

From: Marshall
Happer

Petition 22-38RZ: 2nd Reading, July 11, 2023 Ordinance 2023-11

Mayor Pachota and members of the Venice City Council:

The Venetian Golf & River Club Property Owners Association, Inc., the official Homeowners Association is an Affected Party to this proceeding and we are appearing today without legal counsel.

My name is Marshall Happer. I am appearing as a resident of the City of Venice since 2005, and as Vice President of the Venetian HOA.

I understand that a 2nd Reading is to provide some amount of extra time for reflection before a final vote on an Ordinance is conducted to try to make sure that a mistake is not being made. While, I would welcome a change of the position of the Council to deny the Petition, I am assuming that will not happen, so I wrote to you last Wednesday to give you advance notice of what I will present to you today and on which I respectfully hope you will consider with respect to the format and content of any final Ordinance you approve today.

Your approval of the Petition is the approval of a classic "Bait & Switch" whereby the Developer asked for and obtained Binding Plan approval in 2017 for a 500-acre residential only Milano PUD and after selling 100s and 100s of homes is now 6 years later obtaining approval for his unilateral change of the scheme of development to convert 10.42 acres of open space wetlands into a Commercial shopping center. In monetary terms, you are permitting a wealthy developer to unilaterally convert virtually valueless open space wetlands promised as subdivision Commons into a multi-million-dollar Commercial shopping center. That is, to say the least, very controversial.

You were the Judges and Jury during the 4 days of Quasi-Judicial Hearings on May 23-24 and June 15-16. When the Hearings were concluded on June 16, a motion was made to approve the Petition, and each of the 6 members present each announced how you intended to vote, after which you voted 5-1 to approve the Petition.

While we were certainly disappointed with your vote to approve the Petition, we were disappointed that there were no Juror type deliberations of the essential facts and that no Finding of Facts was made and announced. In addition, not one question was asked of the City Attorney with respect to the proper interpretation of the applicable laws and there were no Judge type Conclusions of Law made and announced. This left all of us with no understanding of how you reached your very important and controversial approval of the Petition.

Today, I will request that you issue Findings of Facts and Conclusions of Law as part of the final Ordinance to be adopted as shown in the attached draft Ordinance I sent to you. I believe that each proposed Finding of Fact will be obvious to each of you. I will also go through each proposed Conclusion of Law, which I believe you had to make to support your approval of the Petition and I request that you ask for and receive advice from the City Attorney on each one of them. I hope you will agree that as a matter of due process and fairness to everyone concerned,

including the overwhelming numbers of homeowners who opposed this Petition, that this should be done.

Finally, as mitigation for the impact the Commercial shopping center you are approving will have on the surrounding residential developments, I request that you consider and include the proposed Stipulations suggested in the draft Ordinance which I will go through with you today. Here are my proposed Findings of Facts:

SLIDE #1

Findings of Facts

1. In 2017, the Applicant (Neal) asked and obtained approval for a Binding Master Plan for **up to 1,350 dwelling units with no commercial uses and with 55.2% open space.** This made the 537 acre Milano PUD **100% residential.**
2. The 2017 Binding Master Plan stated that **“where the PUD Master Plan identifies areas for residential uses, the developer shall have the option to convert such residential uses to open space uses.”**
3. As part of the 2017 Milano PUD zoning, Neal obtained several modifications to standards **“based upon the low intensity of the development plan, the extensive perimeter buffers and the significant amount of open space otherwise provided.”**
4. Subsequent to 2017, the Milano PUD has been developed into **4 residential subdivisions** with 1,021 platted dwelling units (769 single-family detached and 252 single family attached): **Milano, Aria, Cielo and Fiore.**
5. In 2019, the **Plat of the Cielo Subdivision** was recorded showing **71 lots and various Open Space Tracts.**

SLIDE #2

6. The 10.42 acres proposed by Neal for rezoning for commercial use was shown on the Cielo Subdivision Plat as part of 3 Tracts labeled as **Open Space, Private Lake and Wetland private Flowage Easements.**
7. The Cielo Subdivision Covenants provided that the Flowage Easements were Common Property subject to the “power, authority and responsibility to operate and maintain,” by the Cielo HOA.
8. The Milano PUD was amended in **2020 and 2022**, but no new development rights were requested or approved. The 2022 amendment reduced the open space by 24.1 acres leaving the Milano PUD with **503.9 acres and 266.9 acres or 53%** of open space.

9. In **October of 2022**, after the filing of this Petition in June, without any notice to the homeowners in the Cielo Subdivision, Neal along with the Cielo HOA, which Neal still controlled, executed and filed a **Release purporting to release the 10.42 acres** from the Covenants and easements of the Cielo Subdivision stating that it was **“in the best interests of the landowners within the Cielo Subdivision.”**

SLIDE #3

10. The proposed shopping center is located **directly across** from the current 3-way Veneto/Laurel entrance/exit intersection used by the 1,377 homeowners in the Venetian Golf & River Club PUD.

11. The 10.42 acre proposed shopping center will **destroy and replace** open space wetlands shown on the Cielo Subdivision Plat, including a 6 acre lake, and numerous native wild life habitats, but the Applicant proposes to make a deposit into a **Mitigation Bank** as compensation.

12. The proposed shopping center is planned to attract shoppers from the **8,000+ homes** on the east side of I-75.

13. The proposed shopping center would convert the Veneto/Laurel intersection from a 3-way intersection into a **4-way intersection** and with the widening of Laurel Road it would have **7 lanes with stop signs** on each side of Veneto Boulevard.

14. **Traffic congestion** at the Veneto/Laurel intersection will naturally be increased by the proposed shopping center.

15. Today, the 500+ acres of the Milano PUD are owned in part by Neal and by **hundreds** of individual homeowners in 3 of the subdivisions and several homeowner associations and includes 50+- acres of dedicated private streets.

SLIDE #4

Section 86-130(b)(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.”]

Conclusions of Law

1. The term “Neighborhood Commercial Uses” in **Section 86-130(b)(8)** may include **all of the planned 8,000+ homes** on the east side of I-75.

2. **Section 86-130(b)(8)** did not require that commercial uses in the Milano PUD had to be determined **at the time of approval** of the Milano PUD in 2017.

3. **Section 86-130(b)(8)** permitted the Milano PUD to be developed between 2017 and 2023 as a **100%** residential PUD and, after the sale of numerous homes, it permitted the Milano PUD

to be changed in 2023, **without the consent** of the various homeowners and homeowner associations, by converting platted open space to a shopping center.

4. **Section 86-130(b)(8)** permits up to 5% for commercial uses in a residential PUD and therefore the proposed shopping center is **compatible as a matter of law** with adjacent and nearby residential lands.

SLIDE #5

Section 86-130(r). “Commercial uses. Commercial uses located in a PUD are intended to serve the needs of the PUD and not the general needs of the surrounding area. Areas designated for commercial activities normally shall not front on exterior or perimeter streets, but shall be centrally located within the project to serve the residents of the PUD.”]

5. The **Section 86-130(r)** language “intended to serve the needs of the PUD and not the general needs of the surrounding area” is **hereby interpreted** to mean that the proposed shopping center can serve the planned **8,000+ homes** on the east side of I-75.

6. The **Section 86-130(r)** language “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” is **hereby interpreted** to mean that the proposed shopping center streets **do not have to be centrally located** in the Milano PUD and that the proposed shopping center may be located at northeast corner of the Cielo Subdivision at the intersection of Laurel Road and Jacaranda Boulevard and have the proposed exits onto both of those exterior streets.

SLIDE #6

Section 86-47(b)(1)(d). “...no such person shall propose an amendment for the rezoning of property which he does not own except as agent or attorney for an owner.”

Section 86-130(k). “Evidence of unified control; development agreements. All land in a PUD shall be under the control of the applicant, whether that applicant is an individual, partnership or corporation or a group of individuals, partnerships or corporations. The applicant shall present firm evidence of the unified control of the entire area within the proposed PUD.” See also Section 86-130(t)(3)(a).]

7. **Section 86-47(b)(1)(d)** does not require the **100s of homeowners** in the Milano PUD to join in the application for the rezoning of the Milano PUD in 2022-2023.

8. **Section 86-130(k)** is **hereby interpreted** to mean that the evidence of **unified control submitted in 2017** for approval of a 100% residential PUD gave the Petitioner the right of unified control to unilaterally change the scheme of development in 2022-2023 to convert platted open space for commercial uses as a shopping center.

9. **Section 86-130(k)** does not permit **any involvement of the 100s of homeowners** and the homeowner associations in the 100% residential Milano PUD in the application for the proposed amendment for a shopping center in 2022-2023.

SLIDE #7

Section 86-130(j). “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.”

10. The **failure** of the City so far to require the dedications of open space shown in the Cielo subdivision plat specified in **Section 86-130(j)** and **Section 86-231(c)(2)(n)** is **immaterial**.

11. The conversion of 10.42 acres of open space which includes the destruction of platted and zoned wetlands and wildlife habitats with paving and their replacement with a shopping center is permitted because there was **131 acres of Wetlands** in the 500+ acre Milano PUD.

12. The proposed rezoning of the property described herein is in accordance with and meets the **requirements** of the Land Development Code and is consistent with the City of Venice Comprehensive Plan.

The 2017 Ordinance for the Milano PUD had 11 Stipulations.

SLIDE #8

Proposed Stipulations

1. **Advisory Board.** There shall be an Advisory Board (herein, “Advisory Board”) which shall consist of residents of the Milano Subdivision, the Aria Subdivision, the Cielo Subdivision, the Fiore Subdivision, the Venetian Golf & River Club Subdivision and the Willow Chase Subdivision (in equal numbers from each) and shall be chosen by those residents, to advise Petitioner on the development of the proposed shopping center, including without limitation, all issues relating to the proper buffering of the Commercial development from those Subdivisions.

2. **Buffering.** The entire perimeter of the Commercial center along the south side of Laurel Road and the west side of Jacaranda Boulevard, not included in access right of ways, shall be buffered with soil berms with a minimum height of 4’ high, plus 4’ shrubs and 12’-18’ trees on top of the berms.

3. **Lights.** The parking lot lights shall be **shielded** and of a height and type that does not spill over light outside of the shopping center. No lighting from the Commercial property shall be spilled over into any of the adjoining residential properties of the Milano, Aria, Cielo, Venetian Golf & River Club and Willow Chase Subdivisions.

SLIDE #9

4. **Security.** Security **cameras** shall cover all parking lots and shall be monitored at all times.
5. **Overnight Parking.** All overnight parking, including but not limited to boats and recreational vehicles, shall be prohibited and that restriction shall be noted by appropriate signage, with compliance monitored by security cameras and enforced by the Venice Police.
6. **Deliveries.** Reasonable commercial efforts shall be exercised to restrict all deliveries to daylight hours only.
7. **Back-up Alarms.** Reasonable commercial efforts shall be exercised to restrict all back-up alarms on delivery vehicles to silent laser type alarms or similar silent alarms.
8. **Delivery Area Noise.** The Advisory Board shall be consulted to determine, implement and provide the best combination of walls and/or landscaping to surround the delivery areas to buffer to the greatest extent commercially reasonable any noise emanating therefrom.

SLIDE #10

9. **Gas Station.** No gas station shall be allowed.
10. **Street Lighting.** Petitioner shall, at its expense, install street lighting along Laurel Road and Jacaranda Boulevard approved by the City of Venice and Sarasota County.
11. **Traffic Lights.** The Site and Development Plan for the property shall require that prior to any building permit being issued by the City for the subject Commercial property, a Variance shall be obtained from the County for a full traffic signal at the intersection of Laurel Road and Veneto Boulevard and that traffic signal shall be installed, all at the expense of the owner of the Commercial property.
12. **Operating Hours.** The operating hours for businesses on the Commercial property shall be limited to being between 8:00 AM and 11:00 PM unless otherwise approved by the City Council.

SLIDE #11

13. **Spill Over Noise.** No noise from the Commercial property shall be spilled over into any of the adjoining residential properties of the Milano, Aria, Cielo, Venetian Golf & River Club and Willow Chase Subdivisions.
14. **No Outside Activities.** All commercial activities on the Commercial property shall be conducted inside of buildings and no such activities shall be conducted outside of buildings.

15. **Mitigation Bank.** The Mitigation Bank deposit to be submitted by Neal shall be subject to the approval of the City Council.

Thanks

Members of the City Council. This is a difficult and controversial case. If you will take the time to include Findings of Facts, you will make it clear to all of us what facts you found to support your votes. In addition, if you take the time to include your Conclusions of Law after you receive advice from your City Attorney, you will make it clear to all of us the laws that you used to support your decision. That is the best way for you to obtain any understanding and acceptance of your decision for those in opposition to it.

Then finally, if you will take the time to add meaningful Stipulations to lessen the impact of this shopping center on the surrounding homes, you will have gone a long way make this decision acceptable and its future successful.

Thanks for your time and consideration.

Marshall Happer for the Venetian HOA.

Findings of Facts

1. In 2017, the Petitioner (Neal) asked and obtained approval for a Binding Master Plan for up to 1,350 dwelling units with no commercial uses and with 55.2% open space. This made the 537 acre Milano PUD 100% residential.
2. The 2017 Binding Master Plan stated that "where the PUD Master Plan identifies areas for residential uses, the developer shall have the option to convert such residential uses to open space uses."
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5. In 2019, the Plat of the Cielo Subdivision was recorded showing 71 lots and various Open Space Tracts with only one small reserved Tract for the widening of Laurel Road.

Findings of Facts Continued

6. The 10.42 acres proposed by Neal for rezoning for commercial use was shown on the Cielo Subdivision Plat as part of 3 Tracts labeled as Open Space, Private Lake and Wetland private Flowage Easements.
7. The Cielo Subdivision Covenants provided that the Flowage Easements were Common Property subject to the “power, authority and responsibility to operate and maintain,” by the Cielo HOA.
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