

Zoning Board of Appeals
Petition AZB-24-122
Appeal of MAS-23-160
Heron Creek, Parcel K





Aggrieved Party Status

*Sec. 2-81. -
Notice
procedures for
aggrieved or
adversely
affected persons*

- (b) **Notice required.** Any aggrieved or adversely affected person desiring to become a party in the quasi-judicial proceeding **must provide written notice** to the city clerk.
 - (1) Contents. The aggrieved or adversely affected person's notice must include:
 - a. The person's name, address, email, and telephone number;
 - b. **A description of the effect that the decision will have on the person and their particular interests, such that the person meets the definition of "aggrieved or adversely affected person" in section 2-80;**
 - c. A statement whether the person is in favor of or opposed to the application; and
 - d. A statement whether the person requests notice of any special magistrate proceedings subsequent to the city commission's determination.

Sec 2-80. - Definitions.

- *Aggrieved or adversely affected person.*
 - Any person who will suffer a negative effect to a protected interest as a result of the quasi-judicial action sought by the applicant. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in the community.

*Sec. 2-81. -
Notice
procedures for
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adversely
affected persons*

(c) *Quasi-judicial body review.* Upon the request of any other party to a proceeding, the quasi-judicial body must determine whether the aggrieved or adversely affected person's notice complies with this section. In making its determination, the quasi-judicial body may consider only the content of the notice and may not consider any additional evidence. If the quasi-judicial body finds that the request is not in compliance, then the person requesting to be recognized as an aggrieved or adversely affected party may only provide public comment in the hearing. The determination by a quasi-judicial body will not disqualify the aggrieved or adversely affected person's notice in any other quasi-judicial proceeding on the same application.



No Notice of Aggrieved
Party Status filed

Appellant's Application:

This Appeal is by Heron Creek Community Association, Inc., which operates and maintains the Heron Creek Community in which Parcel K is located. The Association and its members, who are the homeowners in the Heron Creek Community, stand to be adversely impacted in their interests by the Development Order more than the general public at large with regard to neighborhood compatibility (aesthetics, privacy, scale, ambiance, views, traffic, etc.) with the low-density single-family homes throughout the entirety of the Heron Creek Community -- including those adjacent to Parcel K --, the impacts on Common Facilities, the precedent for disregard for density limits and other applicable provisions in the Comprehensive Plan and Unified Development Code if applied to other development in the Heron Creek DRI, and otherwise. The Neighborhood Workshop drew considerable opposition from the neighbors within 1,000 feet of the site who received the required notice. One of the many issues raised by neighbors is the potential for overflow parking onto common streets, by cars and golf carts, particularly considering the lack of garages and parking constraints in the development site plan. The Association itself, in that it operates the Heron Creek Community in which Parcel K is located, will obviously face challenges from this dramatic land use change.

HOA is not an Aggrieved Party

Parcel K is not within HOA

Parcel K is abutted by Developer-owned property

No SF homes adjacent to Parcel K

Nearest SF home is .29-.41 miles away

Vague alleged impact

Sufficient parking in Site Plan

0991002050

Search result

0991002000
MARSH CREEK HOLDINGS LTD





BILL FURST
SARASOTA COUNTY PROPERTY APPRAISER

PARCEL MAP

3D MAP

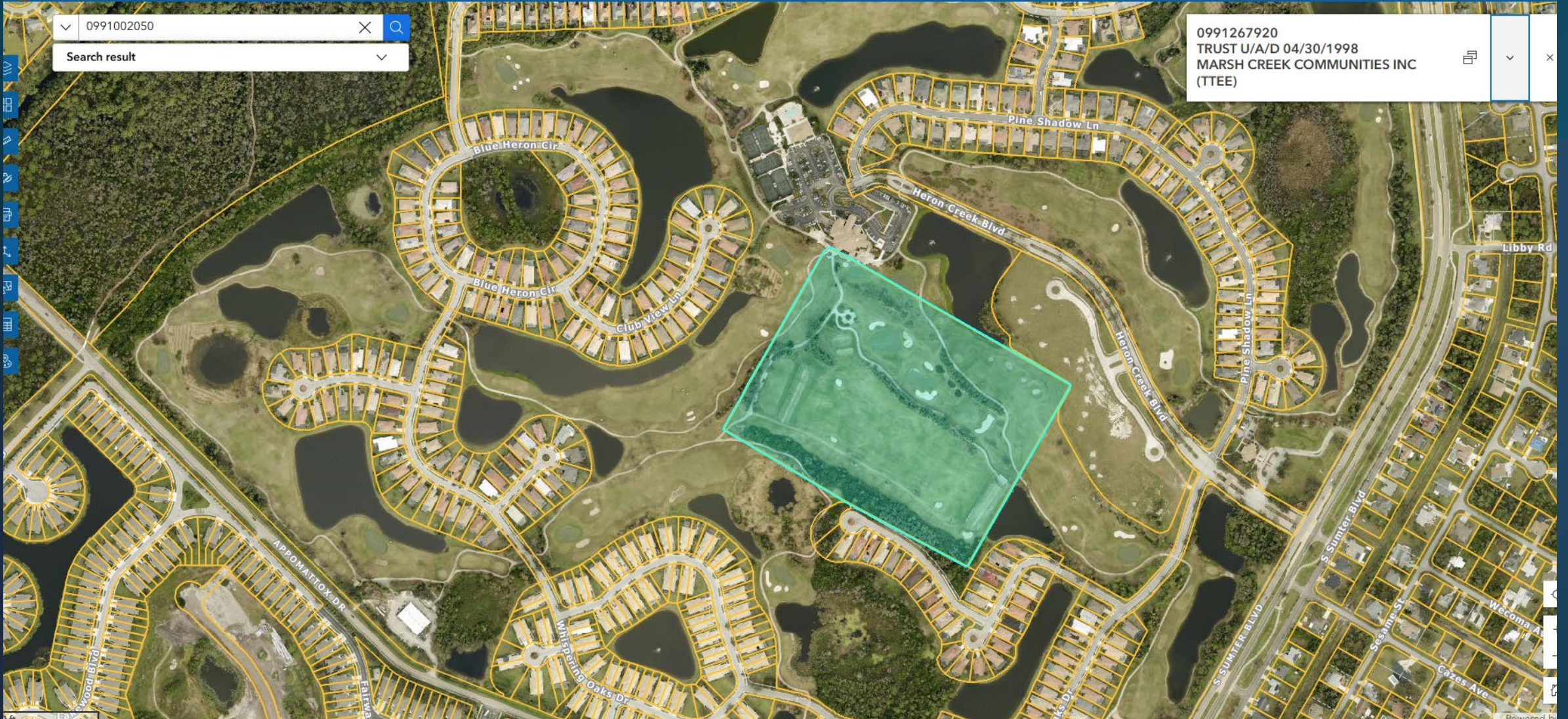
INFO

0991002050



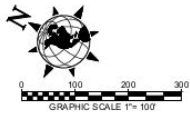
Search result

0991267920
TRUST U/A/D 04/30/1998
MARSH CREEK COMMUNITIES INC
(TTEE)





2022 AERIAL



PREPARED FOR:

Heron Creek Associates, Ltd.

4524 Southwest 15th Place, Suite 1
Cape Coral, Florida 33904
239-490-1071



MORRIS ENGINEERING AND CONSULTING, LLC
Civil Engineering and Land Development Consulting
10001 Little Dr. Suite 200, Fort Myers, FL 33907 CA 33708 MO 228-4707 www.morrisengineering.com

NO.	DATE	REVISION DESCRIPTION	BY

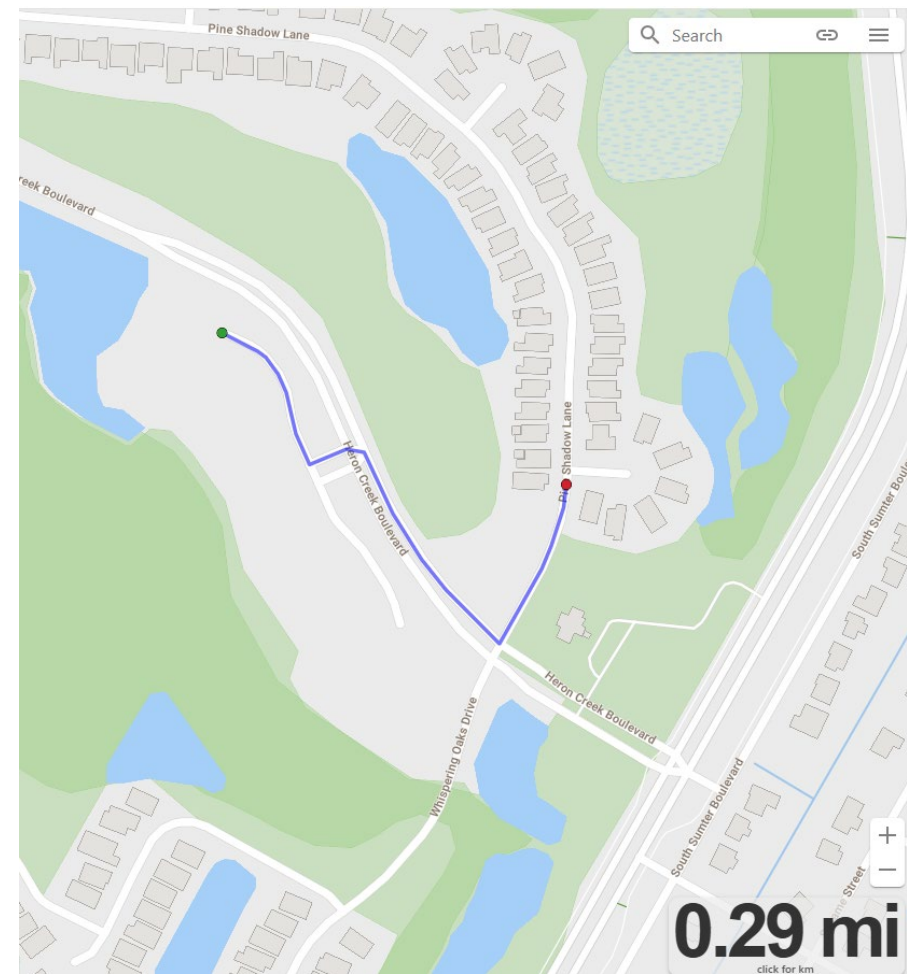
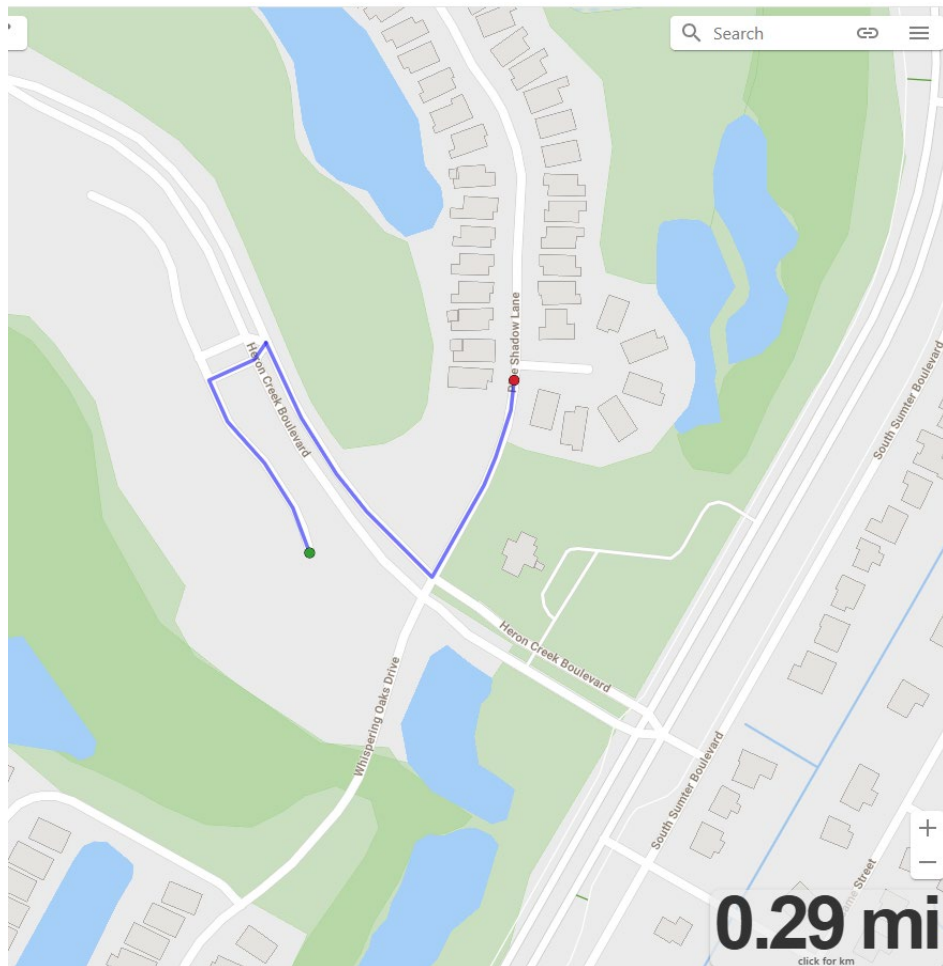
MATTHEW J. MORRIS
FL LICENSE NO. 82634

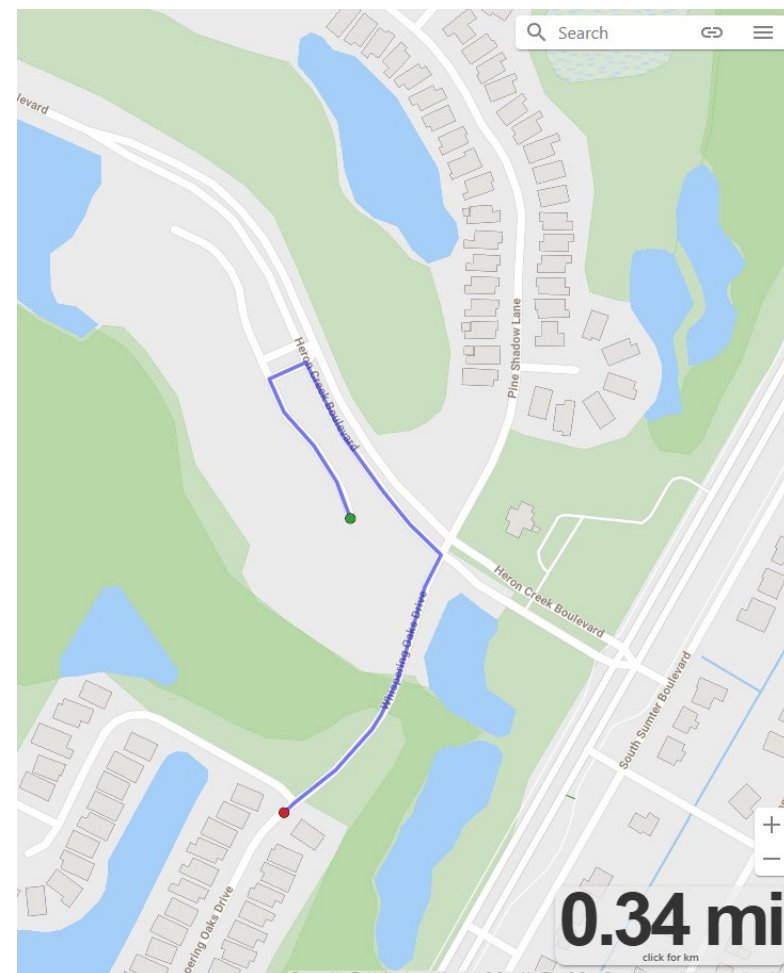
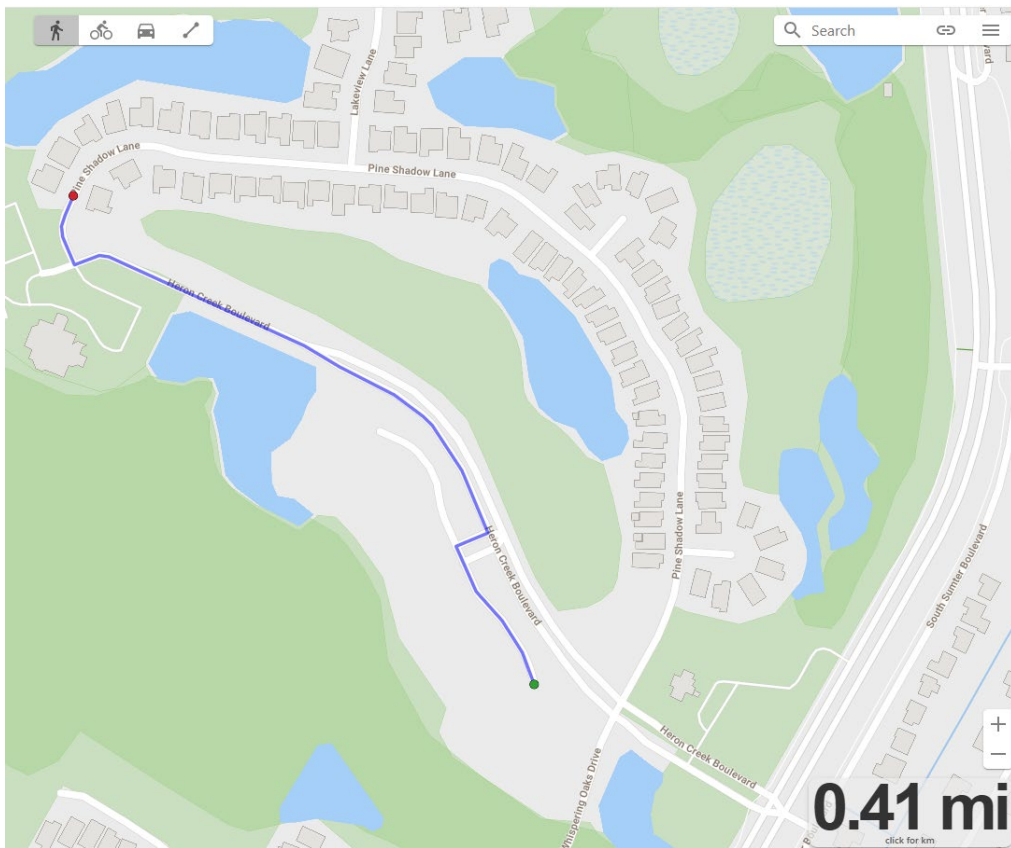
DATE	06/27/2023
PROJECT	SCF
DRAWING	WSP
DRAWN BY	
CHECKED BY	

AERIAL SITE MAP
HERON CREEK - PARCEL K
NORTH PORT, FLORIDA

SCALE	1"=100'
SEC. - TWP. - RANG.	29-36-2E
SHEET	OF
2	11







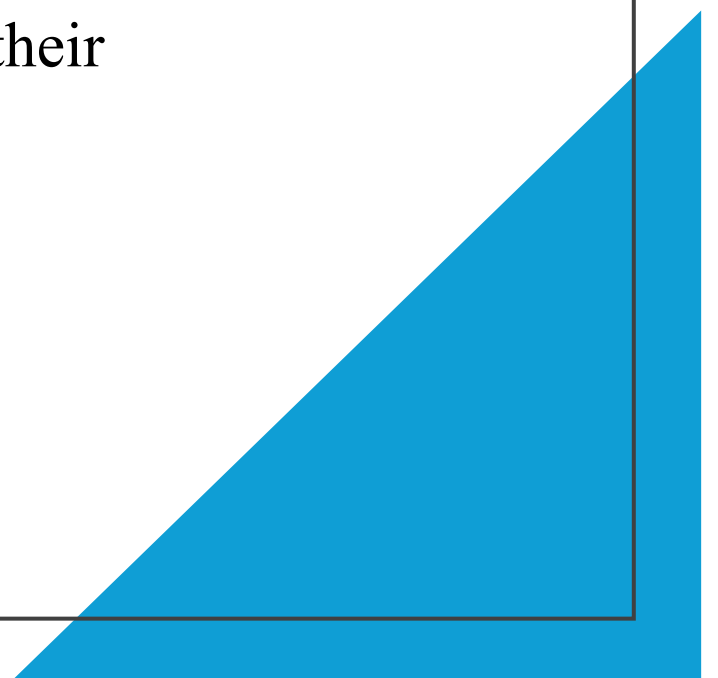
Zoning Board of Appeals
Petition AZB-24-122
Appeal of MAS-23-160
Heron Creek, Parcel K



Count 1 – Staff properly exercised their jurisdiction to approve MAS-23-160

City staff have jurisdiction to approve major site and development plans, and thus City staff properly exercised their jurisdiction to approve MAS-23-160.

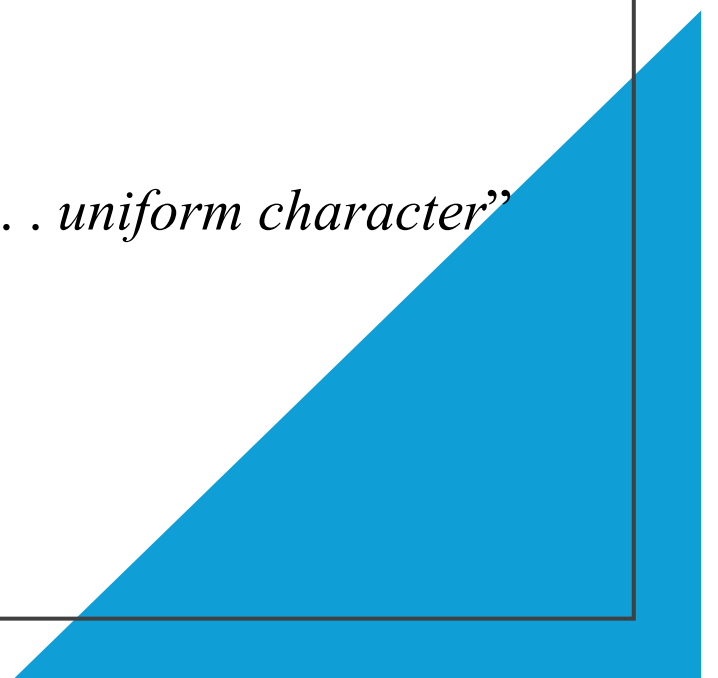
Plain language of Section 33-8 of ULDC.



Sec. 33-8. Procedure for securing major site and development plan approval.

- D. *Review of application.* Upon a determination that the plans submitted are complete, the application shall be logged into the City's database and placed on the **staff review schedule**.
- (1) **The City staff shall review the plans** within a timely manner of receipt of the application. Depending on the size of the proposed development, a longer period of review time may be required by the City staff but shall not exceed sixty (60) days.
 - (2) Upon receipt of all comments by the City staff, a master list of the comments shall be transmitted to the applicant.
 - (a) **The decision of each City staff** may be: **Meets Requirements**, Meets Requirements with Conditions, No Objection, Does Not Meet Requirements, Continuance.
 - (b) If the applicant receives a finding of "Does not meet requirements," the applicant shall resubmit the petition with all required changes to bring the project into conformance with the Unified Land Development Code, Urban Design Standards Pattern Book, any other City Code which applies, and any State, County, or Federal regulations.
 - (3) **Upon resolution of all outstanding issues and a unanimous decision of "Meets Requirements," "Meets Requirements with Conditions," or "No Objection" by the City staff**, the applicant shall submit all required copies of the final plans showing all required corrections within ten (10) days of **the City staff's final findings** sent to the applicant.
 - (4) **Upon receipt of the final corrected plans, the plans shall be stamped approved and a development order shall be issued to the applicant.**
 - (a) A development order is required to secure a development permit.

Count 2 – No Violation as to Density

- Macro, per *gross* acreage: 831 acres
 - 1997 (pre-DRI): max “overall density” of 4.0 du/acre
 - Ordinance 2000-13: DRI approved 1,067 multifamily units
 - Map H: “*Residential Use*”
 - Compliance with Comprehensive Plan
 - Heron Creek is DRI and PCD, gross acre
 - “PCD” = “*Large scale* development . . . definable boundary. . . *uniform character*”
 - ULDC: “Density” = “dwelling units per *gross* acre”
 - 2009 approval of 180 multifamily units on Parcel K
 - Lori Barnes October 2, 2023 Memorandum
 - Attorney Cowan January 3, 2024 Memorandum
- 

Pre-DRI, Macro Calculation

In 1997, even prior to the 2000 DRI approval, 807 acres of Heron Creek (Phase 1) were rezoned to the PCD district by Ordinance No. 97-2. Attached to that ordinance was a copy of the rezoning request in which it is stated: “*Consistent with the Future Land Use Map designation of Low Density Residential, the residential component for Phase 1 will not exceed an **overall** density of greater than 4.0 du/acre.*” (“Phase 1” consisted of the increment of development that could legally take place pursuant to a preliminary development agreement prior to the approval of the DRI.) The DRI approval later adopted the same methodology.

The DRI: Ordinance 2000-13

SECTION 1. Findings of Fact and Conclusions of Law. The City Commission of the City of North Port, Florida hereby make the following findings of fact and conclusions of law:

1.3 The ADA, as amended, proposes 1,970 residential units (903 single-family and 1,067 multi-family units), 500,000 gross square feet of retail/service and 250,000 gross square feet of office, 269.38 acres of recreation and open space, 27 holes of golf, buffers and tennis center, 44 acres of conservation lands (wetlands and scrub jay habitat), 105 acres of lakes for water management and 5 acres of internal road rights-of-way, on a project site containing a total of 831.38 acres more particularly described in Exhibit "A".

1.15 When developed in accordance with the conditions imposed by this Development Order, the Heron Creek development:

(a) will have a favorable impact on the environment and natural historical resources in the area;

(b) will have a favorable economic impact on the economy of the region by providing new employment and business for the residents of the region;

(c) will efficiently use water, sewer, solid waste disposal, public school facilities, and other necessary public facilities;

(d) will effectively use public transportation facilities;

(e) will favorably affect the ability of people to find adequate housing reasonably accessible to their places of employment; and

(f) will comply with such other criteria for determining regional impact as the regional planning agency deems appropriate, including but not limited to, the extent to which the development would create additional demand for, or additional use of, energy.

7.3 The obligations of this Development Order shall run with the land. The Applicant is bound by the terms of this Development Order so long as it owns such property. This Development Order shall be binding upon and inure to the benefit of the Applicant and its assignees or successors in interest. It is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designed as successor in interest thereto, or which otherwise possess any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.

Consistent Compliance with Comprehensive Plan

- Ordinance 2000-13

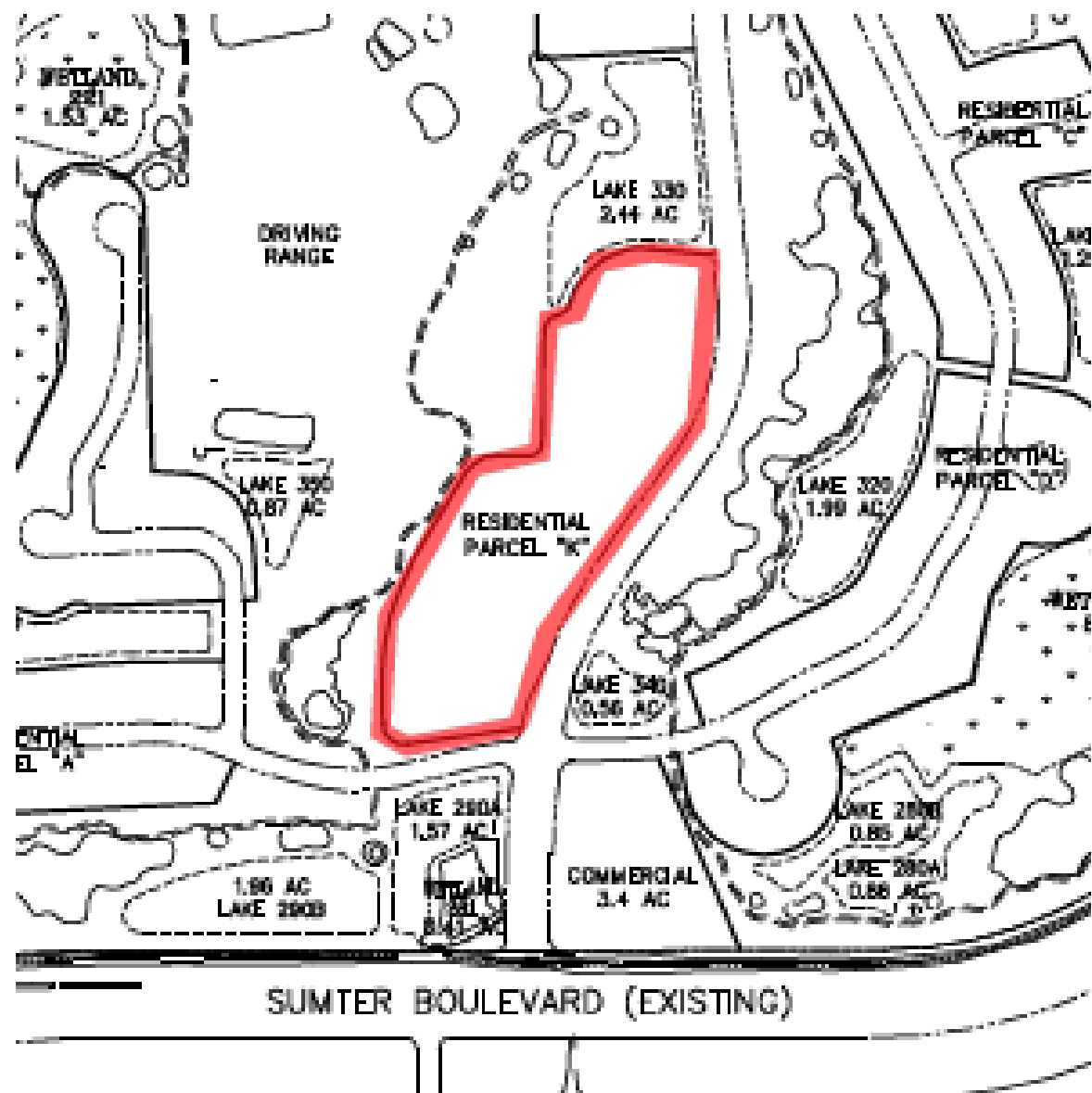
1.13 The proposed development, subject to the conditions imposed herein, is consistent with the North Port Comprehensive Plan and does not appear to conflict with other local land development regulations.

- Ordinance 2011-33

1.16 The proposed development subject to the conditions imposed herein, is consistent with the North Port Comprehensive Plan and does not appear to conflict with other local land development regulations;

- Ordinance 2013-16

1.17 The proposed development subject to the conditions imposed herein, is consistent with the North Port Comprehensive Plan and does not appear to conflict with other local land development regulations;



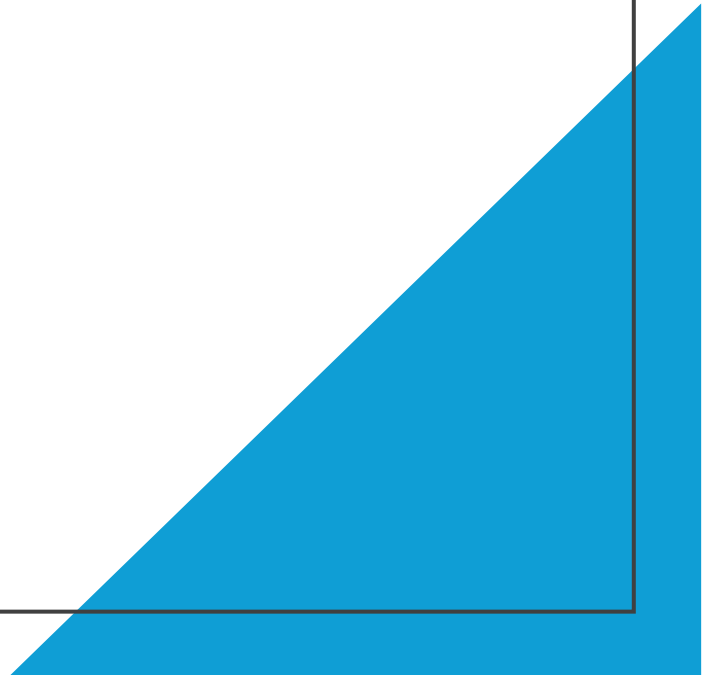
ULDC Sec. 61-3. – Definitions and word usage.

DENSITY — An existing or projected relationship between numbers of dwelling units and land area. Unless specifically noted in the context of its use, density means *dwelling units per gross acre*.

PLANNED COMMUNITY DEVELOPMENT DISTRICT (PCD)
— A *large-scale development* whose essential features are *definable boundary*; a consistent, *uniformed character; overall control* during the development process by a single development entity; private ownership of recreation amenities; and enforcement of covenants, conditions and restrictions by a community association.

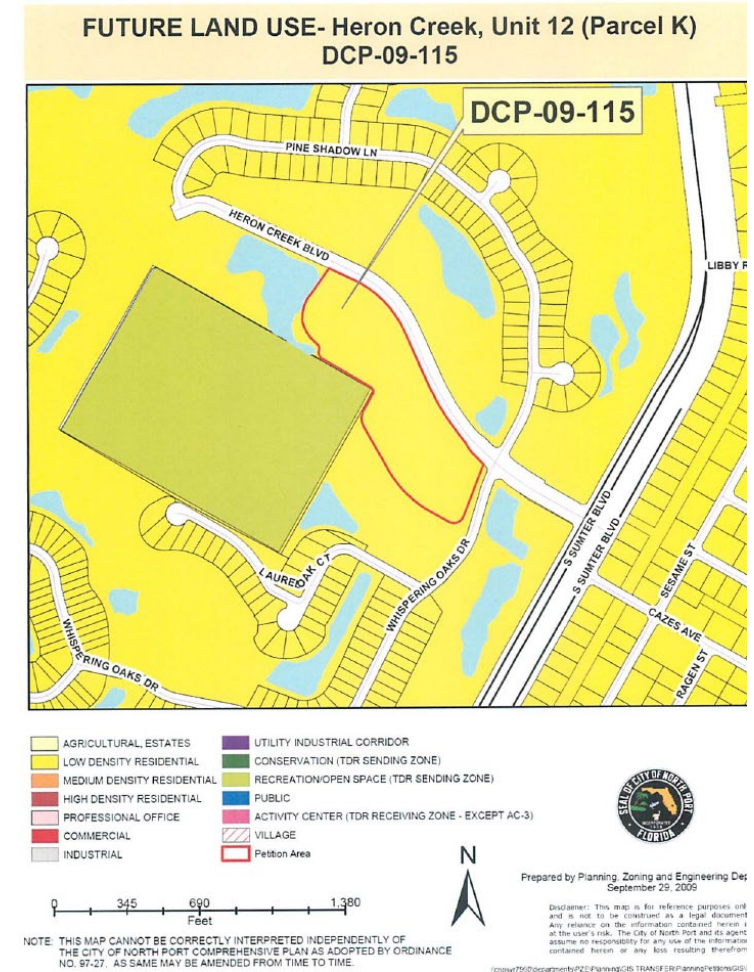
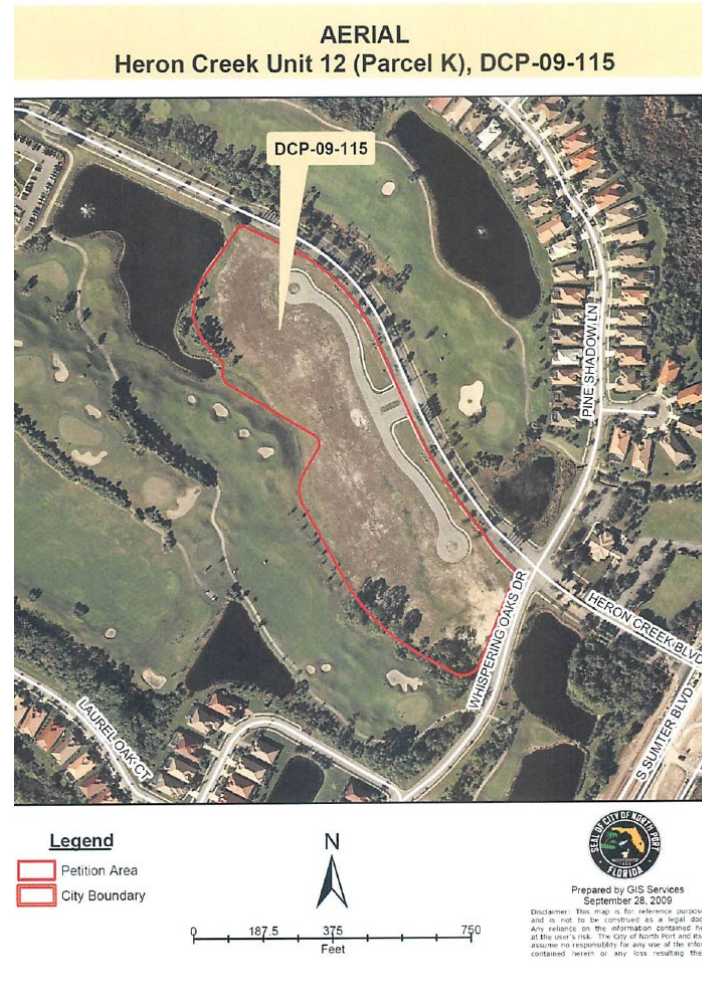
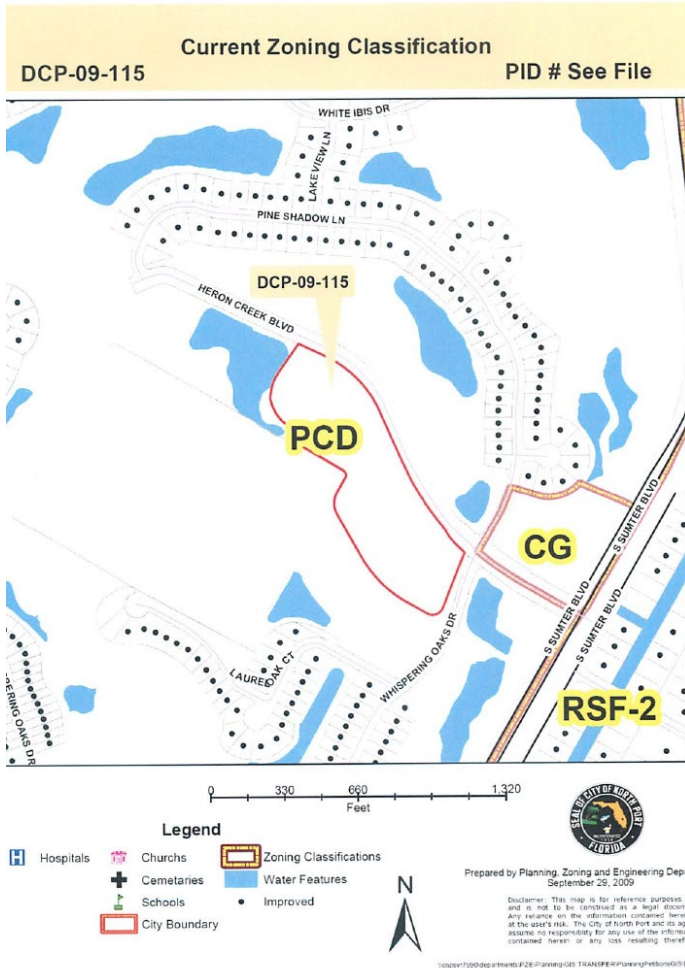
Interpretation and Application on Macro Scale

- Density calculated based on *Master Plan*
 - 20+ years ago, Parcel B
 - 104 units on 21.33 acres = 4.88 units/acre
 - 2009 approval of 180 units on Parcel K



2009 Approval of 180 Multifamily Units

Parcel K = Units / Gross Acre



**Development
Services Department
Memorandum,
October 2, 2023**

Lori Barnes,
AICP, CPM,
Assistant Director,
Development Services

- **History of Heron Creek DRI**

- Ordinance 2000-13: 1,970 residential (903 single family + 1,067 multifamily), 831 acres
- Map H (Feb 2000): Does not specify location of single v multifamily, all Residential, Parcel K not bifurcated by roadway
- Consistent with Comprehensive Plan

- **Concludes**

- DRI entitles Developer to place multifamily “on any parcel” of the DRI “provided the overall density does not exceed 4 dwelling units per acre.”
- “City cannot require submittal of additional development petitions. . . .”

Development Services Department Memorandum, October 2, 2023

Lori Barnes, AICP, CPM, Assistant Director, Development Services

Planning & Zoning staff concludes that the DRI, including Map H, was found consistent based on the Comprehensive Plan in force at the time of ADA application. The Urban Infill designation and permitted uses therein, including medium and high-density residential development applied to Heron Creek. In the absence of specific language limiting location of multi-family development and any associated mapping designations, staff opines that the DRI entitles the developer to place multi-family residential development on any parcel located in the golf community area of the DRI, provided the overall density does not exceed 4 dwelling units per acre. Therefore, the City cannot require submittal of additional development petitions, including but not limited to future land use amendments, development master plans, etc.

Development Services Department Memorandum, October 2, 2023

Lori Barnes, AICP, CPM, Assistant Director, Development Services

Staff believes that the interoffice memorandum from the North Port City Attorney's office January 20, 2020, regarding "Analyze – Parcel K Issue – Heron Creek may not have taken into consideration the complexities and applicability of the Comprehensive Plan in effect at time of Heron Creek's ADA DRI application, the findings in Ordinance 2000-13, and the entitlements granted. So we respectfully request review of the background analysis herein versus the memorandum as to the mandate of a Comprehensive Plan Amendment to facilitate multi-family development on Parcel K. Note that staff's position is further supported by the Bryant, Miller, and Olive legal response memorandum dated October 15, 2021, and the Summary Judgement under Case No. 2020 CA 4364 NC dated July 24, 2022.

Count 3 – No Violation of Comprehensive Plan Policies as to Flood Zones

Policy 9.25: No development order shall be issued which would permit unmitigated development in 100-year floodplains, as designated on Federal Emergency Management Agency Flood Insurance Rate Maps, or on floodplain associated soils shown in Map 2-2 of the Future Land Use Map Series, that would adversely affect the function of the floodplains or that would degrade the water quality of water bodies associated with said floodplains in violation of any local, State, or federal regulation, including water quality regulations.

Policy 9.26: The City shall discourage the densification and intensification of land uses within Hurricane Evacuation Zones A and B (as depicted within the Coastal Management Element Map Series) the CHHA, and/or FEMA Flood Zones “A,” “AE,” and/or “VE.”

Count 4 – No Violation of Comprehensive Plan Policies as to Compatibility (*See Site Plan*)

Policy 9.27: As reflected in City of North Port Zoning standards, potential incompatibilities between land uses due to the density, intensity, character or type of use proposed, shall be mitigated through site and architectural design techniques including but not limited to any or all of the following:

- provision and location of open space, perimeter buffers, landscaping and berms;
- the location and screening of sources of light, noise, mechanical equipment, refuse areas, delivery areas and storage areas; and,
- the location of road access to minimize adverse impacts, increased building setbacks, step downs in building heights.

Count 5 – Sufficient Multifamily Units Exist in the DRI and Proper Categorization of ALF

- City determined that ALF is General Office
 - Nicole Galehouse correspondence, March 17, 2020
- Developer has sufficient number of multifamily units to develop
 - Ordinance 2011-13, 3.01 Land Use Conversion Table and Matrix
 - Entitled to convert other uses to 150 multifamily units
 - Unilateral modification by Developer, without DRI Amendment

Nicole Galehouse Correspondence, 3/17/2020

Ron & Jim,

Thank you for coming in to meet with us today. I think it was great for us to sit down and go over what your plans are so we're all on the same page moving forward. I wanted to provide a brief recap of the meeting for follow-up purposes.

- The Assisted Living Facility is categorized under general office.

Ordinance 2011-33:

3.01 Land Use Table and Conversion Matrix

3.01 The amended ADA for the Heron Creek DRI is hereby approved for the following land uses and phases, and land use conversion matrix subject to the conditions contained herein consistent with the revised Map H (Attachment 3 of DO), and is subject to the other provisions of the Development Order (including Attachment 4 of DO):

Land Use

Land Use	Phase I (‘97-2001)	Phase II (‘02-2006)	Phase III (‘07-2011)	Phase IV (‘12-2017)
Residential Single Family (LUC 210)	275 DU	377 DU	251 DU	
Residential Multi-Family (LUC 220)	125 DU		175 DU	
Golf Course (LUC 430)	18 Holes	9 Holes		
Tennis Club (LUC 492)		5 Courts		
Medical/Professional (LUC 720)			43,000 GLA	
Office General (LUC 710)			40,000 GLA	
Retail Shopping Center (LUC 820)	90,000 GLA	30,000 GLA	488,000 GLA	137,500 GLA

The Land Use Table, as specified above, may be modified by the Developer without further amendment to this Development Order, subject to the following.

a. This transfer or conversion may occur subject to the following conversion table:

Land Use		To				
		Single Family	Multi Family	Medical/ Professional	Office General	Retail Shopping Center
		(d.u.)	(d.u.)	(sq.ft.)	(sq.ft.)	(sq.ft.)
From	Single Family (Per d.u.)	1.0	1.5	443	685	365
	Multi Family (Per d.u.)	0.7	1.0	291	450	239
	Medical/ Professional (Per 1,000 sq.ft.)	2.3	3.4	1000	1544	822
	General Office (Per 1,000 sq.ft.)	1.5	2.2	648	1000	533
	Retail Shopping Center (Per 1,000 sq.ft.)	2.7	4.2	1216	1878	1000


- (b) The transfer or conversion may occur provided that: 1) the external trips approved for the DRI remain the same and 2) no additional impact will occur to other public facilities (such as sewer and water). Further, no alteration to the Map H may occur as a result of the conversion.
- (c) Forty Five (45) days notice of any conversion must be provided to the City, the Department of Economic Opportunity Division of Community Planning and Development, and Southwest Florida Regional Planning Council. In addition, the amount of the conversion must be reported as part of the subsequent monitoring report and petition to develop. When a petition to develop which includes a transfer or conversion of land use is submitted to the City, proof that no adverse impact is being caused by the transfer or conversion or any combination thereof must be provided.
- (d) The transfer or conversion does not increase the allotted number of units on any particular parcel to a level above what is permitted in the DRI or the City of North Port Land Development Code and does not exceed the substantial deviation criteria of subsection 380.06(19)(b), F.S.

Jan 2023 (Current) Modified Land Use Conversion Table

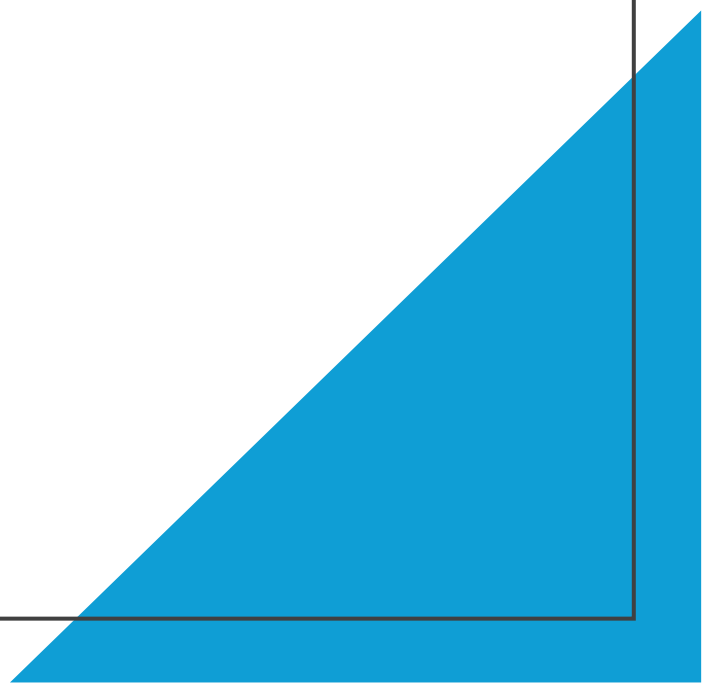
Land Use	Phase I (‘97-2001)	Phase II (‘02-2006)	Phase III (‘07-2011)	Phase IV (‘21-2024)
Residential Single Family (LUC 210)	376 DU	457 DU		70 DU
Residential Multi-Family (LUC 220)				750 DU
Golf Course (LUC 430)	18 Holes	9 Holes		
Tennis Club (LUC 492)		5 Courts		
Medical/Professional (LUC 720)				43,000 GLA
Office General (LUC 710)				40,000 CLA
Retail Shopping Center (LUC 820)	68,075 GLA	34,240 GLA	3,890 GLA	532,152 GLA

- Includes extended buildout date for Phase IV: Now, *June 23, 2028*
- Reflects reduction of multifamily units from 1,067 to 300 (in 2007)
- Reflects conversions. As of January 2023, converted:
 - 430 multifamily units created by conversion of 102,380 GLA of Retail Shopping Center at ratio of 4.2 Residential multifamily to 1,000 GLA of Retail Shopping Center

Count 6 – Covenants and Restrictions Not Required to be Recorded

- Sec 33-9-A (22)
 - Does not specifically apply to condominiums
 - Unreasonable to require covenants/restrictions before Development Order is approved
- 
- A blue triangular graphic is located in the bottom right corner of the slide, pointing towards the top right.

Count 7 – Compliance with Traffic Impact Study

- Submitted by Matt Morris, P.E.
 - Current at time of submission
 - Verifies number of proposed trips
 - Analyzes turn lanes
 - Adjacent roadway analysis considered in DRI
 - Signed and sealed December 9, 2024
- 
- A large blue right-angled triangle is positioned in the bottom right corner of the slide, with its hypotenuse facing the top-left.

Count 8 – Compliance with Water and Sewer Impact Requirements

- Developer Letter, Notice of Conversion January 25, 2023
 - Addressed impacts
 - Applying Matrix has no effect on utility service
- Section 78-90 of the ULDC

January 25, 2023 Letter

The additional 430 Multi-Family units were created by the conversion of 102,380 GLA of Retail Shopping Center at a ratio of 4.2 Residential Multi-Family units to 1,000 GLA of Retail Shopping Center. Section 301(b) of the Development Order allows for land use conversion provided that (1) the external trips approved for the DRI remain the same, and (2) no additional impact will occur to other public facilities such as water and sewer. The Technical Memorandum prepared by William E. Oliver, P.E. on September 6, 2006, which was utilized in creating the conversion table, indicates that it is tailored to ensure that its use in converting uses will result in no increase in external trips over those approved in the DRI. The DRI grants no guarantee of entitlement to water and sewer service going forward; so, use of the table to convert uses has no effect on utility entitlements. Each future development project, regardless of the use, will still have to seek written confirmation from the City that water and sewer service will be available. The Developer is currently working with the utility department on an agreement for service to a new proposed development within the Towne Center and has already received confirmation that the City does have capacity to serve the development.

Sec. 78-30. – Water and wastewater capacity fees

- Equivalent Residential Connections (ERCs) for multifamily unit is 1
- Complex formula to determine ERC for non-residential use
 - Water service: fixture units x 20, then divide by 170
 - Wastewater service: fixture units x 20, then divide by 155
- **COMPLIANCE**
 - Additional Impact in converting retail to residential:
 - Look at original entitlement in DRI
 - **1,970** Residential (903 single family + 1,067 multifamily)
 - Current is **LESS IMPACT: 1,653** Residential (903 single family + 750 multifamily)

Count 9 – The Developer Rightfully and Properly Shifted Land Uses Pursuant to the Land Use Conversion Matrix in the DRI Order

- Developer **entitled to shift** land uses per conversion matrix
 - Attorney Cowan Memorandum, October 15, 2021
 - Summary Judgment Order, Judge Williams, July 24, 2022
- **Compliance** with substantial deviation criteria
 - 2023 conversion = **Decrease in residential units**
 - Original DRI entitlement: **1,970** Residential (903 single family + 1,067 multifamily)
 - Current: **1,653** Residential (903 single family + 750 multifamily)