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** Board Certified City, County and Local Government Law

Reply to: *Venice*

June 6, 2014

The Honorable John W. Holic, Mayor
and Members of the City Council
401 West Venice Avenue
Venice, Florida 34285

RE: Laurel Road Medical Campus Site Plan

Dear Mayor Holic and Council Members:

Attached is a letter that I have received from Charlie Bailey, attorney for the Sarasota County Public Hospital Board ("Sarasota Memorial"). Last year in the case of Sarasota County Public Hospital Board v. City of Venice, Florida, et al, the Court ruled in the City's favor allowing the City to hear the merits of this matter. There has been a motion for reconsideration or clarification pending that has prevented further City action.

As you may recall, one of the issues raised on appeal was that the City's Code had not been properly codified and a portion of the Code which was germane to the request was missing and not available for consideration by the Planning Commission when the matter was before it. Sarasota Memorial is requesting to bring this matter back to the Planning Commission for rehearing under the properly promulgated section of City Code.

I respectfully request that you remand this to the Planning Commission for its review and consideration. Upon your approval of that request, Sarasota Memorial will withdraw its pending motion and proceed to public hearing before the Planning Commission.

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
217 Nassau Street S.
Venice, Florida 34285

The Honorable John W. Holic, Mayor
and Members of the City Council
June 6, 2014
Page | 2

Thank you in advance for your consideration. If you have any questions, please do not hesitate to call me.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Persson', with a large, sweeping loop at the end.

David P. Persson

DPP/dgb

Attachment

cc: Edward Lavalley, City Manager
Lori Stelzer, City Clerk
Jeff Shrum, Community Development Director
Roger Clark, Planner
Jeffery A. Boone, Esquire
Charles D. Bailey, III, Esquire

May 29, 2014

David P. Persson, Esq.
Venice City Attorney
Persson & Cohen, P.A.
6853 Energy Court
Sarasota, FL 34240

Re Site and Development Plan Petition No. 07-3SP ("Site Plan")
Laurel Road Medical Campus
Request for Remand to Planning Commission

RECEIVED
JUN 03 2014

Dear Dave:

On August 7, 2012, the City's Planning Commission approved the above-referenced Site Plan filed by the Sarasota County Public Hospital Board ("Public Hospital Board"). At the Planning Commission hearing, Venice HMA, LLC ("HMA") appeared and requested party standing in that proceeding. The Planning Commission found HMA did not have standing and denied HMA's request. However, the Planning Commission properly permitted HMA to participate in the hearing by providing extensive evidence and testimony through counsel urging the Site Plan be denied. Despite HMA's evidence and argument, the Planning Commission ultimately voted unanimously to approve the Site Plan. Attached as Exhibit "A" is a copy of the August 9, 2012 letter from the City Community Development Director memorializing the approval.

HMA subsequently filed an appeal of the Planning Commission's Site Plan approval to the City Council. On December 11, 2012, the City Council voted 4-3 to find HMA had standing to seek an appeal. The primary focus of the City Council's consideration of HMA's standing was the fact that a provision of the Planned Commercial District ("PCD") Regulations, which the Planning Commission applied when reviewing and approving the Site Plan, was inadvertently omitted from the codified version of the City Code. Specifically, Sections 86-133(i)(2) b, c, d and e were found to have been unintentionally left out of the PCD Regulations published by the Municipal Code Corporation ("Municode"). This was not raised by HMA at the Planning Commission hearing on the Site Plan. Nevertheless, because of Municode's inadvertent omission, the Planning Commission did not consider Sections 86-133(i)(2) b, c, d and e when the Site Plan was approved. Understandably concerned over this omission, the City Council ruled HMA had standing to appeal. Attached as Exhibit "B" is a copy of a December 14, 2012 correspondence from the City Attorney memorializing the City Council's action.

Because the omission of the code provision was not germane to the only issue before the City Council (that is, HMA's standing to bring the appeal), the Public Hospital Board sought clarification on the standing issue by petitioning circuit court. The court did not grant the petition and, instead, determined that the Public Hospital Board has an adequate remedy at law in the form of a *de novo* hearing before the City Council on the Site Plan and, if necessary, the right to file a petition reviewing the legality of the City Council's action on the Site Plan. The circuit court further determined that the additional administrative proceedings should first be exhausted before petitioning the court. Attached as Exhibit "C" is a copy of the Court's Order.

Because the petition was decided on threshold issues, the court did not address the substantive issue of whether HMA has standing to bring the appeal of the Site Plan approval. In an abundance of caution, the Public Hospital Board filed a motion seeking clarification from the court which is still pending. Since filing the motion, we have had the opportunity to confer with you and City staff on the most appropriate way to conclude the Site Plan application process.

The City's primary concern was the absence of the provisions from the PCD Regulations when the Planning Commission approved the Site Plan and whether their inclusion in the regulations would have resulted in a

different outcome. Thus, to fully address this concern, my client proposes to take its Site Plan back to the Planning Commission for consideration. This would allow the City's Planning Commission to reconsider the Site Plan for compliance with the code, including Sections 86-133(i)(2) b, c, d and e, as may be applicable.

Accordingly, consistent with our recent discussions, **the Public Hospital Board is respectfully requesting the City Council remand the Site Plan to the Planning Commission. We would further request the Site Plan application be set for hearing for reconsideration by the Planning Commission under the City of Venice Land Development Code, including Sections 86-133(i)(2) b, c, d and e.**

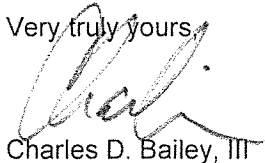
As discussed, we propose no changes to the Site Plan. We intend to present to the Planning Commission the very same, unchanged Site Plan which it unanimously approved in August 2012. We believe the Site Plan application fully complies with the provisions which were previously omitted from the code. Remanding the application to the Planning Commission will afford the City the opportunity to have its designated board confirm this is the case.

Further, as we agreed, upon the City Council remanding the Site Plan to the Planning Commission, the motion seeking clarification filed in circuit court would be rendered moot allowing the Public Hospital Board to withdraw it, thereby disposing of the circuit court proceeding.

I would ask that you please present this request to the City Council at your earliest opportunity. Please also let me know when and how it will be discussed and considered by the City Council in advance.

We are looking forward to again presenting the Site Plan application to the Planning Commission, the body the City Council vested with the authority to review and approve site plan applications. Thank you for the assistance you, Jeff Shrum, and the Planning and Zoning Department have provided in this process.

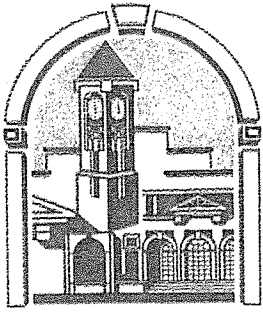
Very truly yours,



Charles D. Bailey, III
For the Firm

CDB, III/djb
Attachments (as stated)

cc: David Verinder, Chief Operation Officer
Thomas Perigo, Director of Architecture and Construction
Peter Van Buskirk, Kimley-Horn and Associates
Kelley Klepper, Kimley-Horn and Associates
Wayne M. Ruben, WMR Consulting, LLC
Jeff Shrum, City of Venice Community Development Director



CITY OF VENICE
401 W. Venice Avenue Venice, FL 34285

(941) 486-2626 Fax (941) 480-3031
Suncom: 516-4382

"City on the Gulf"

August 9, 2012

Charles D. Bailey, Esquire
Williams Parker
Attorneys at Law
200 South Orange Avenue
Sarasota, FL 34236

RE: Site & Development Plan Petition (No. 07-3SP)
Laurel Road Medical Campus

Dear Mr. Bailey:

On August 7, 2012 the Venice Planning Commission found the above-referenced request consistent with the Comprehensive Plan and Code of Ordinances and, therefore, voted to APPROVE Site & Development Plan Petition (No. 07-3SP) for Laurel Road Medical Campus.

This order shall be voided two years after approval unless a building permit has been issued under the approval plans. This time period may be extended by the Planning Commission for a period not to exceed one six month period after showing that a building permit is being actively pursued.

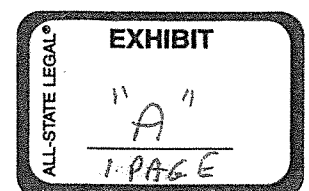
In order to proceed with site and infrastructure improvements, please submit to the Engineering Department application for Site Preparation Permit and eight (8) copies of Construction Plan Permit, including site and utility construction plan details. It is important that the Engineer maintain Planning Commission-approved design and facilities through Construction Plan and Building Permit submittal. Any deviation from the Planning Commission-approved design shall require an amendment to the Site and Development Plan.

If you have any questions, or if we can be of additional assistance, please feel free to contact me at 486-2626, extension 28006.

Sincerely,

Chad L. Minor, AICP, LEED® G.A.
Community Development Director

cc: Sarasota County Public Hospital Board
Kathleen J. Weeden, P.E., CFM, LEED AP, City Engineer
File No. 07-3SP



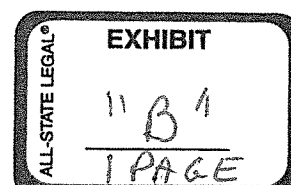
BAILEY, CHARLES III

From: Robert C. Anderson [randerson@hall-anderson.com]
ent: Friday, December 14, 2012 9:03 AM
fo: 'Jeff Boone'; BAILEY, CHARLES III
Cc: Lori Stelzer; Chad Minor
Subject: Appeal filed by Venice HMA, LLC

On December 11, 2012 the Venice City Council ruled that Venice HMA, LLC has standing to appeal the Planning Commission's approval of Site and Development Plan Petition No. 07-3SP. Please work with Lori and Chad to select a regular meeting of City Council at which this appeal may be heard and decided. This appeal shall be governed by Section 86-21 of the land development code.

Should you have any questions concerning this matter, please do not hesitate to contact me.

ROBERT C. ANDERSON, ESQUIRE
Hall & Anderson, P. A.
1314 East Venice Avenue, Suite E
Venice, Florida 34285
Telephone: (941)480-0999
Fax: (941)480-1446
Email: randerson@hall-anderson.com



IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

SARASOTA COUNTY PUBLIC HOSPITAL BOARD,

✓
Petitioner,

v.

Case No.: 2013-CA-000299 NC

CITY OF VENICE, FLORIDA,
a municipal corporation, and
THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA,
As its governing body,

Respondents.

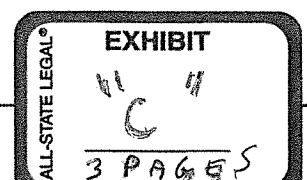
FILED FOR RECORD
2013 JUL 10 PM 12:18
KAREN E. RASHINSKY
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

ORDER DENYING PETITIONER'S PETITION FOR WRIT OF PROHIBITION

THIS CAUSE has come before the Court on the Petitioner's Petition for Writ of Prohibition, filed January 10, 2013. The Court has reviewed the Petition and the responses thereto, heard the argument of counsel, and is otherwise duly advised in the premises.

On January 17, 2013, the Court issued an Order to Show Cause. On February 12, 2013, the Court entered a stipulated order confirming Venice HMA, LLC as a Respondent in this action and granted an extension of time to file response to the show cause order. On March 8, 2013 the Respondent Venice HMA, LLC filed a Motion to Dismiss. On May 8, 2013, the Petitioner filed a response to the Motion to Dismiss. On May 15, 2013, the Court heard oral argument on the Motion to Dismiss. On May 20, 2013, the Court denied the Motion to Dismiss and directed the Respondents to file a Response to the Petition. On June 6, 2013, both the City of Venice and Venice HMA, LLC filed a response. Following an extension of time, on July 3, 2013, the Petitioner filed a Reply to the Response.

Case: 2013 CA 000299 NC
000299 NC
Dkt: ORDONTPET



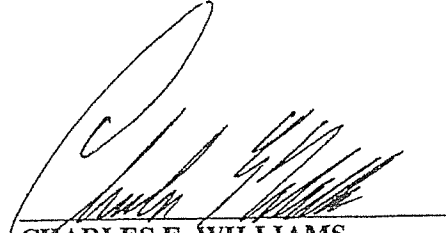
In the Petition, the Petitioner argues that a Writ of Prohibition is necessary to prevent the City Council from unlawfully exercising jurisdiction over and hearing an appeal involving the issue of the Petitioner's site and development plan application.

The record contained in the Appendix to the Petition reflects that the Venice City Planning Commission determined that Venice HMA, LLC did not have standing in the matter. Pursuant to City of Venice Code Section 86-21(b), an appeal was filed to the Venice City Council, which conducted a de novo review of the Planning Commission's decision on the site and development plan petition on August 7, 2012. The Venice City Council examined whether Venice HMA, LLC had standing to appeal the Planning Commission's approval of the site and development plan. This proceeding was not quasi-judicial in nature. The City Council found that Venice HMA has standing to pursue its appeal of the Planning Commission's determination. Accordingly, a de novo review and appeal will be scheduled for a future date.

The issuance of a writ of prohibition is appropriate where a lower tribunal lacks jurisdiction to prevent an injury when there is not an adequate legal remedy. See Board of County Commissioners in Metropolitan Dade v. Wood, 662 So. 2d 417 (Fla. 3d DCA 1995). The Venice City Code permits the city to determine that Venice HMA, LLC's appeal was properly filed and should be placed on the city's agenda to be heard. Should the Petitioner not prevail on the merits in the de novo proceeding before the Venice City Council, it may file a Petition for Writ of Certiorari in this Court. Accordingly, the Petitioner has not demonstrated that it does not have an adequate legal remedy. Furthermore, Petitioner has failed to exhaust its administrative remedies below.

It is, therefore, **ORDERED AND ADJUDGED** that the Petitioner's Petition for Writ of Prohibition is hereby **DENIED**.

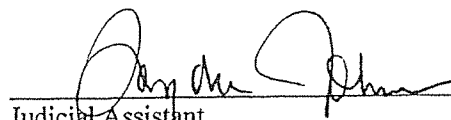
DONE AND ORDERED in Chambers, in Sarasota, Sarasota County, Florida, this 10
day of July, 2013.



CHARLES E. WILLIAMS
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail as follows on this 10 day of July, 2013 to: **David P. Persson, Esq.**, Hankin, Persson, Davis, McClenathen, Darnell, 1820 Ringling Blvd., Sarasota, FL 34236, **Charles D. Bailey, III, Esq.**, Williams, Parker, Harrison, Dietz & Getzen, 200 South Orange Avenue, Sarasota, FL 34236, and **Jeffrey A. Boone, Esq.**, Boone, Boone, Koda & Froom, P.A., 1001 Avenida del Circo, Post Office Box 1596, Venice, Florida 34284.



Judicial Assistant