roll Call. Mr. Proctor, Mr. Schmelzer, Mr. Sleasman, Mr. Edgerton, Dr. Saunders and Mr. Stemm, YES. Motion carried.. Mr. Proctor initialed the colored site plan. Mr. Morris will bring in other copies for the Commission.

See Exhibit 1, attached.

The minutes of the November 14, 1977, Planning Commission meeting reflect the following:

Mr. Edgerton questioned who owned the properties in Bird Bay. Mr. Morris stated all the associations were made as a method of financing the project. They have options to purchase all of the properties in Bird Bay that are not developed. Venice Properties is First City Federal Savings & Loan. First City Federal and Mr. Morris gave City Council a document, notarized and recorded, stating the golf course would forever be open space. Bird Bay Assoc. is a general partnership between Jimmy Carrion and Robert Morris.

See Exhibit 2, attached.

However, the Developer's promised covenant in favor of the City was never recorded. The Developer's Agreement reflects that the boundaries of the Golf Course had to be amended to meet setback requirements:

4. It is agreed the master plan referred to in paragraph 1 above is conceptual in nature and the Owner and the City acknowledge the golf course lines will have to be amended so that any development or construction of buildings will fall outside the golf course, and the Owner will be permitted within reason to alter the location of buildings so as to conform to natural terrain and preserve trees.

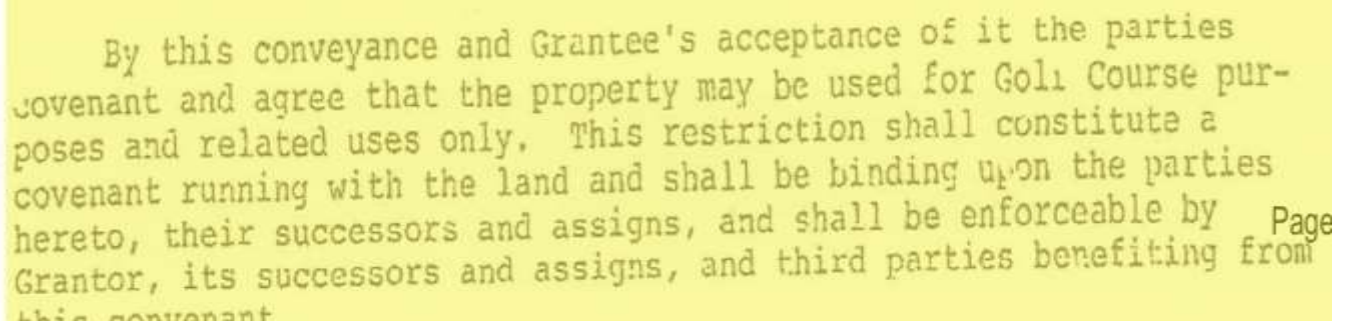
5. The owner has previously submitted a dedication to open space to the City of Venice which has not been accepted by the City at this time. It is agreed that Owner will resubmit a dedication within thirty (30) days of today's date using new legal descriptions which take into consideration the setback requirements of R-3 zoning as it pertains to the golf course boundaries.

See Exhibit 3, attached.

In 1978, the City adopted a new Zoning Code and Zoning Atlas (maps). The new Zoning maps applied the PUD zoning designation to the residential areas and Golf Course areas within Bird Bay. Under the 1978 Code (as through today's code), in such cases the Amended Annexation Agreement and Preliminary Site Plan became the governing documents and Master Plan for Bird Bay PUD.

Unfortunately for everyone (except the Applicant), and as noted in the Staff Report, the City is unable to locate the dedication the Developer promised in the Development Agreement and as required by the Zoning Code. The Developer never recorded the promised dedication. Therefore, the promise made to the Planning Board – and therefore to the City – went unfulfilled. In addition, the developer did not record a covenant limiting the Golf Course and other open space uses in Bird Bay for 99 years, as required by the Zoning Code.

The Bank who owned the Golf Course did remember the requirement, and when the Bank conveyed the Golf Course to John Robertson in 1983, it included an express limitation in the deed limiting the property to golf course uses:



By this conveyance and Grantee's acceptance of it the parties covenant and agree that the property may be used for Golf Course purposes and related uses only. This restriction shall constitute a covenant running with the land and shall be binding upon the parties hereto, their successors and assigns, and shall be enforceable by Grantor, its successors and assigns, and third parties benefiting from this covenant. Page

See Exhibit 4, attached.

**When Mr. Robertson bought the Golf Course in 1983, he knew he purchased a golf course, and only a golf course. When Mr. Robertson platted the Golf Course in 1985, he again knew it was a golf course and only a golf course.** However, when Mr. Robertson platted the Golf Course, the City failed to notice that the Golf Course Plat did not include an express open space dedication and restriction on the use as required by the Zoning Code, the Developer's Agreement, and the promises made to the City in 1977. Because the Deed Restriction was not included in the Plat, it expired.

**When Hawks Run Development bought the Golf Course in 2022, it also knew it bought a golf course, and only a golf course. Hawks Run has no right or expectation to use the Golf Course as anything other than a golf course because any changes would violate not only the City's Comprehensive Plan and Land Development Regulations, but the express promises the Developer made in 1977.**

Despite any representations to the contrary from Hawks Run, the City Council can, should, and must enforce the promises the Developer made in 1977 to the Planning Board and the City, the

express intent of the Developers' Agreement, and the requirement of the Zoning Code by requiring that the Golf Course remain as open space.

**II. The City Council Should Follow the Planning Commission Recommendation and Deny the Application Because It Violates Comprehensive Plan Strategy LU-PB 1.1.1,**

The City Council cannot approve a change to a PUD that violates the Comprehensive Plan. The Planning Commission recommended denial because the Application is not consistent with Land Use Element Strategy LU-PB 1.1.1. That Strategy, which applies within the Pinebrook Neighborhood, states:

*The City shall require that functional and conservation open spaces within existing residential developments including those zoned Planned Unit Development (PUD) be protected from redevelopment and infill development which may negatively affect their use. Reduction and or elimination of open spaces developed consistent with the underlying PUD zoning shall not be supported by the City.*

Both sentences of the strategy apply to any conversion of open space in a PUD within the Pinebrook Neighborhood, including Bird Bay. Strategy LU-PB 1.1.1 was clearly intended to protect the golf courses and other open spaces in the City's older PUD developments - Bird Bay, Capri Isles/Sawgrass, and Pinebrook - that have less specific "master plans" because they were not adopted under the current PUD process. Both Bird Bay and Capri Isles have golf courses that constitute PUD open space but were not properly protected by open space covenants. The Strategy was intended to limit exactly the kind of opportunistic redevelopment of those golf courses and open spaces that Hawks Run seeks.

The existing Golf Course constitutes "functional" open space as defined and described in Strategy OS 1.11.1(2)(a). The existing Golf Course is an open space use that has been "developed [as a golf course] consistent with the underlying PUD Zoning."

The Staff Report identifies Strategy LU-PB 1.1.1 as an issue and suggests the City Council must determine "whether the proposed development has a negative effect on the use of the existing open space." Here, the evidence shows the Application can only have a negative effect on the existing open space within Bird Bay because it converts existing open space to residential use. There is absolutely no evidence that approving the Application would result in any improvement to the remaining open space.

The Application Narrative claims:

The applicant proposes to redevelop the existing golf course with up to forty-five (45) residential villas, an amenity area to serve the new residences, a redesigned twelve (12) hole golf course, and updated golf course amenities including a new clubhouse with pro shop and restaurant.

The Applicant has failed to provide any evidence to support its claim. To the contrary, all evidence refutes such claims:

1. The proposed Amended Master Plan eliminates all of the golf course holes currently depicted and does not depict a new, 12-hole golf course layout;
2. Hawks Run fails to proffer any covenant or condition requiring redevelopment of the Golf Course;
3. Hawks Run fails to proffer any conditions governing the “Clubhouse”;
4. Hawk Run fails to proffer any covenant restricting the remaining Golf Course to golf course/open space use.

In sum, there is no evidence that approval of the Application will result in a redeveloped, 12-hole golf course, any other open space, or any golf course amenities. The Application clearly has a negative impact on the existing open space: it removes 5.3 acres of the existing, developed Golf Course Open Space, replaces it with housing, while failing to guarantee any protection of, or improvement to, the remaining open space.

**Hawks Run’s proposal to convert 5.3 acres of the Golf Course to residential uses constitutes “redevelopment” of functional open space that will have a negative impact on that open space and therefore violates the first sentence of Strategy LU-PB 1.1.1. The proposal further violates the second sentence of the Strategy because approving the Application would reduce or eliminate portions of the developed Golf Course Open Space, and that result “shall not be supported by the City.” The City Council must follow the Planning Commission’s recommendation and deny the Application because it violates Strategy LU-PB 1.1.1.**

**III. The City Council Must Deny the Application Because it Fails to Provide Bulk Standards as Required by Action Strategy LU 1.12.16.3 and the Amended Master Plan Fails to Include the Information Required by LDC § 86-130(t)(3)(c)(4).**

The Application depicts a proposed change to the Master Plan “density/use” chart showing the development for 45 single family residences. The Application Narrative states the golf course will be redeveloped “with up to forty-five (45) residential villas...” The Application provides no “bulk standards” for the residential uses, meaning no minimum lot size or width, no maximum lot coverage, no maximum impervious coverage, no minimum setbacks, and no height restriction for the residential units. The Master Plan drawing fails to locate or describe the location or amount of off-street parking or other “permitted” (or accessory) uses it intends to develop.

For PUD developments, Land Use Strategy LU 1.2.16.3 states that “development standards including bulk development standards and housing types *are designated at the PUD Zoning level.*” (emphasis added). Under LDC § 86-130(t)(3)(c)(4), a PUD master plan must include “locations of the different uses proposed, by dwelling types, open space designations, recreational facilities, commercial uses, other permitted uses, and off-street parking and off-street loading locations.”

The Staff Report notes that staff did not require Hawks Run to provide bulk development standards and that the residential development and the Clubhouse would have to undergo site and development plan or preliminary plat review if the City were to approve the Application. However, what standards should apply in that review? This is simply an error: the PUD master plan must establish the standards that will be applied under LU 1.2.16.3 and LDC § 86-130(t)(3)(c)(4). Every PUD and PUD amendment that comes before the Council includes such standards. If they are not included, Hawks Run could propose 0 setbacks, 35’ height, and 100% building coverage in the site

plan application and argue the Application is totally authorized by the adopted and approved Master Plan.

**Hawks Run’s complete and intentional refusal to identify the proposed housing types with any specificity or to provide any lot, setback or height standards for either the residential use or its proposed “clubhouse/restaurant” violates Strategy LU 1.2.16.3 and LDC § 86-130(t)(3)(c)(4), and the City Council must deny the Application.**

**IV. The City Council Must Deny the Application Because the Golf Course Was Platted and Designated in the Master Plans Since 1977 for Golf Course Use and Not for Residential Development.**

Hawks Run claims there is unused density in the Bird Bay PUD and the Staff has agreed. However, the Golf Course was designated on the PUD master plans (since 1977) and was platted in 1985. Hawks Run claims that, under the City’s longstanding practices, PUD open space can be converted at any time until the PUD development rights are completely built out. Even if that underlying general proposition is true, it simply does not apply here, where the Golf Course portion of the development was developed and platted for that specific purpose. Hawks Run cannot convert a portion of the PUD that was promised and designated as golf course open space, developed as golf course/open space, and then platted as a golf course/open space use, for any different use without changing the entire PUD.

If Hawks Run wants to live by the rights set out in the 1977 version of the Master Plan (and the Amended Annexation Agreement) it must die by the obligations and development areas set out in those documents. If there are unused dwelling units, they can be developed in only two areas: the designated (but built out) residential development areas or the remaining, unplatted open spaces. Those include the submerged lands and the portions of the original PUD to the north now owned by the County. What Hawks Run cannot do is redevelop the previously developed and committed area that was designated in the approved Master Plan as a Golf Course/Open Space use, developed for that purpose, and platted. Those boundaries and uses are committed, vested, and cannot now be changed simply because there may be some “unused” density within the PUD (if, in fact, that is the case).

**V. The City Council Must Deny the Application Because It Does Not Meet the Requirements of Land Development Code Section 86-130(v) Governing Amendments to PUD Master Plans.**

This Application is governed by the prior version of the Land Development Code. Under that Code, changes to PUD plans are governed by Section 86-130(v), which states:

Changes in plans. Changes in plans approved as a part of the rezoning to PUD may be permitted by city council upon application by the developer or his successors in interest, and after a recommendation from the planning commission, but *only upon a finding that any such changes are in accord with all regulations in effect when the changes are requested and the intent and purpose of the comprehensive plan in effect at the time of the proposed change.* Changes other than those indicated shall be processed as for a new application for PUD rezoning.

(emphasis added).

For the reasons stated above, the proposed changes to the Master Plan are not “in accord” with Strategy LU-PB 1.1.1, Strategy LU 1.3.7, or Strategy LU 1.12.16.3, and fail to provide the master plan /use information required by LDC § 86-130(t)(3)(c)(4). The proposed changes in the plans fail to meet the applicable requirements of the LDC for changing the approved Master Plan.

**VI. The City Council Must Deny the Application because the Proposed Conversion of Golf Course Open Space to Residential Use Violates the Legal Standard for Amending an Existing PUD.**

Florida courts have established standards for amending a previously approved PUD. The most important case specifying those requirements is *City of New Smyrna Beach v. Andover Development Corporation*, 672 So. 2d 618 (Fla. 5<sup>th</sup> DCA 1996). The court states:

It is important to emphasize the distinction between a PUD classification and the normal zoning districts. Unlike a normal construction project which is designed to fit within the fixed parameters (setbacks, maximum lot coverage, height limitations, etc.) of a normal zoning classification, the PUD concept is flexible and permits the developer to present a plan covering a large tract (fifty-five acres in this case) which is unique and which meets the developer's concept of the best use of the particular area. The developer may suggest high-rise buildings in order to permit greater open space. But in any event, the height of the buildings must be in harmony with the rest of the proposed development and the surrounding area. *The plan submitted incorporates the developer's recommendation as to what the setbacks, the percentage of open space, the height of buildings, etc. should be and, once accepted by the governmental agency, these recommendations become fixed as the PUD classification is molded over and around the approved plan.* The PUD classification, therefore, although flexible in concept, becomes rigid in application.

And because of this distinction, unlike a normal zoning classification, there remains no “unused” development authority in the PUD. For example, if one builds a home twenty-five feet high in a residential zone that permits thirty-five foot structures, such owner may expect to be able to “add on” at a later date up to the height limitation. But once a PUD is approved, there remains no unused authority. Therefore, if the plan is to be subsequently amended, the PUD classification, by necessity, must also be amended. In order to justify such amendment, the plan as modified must remain compatible with the balance of the project and the surrounding area. *It should be the type of amendment, taking into account the changing conditions, that would have been approved in the first instance.*

*Andover Dev. Corp.*, 672 So. 2d at 620 (emphasis added).

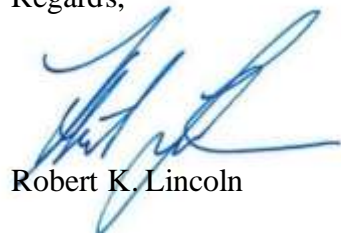
**Hawks Run’s proposal to convert 5.3 acres of the Golf Course from golf course/open space use to residential is clearly inconsistent with its original promise to protect the Golf Course forever; that promise was clearly necessary to the City’s approval of the entire 1977 Amended Annexation Agreement and Preliminary Site Plan. Redeveloping 5.3 acres of the Golf Course**

**with housing absolutely would not have “been approved in the first instance.” The City must deny the Application for its failure to meet the *Andover* test for amending the PUD.**

## **VII. Conclusion**

Hawks Run’s Application and proposal is clearly inconsistent with the City’s own Comprehensive Plan and it fails to meet the requirements of the City’s own Land Development Code for master plans and for approving or changing a PUD. Further, the Application definitively fails to meet the legal standards set forth in the *Andover* test for approving a change to a PUD. The City Council must follow the Planning Commission’s unanimous recommendation and deny the Application.

Regards,



Robert K. Lincoln

adr/RKL

Encs. Exhibits 1-4

cc: Roger Clark, RClark@venicefl.gov  
Kelly Fernandez, Esq., kfernandez@flgovlaw.com  
Bird Bay Community Association, Inc.



MINUTES  
VENICE PLANNING COMMISSION  
OCTOBER 17, 1977 7:30 PM

Meeting was called to order by the Chairman, Frank Proctor, at 7:30 P.M.

Present: Frank Proctor, William Schmelzer, John Sleasman, Eric Edgerton, Dr. Saunders, Howard Stemm and ex-officio member, Robert Becker.  
Absent: Robert Hamilton and ex-officio members, John Vickers and W. G. Bally.

Minutes of October 3, 1977 were discussed. Mr. Stemm questioned if the application for a grant for State funds for the Comprehensive Plan was sent in. Mr. Proctor confirmed that it was. Mr. Proctor stated Mr. Reith approved Mr. Becker for the contact person for Mr. Wilkison's office. Mr. Wilkison informed Mr. Proctor that the Sarasota Planning Commission's orientation meeting probably will not be held until the middle of November. Venice Planning Commission's orientation meeting will probably be held the first part of December.

Motion was made by Mr. Stemm to approve the minutes of October 3, 1977. Seconded by Mr. Schmelzer. All voted aye. Motion carried.

Next order of business, was request for approval of a site plan change for Bird Bay. At this point, Mr. Becker asked to be excused from the meeting. He informed the Commission, he had been over the plan with Mr. Yeatts and Mr. Morris and no objections to this plan. He felt it was a good plan, better than the one that is existing and would like to see the Planning Commission approve this concept.

Mr. Robert Morris, architect, developer and owner came before the Commission. Mr. Proctor informed the commission, that Mr. Morris is also vice chairman of the Sarasota Planning Commission. Mr. Morris stated that being a member of the Commission is irrelevant to this presentation. Mr. Morris showed the Commission, a colored picture of the site plan, which showed the concept of his development for this area. He stated, that in mid-summer, he purchased from the lender, who had foreclosed on this property, forty acres of land. He has the right to purchase an additional forty acres. The changes that will be made are in the expansion of open spaces, through improvement of the golf course. They also plan to build low rise houses along the waterfront and three story buildings along Albee Farms Road. They are planning an additional 1000 units, which will be a reduction of 400 units under the existing annexation agreement. There are 201 condominium units built there now, and he has no connection whatsoever with them. The existing annexation agreement goes with the land but it will be modified under the new sub-division ordinance and the present city PUD ordinance. This plan will take approximately seven to eight years. First construction will be the club facilities and a model center and approximately 126 units. The golf course will be redesigned.

Mr. Schmelzer questioned the dedication of streets. Mr. Morris said he will put in and dedicate a boulevard, that will hook up to what

is already there. The only responsibility the city will have, is for the road through the property. Private roads will be to specifications except for swale and percolation. There will be pedestrian ways on the private side of the buildings instead of sidewalks. Mr. Yeatts said the sub-division ordinance addresses itself to sidewalks on public streets. Mr. Morris said that when the preliminary plats are presented, specifics will be outlined. This plan is for concept only. Mr. Proctor asked the selling prices for the units. Mr. Morris thought, at the present time, from the low thirtys to the high sixtys and seventies, for two bedrooms, two bath units.

Mr. Morris stated he does not own the golf course but has an option to buy, at some future time. Mr. Edgerton's concern was that the golf course should remain open space for ever and not be built on at some future time. Mr. Morris said the banks owns the golf course and he has an agreement with the bank to buy it in the future. He can provide the city with a document that will make sure that it will be forever more a golf course.

Mr. Sleasman made a motion that the Planning Commission instruct the Chairman to inform City Council that we conceptionally approve the proposed revised site plan for Bird Bay Village. Mr. Stemm seconded. Discussion. Mr. Edgerton wanted an assurance that the golf course would remain open space forever more. Mr. Morris stated he could provide the city with such a document. Mr. Sleasman added to his motion, "conditioned upon the presentation to Council of a document proving the golf course as it exists, remain as it appears on the conceptual plan." Roll Call. Mr. Proctor, Mr. Schmelzer, Mr. Sleasman, Mr. Edgerton, Dr. Saunders and Mr. Stemm, YES. Motion carried.. Mr. Proctor initialed the colored site plan. Mr. Morris will bring in other copies for the Commission.

Short discussion on the zoning code meetings. Meetings have been postponed due to work being done in Council chambers. Chairman will let the Commission know when the meetings resume.

Meeting adjourned at 9 P.M.

MINUTES  
VENICE PLANNING COMMISSION  
NOVEMBER 14, 1977 7:30 PM

Meeting was called to order by the Chairman, Frank Proctor, at 7:30 P.M.

Roll Call: Present, Frank Proctor, William Schmelzer, Eric Edgerton, Howard Stemm, Robert Hamilton, Dr. Lewis Saunders and Robert Becker and W. G. Bally, ex-officio members. Absent: John Sleasman and John Vickers, ex-officio member.

Motion was made by Mr. Edgerton that the minutes of October 17, 1977, be approved as submitted. Seconded by Dr. Saunders. All present voted aye. Motion carried.

Review of the preliminary plat of the first phase of Bird Bay Village began. Mr. Robert Morris, architect, developer and builder came before the Board. Also in attendance was Ted Yeatts, City Engineer.

Mr. Morris stated that this preliminary plat conforms with the site plan that was conceptually approved by the Planning Commission and the City Council. City Council approved 128 units plus four models and the recreation center. All the legal requirements have not been completed between the City attorney and their attorney. It consists of an amendment to the annexation agreement so that the City attorney will feel he is on firm ground before the City Council gives their final approval on a building permit. At this time, they are asking for approval from the Planning Commission on the preliminary plat so that they may approach City Council for their approval.

Mr. Edgerton questioned who owned the properties in Bird Bay. Mr. Morris stated all the associations were made as a method of financing the project. They have options to purchase all of the properties in Bird Bay that are not developed. Venice Properties is First City Federal Savings & Loan. First City Federal and Mr. Morris gave City Council a document, notarized and recorded, stating the golf course would forever be open space. Bird Bay Assoc. is a general partnership between Jimmy Carrion and Robert Morris.

Mr. Becker read a memo from Fire Chief Ted Deming. Chief Deming suggested an eight inch main instead of a six inch main and also requested fire hydrants spacing should not exceed 500 feet. Mr. Morris agreed to comply with these requests.

Discussion was held on whether the property is to be developed under a PUD or under an amended annexation agreement. The property is now zoned R-3. Mr. Bally questioned why the annexation agreement cannot be voided and the property be zoned as a PUD. Mr. Morris said it is a legal matter for the attorneys to decide.

Mr. Becker read a report from Mr. Heath, Director of Public Works, as follows:

Listed are my comments on the above referenced subject.

1. Sheet (1) of plans - Does not show all the City's R/W's; two (2) cul-de-sacs have not been located east of White Pine Tree Road.
2. Sheet (2) of plans - The enclosed drainage pipe from Bird Bay Drive west running westerly to an existing lake should not be the City's maintenance responsibility.
3. Sheets (2) and (3) of plans - Lakes and/or drainage areas need to be restrained or restricted for those purposes only. This would prevent the drainage areas from being changed or reduced in the future causing problems to the City or residents in the Bird Bay area.
4. Sheet (3) of plans - I do not approve the utilization of curb and gutters plus drainage swales within the same R/W's.

Mr. Yeatts said he agreed with item four of the report. Mr. Morris felt his system was a better one but if the City did not want to maintain the swale, he would be willing to keep all the maintenance on the ROW's. Mr. Yeatts said they are not in agreement with the sub division ordinance or the city regulations.

Mr. Wilson, Water Department, did not have his water and sewer report ready for the meeting. Mr. Becker said his only concern was the zoning on the property.

Mr. Hamilton said he did not think you could draw lines so near the house along the golf course, even though the lines are arbitrary. If something goes sour again, the people then will not be jeopardized. Mr. Morris said there is no problem in changing the lines and will do so. Mr. Yeatts felt the city should have a public thoroughfare in a development of that size. Mr. Yeatts also said he understood City Council gave permission for Mr. Morris to build the first phase, even though a DRI will not be determined for another 90 days. The Council agreed only, if in the meantime Mr. Morris would go through the steps in Tallahassee for a DRI. If Tallahassee says they would need a DRI, Mr. Morris would reduce the number of units in the development.

Dr. Saunders said that the planning commission is charged with the obligation that a development will be built in the right way. He felt there are too many questions that cannot be answered. Mr. Morris stated he would be willing to accept any stipulations the Planning Commission requires, as he is trying to get to City Council and the City Attorney for final approval.

Mr. Yeatts' concern was with the set backs and the dedicated thoroughfare in the property. At this point it is a public ROW and he would not like to see swales in there. He suggested a temporary turnaround in one of the streets. Streets are not named and need approval from the Post Office. He also felt their engineer should have a statement on the preliminary plat stating the land is suitable for development. He felt the legal problems need to be straightened out and that the items he has mentioned are minor and can be changed easily. Mr. Morris agreed to each stipulation and felt the unresolved issues are with the attorneys.

Mr. Stemm made a motion that the Planning Commission approve the preliminary plat, providing it conforms with all of the requirements of the City Engineer and the City Building Official, as outlined in the meeting of November 14, 1977. Mr. Edgerton seconded. Roll Call: Mr. Proctor, Mr.

Schmelzer, Dr. Saunders, Mr. Edgerton, Mr. Stemm and Mr. Hamilton all voted YES. Motion carried.

Old Business. Mr. Proctor read a letter from Mr. Reith stating the City has received a \$9566 grant applicable to the City's Comprehensive Planning Program.

A Notice was put in the newspapers for the orientation meeting to be held on November 21, 1977 for the Local Government Comprehensive Plan. One hundred thirty nine letters were sent to various organizations requesting their attendance.

New Business. Letter was received from the Zoning Board of Appeals asking for recommendation on an owner initiated petition for the rezoning of Lots 9 and 10 in the Venezia Park section of Venice, from R-1 to R-3, within Block 88, Nokomis Avenue. A Dr. Morrison initiated the petition. The Commission felt it would be spot zoning to change the zoning on these two lots within that block.

Mr. Stemm made a motion that the Planning Commission is not in favor of "spot zoning" and therefore did not feel they could approve this type of zoning request. Mr. Edgerton seconded. Roll Call: Mr. Proctor, Mr. Schmelzer, Mr. Edgerton, Mr. Stemm and Mr. Hamilton voted YES. Dr. Saunders abstained and will file the proper papers. He owns three pieces of property in that section. Motion carried.

Dr. Saunders questioned the status of the zoning code. Mr. Proctor informed the Commission there will be no further workshop sessions on the code until after the first of the year.

Meeting adjourned at 9:35 P.M.

## DEVELOPER'S AGREEMENT

MICROFILMED  
ROLL \_\_\_\_\_

THIS AGREEMENT, made and entered into this 21st day of December, 1977, by and between BIRD BAY ASSOCIATES, a Florida general partnership comprised of Robert A. Morris, Jr. and Jaime S. Carrion, hereinafter referred to as "Owner", and CITY OF VENICE, a municipal corporation in the County of Sarasota, State of Florida, hereinafter referred to as "City".

## W I T N E S S E T H:

WHEREAS, Owner has acquired rights to properties described in Annexation Agreement recorded in O.R. Book 977, Page 1373, as amended in document recorded in O.R. Book 999, Page 2130, and as further amended by document recorded in O. R. Book 1219, Page 1414, of the Public Records of Sarasota County, Florida, and

WHEREAS, certain questions have arisen as to the interpretation of the Agreement's referred to above, the City Zoning Code, the City Subdivision Ordinance and other ordinances of the City, and

WHEREAS, it is the intent of the Owner and City to clarify certain items pertaining to the above,

NOW, THEREFORE, it is agreed as follows:

1. The Owner has assured the City the implementation of the development as proposed in the new master plan approved by City Council on the 21st day of December, 1977, and recorded in O.R. Book 1219, Page 1414, of the Public Records of Sarasota County, Florida, does not constitute a development of regional impact or constitute a retriggering of a development of regional impact as provided in Chapter 380, Florida Statutes, and Owner has further agreed to take immediate steps to make application under Chapter 380 for a letter of determination. Owner agrees that it will not request the City to issue building permits or entertain planning procedures for more than the first 133 units of its development until said letter of determination is furnished to the City or until it complies with subparagraphs 1 or 2 of the following sentence. Furthermore, if it is found that the project is not vested or a substantial change has occurred which would trigger a DRI classification, Owner agrees either:

(1) to amend its master plan to reduce the total density of the units it intends to build to 798 units or to take whatever action is necessary to take the project out of a Development of Regional Impact, or

(2) secure a Development of Regional Impact determination by the appropriate governmental authority and follow the process outlined in Chapter 380 for a Development of Regional Impact if so required by that authority.

2. The Owner has determined that it will not make an application to rezone the project under the Planned Unit Development zoning category as provided in Chapter 20-A of the Code of Ordinances of the City of Venice, and therefore acknowledges that Owner must comply with the requirement of the particular zoning which is placed upon the property at this time (primarily R-3 except for a small portion that is zoned B-1). Owner does hereby agree to develop its property in accordance with Chapter 20A of the Code of the City.

3. Each time the Owner intends to develop another phase of its project, it will follow the subdivision regulations of the City and each time it is ready to start construction on condominiums or other dwellings in a new phase, Owner will file a site plan with the City of Venice for its approval, said site plan containing the information outlined in site plan approval check-off list attached hereto as Exhibit A and made a part hereof. The City shall not make unreasonable demands for material furnished under the site plan if said material has already been furnished to the City in the subdivision procedure.

4. It is agreed the master plan referred to in paragraph 1 above is conceptional in nature and the Owner and the City acknowledge the golf course lines will have to be amended so that any development or construction of buildings will fall outside the golf course, and the Owner will be permitted within reason to alter the location of buildings so as to conform to natural terrain and perserve trees.

5. The owner has previously sub vitted a dedication to open space to the City of Venice which has not been accepted by the City at this time. It is agreed that Owner will resubmit a dedication

within thirty (30) days of today's date using new legal descriptions which take into consideration the setback requirements of R-3 zoning as it pertains to the golf course boundaries.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Owner has executed this agreement by its duly authorized general partner and City has executed this agreement by its duly authorized officials and its corporate seal affixed hereto, the day and year first above written.

Witnesses:  
Norma J. Dillon  
John W. Gardiner

BIRD BAY ASSOCIATES  
By: Robert A. Morris, Jr.  
Robert A. Morris, Jr.  
A General Partner

CITY OF VENICE  
By: Harry E. Case  
Mayor

(SEAL)

ATTEST:  
By: [Signature]  
City Clerk

C O N S E N T

The undersigned hereby consent to the foregoing Developer's Agreement effective the day and year first above written.

Witnesses:  
Norma J. Dillon  
John W. Gardiner

BIRD BAY GOLF CLUB, INC.  
By: Robert A. Morris, Jr.  
Robert A. Morris, Jr.  
As its Vice President

Norma J. Dillon  
John W. Gardiner

BIRD BAY REALTY COMPANY  
By: Robert A. Morris, Jr.  
Robert A. Morris, Jr.  
As its Vice President

[Signature]  
Margie M. [Signature]

VENICE PROPERTIES, INC.  
By: James U. Wade  
James U. Wade  
As its President



**EXHIBIT 4**

Record at 10:30  
the day 10/16/83

4

MEMBER OF THE BAR  
SARASOTA, FLORIDA 33578

WARRANTY DEED

251758

GRANTOR: FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION,  
a Corporation organized and existing under the laws  
of the United States of America.

DS PAID 10/12/83  
R H PROPERTY CO  
SARASOTA, FLORIDA  
By: [Signature]  
Deputy Clerk

GRANTEE: JOHN T. ROBERTSON

Grantee's Post Office Address: 2323 Teal Avenue  
Sarasota, Florida 33582

O. R. 1562 PG 0183

Grantor, for and in consideration of the sum of one dollar, to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to Grantee, and Grantee's heirs and assigns forever, the following described land, to wit:

SEE ATTACHED LEGAL DESCRIPTION

This conveyance is subject to the following:

a. Long-Term and Non-Exclusive Use Agreement dated November 30, 1977, and recorded in O.R. Book 1215, Page 2126, Public Records of Sarasota County, Florida.

b. Annexation Agreement with the City of Venice dated August 21, 1972, recorded in O.R. Book 977, Pages 1373, thru 1387, as amended in O.R. Book 997, Page 1510, O.R. Book 999, Page 2130, and O.R. Book 1219, Page 1414, and Resolutions and Petitions for Annexation in connection therewith recorded in O.R. Book 977, Page 1368, and O.R. Book 997, Page 1506, Public Records of Sarasota County, Florida.

c. Articles of Incorporation and Bylaws of BIRD BAY COMMUNITY ASSOCIATION, INC., recorded in O.R. Book 1269, Pages 640 thru 659, Public Records of Sarasota County, Florida.

d. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to the City of Venice dated July 23, 1981 recorded in O.R. Book 1456, Pages 158 thru 165 of said records.

e. Sanitary Sewer Easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to the CITY OF VENICE recorded in O.R. Book 1456, at Page 156 of said records.

f. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for ingress, egress and parking, recorded in O.R. Book 1562, Page 174 of the Public Records of Sarasota County, Florida.

g. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for irrigation, recorded in O.R. Book 1562, Page 176 of the Public Records of Sarasota County, Florida.

h. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for drainage, recorded in O.R. Book 1562, Page 180 of the Public Records of Sarasota County, Florida.

i. Property Taxes for 1983 and subsequent years.

By this conveyance and Grantee's acceptance of it the parties covenant and agree that the property may be used for Golf Course purposes and related uses only. This restriction shall constitute a covenant running with the land and shall be binding upon the parties hereto, their successors and assigns, and shall be enforceable by Grantor, its successors and assigns, and third parties benefiting from this covenant.

Dated: January 27, 1983.

O. R. 1562 PG 0184

Witnesses:

[Signature]  
[Signature]

FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a Corporation organized and existing under the laws of the United States of America

By: [Signature]  
Its Executive Vice President

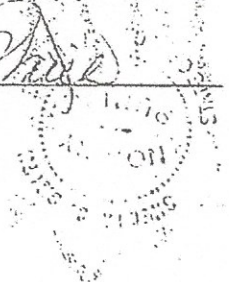
STATE OF FLORIDA  
COUNTY OF ~~STATE~~ MANATEE

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 19 83, by James U. Wade as Exec. Vice President of FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a Corporation organized and existing under the laws of the United States of America, on behalf of the corporation.

[Signature]  
NOTARY PUBLIC

My Commission Expires:

Notary Public, State of Florida at large  
My Commission expires January 27, 1984.



O.R. 1562 PG 0185

Commence at the Southwest corner of Southeast 1/4 of the Southeast 1/4 of Section 6, Township 39S., Range 19E., run N89° 31'14"W, 661.50 feet along the Southerly line of said Section 6; thence N23°55'00"E, 250.80 feet; thence by a curve to the left Radius 610.71 feet, Arc 291.22 feet, Chord N10°16'21"E, 288.46 feet for a Point of Beginning. Thence continue along said curve to the left, Radius 610.71 feet, Arc 22.71 feet, Chord N04°27'12"W, 22.71 feet; thence by a curve to the right, Radius 305.00 feet, Arc 119.77 feet, Chord N05°43'53"E, 119.01 feet; thence N16°58'53"E, 75.26 feet to a point on the Southerly boundary line of Bird Bay I A Condominium, as recorded in Condominium Plat Book 11, Pages 37 thru 37J, Public records of Sarasota County, Florida; thence traverse along the Southerly and Easterly boundary line of said Bird Bay I A Condominium by the following seven courses: S73°01'07"E, 129.13 feet; thence N76°44'55"E, 46.65 feet, thence N12°49'07"E, 180.71 feet; thence N55°59'07"E, 42.13 feet; thence N04°55'16"E, 143.08 feet; thence N66°28'25"W, 74.02 feet; thence N10°16'12"E, 234.73 feet to the most Southerly corner of Bird Bay II A Condominium as recorded in Condominium Plat Book 13, Pages 23 thru 23U, Public records of Sarasota County, Florida; thence traverse along the Easterly boundary line of said Bird Bay II A Condominium by the following seven courses: N12°56'43"E, 121.28 feet; thence N27°36'33"E, 196.36 feet; thence N71°25'08"E, 247.92 feet; thence N40°20'30"E, 95.78 feet; thence N06°51'02"W, 259.85 feet; thence N41°29'47"E, 69.43 feet; thence East 10.00 feet; thence leaving said Easterly boundary line run N85°11'47"E, 156.81 feet; thence S53°55'53"E, 43.99 feet; thence S25°36'40"E, 284.87 feet to the Northwest corner of Bird Bay Village Condominium Unit 1, as recorded in Condominium Plat Book 6, Pages 53 thru 53I, Public records of Sarasota County, Florida; thence traverse along the Westerly boundary line of said Bird Bay Village Condominium Unit 1 by the following seventeen courses: S25°37'32"E, 33.93 feet; thence S03°41'20"E, 49.09 feet, thence S16°33'54"W, 215.13 feet; thence S60°45'36"W, 175.03 feet; thence S30°46'43"W, 75.80 feet; thence S12°57'23"E, 76.90 feet; thence S40°47'12"E, 184.39 feet; thence S86°52'06"W, 252.36 feet; thence S46°55'26"W, 30.67 feet; thence S06°58'55"W, 148.32 feet; thence S27°54'34"E, 154.77 feet; thence S76°39'26"W, 158.15 feet; thence S56°54'34"W, 80.99 feet; thence S25°42'06"W, 75.08 feet; thence S47°14'03"W, 150.75 feet; thence S86°31'17"W, 132.91 feet; thence S77°28'40"W, 207.18 feet to the Point of Beginning. Said tract contains 15.07 Acres more or less.

June 2, 1982

D. A. 1562 PG 0186

From the Southwest corner of the Southeast 1/4 of the Southeast 1/4 of Section 6, Township 39S., Range 19E., Sarasota County, Florida, run N89°31'14"W, 698.77 feet along the South line of the Southeast 1/4 of said Section 6; thence S23°56'00"W, 146.33 feet to the Northeasterly R/W line of Venice By-Pass (State Road No. 45-A, 200 foot R/W at this point); thence N66°04'00"W, along said Northeasterly R/W line 5.81 feet; thence N23°56'00"E, 250.00 feet; thence N66°04'00"W, 40.00 feet to the Westerly R/W of Bird Bay Drive West for a Point of Beginning. Thence N66°04'00"W, 848.51 feet to a point on the Easterly R/W line of Seaboard Coastline Railroad (100 foot R/W); thence N11°50'34"W, 975 feet more or less along said Easterly R/W line to the Mean High Water line of Curry Creek; thence Northeasterly along said Mean High Water line 55 feet more or less to the most Westerly corner of Bird Bay II A Condominium as recorded in Condominium Plat Book 13, Page 23 thru 23U, Public records of Sarasota County, Florida; thence traverse along the Southerly boundary of said Bird Bay II A Condominium by the following nine courses: S59°21'45"E, 255.41 feet more or less; thence S52°11'29"E, 81.56 feet; thence N86°46'08"E, 62.10 feet; thence N36°01'39"E, 170.02 feet; thence N53°48'01"E, 171.01 feet; thence N55°21'49"E, 184.74 feet; thence N60°00'22"E, 226.64 feet; thence N85°07'05"E, 197.53 feet; thence S73°06'25"E, 114.42 feet to a point on the Westerly R/W line of said Bird Bay Drive West; thence run along said Westerly R/W line by a curve to the left, Radius 270.00 feet, Arc 136.96 feet, Chord S23°50'48"W, 135.50 feet; thence S09°18'53"W, 147.33 feet to a point a point of intersection with said Westerly R/W line Bird Bay Drive West and the Northerly boundary line of Bird Bay I A Condominium, as recorded in Condominium Plat Book 11, Pages 37 thru 37J, Public records of Sarasota County, Florida; thence traverse along the Northerly, Westerly and Southerly boundaries of said Bird Bay I A condominium by the following fifteen courses: N56°56'08"W, 121.64 feet, thence S38°51'02"W, 190.45 feet; thence N77°45'43"W, 30.00 feet; thence S36°48'18"W, 106.43 feet; thence S70°12'25"W, 193.25 feet;

O.R. 1562 PG 0187

thence S68°55'08"W, 222.28 feet; thence S55°06'44"W, 148.54 feet; thence S34°20'53"E, 157.51 feet; thence S26°01'06"E, 167.22 feet; thence S44°03'15"E, 38.16 feet, thence S38°07'39"E, 120.66 feet; thence S63°23'51"E, 106.11 feet; thence N73°39'10"E, 177.00 feet; thence N75°00'42"E, 153.00 feet; thence S73°01'07"E, 52.35 feet to a point on said Westerly R/W line Bird Bay Drive West; thence by a curve to the left, Radius 385.00 feet, Arc 151.19 feet, Chord S05°43'53"W, 150.22 feet along said Westerly R/W line; thence continue along said Westerly R/W line by a curve to the right, Radius 530.71 feet, Arc 164.40 feet, Chord S03°21'21"W, 163.75 feet; thence leaving said Westerly R/W line run N 79°34'26"W, 50.65 feet; thence N41°27'56"W, 15.93 feet; thence N81°58'01"W, 40.85 feet; thence N07°30'19"E, 41.32 feet; thence N85°30'41"W, 81.17 feet; thence N04°31'32"E, 37.98 feet; thence N23°04'31"E, 49.27 feet; thence S76°00'18"W, 217.21 feet; thence by a curve to the left, Radius 43.00 feet, Arc 95.91 feet, Chord S12°06'33"W, 77.23 feet; thence S51°47'21"E, 142.85 feet; thence S70°25'45"E, 233.38 feet to point on said Westerly R/W line of Bird Bay Drive West; thence S23°56'00"W, 124.31 feet along said Westerly R/W line to the Point of Beginning. Said tract contains 18.25 Acres more or less.

June 2, 1982

Together with that certain access easement dated November 17, 1982 recorded in O.R. Book 1548, Page 672 of the Public Records of Sarasota County, Florida.

FILED AND RECORDED  
CLIFFORD W. ASHLEY JR., CLERK  
SARASOTA CO., FLA.  
JUN 13 06 PM '82  
251758