



City of North Port

Office of the City Attorney

Memorandum

To: Mayor Pete Emrich
Vice-Mayor Barbara Langdon
Commissioner Jill Luke
Commissioner Debbie McDowell
Commissioner Alice White

From: Amber L. Slayton, City Attorney *ALS*

Copy: A. Jerome Fletcher II, City Manager
Chuck Speake, Public Works Director
Margaret Roberts, Assistant City Attorney

Date: April 11, 2022

Re: Analysis - City's Obligation to Place Artwork Near Walgreen's in Heron Creek (864)

In response to the City Commission's direction to analyze the City's obligations to place artwork near Walgreens at the intersection of Sumter and Price Boulevards, attached is a memo drafted by Assistant City Attorney Margaret Roberts.

If you have any questions, please let me know.



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Interoffice Memorandum

To: Amber L. Slayton, City Attorney

From: Margaret T. Roberts, Assistant City Attorney

Date: April 5, 2022

Re: Analysis – City’s Obligation to Place Public Art near Walgreens in Heron Creek

On December 14, 2021, the City Commission directed the City Attorney to review the legalities of removing and replacing public artwork near the Heron Creek Development Walgreens on the northwest corner of the intersection of Sumter and Price Boulevards (“Walgreens Location”).¹ This memo provides the City’s obligations to legally remove and replace public artwork at the Walgreens Location.

I. SUMMARY

The ULDC requires public art in every activity center;² however, the City is not required to place public art at the Walgreens Location. With the permission of the property owner, the City may place public art within the corner landscape easements at the intersection of Sumter and Price Boulevard. The property owner must grant permission in the form of a perpetual ingress and egress easement for the City to install and maintain the public art. An easement is needed only if one currently does not exist.

II. BACKGROUND

A. Heron Creek Development

The developer of the Heron Creek Development paid fees to the City for the placement of public art pursuant to the requirements of Section 59-5 of the Unified Land Development Code (“ULDC”).³ On or about November 19, 2019, the City’s contractor installed a spoonbill sculpture at the Walgreens Location.⁴ On March 2, 2021, the Commission directed staff to remove and store the sculpture due to damage from

¹ See Meeting Minutes of the City Commission of the City of North Port, Fla., Item 7.B. (December 14, 2021).

² Section 59-4.A., ULDC.

³ See Meeting Minutes of the City Commission of North Port, Florida, Item 7.A. (March 2, 2021).

⁴ See Invoice received and paid for completed installation (November 19, 2021).

the elements.⁵ On this same date the Commission directed the Art Advisory Board to provide options for replacement artwork at the same location. On December 14, 2021, the City Commission considered the Art Advisory Board’s recommendation to approve a replacement sculpture for installation, and a motion to purchase new artwork failed.⁶ The Commission then directed the City Attorney to review the legalities of removing and replacing public artwork at the Walgreens Location.⁷

The intersection of Sumter and Price Boulevards is designated as a key intersection by the Pattern Book for the Development of Towne Center. The key intersection designation provides for the inclusion of public art projects within certain landscape easements at any corner of the intersection.⁸

B. Public Art Account

The ULDC⁹ requires a developer to provide public art within the development site or pay into the City’s public art account.¹⁰ The intent of a public art contribution is to provide for public art and aesthetic enrichment of the community.¹¹ The public art account is a restricted fund. The designated uses for the account include the selection, acquisition, transportation, installation, maintenance, and promotion of works of art displayed in the City.¹² Since the spoonbill sculpture was acquired with funds from the City’s public art account, the City is the owner of the sculpture.¹³ As a City structure, the City was legally entitled to remove the structure for maintenance.

III. PUBLIC ART LOCATION AT HERON CREEK DEVELOPMENT

The ULDC provides that public art is required in all Activity Centers;¹⁴ however, the City is not required to place public art at the Walgreens Location. The City may consider other locations within the designated key intersection of Sumter and Price Boulevards for placement of public art. Any new proposal for placement requires the Heron Creek developer’s approval.¹⁵ The property owner’s approval is also required for legal access on private property and is best documented in the form of an ingress and egress easement granting the City permission to install and maintain the public art.

Although the City has diligently searched its records, a document showing the Heron Creek approval at the Walgreens Location is not available. Other forms for the approval may have included a license or a verbal or written statement. An easement is not required if the City determines that an easement currently exists.

⁵ See Meeting Minutes of the City Commission of the City of North Port, Florida, Item 7.A. (March 2, 2021).

⁶ See Meeting Minutes of the City Commission of the City of North Port, Fla., Item 7.B. (December 14, 2021).

⁷ Id.

⁸ Section 2.7.2, Pattern Book for Development of Towne Center, a part of the Heron Creek Development of Regional Impact states that “space will be designated for the inclusion of public art projects within the corner landscape easements at the intersection of Sumter and Price Boulevards.”

⁹ Section 59-4, ULDC.

¹⁰ Section 59-8, ULDC establishes the public art account consisting of contributions received pursuant to Section 59-5 B(1), ULDC.

¹¹ Section 59-3, ULDC.

¹² Section 59-8, ULDC.

¹³ Section 59-8, ULDC states in part that any public art purchased with public art account funds shall be and remain the sole property of the City.

¹⁴ Section 59-4.A., ULDC.

¹⁵ Section 2.7.2, Pattern Book for Development of Towne Center, a part of the Heron Creek Development of Regional Impact states that “Heron Creek shall review and approve all public art proposals for the designated intersection.”