



IMPACT REPORT & REBUTTLES

For: Venice City Mayor and City Council

City Council Meeting – May 11, 2021

Subject: Opposition to the Plan to Build 4 Pickleball Courts and a Dog Park at 200 Pesaro

Prepared by:

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VGRC resident and friend of the affected parties

The Site in the Plan for Review

The Site chosen by the CDD is between Laurel Road, and Pesaro, just east of Citrella which is the back exit-only gate to the Venetian Golf and River Club. It is just across Laurel Road from the Florida Power and Light power substation, and just east of the Fire Station.

So much opposition exists because of the close proximity to several homes that will be affected by the noise from the courts, and the Site is inherently dangerous because it's in the FP&L right-of-way under the high tension power lines. Several power lines run through the Site overhead.

An aerial view of the site.



Note - All quotes used in this report are from official Venetian Golf and River Club meeting notes transcribed from the meetings by Rizetta & Company, 9530 Marketplace Rd, Ft. Myers, FL 33917. Website: www.rizetta.com

The quotes and events in this report can be found in the numerous tabs provided in a separate document that accompanied this report.

The Case in Brief – Chronology of Events Leading up to the City Council Hearing

2015 - A petition with 297 names was given to the Board on March 23, 2015. There is no reference as to when the petition was taken or the verbiage on the petition.

This historical account is taken from the official *Exhibit 1, Venetian Community Development District Meeting October 28, 2019, Minutes of the Meeting.

On Page 3, Board Member, Mr. Lusty, (who has since retired from the Board), provided some background on the Pickleball Discussion. On page 3, in the last paragraph he says:

“a petition was signed by several hundred residents was received in January of 2017 and by April 2018 the Board had considered locating the Pickleball courts alongside the tennis courts or in the River Club parking lot and sound testing was conducted along with review of geography and it ultimately decided that the parking lot was not a good idea as parking would be lost and it would not provide what was needed;”

“then in July of 2018, the Pickleball Advisory Committee was appointed with Mr. Wilson as the Chairman, and in February 2019 the board received the consent from FP&L to locate the Pickleball courts on a proposed site under the FP&L power lines between Pesaro and Laurel Rd.”

On the bottom of page 5 in the lined box:

CDD Approves Money for the Courts –

“A motion was made with four in favor and one opposed to approve the expense of \$175,000 for the construction of 4 Pickleball Courts”.

On page 6, bottom of the page second line from the bottom;

“Mr. Kleinglass (Board Member) asked if there was a Committee for a Dog Park. Mr. Lusty confirmed there was not although a petition was submitted March 23, 2015 which contained 297 signatures.”

Note: Conflicting Dates - Mr. Lusty seems to have conflicting dates for when the petition was given to the Board. He said a “petition was signed by several hundred residents was received in January of 2017”, and then later says, a petition was submitted March 23, 2015 which contained 297 signatures.” It is unclear whether these dates refer to the same petition or a different petition. I would tend to rely on the March 23rd 2015 date because it is more specific in that an exact day is mentioned.

"Mr. Kleinglass (Board member) advised that he is not in favor of building under the power lines and the sentiment of the community is less than 50%, he advised that a huge mistake is being made when building under the power lines."

CDD Approves Money for the Dog Park - On page 7, upper part of the page in the lined box,

"A motion was made and the Board approved 4 to 1 for the Construction of a Dog Park, simultaneously with pickleball courts in an amount not to exceed \$40,000."

On July 13, 2020, the City of Venice Required A Public Workshop was held . *Exhibit 2, Venetian Community Development District, Public Hearing, July 13, 2020, Minutes of the Meeting, pages 1-9 under the heading Pickleball Public Workshop..

This was quite a lengthy meeting and **several residents spoke in opposition** to the problematic location of the Plan. Residents were concerned about the:

- **Liability** passed on to the CDD by the FP&L contract.
- **Inherent dangers** in using the right-of-way space under the FP&L high tension power lines – the possibility of electrocution.
- Concern that Pickleball **court noise** will be heard by homes in close proximity.
- **Negative impact on the quality-of-life** from the court noise by affected homes.
- **Devaluation of property value** due to the constant noise by affected homes.
- **Lack of adequate parking** and lack of any **restrooms** at the site.
- **EMF (electro magnetic Field) radiation** exposure.

Board member, Mr. Lutsy, showed his frustration with those speaking in opposition by saying:

"The Board makes decisions and makes a plan, votes on it, approves it, and then a few NIMBY's (Not In My Back Yard) come out of the wood and then we change the plans":

And the statement continues:

"It troubles him as there are way more people that are interested than those against it, and this will keep property values up and no amenities have been added in seventeen years, and new construction all around the Venetian has these amenities."

****No Vote Taken** - No vote was taken at the conclusion of the Public Workshop.

****Point of Law** – Our resident lawyer, Mr. Anthony Pirrotti (Retired), believes that was a violation of our right of **"due process"** and has made that statement before the CDD board, in

testimony, and in writing in his letter to dismiss the appeal. *Exhibit 3, Florida Statutes, section in 190.006 (5) says:

"Action taken by the district shall be upon a vote of the majority of the members present unless general law or a rule of the district requires a greater numbers."

On July 23, 2020, The Board decided to go ahead with the plan in spite of the opposition that spoke out. Again, **No vote was taken**. The Plan kept moving forward.

On July 24, 2020, a letter from Mr. Andrew Cohen, the attorney for the CDD, answered Mr. Pirrotti's letter to him and said the contract with FL&L had several "pitfalls" in it and asked if the Board wanted him to go back and try to renegotiate the contract. *Exhibit 4, Letter from Andrew Cohen, dated July 24, 2020, page 1 end of paragraph 1;

"I agree that the Agreement has some provisions that I would have liked to see revised but FP&L was very loathe to make changes and we negotiated what we felt we could at the time (I am glad to go back and try for additional revisions if the Board chooses so.) I explained the pitfalls to the Board and the Board made a reasoned policy decision to move forward."

The Board ignored the "pitfalls" warning in Mr. Cohen's letter, and Mr. Cohen was not asked to try to renegotiate the contract.

Again, **No vote was taken**. Moving forward was a reasoned "policy" decision according to Mr. Cohen.

July 2020 to February 2021. Residents continued to speak in opposition to the Plan at CDD meetings.

In January 2021, the City Planning Meeting notice to be held on February 2, 2021 was sent to many residents at the VGRC. As a result, many residents wrote letters to the Planning Board in opposition to the Plan. Others wrote in favor.

February 2, 2021 The Venice City Planning Commission Hearing was held at City Hall. The Plan was presented, and many members gave testimony in person and online in opposition to the Plan.

The Planning Commission voted 5 to 2 against the Plan and 6 to 1 against the Site. *Exhibit 5, Decision by the Planning Commission, dated February 2, 2021.

The Planning Commission cited the following reasons:

In Section 2:

"Based on the testimony and the evidence presented, Site and Development Plan Petition 2-38SP is hereby DENIED as it does not meet the requirements of Section 86-23 (m); (2), (5), (9), and (10) of the City Land Development Code for the following reasons: & the proposed improvements;

- a) Incompatible with adjacent residential properties and*
- b) Adequate supporting facilities such as parking, water, and restrooms are not provided."*

February 8, 2021 – Disappointed by the decision, at the CDD Board meeting, the board voted 4 to 1 to have outside counsel appeal the City Planning Commission decision.

An undated letter of appeal was sent to the City Planning Board by Mr. Rick Schappacher, the Engineer, not an outside counsel. Mr. Pirrotti, our resident lawyer (retired), objected to the letter of appeal as not being what was approved at the Board meeting. *Exhibit 6, Notice of Appeal.

The Board opened up a discussion among themselves about the possibility of putting the Pickleball courts in the west end of the River Club parking lot next to the tennis courts. This plan was abandoned 3 years ago when the Pickleball Committee settled on building a total of 4 Pickleball courts, instead of 2 or 3.

The other location possibility was the western end of the Golf Club parking lot, but that was owned by Lannar, and they had previously turned down offers there.

Board member, Mr. Booker, said he had already reached out to Lannar about selling or leasing this golf course section to the CDD and had not heard back from them at this time. At a later date, Lannar wrote that they were not interested in selling or leasing any part of the golf club parking lot.

March 15, 2021 - Mr. Anthony Pittotti, a resident lawyer (Retired), sent a multi-page motion to dismiss the appeal, with evidence, to the City of Venice. The City denied the motion to dismiss.

May 11, 2021 – The Plan comes before the Venice City Council for review.

REBUTTAL ARGUMENTS by The OPPOSITON

The Rebuttal Arguments have been gathered from those who oppose the plan during several meetings. These arguments are put in an easy question/answer format.

1. Question: Why did the CDD chose the site under the FP&L high tension power lines?

Answer – The VGRC concluded it was the only location available for the Plan where 4-Pickleball courts and a Dog Park could be constructed. The VGRC Community is completely Built Out. All new building ceased a few years ago. There is no vacant space left without taking space away from something else.

At this time, the talk about a new park coming to North Venice was just a whisper. The whole CDD Plan would have been abandoned if the park plans had been more of a reality.

Other sites were considered:

- The Tennis Court Site - The western part of the River Club parking lot next to the tennis courts was considered. In fact, there are drawing renditions for 2 and 3 courts at this site. This location is ideal because it is near the clubhouse where restrooms, lockers and showers are located.

However, the Pickleball Committee decided that they wanted 4-Pickleball courts, so the location next to the tennis courts would not be large enough. It would hold a maximum of e courts. In addition, they reasoned that taking enough parking spots for 4 courts would deprive the clubhouse of valuable parking spots.

- The Golf Course Site - Another site consideration was the western part of the Golf Club parking lot. However, the Golf Club is owned by Lannar, and they are unwilling to sell off or lease part of the parking lot to the VGRC.

After eliminating other possible sites, the Board concluded that the only open space available for 4-Pickleball Courts and the Dog Park was on Pesaro under the FP&L power lines.

A contract was negotiated with FP&L by CDD lawyer, Mr. Andrew Cohen. *Exhibit 7. Right of Way Consent Agreement, July 23, 2020.

Mr. Schappacher, the CDD Engineer, drew up a plan for that area based on FP&L contractual limitations and permissions. No construction plans were drawn up.

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2. Question: Does this Plan and Site have the “overwhelming support” by the VGRC as mentioned in the updated PUD and in testimony to the City Planning Commission?

In the *Exhibit 8, PUD Staff Report, Venetian Golf and River Club, dated February 2, 2021, Mr. Schappacher, the VGRC Engineer said in (g)

On page 11:

“As with any change there may be a select few that will object with any new amenity constructed in close proximity to their home, but both the Pickleball and Dog Park committees have received overwhelming support from the community.”

Answer – NO - “Overwhelming Opposition” Exists Today.

Problems with that statement:

- 1) **There never was a Dog Park Committee!** A Dog Park Committee was never appointed! In the July 13, 2020 Minutes of the Meeting on page 2, end of the first long paragraph, it reads:

“Mr. Lusty advised that there was not a Dog Park Committee, only a Pickleball Committee.”

- 2) **The “select few” is actually 33-100 plus affected homes**, plus many others who signed opposition petitions. All of the homes in the red circle in the aerial view on page 1 will be affected by the noise from the Pickleball courts. This is explained later in this document in statements from Acoustical Engineers, S&W in Phoenix, AZ.

- 3) The **“overwhelming support”** is based on the **petition taken in 2015** mentioned earlier. **Those 297 names are 6 years old!** The list is unreliable and stale.

The 297 names were gathered **before a location was chosen**. People simply said “yes” Pickleball would be a good amenity to add.

If you take about 2,500 residents who live in the VGRC, 297 names is only about 12% of our population. **12% support is not overwhelming support**. It is little support.

Since then – Support has almost vanished due to: 1) people moving out of the VGRC, 2) those moving to the opposition when they found out the location chosen was under the high-voltage power lines, and 3) some don’t play racquet sports anymore.

- 4) **No survey has been taken since the 2015 petition!** The CDD has NO idea how many residents support the Plan. None.

The CDD knew that support was waning when several residents spoke in opposition to the Plan at the City Required Public Workshop held on July 13, 2020. *Exhibit 2, Meeting Notes beginning on pages 1-9, under the heading Pickleball Public Workshop. This is mentioned in detail in the Chronology section.

Tennis Player Petition – Some tennis players have signed a petition to support the Pesaro location after being disappointed by the Planning Commission’s Denial decision. They want the courts on Pesaro because:

- 1) They know that building Pickleball courts next to the tennis courts would be **too noisy** and would interfere with their tennis game.
- 2) They are afraid the CDD would try to **take 2 tennis courts away** from them and convert them into Pickleball courts and destroy their ability to play in the leagues which require 6 tennis courts. They could play in the league with 4 tennis courts.
- 3) **Few**, if any who signed their petition, **live in the affected area**. In fact, several residents who play tennis have signed the opposition petition because they don’t support the Pesaro Site.
- 4) The tennis players just like the **“idea”** of Pickleball. A few currently play at Foxworthy Park, Pinebrook Park, and some even go further. The county of Sarasota has 54 pickleball courts in public parks..
- 5) Those who want Pickleball would **gladly go to the new park** that is being planned because the park will have restrooms, benches, shade, restrooms and plenty of parking.

The Pickleball Committee was disbanded in December 2020, and replaced by the Racquets Committee.

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3. Question: Why did FP&L give the VGRC a contract to use the right-of-way under the power lines?

Answer – The CDD Board insisted that their attorney, Mr. Andrew Cohen, negotiate with FP&L and get some kind of agreement that would allow Pickleball courts and a dog park to be constructed in the right-of-way on Pesaro.

The agreement he returned with has vast number of restrictions and few permissions. This was foreseeable because the right-of-way under the high-voltage power lines is supposed to be left free and clear of any obstructions in order for FP&L to access the area in times of emergency and for regular line maintenance.

The National Electric Code makes this clear when it said:

“Obstructions in the right-of-way are dangerous and lead to power outages, and these spaces must be left vacant in order to permit line maintenance when necessary.”

Based on the agreement, Mr. Rick Schappacher, the CDD engineer drew up plans that worked with the FL&L contractual limitations and permissions.

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4. Question: What limitations are in the contract?

Answer –There are several limitations. *Exhibit 7, Right of Way Consent Agreement.

- **All liability is passed to the CDD.** We have never had a full explanation on this matter. The CDD has said that their insurance carrier has agreed to cover the liability. We residents don't believe that the CDD should take on such a financial risk, and we are very concerned about any financial responsibility that may be passed on to us, the residents, for any legal costs or for settlements.

- **Danger signs must be posted.** Paragraph 8 in the agreement states:

"Licensee agrees to warn its employees, agents, contractors, and invitees of the fact that the electrical facilities are of high-voltage."



This means that we would have to post a sign such as this one pictured.

- **30-Day Reclaim clause** – FP&L has the right to "reclaim" the area at any time should they desire to do so. This clause puts the whole Plan and in financial jeopardy. If there was storm damage there or line maintenance work that needed to be completed, FP&L could tell the CDD to remove everything that was put there. The CDD would lose their entire \$175,000 dollars spent, plus have to pay demolition charges!
- **No permanent structures** are permitted, no trees over 14 feet in height, and no walls of any kind. Permanent structures would interfere with their ability to quickly traverse the area during emergencies or for regular line maintenance.

No Restrooms can be built because these are permanent structures.

In the Meeting notes of July 13, 2020, (*Exhibit 2) Page 3, paragraph 3, reads:

"Mr. Lutsy advised as far as bathrooms go, Mr. Bender makes a valid point, there will not be restroom facilities at this location and so folks will have to go to their homes or go to the River Club."

- **No trees over 14 feet in height and no walls of any kind.** This limitation prevents the CDD from creating permanent noise abatement structures.
- **No curb stops are permitted** within 75 feet of the power poles. This means that the cars from over-shooting the parking space. This will lead to random parking, and even accidents by carless drivers.
- **The Designed Parking lot is much too small** – It was designed small to save money.

Mr. Schappacher, the CDD Engineer addressed these parking limitations in *Exhibit 2, The July 13, 2020 Public Hearing, on page 6, paragraph 1, middle of the paragraph:

He advised that:

“the size of the parking lot is to minimize the cost of the project.”

Mr. Foster advised 23 lines down that:

“the area is not wide enough for two vehicles and so he asked if people will park in the swale.”

Mr. Schappacher advised that, in the next sentence that:

“the swale is a very minor swale and most of the time that is all dry so if it is raining out, they won’t be playing Pickleball.”

Problems with the statement – The small parking lot:

- Cannot hold **full capacity** at the Site.
- It does not **allow for several vehicles coming and going** when using the site.
- Overflow vehicles will **park on the street** if the lot is full and they don’t want to park in the swale or the grass.
- The **swale stays wet** for several days **after** heavy rains.

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5. Question – Is the space under the power lines in the right-of-way dangerous? If so, what are the dangers?

Answer – YES. The dangers there **CANNOT BE MITIGATED.** The best way to avoid danger would be to stay out of the area completely. To be safe, many people don't even walk under the power lines.

This is the site seen from Pesaro



FP&L trucks are pictured above are doing line maintenance right where the Pickleball courts are planned. Numerous power lines are visible overhead.

We know that the space has inherent dangers because:

- **FP&L liability** is passed to the CDD.
- **Dangers signs are Mandatory** – If there was no danger, danger signs would be required.
- **3 Recent Explosions there in 2020** - Several of us who live near the site remember quite vividly the 3 explosions that occurred there in September and October of 2020.

Each explosion caused us to run outside our houses to see what had blown up. Frantic calls were made to 911, the Venice Fire Department and FP&L.

- **FP&L meeting** – FP&L Area Manager, Mr. Gabriel Pinheiro, came out in October and was joined by about a half dozen residents at the power sub-station just across Laurel Road from the site. He explained that 2 explosions were equipment failures at the sub-station and one explosion was somewhere on the line near Pesaro. He advised that it was ill-advised to build there because it limited their ability to access in times of emergency and regular line maintenance.
- **Recent Power Line Death on April 17, 2020** – A Spring Hill girl was electrocuted when she stepped out of her car after heavy winds had toppled a power line that set her car afire. Trying to escape the car fire, she stepped outside and was killed.
- **Lightening Danger** - Florida is the lightning capitol of the country with 20 flashes per square mile per year. There have been more than 54 deaths by lightening since 2007. Lightning can and do strike power lines frequently cutting the power to thousands of residents.
- **Storm Damage, Tornado and/or Catastrophe** - Hurricanes coming from the Caribbean and the Gulf of Mexico frequently threaten our area. Tornado warnings are frequent. One just occurred on our phones on April 18th for the Hillsboro area. Any storm or weather event of any significance can pass through our area and knock out power up and down the lines.

Hurricane season start on June 1st

Questions:

- 1) What are the chances of somebody being struck by lightning there? Remote.
- 2) What are the chances of a power outage due to storms? Very likely in the future.

The right-of-way area must be left free and clear in order for FP&L to have complete access at all times. The first thing that must be restored after an emergency is the power.

CONCLUSION: The Dangers there CANNOT BE MITIGATED.

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6. Question – Pickleball is a louder sport than tennis. Can the noise from the courts be abated so as not to negatively affect the nearby homes?

Answer – NO . The Noise from the courts **CANNOT BE MITIGATED**. This is a main reason why there is so much opposition to the Plan by nearby residents, and why they have had meetings, and signed petitions with over 100 names in Opposition to the Plan.

Noise abatement was mentioned to the CDD as a concern, but it was not taken seriously.

Board Member, Mr. Lutsy, said in the meeting minutes of July 13, 2020, (*Exhibit 2) page 2 bottom in the last paragraph:

“Mr. Lusty advised that the Board did conduct a noise test and ran decibel ratings on the pickleball off the pavement next to the tennis courts and the sound was less than tennis without any barriers and so that has been taken into consideration. He further advised that the landscape provided would certainly muffle the sounds.”

The Problems with the statement? - Several

- 1) Pickleball noise comes from the hard ball and hard **paddle “pop”**, plus **bounce**, plus **player noise**, multiplied by the **number of players**. Landscaping cannot muffle the sounds in any significant amount. Pickleball is **much louder** than tennis.
- 2) Landscaping such as trees bushes and shrubbery will not reduce the noise to any acceptable level as stated in the following case examples where communities have installed Pickleball courts without undertaking a serious noise consequence study from acoustical engineering experts with experience in measuring noise – especially the noise from Pickleball because it is a different type of noise termed short duration impulsive sounds.

Conclusion: Such an amateurish noise test from the CDD can’t be taken seriously.

For good advice, you must go to the Experts.

Here is what some of the experts say:

***S&W Acoustics and Noise Control Company** in Phoenix Arizona is Exhibit 9, page 1, first paragraph says:

“Unfortunately some developers of pickleball courts have not adequately addressed the sound produced by the impact of the hard paddle and ball which creates a sharp pop. This has led to controversy between facility owners and neighbors when pickleball courts are planned.”

They further state on page 3, last paragraph:

*"Based on our experience working with pickleball facilities, courts located **within 350 feet of residential structures** often require abatement."*

And on page 4, 4th paragraph;

*"For sites that have a water feature or golf course as part of the intervening ground between the courts and homes or for sites located in a valley, it may be necessary to consider **abatement at buffer distances greater than 500 to 600 feet** due to addition refraction effects created by these situations."*

They conclude in paragraph 5:

*"The abatement plan for the site **should be prepared by an acoustical engineer** with experience in assessing the community impact of short duration impulsive sounds such as those produced by pickleball paddle impacts". And they continue in paragraph 6:*

*"If you are in the process of planning pickleball for your site, consulting an acoustician **can reveal unforeseen issues** with the selected courts site plan **before spending** tens or hundreds of thousands of dollars in design and construction."*

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The Naples Story – This story comes from *Exhibit 10, The Naples Daily News, June 19, 2016, page 2 on the top:

*"Plans to add Pickleball courts at Hideaway Beach Club on Marco Island has residents at odds with each other. Collier County Commissioner, Donna Fiala, has heard from residents who complain that the courts would be **close to homes, creating a noise issue,** and would infringe in an environmental preserve."*

*"A few people said, If they want to play pickleball, let them go down to the park. One letter writer said, **It has become a nightmare in gated communities. This sport has caused civil war pitting neighbor against neighbor.**"*

*"As early as 2010, The Wall Street Journal picked up on the issues surrounding the growing sport. **Senior citizen hot spots in Arizona and Florida were coping with the conflict between pickleball enthusiasts and residents who thought they were buying into quiet retirement havens.**"*

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The Punta Gorda Case Example

This story was taken from *Exhibit 11, The Port Charlotte Sun, April 18, 2019 and updated on June 17, 2020.

In 2016, The City of Punta Gorda put 8-pickleball courts in Gilchrist Park near the beach in the historic section of town across from several stately houses

Soon after, residents demanded that City Council hold hearings on what could be done about the constant noise.

Residents across the street complained that they "couldn't sit on their front porches anymore due to the constant noise" from the courts.

In 2017, The City commissioned, William Thornton PE, (Pennsylvania) a nationally-known and well-respected noise engineer who has done over 1500 studies to do a study there.

His study concluded that:

- 1) Pickleball noise exceeds the accepted noise standards set by U.S. and international standards.
- 2) "There is no effective means of reducing the noise emitted by pickleball courts such as by noise walls, barriers and screens. Although these types of solutions are frequently suggested, they are not effective and will not reduce the noise to acceptable levels. The only way to fully reduce the noise was to put them inside a building.
- 3) The noise will result in the "diminution in value" for noise affected homes because potential buyers will be deterred by the noise." See last Conclusion page from the original Report from William Thornton in this exhibit.
- 4) "Purported solutions such as quiet racquets, noise walls, and plantings do not provide any significant audible noise reduction."

April 18, 2020 - At the City Council hearing homeowners said the constant noise from the courts was causing them "hypertension, panic attacks, and insomnia". They pleaded for help.

In June 2020, 2 months later, Punta Gorda erected a 10-foot acoustic fence to cut the noise.

Result? Now residents say they can't see the beach because of the fence, and the noise is the same as it was before the fence. Big fence = NO noise reduction.

Nest Step - Since then Punt Gorda has closed 4 Pickleball courts and moved them to the Florida Southwestern State College Pickleplex location.

A committee is still "studying the problem", and the homeowners still hear the noise.

The Gilchrist Park Courts

Four people are playing Pickleball on the Gilchrist Park courts in Punta Gorda. The 10-foot fence with the unsuccessful noise abatement barrier is seen at court edges. Notice the close proximity of the homes across the street. You can see their roofs.



Question – If the 10-foot fence put up in Gilchrist Park didn't stop the noise, how could the smaller 8-foot fence proposed in the CDD Plan stop the noise?

Answer – It won't.

Pickleplex at Florida Southwestern State College has 16 world-class Pickleball courts, plenty of parking, benches, shade, and restrooms. The Pickleball National Championship was held there in February.

PicklePlex is a privately supported (funded) 501 (c) (3) non-profit corporation that operates as a guest of Florida Southwest College and is subject to the rules of lease. These courts are maintained and managed by the PicklePlex Board. The courts were built on donations from individuals and corporations. Memberships are available for a fee.

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The Wynmoor Case – *Exhibit 12, Reported by Siegfried Rivera at Florida HOA Lawyer Blog, April 22, 2019.

Wynmoor is a retirement community in Coconut Creek in Broward County. Two community tennis courts were converted into 8 Pickleball courts which allow 32 people to play at the same time. Soon residents complained about the noise.

Linda Waldman, a resident there said on page 1, paragraph 4:

"It's a noisy game, unfortunately. There is a 'pong' not also from the racket but also when it hits the ground. Ponging and screaming. It's a very enthusiastic game."

Another resident, next to last sentence) said compared the noise to a "Chinese water torture."

One resident says she hears the noise from her condo starting at 8am. Top of page 2, She concludes:

"I can't live with this constant pong, pong, pong every morning. Do I have the right to live here in a quiet environment?"

Yes. Court rulings have generally found that **residents should not have to deal with unreasonable loud noises all day long.**

The article concludes that in the last paragraph on page 2:

"Other community associations considering the addition of Pickleball or other activities as new amenities for resident should heed the lessons learned from Wynmoor's example and evaluate all requirements and possible consequences to all members of the community prior to offering the activity to the residents."

CONCLUSION – Stories Prove the Noise CANNOT BE MITIGATED.

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7. Will the noise from the Pickleball courts have a negative effect on the quality-of-life and the property value for the affected homes?

Answer – YES, Absolutely.



Quality-of-Life Negative Effect – Noise is the Problem

Quietness of the Area – Many of the residents who live here now only hear an occasional passing vehicle and the sounds of nature. Any noise on top of that is an intrusion into their daily lives. Many chose to buy in this area because it was so quiet and serene. Some moved from other part of the VGRC here for that reason. Constant noise from Pickleball will be a negative life-changing event that will disrupt their lives.

Homes that will be affected

The red circle was drawn on the aerial view with a radius of 350 feet because the S&W Acoustic & Noise Control company uses 350 feet as the minimum distance requiring noise abatement.

There are 33 homes with lanais facing the Site.

218 Pesaro Home is 50-feet from the Site



The photo pinpoints the home at 218 Pesaro, and shows the location of the Pickleball courts.

6 other homes pictured are close to the Pesaro home on both sides.



Homes nearby on Savona and Medici Terrace will be affected also.

Water Factor must be considered - S&W says abatement should be done for homes up to **500-600 feet** if there is water between the Site and the home. All homes in the red circle have the water factor.

That brings the number affected up to 67 homes at 350 feet.

Wider Circle – If you drew a wider circle at 500-600 feet from the Site, it would include another 100 plus homes that would be affected.

That would bring the total homes affected to over 150!

Property Value Decrease for Affected Homes – Any real estate person will tell you that noise plays a very important factor in buying and selling of a home.

In large cities many people live with the noise because it is part of the vibrant exciting city. Noise can be temporary, such as a train passing by now and then, or construction noise that will cease after construction has completed. Noise can also be constant such as if you live next to a factory that works all day and night. Those who live in the suburbs or in a rural setting consider noise as an intrusion.

As stated by Acoustical Engineer, William Thornton in the Punta Gorda Report, he stated:

*The noise will result in the “**diminution in value** as potential buyers will be deterred by the noise.*

Homeowners who live near constant noise know that buyers will insist for a drastic reduction in the asking price due to the noise factor. Buyers are much less likely to buy a home where there is constant noise.

Just ask yourself, “would buy a home where there is constant noise?”

CONCLUSION – YES. The Noise will negatively impact the quality-of-life and cause a decrease in the property value of the affected homes.

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8. **Question: Does the VGRC need the addition of these 2 amenities in order to stay competitive in the housing market?**

Answer - NO. This Plan is **Optional** and not needed. The fear of losing out to the newer communities for desirability and price value was the incentive to drive this Plan. This fear is unfounded.

*Exhibit 13 - August 10, 2020 CCD Meeting, page 3, line 137, a Mr. Lutsy advised that:

"he believes their own (VGRC) Dog Park and Pickleball court will help enhance property values, no amenities have been added since the community opened 17 year ago". He has previously said, the newer communities all have these amenities, implying that the VGRC is falling behind.

We have more amenities now - When the VGRC was created, every imaginable amenity was added to the PUD to make the club the best club in the whole area. We have many **more amenities** now than other clubs do. We have these amenities to offer:

A Golf course	Golf pro shop	6-tennis courts for League play	Tennis pro shop
A Lap pool	A <u>Tiki</u> bar	Outdoor dining	Big clubhouse
Showers	Lockers	Clubhouse meals	Social events
Inside bar	Walking path	Gas stoves	Mailboxes

Here is a list of 4 newer clubs near the VGRC.

Club	Pickleball	Tennis	Golf	Lap Pool	Tiki Bar
Aria	4	0	0	0	0
Cielo	0	0	0	0	0
Milano	3	0	0	0	0
Vincenza	4	0	0	0	0
Total	11	0			

What is obvious? Newer clubs are **substituting** Pickleball for Tennis.

Why are they doing that? Because:

- Pickleball is a **marketing tool**.
- Pickleball courts are **space savers** – You can fit **2-4 Pickleball courts** in 1 tennis court.
- All Pickleball courts in these clubs are located next to the clubhouses where they should be - where restrooms and ample parking is available.

The VGRC has a big advantage over these clubs because we have **6-tennis courts** which allow us to join and play in the tennis leagues with other clubs. You must have 6-courts to qualify.

The New Park that is Coming – Plans are being formulated for a new park in North Venice. Their recent survey showed that Pickleball, Tennis and a Dog Park were toward the top of the list of desired amenities.

FYI – I attended the new park presentation online. I’ve written to Jenifer Dorning and James Clinch about the shortage of tennis courts being built in the newer communities, and made other helpful suggestions

The new park will make the VGRC Plan unnecessary.

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9. Would allowing this Plan and Site set a good precedent going forward?

Answer – NO, absolutely not – It would open the flood gates for others who want to utilize the dangerous under the high-tension wires space. Those communities that don’t have tennis courts will be next in line to want to build tennis courts in the right-of-way.

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10. What was the basis for the Venice City Planning Commission to deny the Plan and Site?

Answer – *Exhibit 14, The City Planning Commission, dated Feb 2, 2021, cited the following reasons, in Section 2.

*“Based on the testimony and the evidence presented, Site and Development Plan Petition 2-38SP is hereby DENIED as it **does not meet the requirements of Section 86-23 (m); (2), (5), (9), and (10) of the City Land Development Code** for the following reasons: & the proposed improvements;*

- a) **incompatible with adjacent residential properties** and*
- b) **adequate supporting facilities such as parking, water, and restrooms are not provided.**”*

11. What do those numbered sections of the City Land Development Code say and why did the Plan not meet those requirements?

Answer – *Exhibit 15, Article II, Administration and Review Authorities, section 86-23, (m) The City Planning Commission cited the following:

*(2) “intensity of use and/or purpose of the proposed development **in relation to adjacent and nearby properties and the effect thereon:**”*

(5) ***"Sufficiency of proposed screens and buffers** to preserve internal and external harmony and compatibility with uses inside and outside the proposed development."*

(9) *"Recreation facilities and open access, with attention to the size, location and development of the areas as the adequacy, **effect on privacy of adjacent or nearby properties** and uses within the proposed development, and relationship to community of citywide open spaces and recreational facilities."*

(10) *"General site arrangement, amenities and convenience, with particular reference to ensuring that appearance and general layout of the proposed development will be compatible and harmonious with properties in the general area and will not be so at variance with other development in the area as **to cause substantial depreciation of property values.**"*

And they added:

- a) ***Incompatible with adjacent residential properties** and*
- b) ***Adequate supporting facilities such as parking, water, and restrooms are not provided.***

In addition to the numbered sections above the City possibly could have added (3):

(3) *"Ingress and egress to the development to the development and proposed structures thereon, with particular reference to automotive and pedestrian safety, separation of automotive traffic and pedestrian and other traffic, traffic flow and control, **provision of services and servicing of utilities and refuse collection, and access in case of fire, catastrophe or emergency.**"*

12. The Milano Community has a dog park under the FL&L power lines. How did they get that amenity?

Answer – The Dog Park is separate from the housing section of Milano, separated by a small pond. A good portion of the dog park is not directly under the power lines, but off to the side near the pond, that separates it from the homes there. The park is rarely used.

In order to place the Dog Park there, Milano must have negotiated a Consent Agreement with FP&L. It should have also included the passed liability stipulation, and required them to post a danger sign there warning residents about the overhead power lines, as our agreement does.

There is NO danger sign there. It appears that the Milano Community is non-compliant and City enforcement should investigate the issue.

Dog Park Use Misconception – Many people assume that if you have a dog you will use the dog park. This assumption is untrue. Many dog owners would not use a dog park because of

aggressive or Alpha dogs that may be there; owners who don't control their dogs; fleas or ticks that can be picked up in the park; dog diseases and skin diseases that other dogs may have; and most dog owners like to keep their dogs clean and they don't want them rolling around in the grass and dirt where other dogs have urinated and defecated.

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13. Are there any legal arguments as a result of the CDD's pursuit of this Plan?

Answer – Yes – Mr. Anthony Pirrotti, (retired), a resident lawyer who lives in the affected area has told the CDD several times about their skirting the law on several points. For a full description, see his City Council written statement, and Motion to Dismiss, dated March 15, 2021. He is also speaking to these points in his allotted time.

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To Summarize, this Plan and Site are incompatible at the Site for these reasons:

REBUTTLE CONCLUSIONS

- 1) The dangers under the power lines **CANNOT BE MITIGATED.**
- 2) The noise from the courts **CANNOT BE MITIGATED.**
- 3) The affected quality-of-life for affected homes **CANNOT BE MITIGATED.**
- 4) The decrease in property value for affected homes **CANNOT BE MITIGATED.**
- 5) This Plan is discretionary – It is optional and **NOT NEEDED.**
- 6) The Plan pits **NEIGHBOR AGAINST NEIGHBOR.**

(And, the new park being planned makes this whole Plan unnecessary.)

In accordance, this Plan and Site should not be approved.

We ask the City Council to **DENY** the Plan and Site.

Respectfully,

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