

Todd Myer
6/15

From: Marshall Happer happer@happer.com
Subject: Proposed Shopping Center Opposition: Request for Reconsideration of "Legal Advice" and Strategy
Date: July 24, 2022 at 4:37 PM
To: todd.s.myer@gmail.com

Dear Friends and Neighbors:

July 12 Dan Lobeck Email to City of Venice

On July 12, Attorney Dan Lobeck sent an email to the City of Venice setting forth in detail the reasons that the Petition for the approval of a new 10.42 acre shopping center directly across from the entrance of the Venetian should be denied by the Venice Planning Department, Venice Planning Commission and the Venice City Council. I previously circulated that email and if you do not have a copy send me a request by email and I will send it to you. Dan Lobeck has been employed and funded by the Venetian homeowners of the North Venice Neighborhood Alliance (NVNA). Dan Lobeck is Florida Bar Board Certified in Condominium and Planned Development Law and by the way is also currently employed by the VCDD on two separate matters.

July 21 Bill Schaid Email

On July 21, Bill Schaid as "President and CEO" of our POA sent an email to the Venetian community entitled: "Legal Support & Strategy" in which he disregarded the detailed opposition set forth in the Dan Lobeck email to the City and informed the homeowners in the Venetian that the POA Board intended to accept the "legal advice" from Ellyn Bogdanoff, of Becker Poliakoff in Ft. Lauderdale, a "past State legislator, attorney and lobbyist" who said she talked "to numerous State, County and local officials" and concluded that "it will likely be approved" and that judicial review of such approval will likely not be successful. The basis for her "legal advice" was not disclosed.

My July 24 Email To the POA Board Requesting a Reconsideration of its "Legal Advice" and Strategy along with Full Disclosure of Any Relationships by Becker Poliakoff with Pat Neal and his Companies.

Dear Bill, Mike, Lew, Diane and Jerry:

I have received a copy of your July 21 email entitled: "Legal Support & Strategy" with respect to the proposed Pat Neal shopping center in the Cielo subdivision across from the entrance to the Venetian which you circulated to the homeowners in the Venetian. I am disappointed with your "legal advice" and your proposed strategy.

The "legal advice" you received and apparently plan to rely on from Ellyn Bogdanoff, of Becker Poliakoff in Ft. Lauderdale, a "past State legislator, attorney and lobbyist" who said she talked "to numerous State, County and local officials" and concluded that "it will likely be approved" and that judicial review of such approval will likely not be successful. The basis for her "legal advice" was not disclosed. The Bogdanoff "legal advice" is directly contradicted in detail by Attorney Dan Lobeck, whose employment has been funded by the Venetian homeowners of the North Venice Neighborhood Alliance (NVNA) as detailed in his email to the City of Venice on July 13, a copy of which was forwarded to the POA Board and throughout the Venetian community. Dan Lobeck is Florida Bar Board Certified in Condominium and Planned Development Law and by the way is also currently employed by the VCDD on two separate matters.

So far, Becker Poliakoff seems to be amendable to providing "legal advice" to the POA without proposing to represent the POA in opposition to Pat Neal's proposed shopping center and the optional possibility of litigation for judicial review if the City Council should approve

his request. I respectfully request that you ask Becker Poliakoff to make full disclosure if they are currently or have in the past represented or worked with Pat Neal or any of his companies in any legal or political matters. Please provide that full disclosure at your August 2 meeting.

Your appointment of an Advisory Committee led by Mike Craychee including members of the Community Association Board is no way to oppose the proposed shopping center on behalf of the 75%+ of the homeowners in the Venetian who requested that it be opposed. It is just not possible to oppose the shopping center and at the same time have a group of homeowners negotiating with Pat Neal and Jeff Boone.

You failed to represent the Venetian with respect to the debate, review and approval of the new Land Development Regulations by the City of Venice and as of now you have failed and refused to oppose the proposed shopping center.

If the proposed shopping center is not opposed, it will probably be approved.

The homeowners in the Venetian need to oppose the shopping center before the Venice Planning Department whose review is now underway, before the Venice Planning Commission and before the Venice City Council. It may be prudent to hire a traffic engineer to review the defects in the Pat Neal traffic study and a court reporter would need to be employed to preserve the record of the proceedings before the City Council. If and only if, the Venice City Council should approve the shopping center, then the homeowners in the Venetian would have the option to consider requesting judicial review. I am advised that such a judicial review would be by “a Petition for Writ of Certiorari, which is appellate review of the record before the City Council as submitted in the lawsuit, including a court reporter transcript. The available grounds upon review are denial of due process, departure from the essential requirements of law (Zoning Code and anything else other than the Comp Plan) and the absence of any evidence in the record to support an essential finding of fact. Fees are not awarded, just costs.” Since this is an appeal on the record, no new facts are permitted and these cases usually can be determined on Summary Judgment without the necessity of a trial. Thus, the scare tactic of possibly having the pay legal fees for the City of Venice or Pat Neal if he intervenes, if we were to lose the judicial review, is unfounded.

On April 4, I sent you an email saying: “Your failure to act is causing a division between the homeowners in the Venetian and the POA which is even more detrimental than the proposed Pat Neal regional shopping center.” I hope that at your meeting on August 2, you will reconsider your “legal advice” and strategy and join with the NVNA in opposing the proposed shopping center. If not, the homeowners in the Venetian will apparently have no alternative but to oppose the proposed shopping center via the NVNA which now has over 2,000 signatures on its Petition.

Thanks for your consideration and for your invitation to speak for up to 3 minutes at your POA Board meeting.

Important Email Addresses

If you are interested in expressing your opinion, here are some important email addresses:

schaidwe@gmail.com for Bill Schaid, Venetian POA President.

Mike9n@verizon.net for Mike Craychee, POA Board Member.

dibaz@aol.com for Dianne Bazlamit, POA Board Member.

bkguido@yahoo.com for Jerry Lewis, POA Board Member.

Lperry45@comcast.net for Lew Perry, POA Board Member and Community Association Board Member.

rceffron@gmail.com for Roger Effron, Community Association President.

citycouncil@venicefl.gov for all 7 members of the Venice City Council.

Planningcommission@venicefl.gov for all 7 members of the Venice Planning Commission.

Julianne.polston@publix.com for Julianne Polston, Publix Real Estate Manager for our area.

NVNA

The NVNA has invited all Venetian homeowners to join with the NVNA. Contributions can be made to the NVNA, P.O. Box 104, Laurel, FL 34272 or better yet, Zelle can be used to send money to nvnalliance@gmail.com.

See:

Petition Page:

<https://www.change.org/p/venice-planning-commission-stop-commercial-development-in-the-milano-pud>

[Do not contribute money to change.org]

Facebook Page:

<https://www.facebook.com/groups/258749306377242>

Email Address:

NVNAlliance@gmail.com

Marshall Happer | 117 Martellago Drive, North Venice, FL 34275

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Todd Myer
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From: Marshall Happer happer@happer.com
Subject: Conflict of Legal Opinions between POA Ft. Lauderdale Attorney and NVNA Florida Bar Board Certified Attorney re Pat Neal Shopping Center
Date: July 14, 2022 at 6:01 PM
To: todd.s.myer@gmail.com

Dear Friends and Neighbors:

We Have a Problem

We now have the problem with the POA Board receiving advice from its Fort Lauderdale based lobbyist attorney, **Ellyn Bogdanoff, Esquire, of Becker & Poliakoff that is contrary to the advice received by the North Venice Neighborhood Alliance attorney, Dan Lobeck** of Sarasota. Lobeck is Florida Bar Board Certified in Condominium and Planned Development Law. Bogdanoff has no Florida Bar Board Certification and apparently no experience with the City of Venice.

Bogdanoff told the POA Board that based on the "political intelligence" she obtained by talking to numerous State, County and local officials, the proposed **Pat Neal shopping center** across from the entrance to the Venetian **will likely be approved**. On the "**legal side**", she indicated that she did not think the **VG&RC would have a strong enough legal basis to utilize resources to challenge the City of Venice, should the Council approve it.**

This is a huge problem for us at the Venetian since over 75% of the homeowners in the Venetian according to the POA survey opposed the proposed shopping center. Over 2,000 have now signed the NVNA Petition in opposition to the proposed shopping center. If the POA Board refuses to oppose the proposed shopping center, we will have to rely on the NVNA to oppose it.

Important Email Addresses

If you are interested in expressing your opinion, here are some important email addresses:

schaidwe@gmail.com for Bill Schaid, Venetian POA President.

reeffron@gmail.com for Roger Effron, Community Association President.

citycouncil@venicefl.gov for all 7 members of the Venice City Council.

Planningcommission@venicefl.gov for all 7 members of the Venice Planning Commission.

Julianne.polston@publix.com for Julianne Polston, Publix Real Estate Manager for our area.

NVNAlliance@gmail.com for the North Venice Neighborhood Alliance which is a group of homeowners opposed to the proposed shopping center and which has over 2,000 signatures on its Petition in opposition.

POA Board Meeting July 12

At the POA Board Meeting on July 12, Ellyn Bogdanoff, Esquire, of Becker & Poliakoff reported by Zoom her opinion on the proposed Pat Neal shopping center.

On July 14, Bill Schaid, POA President summarized her report as follows:



“The Board invited Ellyn Bogdanoff, Becker & Poliakoff, to provide a report on the political and legal due diligence she had completed as a result of the special Retainer Agreement we had signed with Becker & Poliakoff. Based on feedback from State, County and City officials, the belief is that the Commercial Development will be approved by the City under the old Land Development Regulations, as those are contained within the Ordinance 186-130, which was in effect at the time of filing of the Application to amend the Milano PUD. Additionally, Ms. Bogdanoff reported that, after reading all of the documents provided to her and those she discovered in her research, that she did not think there is a strong enough legal basis to challenge the City Council in court, should the City Council approve the Application. The POA Board will continue to focus on this issue and pursue it based on information pertinent to future decisions, as the Application makes its way through the Planning Commission and City Council.”

Questions for Attorney Bogdanoff

During the POA meeting which I attended via Zoom, I attempted to ask Ms. Bogdanoff some questions since it was obvious to me that she had not noticed among other things that the Cielo recorded subdivision plat and its residential subdivision covenants included all of the property sought to be converted into a shopping center as residential open space Commons and that a proposed site plan for the proposed shopping center had in fact already been filed with the City. Bill Schaid declined to permit me to question Ms. Bogdanoff saying he would present my questions to her himself.

My Email to Bill Schaid

To memorialize my questions for Ms. Bogdanoff, I sent the following email to Mr. Schaid immediately after the meeting on July 12:

Dear Bill:

I listened in on Zoom during your Venetian POA Board meeting today to receive the analysis and recommendation of Ellyn Bogdanoff of Becker and Poliakoff from Fort Lauderdale with respect to the proposed Pat Neal shopping center. Bogdanoff is apparently a former member of the Florida House of Representatives and Senate and is now a lobbyist and is listed on the firm website as “a Certified Circuit Civil and Family Mediator.” She is not highly rated as a lawyer by Martindale Hubble and is not Florida Bar certified in “Condominium and Planned Development Law.” She did not appear to me to have much expertise in the kind of zoning issue presented by the proposed Pat Neal shopping center. She sounded exactly like a lobbyist.

It was obvious to me that she had done very limited research apparently using only information provided to her by you as the President of the POA. She said that the previous approvals of the Milano PUD that said “Commercial Uses None”, did not mean “never” and that a PUD could be amended. She said the recent changes in the LDR permitted a multi-neighborhood level shopping center in a PUD, but it also prohibited a convenience store with gas pumps. Surprisingly, she concluded that Pat Neal “has the ability to do this” and that there is “no legal basis to stop it.” She appeared to advise that the POA should not oppose the shopping center. That advice is directly contradicted by the Florida Bar lawyer certified in “Condominium and Planned Development Law” employed by the North Venice Neighborhood Alliance which now has over 2,000 signatures on its Petition in opposition to the proposed shopping center.

When I sought to ask her questions, you said I could not ask her any questions directly, but you said you would ask her. Since it was not clear that she has done much legal research in the Milano PUD, I asked that she confirm that she had read the complete files of the 2014, 2017 and 2020 Milano PUD approvals, along with the Cielo Subdivision Plat and the Cielo Covenants in which this property was included as Cielo Commons. I then asked that she confirm whether she was

saying that Pat Neal has a legal right to have his proposed shopping center approved and if so, on what basis.

The POA Board then appointed a committee to meet with someone on the expansion of Laurel Road to 4 lanes. It was unclear to me whether that committee has been authorized to also meet with Pat Neal re the shopping center or whether that is a decision to be made at a later meeting. I would appreciate your clarification in this regard. As you know over 75% of the homeowners in the Venetian confirmed in your survey that they were against the proposed Pat Neal shopping center.

Email from Bill Schaid July 14

“As per my commitment, I sent your request to our retained counsel, Ellyn Bogdanoff. Actually, as she remained on the line through the discussion of the related Laurel Road widening topic, she penned her response to your questions and sent them to me during our meeting. I would summarize my response to your comments and requests as follows:

1. In line with the ground rules that were established prior to the report being given, there were to be no questions to be asked directly of the Board's attorney.
2. She read the Milano PUD documents you inquired about and reflected on additional research pertinent to the current 186-130 and most recently adopted Restated Land Development Regulations under Ordinance 2022-15.
3. She did say that, based on the political intelligence she obtained by talking to numerous State, County and local officials, that it will likely be approved. On the legal side, she indicated that she did not think the VG&RC would have a strong enough legal basis to utilize resources to challenge the City of Venice, should the Council approve it. She added that it would be a risk for us to pursue a lawsuit but did not say we had no legal basis. She acknowledged some points that might form the basis for an argument. She also commented that, as Pat Neal's Application to amend the Milano PUD was filed under the then current Land Development Regulations (Section 86-130), those regulations would apply.

Becker & Poliakoff were retained to complete the Political and Legal Due Diligence and Ms. Bogdanoff completed the work we authorized her to do, approving the Retainer Agreement which included clear deliverables on June 28, 2022.

4. As it relates to the motion that I made. My motion was, as stated in the Board package, and I read it into the record:

Meet with all Traffic Stakeholders – Traffic Flow/Speed/Ingress/Egress
POA in Collaboration with Community Association
Homeowner with Development/Traffic Experience
The Board approved the motion with a 3:1 vote, with Jerry Lewis in opposition.”

Dan Lobeck, Esquire, attorney for the North Venice Neighborhood Alliance (NVNA) sent the following email to the City of Venice Planning Department and Planning Commission on July 13 in opposition to the proposed Pat Neal regional shopping center directly across from the entrance of the Venetian. Attorney Lobeck is Florida Bar Board Certified in Condominium and Planned Development Law. The Constant Contact email program required that the photos inside of the email had to be inserted at the end of the email so you have to "download pictures" at the end of the email to see them.

Lobeck Email July 13.

Dear Planning Commission Members and Planning Director Clark:

This is to present compelling support for the strong opposition by hundreds of Venice residents – including my client, the North Venice Neighborhood Alliance – to paving over 10.42 acres of designated open space and wetland habitat in the Milano Planned Unit Development (PUD) for an intense commercial center with declared regional draw, with a major entrance which adds a “fourth leg” to the intersection of Laurel Road and Veneto Boulevard, the already challenged main entrance to the Venetian Golf & River Club.

As we will show, the requested PUD amendment, Site and Development Plan and Plat amendment for what is now called “The Village at Laurel and Jacaranda” clearly violate the Venice Comprehensive Plan and Land Development Code, as well as good public policy.

The subject site is, and has been from the beginning of the PUD and for many years, designated on the Milano PUD Binding Master Plan as **open space and protected wetland habitat** of the PUD.

The applications seek approval to change that designation to extensive commercial development, specifically a 47,000 square foot grocery store, 18,000 square feet of additional retail development and a 5,000 square feet “super convenience store” with gas pumps, surrounded by impervious pavement.

This is a rendering of the Site and Development Plan provided by the applicant, although the submitted pdf (as provided by the City) leaves the words illegible even when magnified:

Oddly, this rendering is identical to the one which developer Pat Neal presented at the required Public Workshop on January 6, 2022, below, which can be read when magnified. What is odd is that since that time, the applicant has changed the 5,000 square feet retail building at the southwest corner of the site into a 5,000 square feet convenience store with gas pumps, without changing the submitted plans to depict the gas pumps and related features, as required.

This is a clearer version of the proposed development, included as part of the Landscape Architect’s plans in the application. Again, the gas pumps are omitted.

Because the submitted Site and Development Plan omits the gas pumps and related improvements which are requested in the application, it must be rejected.

Moreover, because the addition of this very high traffic feature of the proposed development (with other potential impacts on lighting, hours and otherwise) has changed the “project scope and nature,” the developer is required to first conduct another Public Workshop, under the requirements of Section 86-41 of the Venice Land Development Code.

This is no small development. Here is a rendering of the “elevation” of the grocery store frontage from the application. Note that it is so massive that it runs off the page to include the segment below.

The Scope and Scale of the Proposed Commercial Development Exceeds What Is Allowed

Section 86-130 (r) of the Venice Land Development Regulations governing PUD’s provides as

follows:

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.

This is consistent with Policy LU 1.2.16.7(b) of the Venice Comprehensive Plan for the Mixed Use Residential (MUR) Land Use Designation (which is limited to PUD's). It 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.

It is indisputable that this proposed development violates these requirements of the Comprehensive Plan and LDR's.

The applicant has made much of the regional appeal of this shopping center, particularly the large Publix store.

The developer's Powerpoint presentation at its Public Workshop boasts that the commercial development "is significant for the communities east and north of I-75," claiming that it will serve 6,943 homes in subdivisions spread on a map over many miles, only 837 of which are shown in the Milano PUD (Milano 464, Aria 182, Cielo 71 and Fiore 120). "Will be the only grocery store east of I-75 within 11 miles" the Powerpoint claims, and the only one within 2.5 and 2.8 miles in two opposite directions, both of which "require driving through an I-75 interchange." In a January 15, 2022 article in the *Sarasota Herald-Tribune*, Pat Neal is quoted as saying "Six thousand homes demand a store and three different Publix developers have been trying to buy the property."

[This point is made not only to show some sort of need for the development but also to support a claim of traffic reduction by capturing traffic that would otherwise travel far to another Publix. Indeed, the developer at the Public Workshop perpetuated the false notion that the development would actually reduce traffic rather than increase it. In fact, however, the developer's Traffic Study shows that the development will increase traffic at the impacted intersections and roads by 814 pm peak hour trips, reduced from 945 by 14% due to "pass-by capture trips."]

And of course the proposed commercial center will front on two exterior, perimeter streets rather than be centrally located within the project.

Some have noted certain other PUD's have commercial development fronting on exterior, perimeter streets. Even if it can be argued that a failure to enforce the LDR's in one instance means they can't be enforced in another instance, those exceptions can be distinguished, in consideration of the location (and not the scale) of the commercial center being a factor which the LDR's state is "normally" applied.

In none of those earlier cases did the developer of a previously approved PUD containing no commercial property ask to develop commercial property at a location surrounded by existing residential homes. In none of those earlier cases was there an approved binding master plan that stated there would be no commercial development within the PUD. In all of those earlier cases the commercial property that existed within the PUDs was identified as commercial prior to the time that the land was zoned as PUD. That land had previously been designated for commercial development by the time the PUD was created. Each of those earlier cases is easily distinguished from the Neal proposal, as follows:

CAPRI ISLES. On February 22, 1971, the Venice City Council approved the original "Master Land Use Plan" for Capri Isles. That plan included some proposed commercial development within the

subject area. But at that time that land was not part of a PUD. The land was not rezoned as a PUD until 1978 at which time the original plan became part the PUD master plan in accordance with the then existing provisions of Section 20-9.20 of the City's Zoning Code. That provision states if on the date of the adoption of the Code there exists an annexation agreement that establishes the right for certain development and the subject property thereafter is classified as PUD then the sections of the agreement relating to the development of the property shall be construed as meeting the requirements for an application for PUD zoning. Again, when the City approved the Master Land Use Plan in 1971, which included some commercial property, the land was not a PUD.

BIRD BAY. Prior to 1978 Bird Bay was not a PUD. Prior to 1978 the area that had been annexed into the City and which was to be developed as Bird Bay included residential as well as a proposed small commercial development. In January of 1978 the earlier Annexation Agreement was amended to state that the owner was to develop the lands in a "planned residential community" substantially in accordance with an attached drawing that shows only residential development, no commercial. The amendment also refers to "the Planned Unit Development portion of said lands..." The commercial property that was part of the annexed land was not included within the later created PUD. Additionally, even if the commercial portion of the property was included in the PUD it would appear that Section 20-9.20 of the City's Zoning Code has application to Bird Bay. The commercial property could be developed since it was commercial at the time the land was first annexed.

PINEBROOK SOUTH. Concerning the Pinebrook South development, the annexation agreement of March 8, 1961, required that the land being annexed be developed as per a master plan contained in engineering drawings of February 12, 1959. Those drawings cannot be located by the City's Planning Department but presumably include and reference six acres of land for future commercial development. On May 24, 1974, the then developer applied for rezoning of the subject lands to a PUD, which application was granted by the City. That document references that six acres may be developed as commercial. Those six acres of proposed commercial property were created and were allowed as per the annexation agreement and existed prior to the Pinebrook South PUD being approved. Further, no retail commercial was ever created on the property. Instead, in 1983 the City approved the construction of a nursing home on the subject six acres. Again, Zoning Code, Section 20-9.20 has application to Pinebrook South.

TOSCANA ISLES. The preliminary plat for Toscana Isles relating to its petition to be rezoned PUD was filed in 2011. That property had been annexed in 2003 as an existing 598 space RV park. At that time the property received a "commercial" future land use designation. In 2006 the property was rezoned to "Commercial General" with the intention of developing a project that proposed residential and commercial uses. That plan was never executed, and the property remained vacant and zoned as commercial general until the time of the filing of the petition in 2011. That petition included 10 acres for future commercial use. In 2012 the developer asked that the master plan of the PUD be amended to include approximately 20 additional acres adjacent and to the south of the PUD. That land was zoned commercial and had existed as commercial at the time the Toscana Isles PUD was created next door. The small areas within the Toscana Isles PUD that were approved for future commercial use had previously been zoned commercial general. It does not appear that either of those two areas have actually been developed as commercial to this date. Additionally, at the time the PUD was approved the adjacent land use was as follows: North-Agriculture and Industrial; West-Agriculture and Industrial; South-Vacant; East-Residential and Industrial. See Toscana Isles Staff Report.

In any event, the location of the commercial center is one issue.

The even more important fact is that the development proposed here indisputably fails to meet the requirement of the LDR's that it must be "**to serve the needs of the PUD and not the general needs of the surrounding area**" and "**to serve the residents of the PUD**" and the requirement of

needs of the surrounding area and to serve the residents of the PUD and the requirement of the Comprehensive Plan “to provide for neighborhood scale and serving uses; not for regional purposes.”

The adverse neighborhood impacts also violate the compatibility requirements of Policy LU 8.2 of the Comprehensive Plan. It provides that consideration for determining a proposed use’s compatibility shall include, “Protection of single-family neighborhoods from the intrusion of incompatible uses “as well as, “Prevention of the location of commercial or industrial uses in areas where such uses are incompatible with existing uses.”. A commercial use is considered under the CP to be “potentially incompatible” with residential.

Amending the PUD to Change Open Space to Commercial Is Not Allowed

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).

The regulation is as follows (emphasis added):

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.

Designated Open Space Must Remain Open Space

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:

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.

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.

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...**" "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 land intended to be converted to a shopping center is within the Cielo Subdivision in the Milano PUD. That subdivision has been fully platted, with the Certificate of Approval being signed by the Mayor on November 12, 2019 and the final plat being recorded on December 10, 2019. That plat shows much of the land now intended for use as a shopping center as open space. Yet, although the plat contains a dedication of easements, it includes no dedication of open space. See attached Cielo Subdivision Plat, The intention of the regulation is clear. When a final plat is prepared any open space shown on that plat is to be dedicated to the city. 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 concrete and cinder block. 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 Cielo Declaration of Covenants, Conditions and Restrictions Prohibit the Plat Amendment to Remove This Common Property of the Subdivision

As shown on the attached recorded final Plat for the Cielo Subdivision, 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 easements:

Tract 306: Wetland, Private Drainage & Flowage Easement

Tract 501: Private Lake, Drainage & Flowage Easement

Tract 600: Open Space, Private Drainage & Flowage Easement

Section 4.01(a) of the Cielo Declaration of Covenants, Conditions and Restrictions defines as Common Property almost all the property outside the platted lots, including the areas identified on the recorded Plat as having any private easement, including but not limited to drainage and other easements.

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" -- which does not necessarily include the Plat after its recording -- 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 replat would violate that standard.

While it might be argued that the City should not be involved in enforcing this Declaration restriction, it is not only appropriate but necessary to recognize that the Developer lacks the legal authority for the proposed replat, under the recorded Declaration as well as the statute discussed below.

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.

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:

Owners sign a Plat. And owners provide fee
single title.

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.

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.”

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.

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.

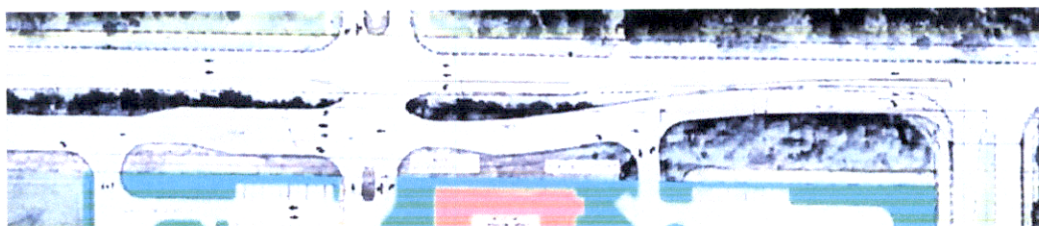
No Valid Choice But to Recommend Denial

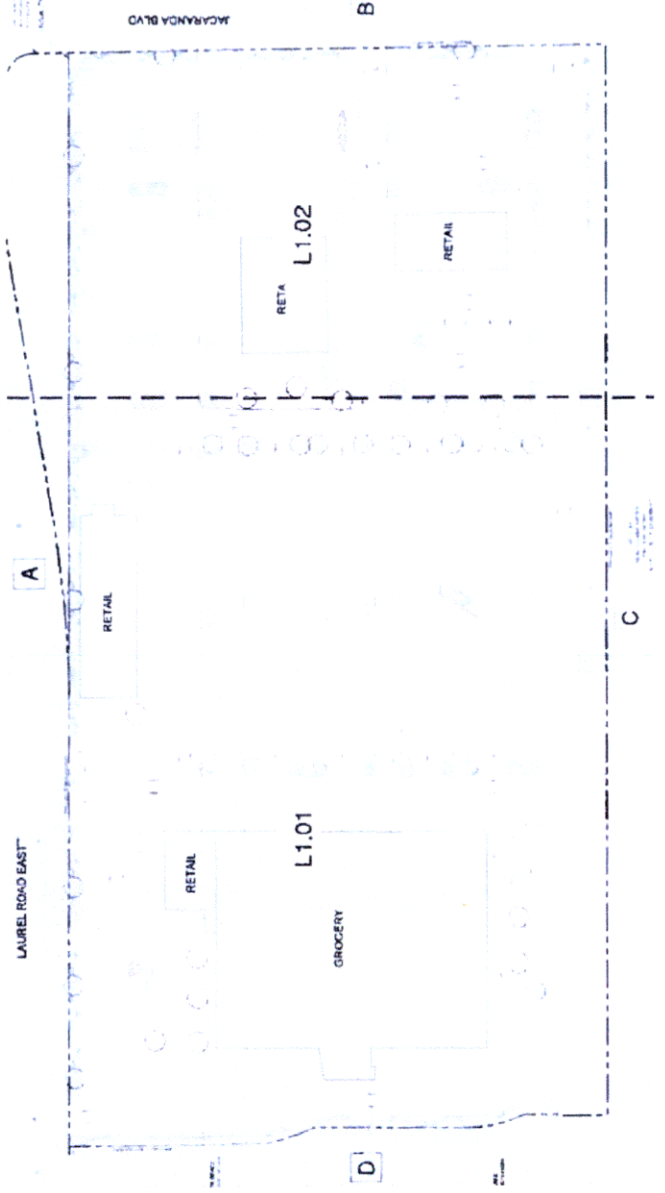
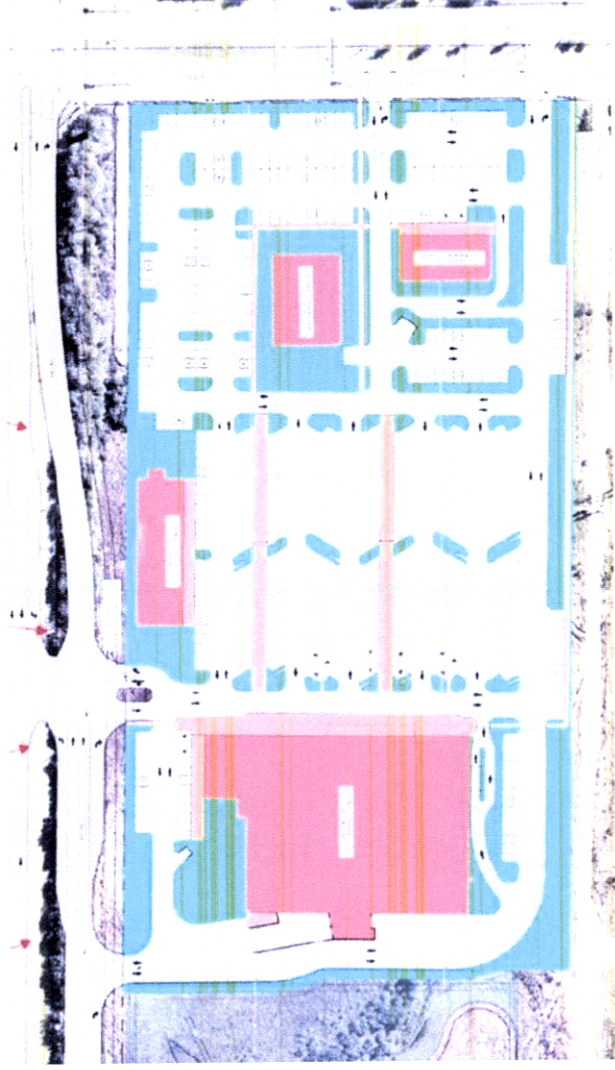
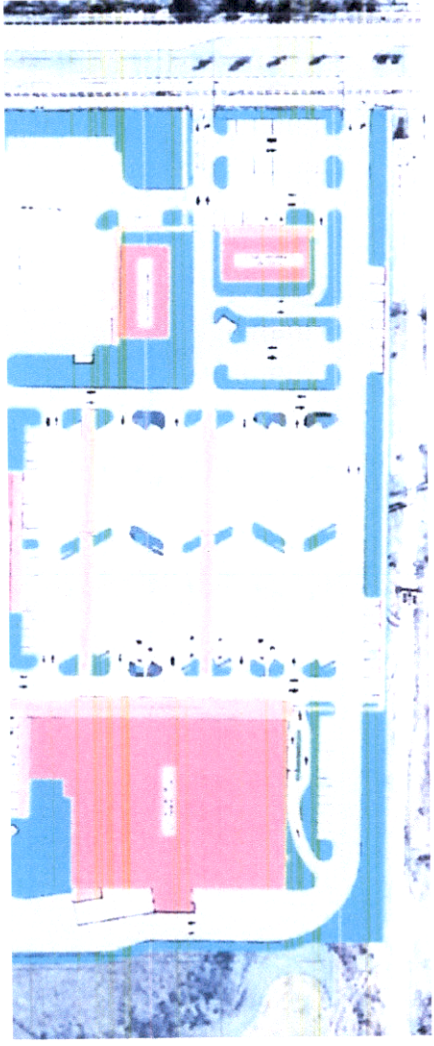
Based on the existing law, Land Development Regulations and Comprehensive Plan of the City of Venice, the Planning Commission has no valid choice to but to recommend denial of the proposed PUD amendment, Site and Development Plan and Plat amendment for “The Village at Laurel and Jacaranda.”

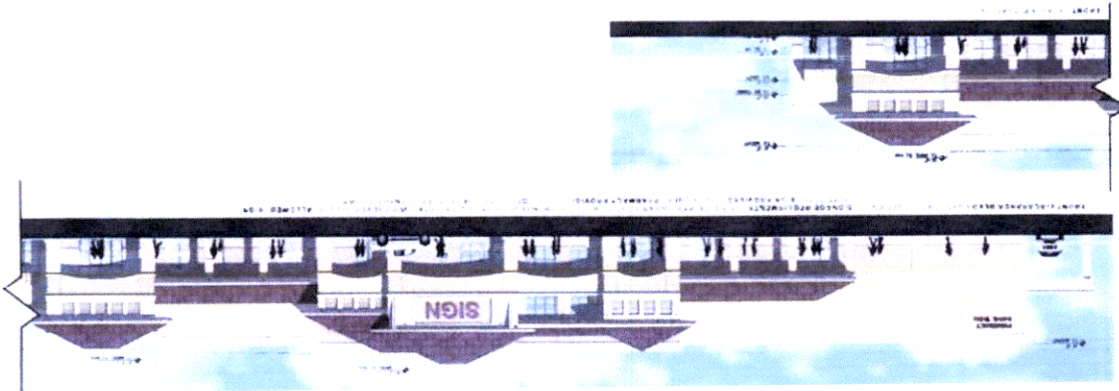
Prior to that, we urge that Planning Director Roger Clark and the City planning staff seriously consider the points herein, address them substantively in their staff report, and for one or more of the reasons we have presented provide a recommendation for denial to the Planning Commission and City Council.

Thank you very much for your considerations.

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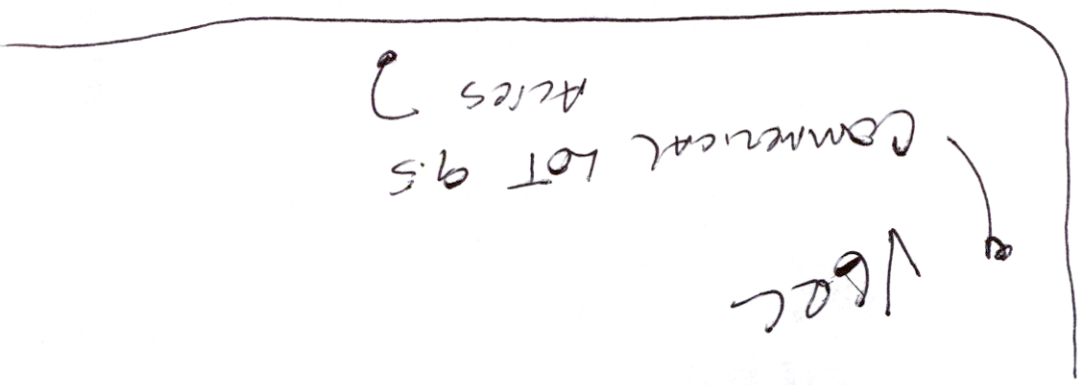
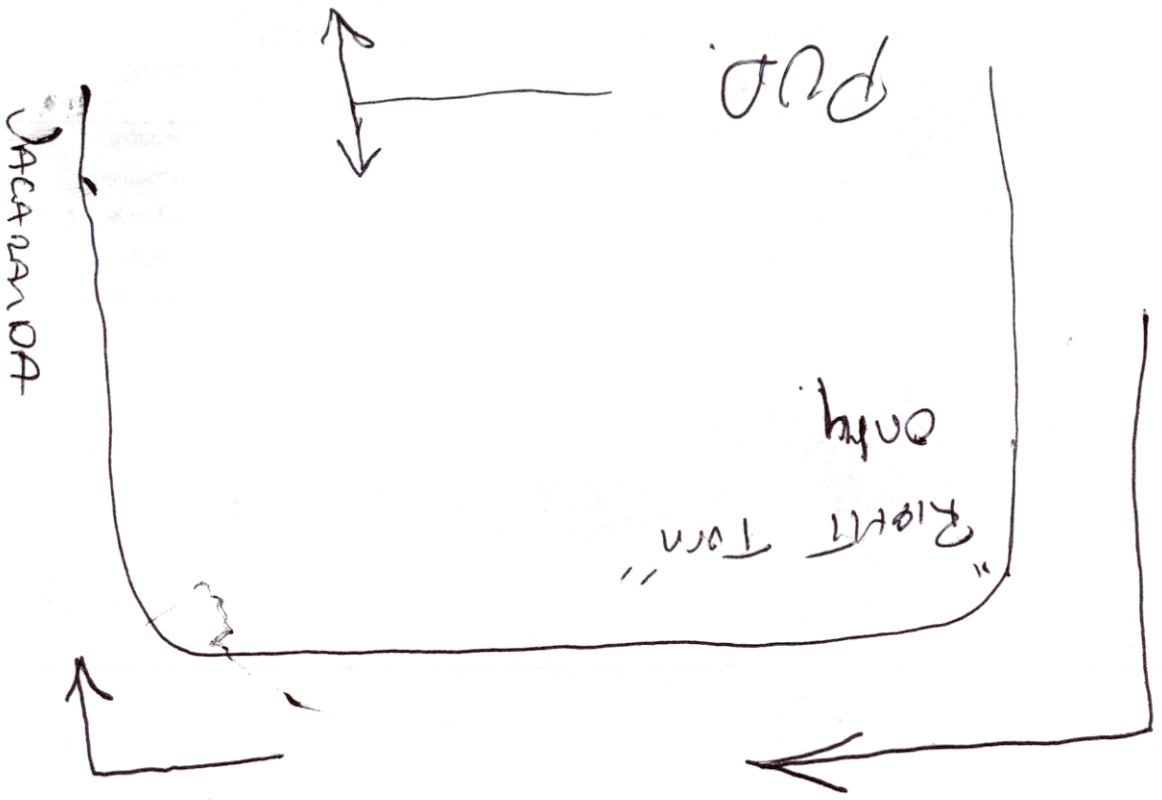
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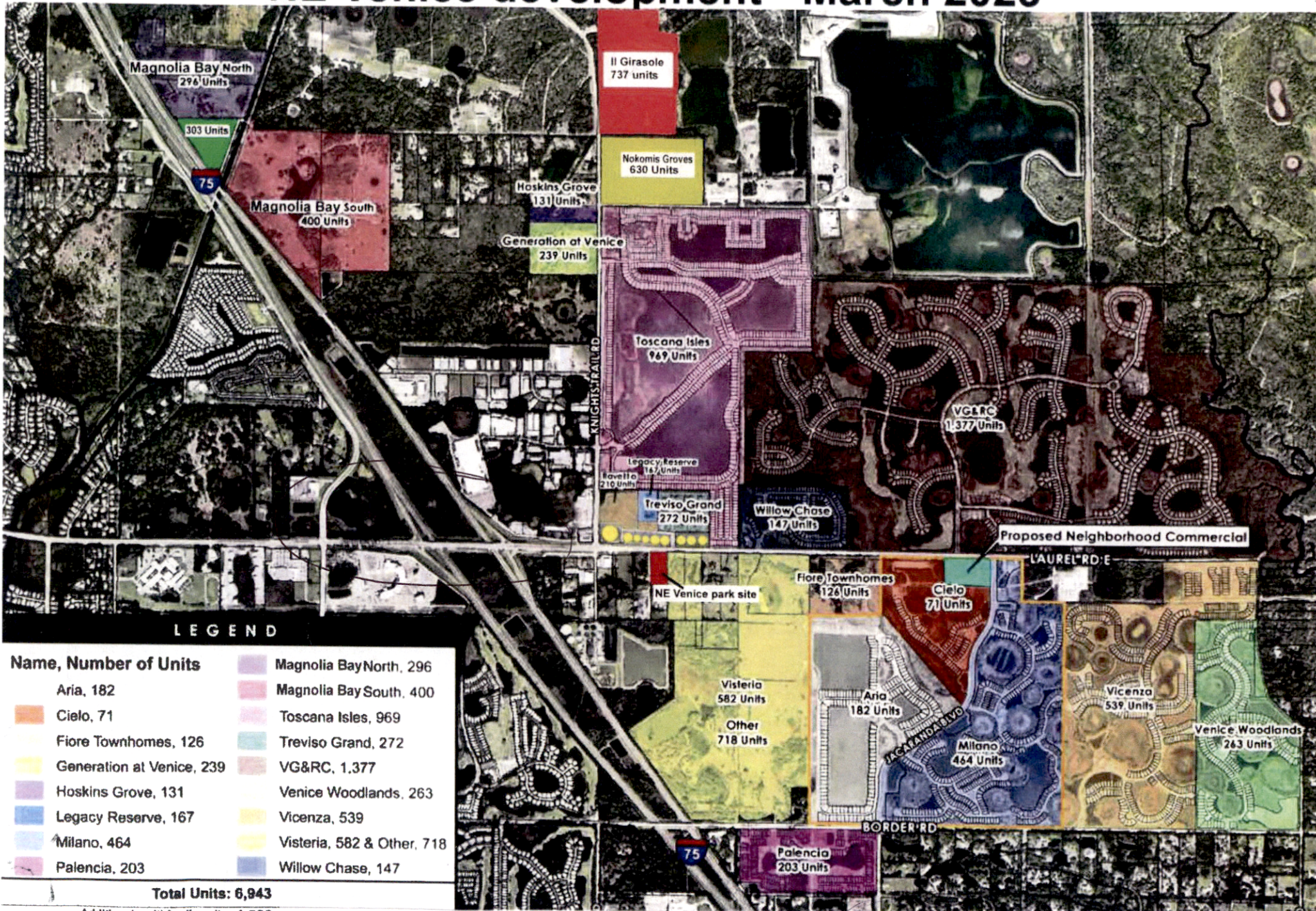


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NE Venice development - March 2023



LEGEND

Name, Number of Units	Color	Name, Number of Units	Color
Aria, 182	Orange	Magnolia Bay North, 296	Purple
Cielo, 71	Red	Magnolia Bay South, 400	Red
Fiore Townhomes, 126	Yellow	Toscana Isles, 969	Pink
Generation at Venice, 239	Light Green	Treviso Grand, 272	Teal
Hoskins Grove, 131	Light Purple	VG&RC, 1,377	Dark Purple
Legacy Reserve, 167	Blue	Venice Woodlands, 263	Light Green
Milano, 464	Dark Blue	Vicenza, 539	Yellow-Green
Palencia, 203	Pink	Visteria, 582 & Other, 718	Light Yellow
		Willow Chase, 147	Blue

Total Units: 6,943

Additional multi-family units: 1,880

TOTAL = 8,823

● Commercial development

