

**NORTH VENICE NEIGHORHOOD ALLIANCE RESPONSES TO THE  
PROPOSED MILANO PUD AMENDMENT FOR A COMMERCIAL  
DEVELOPMENT APPLICATION (NO. 22-38 RZ).**

**Submitted for the City of Venice Planning Commission  
Public Hearing January 17, 2023**

**Prepared by  
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**For The  
North Venice Neighborhood Alliance**

*Jan A. Norsoph, AICP reserves the right to update this report upon becoming cognizant of new or updated information. Mr. Norsoph's qualifications are contained in Appendix A.*

## INTRODUCTION AND EXECUTIVE SUMMARY

This report is prepared on-behalf of the North Venice Neighborhood Alliance, and referred to in this report, as NVNA, related to the proposed Milano PUD amendment for development of a 10.42-acre commercial tract, also referred to as The Village at Laurel and Jacaranda.

The applicant is Border and Jacaranda Holdings, LLC, and proposes to amend the PUD to fill-in and develop upon a 6.6 platted wetland marsh and open space area to construct a strip commercial center along Laurel Road with grocery store, convenience store and other support retail uses with an FAR of 0.5, which would equate to a potential development of 227,000 square feet. It is important to note that the previous PUD approval did not include or anticipate commercial development.

Milano history as stated by the Applicant:

*“The Milano PUD is 503.9 +/- acre property located south of Laurel Road, north of Border Road, and bisected by the Jacaranda Boulevard Extension. The property is located within the Northeast Neighborhood of the Comprehensive Plan and has a Future Land Use Designation of Mixed Use Residential (MUR). The Milano PUD approved by Ordinance No. 2017-25 is a residential community consisting of detached single-family homes, paired villas, multi-family homes, amenity centers and open space. The density approved for the Milano PUD is up to 1,350 dwelling units.”*

The proposed PUD amendment, as stated by the Applicant, and its location as shown in the PUD application (Exhibit A, area outlined in orange) is as follows:

*“This amendment to the Milano PUD proposes to re-designate a 10.42 acre parcel at the southwest corner of the Jacaranda Boulevard and Laurel Road, within the Milano PUD, from Open Space to Commercial, to add access points for the Commercial parcel and establish development standards for the Commercial parcel. The proposed Commercial designated parcel will allow for the provision of various retail and service uses to meet the needs of the neighborhood while reducing trip lengths and increasing multi-modal accessibility to such services for the neighbors. The PUD requirement for a minimum of 50% Open Space will continue to be maintained.”*

The PUD Amendment site is located within the Cielo subdivision plat as shown on Exhibit B. The subdivision tracts and platted uses related to the proposed commercial development site are as follows:

- Tract 600: Open space, Private Drainage & Flowage Easement.
- Tract 501: Private Lake, Drainage & Flowage Easement.
- Tract 306: Wetland, Private Drainage & Flowage Easement

It is important to note that the Cielo Subdivision received final plat approval on December 10, 2019, and all other portions of the PUD have been platted as well. These subdivisions were part of the VICA PUD approval and the 2016 Covenant Agreement described on the following page.

The proposed amendment also entails reducing the 2017 Milano PUD Binding Conceptual Site Plan areas designated as open space from 55.2 % to 50%. Further, no commercial development was approved for or anticipated in the 2017 Binding Conceptual Site Plan.

The proposed PUD amendment seeks to eliminate a platted 6.6-acre freshwater marsh and its environmental habitat, and areas designated as wetland, pond and open space in the approved 2017 Milano PUD Binding Conceptual Site Plan. These areas were required to be protected by restrictive covenants pursuant to the Agreement Regarding Open Space Restriction and Covenant Pursuant to City of Venice Land Development Regulations that was executed by the City and Neal Communities on October 25, 2016, that required the following:

*“The Owner (Neal) shall deliver to the City a fully executed Restrictive Covenant in a form satisfactory to the City Attorney that meets the Minimum Requirements of the Venice Land Development Regulations and sufficiently provides for the restriction of open space on all then existing, approved and recorded plats, prior to or at the time of final plat approval for the last plat, platting substantially all of the remaining residential property, filed in connection with the land development project identified as VICA PUD (a/k/a Villages of Milano) Ordinance No. 2014-16, as amended from time to time.”*

Clearly, the intent of the Covenant requirement was to protect the wetlands and open spaces. To-date, the above reference covenants have not been recorded and which are also required by the Land Development Code (LDC) Sec. 86-130(j) and Sec. 86-231 (c)(2)(n). As noted, the Cielo Subdivision received final plat approval on December 10, 2019, and all other portions of the PUD have been platted as well as. Therefore, restrictive covenants should have been placed at that time; hence the current PUD approval is not in compliance with those requirements.

The Applicant has claimed in the submittals that the proposed PUD amendment is consistent with the 2017 Comprehensive Plan; however, this report will demonstrate that the proposed amendment is not consistent with *Land Use Element LU 1.2.16 and LU 1.2.17* in respect to density and open space; *LUE Northeast Neighborhood Element LU NE 1.1.1 C*, with respect to open space; *Land Use Element Intent LU 4.1*, with respect to transitional strategies related to compatibility and development standards; and with *Open Space Element 1 OS 1, OS 1.2, OS 1.3, OS 1.4, OS 1.5 and OS 1.6* with respect to open space uses, wetlands, native habitats, open space corridors and preservation of open spaces.

It is important to note that the Visions, Intents and Strategies in the Comprehensive Plan take precedence over any Land Development Code requirement. Further, pursuant to LDC Sec. 86-32. Legal significance of the comprehensive plan. *No development order shall be issued under the provisions of the LDC unless determined to be consistent with the comprehensive plan.*

This report will also demonstrate that the proposed PUD amendment does not meet a number of Planned Unit Development (PUD) review criteria in the Land Development Code (LDC).

**Key points for the Planning Commissioners to consider:**

- That the amendment is not consistent with a number of Comp Plan LUE and OSE Visions, Intents and Strategies, and Policy 8.2.

- That pursuant to the peer review conducted by the City’s consultant Wade Trim of the Applicant’s environmental report determined that the proposed PUD amendment is not consistent or compliant with OS1.2.2, OS 1.3.1, OS 1.3.2, OS 1.4.2, and OS 1.4.3.
- That the amendment does not meet a number of PUD rezoning review criteria.
- That the PUD amendment seeks to eliminate a freshwater marsh wetland and its related habitat and eliminate open space that were required to be placed under restrictive covenants pursuant to LDC Sec. 86-130(j) and the 2016 Covenant Agreement. To-date these restrictive covenants have not been recorded. Therefore, the current PUD approval is not in compliance with the 2016 Covenant Agreement or Sec 86-130(j). These wetlands and open spaces provided buffers for the adjacent residential.
- That granting this amendment would set a precedent that previous PUD approvals requiring restrictive covenants on open space or wetland areas can be summarily ignored when a developer wishes to eliminate these areas for other development opportunities. Granting such special privilege is not in the best interest of the City or in compliance with the Comp Plan.
- That no commercial development was approved for or anticipated in the 2017 Binding Conceptual Site Plan. The proposed amendment represents a significant change in land use intensity from open space and wetland to an isolated strip commercial development as there is no other adjacent commercial development.
- That given its location, range of retail uses proposed and potential scale of development (227,00 square feet) the PUD amendment is not consistent with the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *“the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes.”* ; or complies with LDC Sec. 86-130(b) *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* and LDC Sec. 86-130(r) *“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.”*
- That based on the Applicant’s response to staff comment regarding Sec. 86-130(b)(8), the 227,000 square feet commercial center would be larger than neighborhood in scale. Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers from outside of Milano. Even the traffic study included capture from adjacent neighborhoods beyond Milano.
- That there are existing conveniently located commercial centers in the area within 2.3-2.9 miles of this proposed development.

Based on demonstrating the above, the proposed amendment is not in the best interest of the City and adjacent and near-by neighborhoods and is not in consistent or in compliance with the Comp Plan LUE and OSE, or in compliance with LDC PUD review criteria, nor in compliance with the 2016 Covenant Agreement.

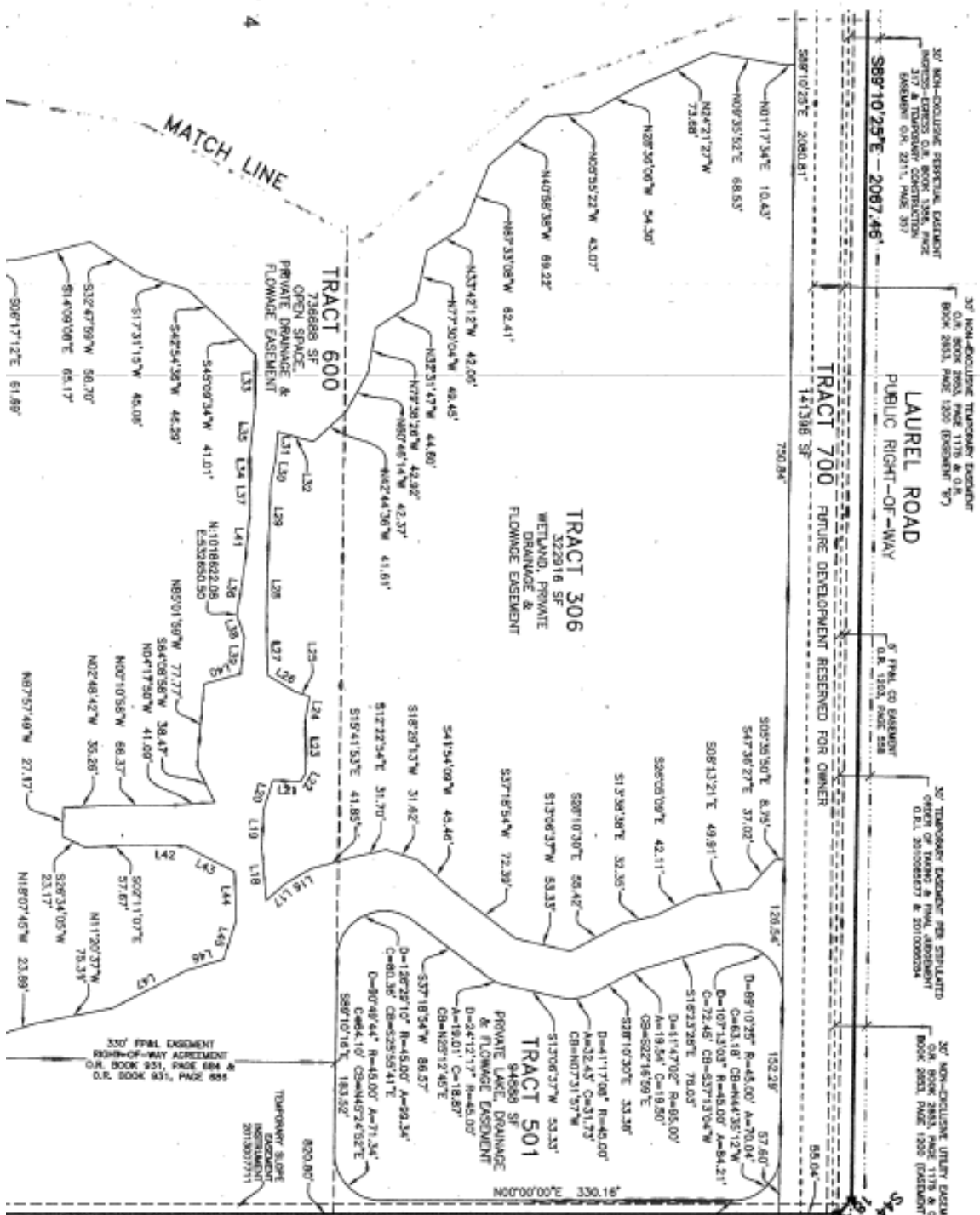
Therefore, the North Venice Neighborhood Alliance recommends that the Planning Commission DENY the proposed PUD amendment based on the analysis presented in this report.

Further, we recommend that the Commission recommend to the City Council that prior to any consideration of a PUD amendment the Applicant be required to meet the requirements of the October 2016 Covenant Agreement to protect the open space and wetland via restrictive covenants.





**EXHIBIT A  
 PROPOSED PUD AMENDMENT AREA**



**EXHIBIT B**  
**CIELO SUBDIVISION PLAT**

## **RELEVANT LAND USE AND OPEN SPACE ELEMENTS VISIONS, INTENTS AND STRATEGIES**

This section focuses on identifying key Venice Strategic Plan goal, and the Comprehensive Plan Land Use (LUE) and Open Space (OSE) Elements Visions, Intents and Strategies, and definitions that will be utilized in this report in supporting denial of the proposed PUD amendment. All italicized text are direct quotes from the Comp Plan LUE and OSE. Some Comp Plan LUE and OSE Visions, Intents and Strategies, and definitions are highlighted for emphasis.

### **VENICE STRATEGIC PLAN FOR FISCAL YEAR ENDING SEPTEMBER 30, 2023.**

*Goal Six: Preserve the Venice Quality of Life through Proper Planning*

*Policy 1: Ensure adherence to the comprehensive plan when reviewing land development applications.*

## **COMPREHENSIVE PLAN**

### **Compatibility Intent and Strategies**

The Comp Plan LUE has compatibility and other criteria to address a development's sensitivity to neighborhoods. The main emphasis throughout the Comp Plan LUE Visions, Intents and Strategies is compatibility with neighborhoods. These visions, intents and strategies place compatibility and environmental sensitivity as the higher criteria to be utilized in the consideration of approval of any proposed PUD amendment review. Achieving compatibility and consistency with the Comp Plan LUE is required and serves in the best interest of the City.

#### *Definition of Compatible*

*“Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean “the same as.” Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.”*

### **Relevant LUE and OSE Visions, Intents and Strategies**

In addition to the various compatibility intents and strategies previously enumerated, the following relevant Comp Plan LUE and OSE Visions, Intents and Strategies are key considerations in the review of this PUD rezoning:

From the development of the Comp Plan community outreach. “What We Heard... Summary Public Comments” is the following goal:

- *Protect the City's environmental and natural resources, and encourage retention of open space for functional and conservation purposes.*



### **SECTION III- ELEMENT-LAND USE**

*Neighborhoods are an integral part of the City and as such, the City has created Neighborhood Planning Strategies. Neighborhoods form the backbone of the community. Quality neighborhood planning and development identifies and capitalizes on the assets of the neighborhood and the City of Venice as a whole.*

***Vision LU 1- The City of Venice envisions a development pattern that balances the economic, social, historical and environmental needs of the community and that preserves the high quality-of-life for all residents.***

#### ***Neighborhoods***

##### ***Intent LU 1.1 - Neighborhoods.***

*The intent of the neighborhood planning approach is to link a variety of efforts to improve the City's neighborhoods in a broad-based way respecting and incorporating the different aspects of community life (residential, commercial, public, recreational) and to provide a method for addressing development issues within the City.*

##### ***Strategy LU 1.1.1 - Neighborhoods Established.***

*The City shall create seven (7) separate and distinct "Neighborhoods" which facilitate area specific development and redevelopment strategies. Neighborhoods are identified for reference purposes on Map LU-1. Seven (7) Neighborhoods have been identified, each including certain unique Strategies that shall apply in addition to those included in this Element. The Neighborhoods are:*

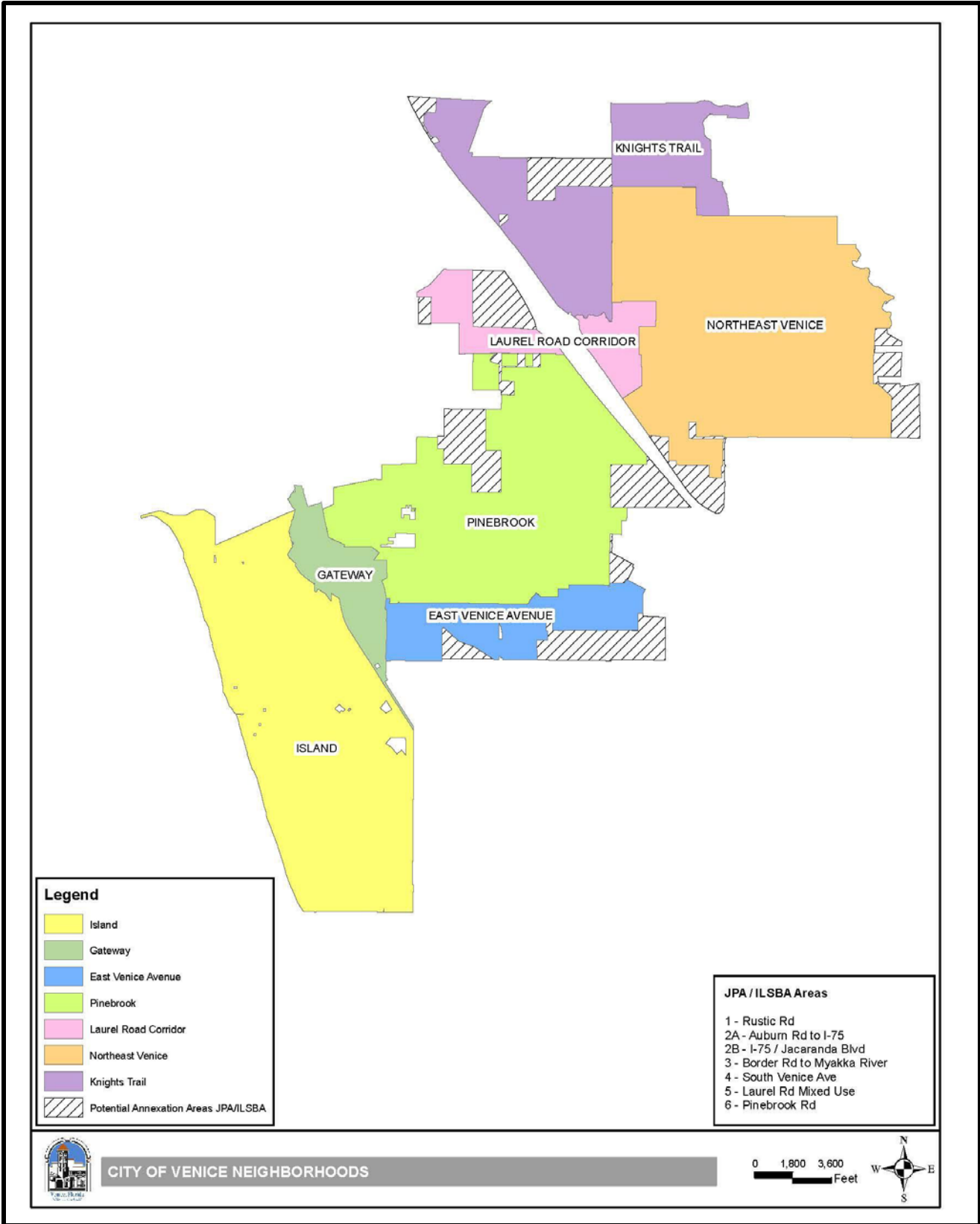
1. *The Island*
2. *Gateway*
3. *East Venice*
4. *Pinebrook*
5. *Laurel Road Corridor*
6. *Northeast Venice*
7. *Knights Trail*

The Comp Plan LUE map on the following page illustrates the location of the various Neighborhoods. The location of the Milano PUD encompasses or impacts the Laurel Road Corridor and Northeast Venice Neighborhoods.

##### ***Strategy LU 1.2.9 - Mixed Use Category.***

##### ***Strategy LU 1.2.16 - Mixed Use Residential (MUR)***

6. *Min/Max Percentages as follows:*
  - a. *Residential: 95% / 100%*
  - b. *Non-Residential: 0% / 5%*
  - c. *Open Space (including both Functional and Conservation): 50% (min). Open Space shall be comprised of a mix of Functional and Conservation Open Space to achieve 50%, with either type being no less than 10%. For the purposes of this Strategy, Functional Open Space may include public and or private open space.*



7. *Min/Max Percentages as follows:*
  - a. *Residential: 95% / 100%*
  - b. *Non-Residential: 0% / 5%*
  - c. *Open Space (including both Functional and Conservation): 50% (min). Open Space shall be comprised of a mix of Functional and Conservation Open Space to achieve 50%, with either type being no less than 10%. For the purposes of this Strategy, Functional Open Space may include public and or private open space.*
  
8. *Intensity/Density:*
  - a. *Residential Density: 1.0 – 5.0*
  - b. *Non-Residential Intensity (FAR): 0.4 (average) Designation-Wide; 0.5 maximum per individual property. Non-Residential Intensity is based on the gross acreage of the non-residential portion of the MUR. The intent of the non-residential portion of the MUR is to provide for neighborhood scale and serving uses; not for regional purposes.*

## ***Planning and Design Principles***

### ***Intent LU 1.3 - Planning and Design Principles.***

*The City intends to guide future development and redevelopment through planning and design principles that foster successful urban communities. The City's Future Land Use designations are intended to establish the following planning and design principles to guide the growth, development and redevelopment efforts within the City. The following Strategies are designed to help guide the City's Land Development Code and review processes.*

### ***Strategy LU 1.3.2 - Functional Neighborhoods***

*The City shall promote functional neighborhoods defined at the Planning Level which include neighborhood centers, a variety of housing types, public/civic space designed for the context of the Neighborhood and a variety of open space amenities.*

### ***Strategy LU 1.3.5 - Natural Features***

*The City shall respect natural features through designs that recognize the natural and environmental features of the area and incorporates the protection, preservation and enhancement of these features as a resource to the Neighborhood as a whole.*

## ***Vision LU 4 - Land Development Code and Transition Issues***

*Policy 8.2 Land Use Compatibility Review Procedures. Ensure that the character and design of infill and new development are compatible with existing neighborhoods.*

*Compatibility review shall include the evaluation of the following items with regard to annexation, rezoning, conditional use, special exception, and site and development plan petitions:*

- A. *Land use density and intensity.*
- B. *Building heights and setbacks.*
- C. *Character or type of use proposed.*
- D. *Site and architectural mitigation design techniques.*

*Considerations for determining compatibility shall include, but are not limited to, the following:*

- E. Protection of single-family neighborhoods from the intrusion of incompatible uses.*
- F. Prevention of the location of commercial or industrial uses in areas where such uses are incompatible with existing uses.*
- G. The degree to which the development phases out nonconforming uses in order to resolve incompatibilities resulting from development inconsistent with the current Comprehensive Plan.*
- H. Densities and intensities of proposed uses as compared to the densities and intensities of existing uses.*

*Potential incompatibility shall be mitigated through techniques including, but not limited to:*

- I. Providing open space, perimeter buffers, landscaping and berms.*
- J. Screening of sources of light, noise, mechanical equipment, refuse areas, delivery and storage areas.*
- K. Locating road access to minimize adverse impacts.*
- L. Adjusting building setbacks to transition between different uses.*
- M. Applying step-down or tiered building heights to transition between different uses.*
- N. Lowering density or intensity of land uses to transition between different uses.*

## **Relevant Open Space Element Visions, Intentions and Strategies**

***Vision OS 1 - The City of Venice shall effectively preserve, protect, maintain, manage and use open space.***

### ***Conservation Open Spaces***

#### ***Intent OS 1.2 - Conservation Open Spaces***

*The City shall use its Conservation Open Space to provide conserved open space for its residents and visitors.*

#### ***Strategy OS 1.2.1 - Conservation Open Space -Defined***

*Conservation Open Space includes: protected open spaces (wetland, wetland buffers, coastal and riverine habitats), preserves, native habitats including those of endangered or threatened species or species of special concern, wildlife corridors, natural lands owned and managed by the City, Sarasota County, State (i.e. FDEP, SWFWMD) or a Federal Agency that do not qualify as Functional Open Space; rivers, lakes, and other surface waters, and aquifer recharge areas. Conservation Open Spaces are envisioned to enhance the quality of the environment by preserving native vegetation that helps to reduce greenhouse gas/ carbon emissions, positively impacting climate change. It is important to acknowledge there may be open spaces that provide both functional and conservation activities e.g. walking trails around water retention facilities.*

#### ***Strategy OS 1.2.2 - Environmental Impact Mitigation***

*The City shall utilize the Land Development Code and review processes to ensure that development projects evaluate potential environmental impacts and provide mitigation for negative impacts. Development shall not adversely impact any threatened or endangered species or species of special concern without appropriate permitting and/ or mitigation.*

## **Wetlands**

### **Intent OS 1.3 - Wetlands**

*The City shall implement strategies to protect its wetlands, wetland buffers, and aquifer recharge areas.*

#### **Strategy OS 1.3.1 - Wetland and Aquifer Recharge Areas Protection**

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

- 1. Establishing site plan requirements to ensure developments evaluate natural drainage features, man-made drainage structures, and impact to wetland and aquifer recharge areas.*
- 2. Requiring development to first avoid impact to wetlands and aquifer recharge areas.*
- 3. Requiring development to minimize impact and then mitigate for impacts to wetlands and aquifer recharge areas when impacts to wetlands and aquifer recharge areas are unavoidable.*
- 4. Limiting activities / uses that are known to adversely impact such areas.*
- 5. Restoring / mitigating wetlands in connection with new development.*
- 6. Maintaining the natural flow of water within and through contiguous wetlands and water bodies.*
- 7. Maintaining existing vegetation to serve as buffers to protect the function and values of the wetlands from the adverse impacts of adjacent development.*
- 8. Requiring any wetland mitigation be based upon the most current state-approved methodology.*
- 9. Prohibiting the dredging, filling, or disturbing of wetlands and wetland habitats in any manner that diminishes their natural functions, unless appropriate mitigation practices are established in coordination with and approved by local, regional, state, and federal agencies.*
- 10. Coordinating with Sarasota County, Federal, and State review agencies on wetland designation, mitigation policies, and regulations.*

#### **Strategy OS 1.3.2 - Wetland Encroachments**

*The City shall require development to identify and delineate wetland boundaries with final wetland delineations to be reviewed and approved by the applicable federal and state review agencies.*

### **Native Habitats, Conservation Lands, and Natural Resources**

#### **Intent OS 1.4 - Native Habitats, Conservation Lands, and Natural Resources**

*The City recognizes the importance of its native lands and habitats and shall implement preservation strategies that protect native habitats, conserve environmental lands and natural resources, minimize environmental pollution, and increase public awareness of the harmful effects of non-native species.*

#### **Strategy OS 1.4.2 - Protection of Native Habitats and Natural Resources**

*The City shall protect significant native habitats through its Land Development Code and review process including the following:*

- 1. Preserve existing native vegetation and natural areas including threatened native habitats.*
- 2. Encourage development forms that provide protection of significant native habitats such as clustered development and alternative roadway designs (i.e., reduced rights-of-way).*



3. *Development shall first avoid impact to significant native habitats.*
4. *Mitigate adverse impacts whenever areas of native habitats are involved in the development of property.*
5. *Require development to first impact lower quality habitats and resources before impacts to higher quality habitats and resources are considered and used.*
6. *Native habitat shall be used whenever possible to fulfill open space requirements.*
7. *Protect environmentally sensitive/significant areas (i.e., floodplain, watersheds, water recharge areas, etc).*

***Strategy OS 1.4.3 - Endangered or Threatened Species***

*The City shall protect threatened or endangered native species by requiring that proposed new development and redevelopment (where applicable) be examined for location of Listed Species. The City through its Land Development Code and review processes, will:*

1. *Coordinate with Sarasota County, Federal, and State agencies for the identification and protection of endangered and threatened species.*
2. *Require applicants to consult with the appropriate agencies, to use recognized sampling techniques to identify listed species, and to provide documentation of such coordination and compliance prior to City approval to conduct any activities that could disturb listed species or their habitat.*
  - a. *If endangered or threatened species, or species of special concern are found, such species' habitat shall be identified on the proposed site plan and a plan for mitigation shall be discussed in the site plan narrative.*
  - b. *Such information shall be addressed through the project staff report.*
3. *Coordinate with Sarasota County Environmental Protection Programs including, but not limited to, those regarding preservation and or permitting requirements.*
4. *Promote connectivity and minimize habitat fragmentation.*

***Unique Habitats***

***Intent OS 1.5 - Unique Habitats***

*The City recognizes the importance of its unique habitats and shall implement preservation strategies that protect and conserve their environments consistent with applicable laws and regulations.*

***Open Space Corridors***

***Intent OS 1.6 - Open Space Corridors.***

*The City will establish open space corridors to facilitate the movement of people and wildlife.*

***Strategy OS 1.6.1 - Open Space Corridors -Defined***

*The City's open space corridors shall provide habitat for wildlife that are able to live within urban development areas and coexist with human populations.*

### **Strategy OS 1.6.2 - Open Space Corridor System**

*Through the land development review process, the City shall continue to identify opportunities to:*

1. *Create an interconnected open space corridor system that links existing open spaces, greenways, public right of ways, and trails including new open space corridors.*
2. *Provide connections from adjacent development to existing or planned open space corridors*
3. *Connect parks and civic resources (i.e., Community Center).*
4. *Provide low-impact natural activities such as walking trails, benches, picnic areas, and canoe launches.*
5. *Connect the City and Sarasota County's open space corridors.*
6. *Require that open space corridors minimize the fragmentation of significant wildlife habitat. Corridor widths shall be defined based on their targeted habitat/species; however, are generally considered to be a minimum of 25 feet in width.*

### **NORTHEAST NEIGHBORHOOD**

#### **Strategy OS-NE 1.1.5 - Wildlife Corridors**

*The City shall minimize habitat fragmentation within and between developments by establishing standards in the Planning and Development review process including the Land Development Code, including the following:*

- A. *Restricting fragmentation of large natural plant communities which provide significant wildlife habitat and habitat connectivity.*
- B. *Use of development techniques such as clustering to protect environmentally sensitive areas.*
- C. *Design features for wildlife crossings also ensuring periodic breaks in continuous barriers such as walls and berms.*
- D. *Establishing context sensitive habitat corridors regarding width, construction, and species.*

## **CHAPTER 86 LAND DEVELOPMENT CODE (LDC)**

This section will identify relevant LDC criteria and requirements contained in Article IV Development Review, Article V Use Regulations.

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

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

(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.*

(j) *Land use intensity; open space; dedication of land for municipal uses.*

(3) *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.*

(r) *Commercial uses. Commercial uses located in a PUD are intended to serve the needs of the PUD and not the general needs of the surrounding area. Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD.*

### ***Sec. 86-231. Plat requirements.***

(c) *Format; required information.*

(2) *Final plat*

*n. Signature and acknowledgement of the owners to the plat and restrictions, including dedication to public use of all streets, alleys, parks or other open spaces shown thereon and the granting of easements. 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. (See exhibit 1 to Ordinance No. 2018-28.)*

## **RESPONSE TO POLICY 8.2 OF THE PROPOSED PUD AMENDMENT REZONING**

The following analysis provides rebuttal to the Applicant's responses to Policy 8.2 Land Use Compatibility Review Procedures, which states: *Ensure that the character and design of infill and new development are compatible with existing neighborhoods.*

*Compatibility review shall include the evaluation of the following items with regard to annexation, rezoning, conditional use, special exception, and site and development plan petitions:*

A. *Land use density and intensity.*

**Applicant's Response:**

The proposed 10.42 acre commercial designated parcel is limited to 2% of the 503.9 acre PUD, or 40% of the maximum commercial permitted in the PUD. The provision of commercial services in the area will limit trip lengths and allow for multimodal connection to those services by the neighborhood and other nearby properties. The commercial parcel is located so as to mitigate impacts to adjacent and nearby properties with separation from surrounding properties by an FPL easement (south), open space (west), Laurel Road (north) and Jacaranda Boulevard (east).

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such as commercial, and therefore, was deemed consistent with the Comp Plan.

The proposed amendment represents a significant change in land use intensity from open space and wetland to an isolated strip commercial development, as there are no other adjacent commercial developments. The commercial center is located on the perimeter of the PUD along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. Development of this isolated intensive strip commercial development could encourage future strip commercial development along Laurel Road.

The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. The types of uses being requested include grocery and convenience stores both of which would capture customers outside of Milano. Based on the Applicant's response to staff comments, this commercial center would be larger than a neighborhood scale commercial center.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano.

Clearly such development intensity and range of retail uses are designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *“the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes.”*

Given its location and potential development (227,00 square feet) it is not consistent with LDC Sec. 86-130(b) *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 or complies with LDC Sec. 86-130(r) “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.”*

C. *Character or type of use proposed.*

**Applicant’s Initial Response:**

The proposed commercial use is compatible with the surrounding neighborhood, consistent with development patterns in the area, and will provide convenient access to commercial services for the neighborhood.

**Applicant’s Response Staff Comments Re: Sec. 86-130(b)(8):**

The proposed uses are clearly neighborhood commercial uses. Regional commercial uses would be similar to those found at or near the Jacaranda Boulevard and US 41 intersection south of the City of Venice, the scale of which serve a large portion of the greater Venice area, including areas within the City of Venice and within unincorporated Sarasota County. Several factors support this, including, but not limited to the fact that the International Council of Shopping Centers (ICSC) generally classifies a neighborhood center as ranging from 30,000 to 125,000 square feet typically anchored by a supermarket and serving a trade area of 3 miles. While a regional center is classified as ranging from 400,000 to 800,000 square feet typically anchored by department stores, mass merchant or fashion apparel stores with a trade area of 15 miles. As proposed the commercial center is clearly neighborhood scaled and does not approach the definition of a regional center.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The proposed amendment represents a significant change in land use intensity from open space and wetland to strip commercial development. The amendment creates an isolated strip commercial development as there are no other adjacent commercial uses. The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. The types of uses being requested include grocery and convenience stores both of which would capture customers outside of Milano.



The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Clearly such development intensity is designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *“the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes.”* Based on the Applicant’s response to staff comments, this commercial center would be larger than a neighborhood scale commercial center.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano.

Given its location and potential development (227,00 square feet) it is not consistent with LDC Sec. 86-130(b) *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* or complies LDC Sec. 86-130(r) *“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 development of strip commercial uses along Laurel Road is a significant incompatibility and change in intensity of use along Laurel Road from open space and wetland to an isolated strip commercial development. This development could encourage future strip commercial development along Laurel Road.

The proposed commercial center is a duplication of existing commercial centers. There is a center that is only 2.3 miles to the west from Jacaranda Boulevard that provides easy access for the surrounding residential areas. In addition, there is another commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods for a variety of commercial uses.

The proposed development also entails the elimination of areas platted as open space and wetlands that were required to be placed under restrictive covenant pursuant to the 2016 Covenant Agreement and LDC Sec. 86-130. These wetlands and open spaces provided buffers for the adjacent residential.

*Considerations for determining compatibility shall include, but are not limited to, the following:*

- E. *Protection of single-family neighborhoods from the intrusion of incompatible uses.*

**Applicant’s Response:**

The proposed commercial use with its extensive separation from nearby single-family homes is compatible. Moreover, single-family neighborhoods will benefit from the provision of such services.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The proposed amendment represents a significant change in land use intensity from open space and wetland to an isolated strip commercial development. There are no other adjacent commercial uses. The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. Such significant change could have compatibility impacts on near-by neighborhoods.

The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. The types of uses being requested include grocery and convenience stores both of which would capture customers outside of Milano. Based on the Applicant's response to staff comments, this commercial center would be larger than a neighborhood scale commercial center.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano. Further, the Applicants' response to this criteria states *"Moreover, single-family neighborhoods will benefit from the provision of such services."*

Clearly the range of retail uses and development intensity is designed to capture customers from outside Milano, and is therefore, not compatible with the surrounding residential neighborhoods or consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*

Given its location, range of retail uses and potential development (227,00 square feet) it does not comply with LDC Sec. 86-130(b) *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 or complies with LDC Sec. 86-130(r) "Commercial uses located in a PUD are intended to serve the needs of the PUD and not the general needs of the surrounding area. Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD."*

The proposed amendment creates an isolated strip commercial development that could encourage future strip commercial uses along Laurel Road.

The proposed commercial center is a duplication of a commercial center use already established 2.3 miles to the west that provides convenient access for the surrounding residential areas. In addition, there is another commercial center with a commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods.

- F. *Prevention of the location of commercial or industrial uses in areas where such uses are incompatible with existing uses.*

**Applicant's Response:**

The proposed commercial use with its extensive separation from nearby single-family homes is compatible. Moreover, single-family neighborhoods will benefit from the provision of such services.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The proposed amendment represents a significant change in land use intensity from open space and wetland to an isolated strip commercial development. There are no other adjacent commercial uses. The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Based on the Applicant's response to staff comments, this commercial center would be larger than a neighborhood scale commercial center.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano.

Clearly such development intensity and range of retail uses are designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*

Given its location and potential development (227,00 square feet) it is not consistent with LDC Sec. 86-130(b) *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 or complies with LDC Sec. 86-130(r) "Commercial uses located in a PUD are intended to serve the needs of the PUD and not the general needs of the surrounding area. Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD."*

The proposed commercial development entails the elimination of areas platted as open space and wetlands that were required to be placed under restrictive covenants, and is therefore, not consistent with a number of Comp Plan Visions, Intent and Strategies related to the protection of wetlands and related habitats such as, but not limited to: LU1.3.5 Natural Features, and Vision OS.1 and related Intent OS 1.3 Wetlands, and OS 1.4 Native Habitats, Conservation Lands and Natural Resources. The elimination of the wetland and open space is not in compliance with the requirements of the 2016 Covenant Agreement, and LDC Sec. 86-130(j) and Sec. 86-231(c)(2)(n).

H. *Densities and intensities of proposed uses as compared to the densities and intensities of existing uses.*

**Applicant's Response:**

The intensity of the proposed use is significantly below the below the maximum intensity of commercial use which could be proposed within the PUD and due to the extensive separation from the existing residential uses, is compatible.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The proposed amendment represents a significant change in land use intensity from open space and wetland to strip commercial development. The amendment creates an isolated strip commercial development as there are no other adjacent commercial uses. The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Based on the Applicant's response to staff comments, this commercial center would be larger than a neighborhood scale commercial development.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano. Further, the Applicants' response to criteria E, states *"Moreover, single-family neighborhoods will benefit from the provision of such services."*

Clearly such development intensity and range of retail uses are designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*

Given its location and potential development (227,00 square feet) it is not consistent with LDC Sec. 86-130(b) *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 or complies with LDC Sec. 86-130(r) "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."*

In addition, there is an existing commercial center located 2.3 miles to the west from Jacaranda Boulevard that provides convenient access for the surrounding residential areas. There is another commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods for a variety of commercial needs.

The proposed intensity of development and range of commercial uses would encourage future extension of incompatible strip commercial uses along Laurel Road and impact the adjacent residential to the west and could have negative impacts on near-by neighborhoods.

*Potential incompatibility shall be mitigated through techniques including, but not limited to:*

- I. *Providing open space, perimeter buffers, landscaping and berms.*

**Applicant's Response:**

Open Space, perimeter buffering landscaping and berms will be provided to ensure compatibility.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The proposed amendment represents a significant change in land use intensity from open space and wetland to an isolated strip commercial development. These wetlands and open spaces provided buffers for the adjacent residential. The elimination of the wetland may have negative impacts on the adjacent wetlands to the south.

It is important to note that the 2016 Staff report (Rezone Petition No. 16-07RZ) stated that *“The proposed site plan preserves more than 98% of wetland systems and associated upland buffers creating a significant wildlife corridor systems throughout the project area.”* Pursuant to the report prepared by Wade Trim for the City, their report states that the Kimley Horn (KHA) report *“does not consider all wetland impacts and is not first avoiding, minimizing, or mitigating for all impacts or otherwise limiting activities of adverse impact or restoring wetlands in connection with the new development. Moreover, the KHA report does not document maintenance of natural flow to contiguous wetlands or water bodies, or maintenance of existing vegetation as buffers (6 and 7).”*

The elimination of the wetland and open space is not consistent with the City's community outreach comments to *“Protect the City's environmental and natural resources, and encourage retention of open space for functional and conservation purposes.”*, and is not consistent with a number of Comp Plan Visions, Intents and Strategies such as, but not limited to: LU1.3.5 Natural Features, and Vision OS.1 and related Intent OS 1.3 Wetlands, and OS 1.4 Native Habitats, Conservation Lands and Natural Resources.

Further, the previous PUD approval was subject to the requirements of Sec. 86-130(j) *Land use intensity; open space; dedication of land for municipal uses.*

- (3) *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.*



And the Agreement Regarding Open Space Restriction and Covenant Pursuant to City of Venice Land Development Regulations that was executed by the City and Neal Communities on October 25, 2016.

To-date no restrictive covenants have been recorded. The final plat for the Cielo Subdivision was approved on December 10, 2019, and the final plats for all other portions of the PUD have been platted as well. It was clearly the intent of Sec. 86-130(j) and the 2016 Covenant Agreement to require such restrictive covenants be recorded at that time and not summarily ignored until this current amendment request. Therefore, the current PUD is not in compliance with the requirement of Sec. 86-130(j), the 2016 Covenant Agreement or Sec. 86-231(c)(2)(n).

N. *Lowering density or intensity of land uses to transition between different uses.*

**Applicant's Response:**

The proposed intensity of the commercial parcel combined with the setback and buffering requirements will ensure an appropriate transition between land uses.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The proposed amendment represents a significant change in the intensity of land use from passive open space and wetlands to an isolated intensive strip commercial, as there are no other adjacent commercial uses. The residential to the west is currently adjacent to open space; but now will be negatively impacted by the extension of incompatible strip commercial development along Laurel Road. This is not an appropriate transition to the adjacent residential.

The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Based on the Applicant's response to staff comments, this center would be larger than a neighborhood scale commercial center.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano.

Clearly such development intensity and range of retail uses are designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*

Given its location, range of retail uses and scale of development (227,00 square feet) it is not consistent with LDC Sec. 86-130(b) *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* or complies with LDC Sec. 86-130(r) *“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.”*

## **RESPONSE TO PROPOSED PUD AMENDMENT REZONING**

The following analysis provides rebuttal to the Applicant's responses to Sec. 86-47 and demonstrates that the proposed amendment is not consistent with Comprehensive Plan or review criteria.

### **Sec. 86-47. Amendments to the land development code.**

(f) *Contents of planning commission report.*

(1) *Rezoning amendments.* When pertaining to the rezoning of land, the report and recommendations of the planning commission to the city council shall show that the planning commission has studied and considered the proposed change in relation to the following, where applicable:

a. Whether the proposed change is in conformity to the comprehensive plan.

#### **Applicant's Response:**

The proposed PUD amendment is consistent with all applicable elements of the Comprehensive Plan.

#### **NVNA Response:**

The Applicant has indicated "The proposed PUD amendment is consistent with all applicable elements of the Comprehensive Plan" yet does not provide any details as to how consistency is being achieved. The proposed amendment is not consistent with Policy 8.2 as previously demonstrated and is not consistent with the Comprehensive Plan. It significantly changes the intensity of land uses by eliminating open space and wetland and developing intensive isolated strip commercial development along Laurel Road and adjacent to single-family residential.

The amendment is not consistent with Comp Plan LUE Vision, Intent and Strategies, and Comp Plan OSE Vision, Intent and Strategies. The following are key, but not all relevant Vision, Intent and Strategies, all of which are described in the Relevant Land Use and Open Space Elements section of this report.

#### **LUE Vision, Intent and Strategies**

"What We Heard... Summary Public Comments"

- *Protect the City's environmental and natural resources, and encourage retention of open space for functional and conservation purposes.*

#### ***Strategy LU 1.2.16 - Mixed Use Residential (MUR)***

7. *Intensity/Density:*

- Residential Density: 1.0 – 5.0*
- Non-Residential Intensity (FAR): 0.4 (average) Designation-Wide; 0.5 maximum per individual property. Non-Residential Intensity is based on the gross acreage of the non-*

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

### ***Planning and Design Principles***

#### ***Intent LU 1.3 - Planning and Design Principles.***

*The City intends to guide future development and redevelopment through planning and design principles that foster successful urban communities. The City's Future Land Use designations are intended to establish the following planning and design principles to guide the growth, development and redevelopment efforts within the City. The following Strategies are designed to help guide the City's Land Development Code and review processes.*

#### ***Strategy LU 1.3.2 - Functional Neighborhoods***

*The City shall promote functional neighborhoods defined at the Planning Level which include neighborhood centers, a variety of housing types, public/ civic space designed for the context of the Neighborhood and a variety of open space amenities.*

#### ***Strategy LU 1.3.5 - Natural Features***

*The City shall respect natural features through designs that recognize the natural and environmental features of the area and incorporates the protection, preservation and enhancement of these features as a resource to the Neighborhood as a whole.*

***Vision OS 1 - The City of Venice shall effectively preserve, protect, maintain, manage and use open space.***

### ***Conservation Open Spaces***

#### ***Intent OS 1.2 - Conservation Open Spaces***

*The City shall use its Conservation Open Space to provide conserved open space for its residents and visitors.*

#### ***Strategy OS 1.2.2 - Environmental Impact Mitigation***

*The City shall utilize the Land Development Code and review processes to ensure that development projects evaluate potential environmental impacts and provide mitigation for negative impacts. Development shall not adversely impact any threatened or endangered species or species of special concern without appropriate permitting and/ or mitigation.*

### ***Wetlands***

#### ***Intent OS 1.3 - Wetlands***

***The City shall implement strategies to protect its wetlands, wetland buffers, and aquifer recharge areas.***

### ***Strategy OS 1.3.1 - Wetland and Aquifer Recharge Areas Protection***

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

- 1. Establishing site plan requirements to ensure developments evaluate natural drainage features, man-made drainage structures, and impact to wetland and aquifer recharge areas.*
- 2. Requiring development to first avoid impact to wetlands and aquifer recharge areas.*
- 3. Requiring development to minimize impact and then mitigate for impacts to wetlands and aquifer recharge areas when impacts to wetlands and aquifer recharge areas are unavoidable.*
- 9. Prohibiting the dredging, filling, or disturbing of wetlands and wetland habitats in any manner that diminishes their natural functions, unless appropriate mitigation practices are established in coordination with and approved by local, regional, state, and federal agencies*

### ***Strategy OS 1.3.2 - Wetland Encroachments***

*The City shall require development to identify and delineate wetland boundaries with final wetland delineations to be reviewed and approved by the applicable federal and state review agencies.*

### ***Strategy OS 1.4.2 - Protection of Native Habitats and Natural Resources***

#### **Additional NVNA Responses:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The amendment creates an isolated strip commercial development as there are no other adjacent commercial uses. The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Based on the Applicant's response to staff comments, this center would be larger than a neighborhood scale commercial center.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano. Further, the Applicants' response to Policy 8.2 criteria E., states "*Moreover, single-family neighborhoods will benefit from the provision of such services.*"

Clearly such development intensity is designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. "*the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes.*"



Given its location, range of retail uses and potential development (227,00 square feet) the PUD amendment is not consistent with LDC Sec. 86-130(b) *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 or complies with LDC Sec. 86-130(r) “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.”*

Further, the proposed amendment is not necessary as there is a commercial center and related support uses only 2.3 miles to the west providing convenient access to these services for the surrounding residential uses. There is another commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods for a variety of commercial uses.

The proposed amendment requires the elimination open space and wetlands which are required to be protected via restrictive covenants and does not meet the requirements of the 2016 Covenant Agreement or the LDC. These wetlands and open spaces provided buffers for the adjacent residential.

It is important to note that the peer review conducted by the City’s consultant Wade Trim of the Applicant’s environmental report determined that the proposed PUD amendment is not consistent or complaint with OS1.2.2, OS 1.3.1, OS 1.3.2, OS 1.4.2, and OS 1.4.3. Further, pursuant to the report prepared by Wade Trim for the City, their report states that the Kimley Horn (KHA) report “*does not consider all wetland impacts and is not first avoiding, minimizing, or mitigating for all impacts or otherwise limiting activities of adverse impact or restoring wetlands in connection with the new development. Moreover, the KHA report does not document maintenance of natural flow to contiguous wetlands or water bodies, or maintenance of existing vegetation as buffers (6 and 7).*”

- b. The existing land use pattern.

**Applicant’s Initial Response:**

The proposed change will provide a convenient location for commercial services to the neighborhood while providing extensive separation from the surrounding neighbors to ensure compatibility with the neighborhood.

**Applicant’s Response to staff comments regarding Sec. 86-130(b)(8):**

The proposed uses are clearly neighborhood commercial uses. Regional commercial uses would be similar to those found at or near the Jacaranda Boulevard and US 41 intersection south of the City of Venice, the scale of which serve a large portion of the greater Venice area, including areas within the City of Venice and within unincorporated Sarasota County. Several factors support this, including, but not limited to the fact that the International Council of Shopping Centers (ICSC) generally classifies a neighborhood center as ranging from 30,000 to 125,000 square feet typically anchored by a supermarket and serving a trade area of 3 miles. While a regional center

is classified as ranging from 400,000 to 800,000 square feet typically anchored by department stores, mass merchant or fashion apparel stores with a trade area of 15 miles. As proposed the commercial center is clearly neighborhood scaled and does not approach the definition of a regional center.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The proposed amendment is a significant change in the existing land use pattern from passive open space and wetland to intensive strip commercial. The amendment creates an isolated strip commercial development as there are no other adjacent commercial uses. The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Based on the Applicant's response above, this center would be larger than a neighborhood scale commercial center. Such commercial uses and intensity are not compatible with the adjacent residential to the west and near-by neighborhoods.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano.

The intensity of development and range of retail uses being requested include grocery and convenience stores both of which would capture customers outside of Milano, therefore, the amendment is not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*

Given its location, range of retail uses and potential development (227,00 square feet) the PUD amendment is not consistent with LDC Sec. 86-130(b) *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 or complies with LDC Sec. 86-130(r) "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."*

Further, the proposed amendment is not necessary as there is a commercial center and related support uses only 2.3 miles to the west providing convenient access to these services for the surrounding residential uses. In addition, there is another commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods for a variety of commercial uses.

As noted in previous NVNA responses, the platted open spaces and wetland were required to be dedicated with restrictive covenants in perpetuity pursuant to the previous Milano PUD approval and the 2016 Covenant Agreement. To-date, this requirement has not been met.

- c. Possible creation of an isolated district unrelated to adjacent and nearby districts.

**Applicant's Response:**

The proposed change will not change the zoning designation and therefore, will not create an isolated district unrelated to adjacent and nearby district.

**NVNA Response:**

The proposed amendment is a significant change in the existing land use pattern from passive open space and wetland to an isolated intensive strip commercial development along Laurel Road. This commercial center is not located adjacent to any other commercial development.

- e. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

**Applicant's Response:**

The proposed change does not change the existing zoning it is limited to a modification to the currently approved PUD master development plan.

**NVNA Response:**

The proposed amendment is a significant change in the existing land use pattern from passive open space and wetland to intensive strip commercial. This amendment creates an isolated commercial center located. This site is not located adjacent to any other commercial development.

- f. Whether changed or changing conditions make the passage of the proposed amendment necessary.

**Applicant's Response:**

The need for commercial services in close proximity to the neighborhood in order to limit required vehicle trip lengths currently required to obtain such services makes the proposed change necessary.

**NVNA Response:**

The Applicant's response to the above is a clear intent to service surrounding neighborhoods and not just Milano. Therefore, given the location and scale of potential development (227,000 square feet) proposed commercial development is designed to capture customers beyond the limits of Milano neighborhood as opposed to the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."* Based on the Applicant's response to staff comments, this center would be larger than a neighborhood scale commercial center.

The proposed amendment is not necessary as there is a commercial center and related support uses only 2.3 miles to the west providing convenient access to these services for the surrounding residential uses and another commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods.

- g. Whether the proposed change will adversely influence living conditions in the neighborhood.

**Applicant's Response:**

The proposed change will not adversely influence living conditions in the neighborhood, in fact, the change will provide a positive benefit to neighbors.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The amendment significantly changes the intensity of land uses by eliminating open space and wetland and developing an isolated intensive strip commercial development along Laurel Road. Such significant change could have compatibility impacts on adjacent and near-by neighborhoods.

LDC Sec. 86-130(r) states *Commercial uses located in a PUD are intended to serve the needs of the PUD and not the general needs of the surrounding area. Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD.* The proposed amendment does not comply with the above requirements, as it locates the commercial center on the perimeter along Laurel Road and creates an isolated strip commercial development that would encourage future strip commercial uses along Laurel Road. Such significant change could have compatibility impacts on adjacent and near-by neighborhoods.

Given the location, range of retail uses and scale of potential development (227,000 square feet) the proposed commercial development would capture customers from outside Milano as opposed to the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *“the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes.”* Based on the Applicant’s response to staff comments, this center would be larger than a neighborhood scale commercial center. Even the Applicant’s traffic study references capture from neighborhoods outside of Milano.

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

**Applicant’s Response:**

Applicant references the Stantec Trip Generation report.

**NVNA Response:**

The Stantec report is based on a development scenario of a 47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant with driveway access to Laurel Road. This report also includes in the analysis trip capture from surrounding neighborhoods.

However, the proposed PUD amendment is requesting commercial development at an FAR of 0.5. This would equate to a 227,000 square foot commercial project. Therefore, the analysis does not reflect the scale of development and range of potential retail uses being proposed.

- k. Whether the proposed change will adversely affect property values in the adjacent area.

**Applicant’s Response:**

The proposed change will not adversely affect property values in the adjacent areas and will likely increase property values due to the proximity to needed services.

**NVNA Response:**

The proposed amendment is a significant change in the existing land use pattern from passive open space and wetland to encouraging intensive strip commercial along Laurel Road. The residential lots to the west will now be adjacent to intensive commercial uses, which could impact property values. Such significant change could have compatibility impacts on near-by neighborhoods as well.

- l. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accord with existing regulations.

**Applicant’s Response:**

The proposed change will not be a deterrent to the improvement or development of adjacent properties, the adjacent properties are currently developed or in the

process of developing.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The proposed amendment is a significant change in the existing land use pattern from passive open space and wetland to intensive strip commercial. Creating intensive strip commercial development adjacent to the residential lots to the west could impact property values.

- m. Whether the proposed change will constitute a grant of special privilege to an individual owner as contrasted with the public welfare.

**Applicant's Response:**

The proposed change will not constitute a grant of special privilege to an individual as contrasted with the public welfare, but instead will provide a benefit to the public welfare.

**NVNA Response:**

The proposed PUD amendment seeks to eliminate a platted 6.6-acre freshwater marsh and its environmental habitat, and areas designated as wetland, pond and open space in the approved 2017 Milano PUD Binding Conceptual Site Plan. These areas were required to be protected by restrictive covenants pursuant to the Agreement Regarding Open Space Restriction and Covenant Pursuant to City of Venice Land Development Regulations that was executed by the City and Neal Communities on October 25, 2016.

Clearly, the intent of the Covenant was to protect the wetlands and open spaces from development. To-date, the above referenced covenants have not been recorded and which are also required by the Land Development Code (LDC) Sec. 86-130(j) and Sec. 86-231 (c)(2)(n). As noted, the Cielo Subdivision received final plat approval on December 10, 2019, and all other portions of the PUD have been platted as well. Therefore, the current PUD approval is not in compliance with those requirements.

Granting this amendment would set a precedent that previous PUD approvals requiring restrictive covenants on open space or wetland areas can be summarily ignored when a developer wishes to eliminate these areas for other development opportunities. Granting such special privilege is not in the best interest of the City or in compliance with the Comp Plan.



The proposed amendment is a significant change in the existing land use pattern from passive open space and wetland to intensive isolated strip commercial. This development would be an isolated commercial site not related to any adjacent commercial uses. Granting approval could encourage future development of strip commercial along Laurel Road.

- n. Whether there are substantial reasons why the property cannot be used in accord with existing zoning.

**Applicant's Response:**

The proposed change does not seek to change the existing PUD zoning it is limited to a modification of the currently approved PUD master development plan.

**NVNA Response:**

The proposed amendment creates an isolated strip commercial development with an intensity of 227,00 square feet and a range of uses that would capture customers beyond the Milano neighborhood as opposed to the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *“the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes.”*

The proposed amendment is not necessary as there is a commercial center and related support uses only 2.3 miles to the west providing convenient access to these services for the surrounding residential uses. In addition, there is another commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods for a variety of commercial uses.

Further, the proposed development requires the elimination of platted open spaces and wetland. These platted open spaces and wetland were required to be dedicated with restrictive covenants in perpetuity pursuant to the previous Milano PUD approval and the 2016 Covenant Agreement. Yet, to-date this requirement has not been met.

- o. Whether the change suggested is out of scale with the needs of the neighborhood or the city.

**Applicant's Initial Response:**

The proposed change is not out of scale with the needs of the neighborhood or the City. In fact, the proposed 10.42-acre commercial parcel is well below the allowable 252 commercial acreage contemplated for a PUD the size of the Milano PUD.

**Applicant's Response to Staff re: Sec 130(r)**

The proposed commercial uses which are limited in type and scale are intended to serve the needs of the PUD and not the surrounding area. While areas designated for

commercial activities normally shall not front on exterior or perimeter streets, in this instance, and similar to several other PUD's in the City of Venice, the location is the best for the residents of the PUD, for a number of reasons.

**NVNA Response:**

The amendment significantly changes the intensity of land uses by eliminating open space and wetland and developing an intensive isolated strip commercial development along Laurel Road and adjacent to single-family residential to the west. Such significant change could have compatibility impacts on near-by neighborhoods as well.

The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Based on the Applicant's response to staff comments, this center would be larger than a neighborhood scale commercial center. Such commercial uses and development intensity are not compatible with the adjacent or near-by neighborhoods.

Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano.

Clearly such development intensity and range of retail uses is designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*

Given its location and potential development (227,00 square feet) it is not consistent with LDC Sec. 86-130(b) *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 or complies with LDC Sec. 86-130(r) "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."*

Further, the proposed amendment is not necessary as there is a commercial center and related support uses only 2.3 miles to the west providing convenient access to these services for the surrounding residential uses. In addition, there is another commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods for a variety of commercial uses.

- p. Whether it is impossible to find other adequate sites in the city for the proposed use in districts already permitting such use.

**Applicant's Response:**

Not applicable, the proposed change does not seek to change the current PUD zoning it is limited to a modification of the currently approved PUD master development plan.

**NVNA Response:**

The proposed amendment changes the intensity of land use from open space and wetland to an intensive isolated strip commercial development. If the applicant's claim that this is merely a PUD modification, why not change the use of the undeveloped Milano residential lots to the west to commercial use; and therefore, preserve and dedicate, as was required, the open space and wetland pursuant to the October 25, 2016 Covenant Agreement, as well as required by LDC Sec. 86-130(j) and 86-231(c)(2)(n).

- (2) *Other amendments.* When pertaining to other proposed amendments of this chapter, the planning commission shall consider and study: [It is noted that the Applicant did not respond to these criteria.]
- a. The need and justification for the change.

**NVNA Response:**

The amendment creates an isolated strip commercial development as there are no other adjacent commercial uses. The commercial center is located on the perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano. The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Based on the Applicant's response to staff comments, this center would be larger than a neighborhood scale commercial center.

Clearly such development intensity and range of retail uses is designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*

Given its location and potential development (227,00 square feet) it is not consistent with LDC Sec. 86-130(b) *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 or complies with LDC Sec. 86-130(r) "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."*

Further, the proposed amendment is not necessary as there is a commercial center and related support uses only 2.3 miles to the west providing convenient access to these services for the surrounding residential neighborhoods. In addition, there is another commercial center and commercial center 2.9 miles to the south on Jacaranda Boulevard that provides convenient access for the surrounding residential neighborhoods for a variety of commercial uses.

Based on this report the proposed PUD amendment is not consistent with the Comprehensive Plan. It significantly changes the intensity of land uses by eliminating open space and wetland and developing an isolated intensive strip commercial development along Laurel Road. Such significant change could have compatibility impacts on adjacent and near-by neighborhoods.

The amendment is not consistent with Comp Plan LUE Vision, Intent and Strategies and Comp Plan OSE Vision, Intent and Strategies, such as, but not limited to: LU1.3.5 Natural Features, and Vision OS.1 and related Intent OS 1.3 Wetlands, and OS 1.4 Native Habitats, Conservation Lands and Natural Resources; and “What We Heard... Summary Public Comments” *“Protect the City’s environmental and natural resources, and encourage retention of open space for functional and conservation purposes.”* In addition, a peer review conducted by Wade Trim of the Applicant’s environmental report determined that the proposed PUD amendment is not consistent or complaint with OS1.2.2, OS 1.3.1, OS 1.3.2, OS 1.4.2, and OS 1.4.3.

As stated, numerous times, the platted open spaces and wetland were required to be dedicated with restrictive covenants in perpetuity pursuant to the previous Milano PUD approval. Yet this requirement has not been met.

Granting this amendment would set a precedent that previous PUD approvals requiring restrictive covenants on open space or wetland areas can be summarily ignored when a developer wishes to eliminate these areas for other development opportunities.

- b. The relationship of the proposed amendment to the purposes and objectives of the city's comprehensive planning program and to the comprehensive plan, with appropriate consideration as to whether the proposed change will further the purposes of this chapter and other city ordinances, regulations and actions designed to implement the comprehensive plan.

**NVNA Response:**

The original PUD approval did not include commercial development or anticipated such. The staff report at that time stated that the PUD was compatible as there was residential adjacent to residential and that the PUD protected single-family neighborhoods from the intrusion of incompatible use such commercial, and therefore, was consistent with the Comp Plan.

The amendment represents a significant change in land uses from wetland and open space to creating an isolated strip commercial development. This development is not located adjacent to other commercial uses. The commercial center is located on the

perimeter along Laurel Road and is clearly designed to attract customers from adjacent neighborhoods beyond Milano.

The amendment is also seeking commercial FAR intensity of 0.5, which would equate to a potential development of 227,000 square feet. Based on the Applicant's response to staff comments, this center would be larger than a neighborhood scale commercial center, which would capture customers outside of Milano and could potentially capture city-wide customers. The Applicant's traffic study even references capture from neighborhoods outside of Milano.

Clearly such potential range of retail uses and development intensity is designed to capture customers from outside Milano, and is therefore, not consistent with the limitation established in the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*

Given its location, range of retail uses and potential development (227,00 square feet) the PUD amendment is not consistent with LDC Sec. 86-130(b) *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 or complies LDC Sec. 86-130(r) "Commercial uses located in a PUD are intended to serve the needs of the PUD and not the general needs of the surrounding area. Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD."*

The amendment is not consistent with Comp Plan LUE Vision, Intent and Strategies and Comp Plan OSE Vision, Intent and Strategies, such as, but not limited to: LU1.3.5 Natural Features, and Vision OS.1 and related Intent OS 1.3 Wetlands, and OS 1.4 Native Habitats, Conservation Lands and Natural Resources; and "What We Heard... Summary Public Comments" *"Protect the City's environmental and natural resources and encourage retention of open space for functional and conservation purposes."* In addition, a peer review conducted by Wade Trim of the Applicant's environmental report determined that the proposed PUD amendment is not consistent or complaint with OS1.2.2, OS 1.3.1, OS 1.3.2, OS 1.4.2, and OS 1.4.3.

## SUMMARY CONCLUSIONS

### This analysis has demonstrated the following:

- Pursuant to LDC Sec. 86-32. - Legal significance of the comprehensive plan. *No development order shall be issued under the provisions of the LDC unless determined to be consistent with the comprehensive plan.* The proposed amendment is not consistent with a number of Comp Plan LUE and OSE Visions, Intents and Strategies, and Policy 8.2.
- Pursuant to the peer review conducted by the City's consultant Wade Trim of the Applicant's environmental report determined that the proposed PUD amendment is not consistent or compliant with OS1.2.2, OS 1.3.1, OS 1.3.2, OS 1.4.2, and OS 1.4.3.
- The amendment seeks to eliminate a freshwater marsh wetland and its related habitat and eliminate open space in noncompliance with the requirements of October 2016 Covenant Agreement, as well as not meeting the requirements of LDC Sec. 86-130(j) and Sec. 86-231(c)(2)(n).
- Granting this amendment would set a precedent that previous PUD approvals requiring restrictive covenants on open space or wetland areas can be summarily ignored when a developer wishes to eliminate these areas for other development opportunities. Granting such special privilege is not in the best interest of the City or in compliance with the Comp Plan.
- The amendment does not meet a number of PUD amendment review criteria.
- The proposed amendment represents a significant change in land use intensity from open space and wetland to an intensive isolated strip commercial development. This site is not adjacent to any other commercial uses and further, no commercial uses were approved or anticipated as part of the 2017 PUD approval.
- The Applicant's response to staff comments, demonstrates that the 227,000 square feet commercial center would be larger than a neighborhood scale commercial center. Even if the site were developed at the intensity analyzed in the traffic study (47,240 square foot supermarket, 18,000 square feet of retail, and a 5,000 square foot restaurant: a total of 70,240 square feet), such uses would capture customers outside of Milano. Even the traffic study included capture from neighborhoods beyond Milano.
- Given its location, range of retail uses proposed and potential scale of development (227,000 square feet) it is not consistent with the Comprehensive Plan pursuant to Strategy LU 1.2.16 Mixed Use Residential 7. Intensity/Density b. *"the non-residential portion of the MUR is to provides for neighborhood scale and serving uses; not for regional purposes."*; or complies with LDC Sec. 86-130(b) *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* and LDC Sec. 86-130(r) *"Commercial uses located in a PUD are intended to serve the needs of the PUD and not the general needs of the surrounding area. Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD."*



- The amendment would create an isolated commercial development and encourage future commercial strip development along Laurel Road.
- That there are existing conveniently located commercial centers and other retail services in the area within 2.3-2.9 miles of this proposed development.

**The Applicant has failed to meet its burden of proof to demonstrate that the proposed PUD amendment is consistent with the Comprehensive Plan and or complies with the standards for approval in the applicable provisions of the LDC.**

**THEREFORE, THE PLANNING COMMISSION SHOULD DENY THE APPLICATION.**

**In addition, we recommend that the Commission recommend to the City Council that the Applicant be required to meet the requirement of the October 2016 Covenant Agreement to protect the open space and wetland via restrictive covenants prior to consideration of any future PUD amendment.**



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Jan A. Norsoph, AICP

Mr. Norsoph reserves the right to amend this report based upon new information. Attached as Appendix A is Mr. Norsoph's qualifications.

**APPENDIX A**  
**MR. NORSOPH'S QUALIFICATIONS**

## JAN ALAN NORSOPH, AICP

(727) 867-0556

[jnorsoph2@gmail.com](mailto:jnorsoph2@gmail.com)

### SUMMARY OF QUALIFICATIONS

Award winning professional with 44 years of extensive and diverse planning expertise, including 24+ years of management experience; development and administration of land development regulations, historic preservation, urban design, community redevelopment, and neighborhood planning; administration of site plan/subdivision development reviews; preparation of comprehensive plans, and skills in building public participation and consensus. This includes local government experience with many different public entities, both as a planning consultant, a City of St. Petersburg Manager, and currently as a part-time city planner for the City of Seminole.

### ACCOMPLISHMENTS

Awards of Excellence (\*) or Merit received by the Florida Chapter American Planning Association (FCAPA) and/or the Suncoast Section (SS) and other professional associations in recognition of professional and innovative achievements:

- MacDill AFB General Plan, Honorable Mention Future of the Region Award, Tampa Bay Regional Planning Council, and Award of Distinction, Florida Planning & Zoning Association.
- Design Guidelines Manual for the National Register/Local Historic District, City of Tarpon Springs, Florida (SS/FCAPA).
- St. Petersburg's Guidelines for Historic Properties (SS/FCAPA).
- St. Petersburg Round Lake Neighborhood Plan (SS\*/FCAPA).
- St. Petersburg North Shore Neighborhood Plan (SS\*/FCAPA\*).
- St. Petersburg Neighborhood Design Review Ordinance and Manual (SS).
- Recognition by the Governor for the Best Large City Comprehensive Plan in Florida.
- St. Petersburg Core Area Parking Study (SS).
- St. Petersburg Bayboro Harbor Redevelopment Plan (SS\*/FCAPA\*).
- St. Petersburg Historic Preservation Program (SS/FCAPA).
- St. Petersburg Downtown Urban Design Plan and Intown Market Strategy (SS\*).
- St. Petersburg Intown Redevelopment Plan (FCAPA).

### PROFESSIONAL EXPERIENCE

Planning Consultant, St. Petersburg, Florida (January 2011 - Present) providing planning services related to:

- Comprehensive planning, land development codes, urban design, zoning, and other land development related services.
- Rezoning and Special Exception Use applications.
- Eminent domain.
- Expert witness testimony.

Part-Time City Planner, City of Seminole (July 2012-present)

- Update of the City of Seminole comprehensive plan, land development code (zoning, landscape buffer and tree protection) and Commercial Corridor Design Guidelines and Sign Code, and
- Conduct site, landscape and commercial corridor and large residential subdivision design reviews.

Vice President, Community Planning & Urban Design, Engelhardt, Hammer & Associates, Inc. (EHA), Tampa, Florida (August 1998 - January 2011) - EHA is a land planning firm and my responsibilities included project development and management for public and private clients related to:

- Master planning, urban design and historic preservation.
- Neighborhood planning and community redevelopment.
- Eminent domain.
- Comprehensive planning, land development regulations, zoning and other land development related services.
- Expert witness testimony.

Planning Consultant, St. Petersburg, Florida (July 1997 - August 1998) - Provided consultant services related to:

- Rezoning and Special Exception Use applications.
- Site planning.

Manager, Development Review Services Division (December 1994 - April 1997) and Manager Urban Design & Development Division (January 1984 - December 1994), City of St. Petersburg, Florida - Directed a progressive and innovative team of ten professional staff with an annual operating budget of \$400,000. Management responsibilities included:

- Administration of land development codes, and site plan and design review processes.
- Preparation of urban design, neighborhood and community redevelopment plans.
- Staffing the Community Redevelopment Agency, Board of Adjustment, Environmental Development Commission and Historic Preservation Commission.
- Presenting recommendations/reports before the City Council and various commissions.
- Developing strong working relationships with neighborhoods, business associations, minority groups and the development community, including serving as the City's representative on the Chamber of Commerce Downtown Council.

## REPRESENTATIVE PROJECTS

### Planning Consultant

- Town of St. Leo- Prepared the Visual Corridor Study, Town of St. Leo Land Development Code, Comprehensive Plan Evaluation and Appraisal Report, Comprehensive Plan update and on-going development review services, and land development code and comprehensive plan updates.
- Provided expert witness testimony on development reviews, special exception uses, rezonings and comprehensive plan map amendments on behalf of neighborhood and other homeowner associations.
- City of Temple Terrace- Prepared revisions to Chapter 29- Downtown Redevelopment Overlay Zoning District, including design guidelines/illustrations.
- MacDill AFB- Prepared the General Master Plan.
- City of Tarpon Springs- Prepared Historic district design guidelines and manuals.
- City of Clearwater- "Enhancing the Visual Environment Through Sign Regulation." (planning and photo simulation analysis report for the City related to litigation by billboard company)
- City of Tampa- Prepared Cultural Arts District Master Plan.
- Prepared multiple future land use amendments, rezoning and conditional/special use applications for private clients (Cities of Pinellas Park, Venice, West Palm Beach and Tampa).
- Conducted land development code/site plan review process analyses for private clients in preparation of due diligence, and site development and landscape plan reviews (City of Venice and Collier, Sumter, Polk, DeSoto and Lee Counties).
- Prepared Eminent Domain Planning Analyses for public clients including Sumter, Lee, Collier, Hillsborough and Pinellas Counties; Florida Department of Transportation Districts One, Five and Seven (Polk, Hernando, Pasco, Manatee, Sarasota, Lee, Orange, Hillsborough, Pinellas, Brevard and Osceola Counties), and Orange County Public Schools.

- Prepared Eminent Domain Planning Analyses for private clients in City of Miami, Charlotte, Escambia, Santa Rosa, Duval, Columbia, Clay, Leon, Palm Beach, Orange, Indian River, Polk, Pasco, Lee, Hillsborough, Seminole, Osceola, Hernando, Citrus, Hendry, Miami-Dade, St. Johns, Putnam, and Sarasota counties.
- Provided Expert Witness Testimony at court trials, including eminent domain cases (8) and a land use litigation case. Qualified as an expert in courts in Charlotte, Hendry, Hillsborough, Leon, Polk, Pasco and Pinellas counties, and U.S. District Court Middle District (Tampa).

City of St. Petersburg

- Administered zoning code and site plan/neighborhood design review and implemented streamlining processes and enhanced customer service procedures.
- Authored land development codes related to new zoning districts, Neighborhood Design Review, historic preservation, CBD bonus FAR criteria, airport height regulations, wireless communication towers and sidewalk cafes.
- Developed and administered five Community Redevelopment/Tax Increment Finance districts with over \$340 million in capital projects, including the Downtown/Waterfront, Major League Baseball (Tampa Bay Rays) stadium area and Salt Creek marine services/Port/University of South Florida district.
- Prepared urban design plans for downtown waterfront, commercial corridors, neighborhoods, and community redevelopment areas including conceptual site plans, and building façade/streetscape designs.
- Prepared and implemented four neighborhood plans (total population-15,000) with a \$7.4 million capital budget, and development of a minority neighborhood commercial corridor revitalization plan.
- Administered the historic preservation program.
- Prepared comprehensive plan elements including Intown Planning Sector, Historic Preservation and Port/Airport.

EDUCATION

- Master of Science in Planning, Florida State University (Urban Design specialty).
- Bachelor of Science, Secondary Education- Geography, West Chester State University (Magna Cum Laude).

PROFESSIONAL ASSOCIATIONS AND CONTINUING EDUCATION

- American Institute of Certified Planners (AICP) with Continuing Professional Development Certificate.
- American Planning Association.
- Speaker at planning, historic preservation, and urban design workshops at national, state and local conferences.

**From:** [Dan Lobeck](#)  
**To:** [Lisa Olson](#)  
**Subject:** FW: 22-38RZ (Milano PUD Amendment)/ Submission for Tuesday Hearing  
**Date:** Wednesday, January 11, 2023 1:07:48 PM  
**Attachments:** [Planning Analysis Report 1.11.23.pdf](#)  
**Importance:** High

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**From:** Dan Lobeck  
**Sent:** Wednesday, January 11, 2023 1:06 PM  
**To:** Roger Clark <RClark@venicefl.gov>; kmichaels@venicefl.gov  
**Subject:** 22-38RZ (Milano PUD Amendment)/ Submission for Tuesday Hearing  
**Importance:** High

Mr. Clark and Ms. Michaels:

This is to request that the attached report of professional planner Jan Norsoph be added to the record, provided to Planning Commissioners and posted with the agenda backup for the Planning Commission hearing on Tuesday, January 17 regarding Application 22-38RZ (the Milano PUD Amendment).

Mr. Norsoph reserves the right to revise his report as this matter progresses.

Thank you very much for your considerations.

Dan Lobeck, Esq.  
Florida Bar Board Certified in  
Condominium and Planned Development Law  
Law Offices of Lobeck & Hanson, P.A.  
2033 Main Street, Suite 403  
Sarasota, FL 34237

Telephone: (941) 955-5622  
Facsimile: (941) 951-1469  
[www.lobeckhanson.com](http://www.lobeckhanson.com)



**From:** [Dan Lobeck](#)  
**To:** [Roger Clark](#); [Lisa Olson](#)  
**Cc:** [Kelly Michaels](#)  
**Subject:** 22-38RZ (Milano PUD Amendment)/ Follow the Law  
**Date:** Thursday, January 12, 2023 12:00:39 PM

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

Roger and Lisa:

Please add this email to the materials in the above-referenced PUD amendment, to be provided to Planning Commissioners for their hearing Tuesday and included in the materials published with the agenda for that meeting on the City's website.

Today, I will be timely filing a Notice as a Designated Representative of my client, the North Venice Neighborhood Alliance and certain affected residents in the area individually, as will our professional planner Jan Norsoph. Given the number of substantial issues in this matter and the scope of our representation, we request two hours together to make our presentation to the Planning Commission.

After reviewing the staff report which will be filed this afternoon, I will be providing a comprehensive analysis of the reasons why -- if the City of Venice is to follow the law, as it must -- the proposed Milano PUD amendment 22-38RZ must be denied.

Some of our major points, among others may be summarized as follows:

- The Milano PUD has final plats approved and recorded for its entirety. The PUD amendment is inconsistent with those plats, specifically the final plat for Cielo, which designates the subject 10.47 acres for Open Space, Wetland, Drainage & Flowage and Lake. The existing PUD is plat-consistent, however, in designating the area as Open Space.
- Under state law, the developer cannot amend the Cielo plat without the unanimous joinder and consent of 100% of the property owners in Cielo. The City asked the developer to respond to that constraint as an objection to the application for approval of the Plat Amendment which the developer filed with the PUD amendment, to change the Open Space, Wetland, Drainage & Flowage and Lake designations for the 10.47 acres to Commercial. However, rather than responding to that objection, the developer seeks City approval of the PUD amendment without the Plat amendment. A PUD amendment which conflicts with the approved and recorded Plat should not and cannot be approved.
- The City LDR's require that land designated for Open Space in a PUD be preserved as such for 99 years by a recorded instrument, by recitation in the final plat or otherwise. Although the better reading of that requirement is that it be fulfilled at the time of each final plat, and the City now so requires, there has been some apparent former policy that a developer may delay the Open Space dedication until the final plat in the PUD has been approved. That has

occurred in the Milano PUD, yet the dedication has not yet occurred. It is overdue, should now be required, and the PUD amendment cannot be approved because it would be inconsistent with that LDR requirement.

- Further, in 2016 the City signed an agreement with the PUD developer that the Open Space dedication referenced above shall be provided once the last plat for “substantially all of the remaining residential property” in the PUD has been filed. That has clearly occurred. The fact that the developer chose to plat fewer than the total residences allowed in the PUD is irrelevant. As stated above, state law does not allow the developer to amend any of the plats to add more homes.
- The Commercial development allowed by the PUD amendment clearly violates provisions of the LDR’s and Comprehensive Plan which limit any commercial development in a PUD to that which will serve the PUD residents, and not residents in surrounding areas.
- The extent of commercial development which would be allowed would produce high-volume traffic which is incompatible with the affected residences.
- The PUD amendment violates the Comprehensive Plan in allowing commercial development over all of the protected wetlands.

Again, this just scratches the surface of the failures of the PUD amendment to follow the law.

The Planning Commission has no choice but to recommend its denial to the Venice City Council.

Thank you for your considerations.

Dan Lobeck, Esq.  
Florida Bar Board Certified in  
Condominium and Planned Development Law  
Law Offices of Lobeck & Hanson, P.A.  
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