



CITY OF NORTH PORT

Neighborhood Development Services
Planning Division
4970 City Hall Boulevard
North Port, FL 34286-4100
www.cityofnorthport.com
Phone (941) 429-7156

DATE RECEIVED -- DATE STAMP

Joint Exhibit 1

Application to Request an Appeal

Request for an Appeal fee: \$750

Date Request Received: _____ Accepted by: _____ Project No: MAS- 23-160

- Appeals of Interpretation and Enforcement for the Unified Land Development Code (Zoning Board of Appeals)
- Appeals of Administration Process of Procedure (Planning & Zoning Advisory Board, Commission)

Name: Heron Creek Community Association, Inc.

Address: c/o Daniel J. Lobeck, Esq., 2033 Main Street, Suite 403

City: Sarasota

State: FL

Zip: 34232

Telephone: (941) 955-5622

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E-Mail: dlobeck@lobeckhanson.com

Purpose of Application: Please briefly state what specific interpretation or enforcement being appealed or the specific administrative process or procedure being appeared.

(See attached)

Planning & Zoning

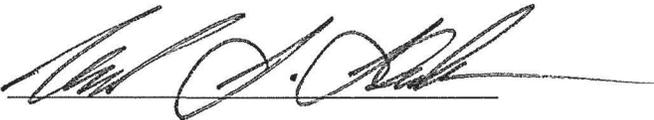
Has this property undergone previous City development review and approval?

No: _____ Yes: If yes, when? (Month/Date/ Year) Approved and Development Order Issued June 18, 2024

Has this property received variance, waiver or special exception use permit approval?

No: Yes: _____ If yes, please describe: _____

*All of the information provided on this application is true and correct to the best of my knowledge.



Signature of Applicant

July 18, 2024

Date

Heron Creek Community Association, Inc. By: Daniel J. Lobeck, Attorney

Print Applicant Name

Appeal of June 18, 2024 Development Order MAS-23-160 (Heron Creek Parcel K)

Filed With the North Port Development Services Department July 18, 2024 by Heron Creek Community Association, Inc.

This is an Appeal under Article II, Sections 1-10.A(2) and 1-10.C of the North Port Unified Development Code (ULDC), and any other applicable authority, of the approval by staff of the City's Development Services Department of City of North Port Development Order MAS-23-160, a Major Site and Development Plan for a 150-unit residential condominium development on 9.78 acres known as Heron Creek Parcel K.

The location of the property is referenced in the City records as Section 28 Township 39S Range 18E. Its Parcel ID Number with the Sarasota County Property Appraiser is 0991002050. Parcel K is the reference given to the property on Map H of the Heron Creek Development of Regional Impact.

A copy of Development Order MAS-23-160 is attached hereto.

The Issue Date on the Development Order is June 18, 2024. As such, this Appeal, being filed within 30 days of that date on July 18, 2024, is timely.

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.

The Association has standing in this Appeal under s. 720.303(1), Florida Statutes, Section 1.221 Florida Rules of Civil Procedure and applicable case law, including Southwest Ranches Homeowners Association v. County of Broward, 502 So.2d 931 (4th DCA Fla. 1987).

The Association's Statement of Good Cause, identifying errors in the approval of the Development Order, with applicable Code references, is as provided herein.

Count 1 – Lack of Staff Jurisdiction to Approve Major Site and Development Plan

Nowhere in the ULDC or other authority is the staff of the City's Development Services Department given jurisdiction to approve a Major Site and Development Plan such as the one at issue.

Instead, the ULDC provides as follows (emphasis added):

ARTICLE III. - BOARDS AND DUTIES

Sec. 1-27. - City Commission.

Under these zoning regulations, the City Commission shall have only the duties of:

C. Considering and approving or denying requests for annexations, special exceptions, rezoning of property, land use, development master plans, plats, landscape regulations variances, and subdivision regulations variances.

Sec. 1-29. - Planning and Zoning Advisory Board (PZAB).

G. Functions, powers and duties.

(1) The Planning and Zoning Advisory Board serves as the Local Planning Agency as required by the 1985 Florida Growth Management Act as set forth in the Florida Statutes, Chapter 163, and serving as a Planning and Zoning Advisory Board to the City Commission. The function, powers and duties of the Planning and Zoning Advisory Board in general shall be to:

e) Determine whether specific proposed developments conform to the principles and requirements of the Comprehensive Plan.

Accordingly, in the absence of anything in the ULDC giving authority to staff alone to perform those functions as to a Master Site and Development Plan, its authority is limited to providing its analysis to the Planning and Zoning Advisory Board for its recommendation to the City Commission, for consideration and action at their respective public hearings.

Count 2 – Violation of Comprehensive Plan and ULDC as to Density

This is what killed the developer's 2021 effort to get approval for high density housing on Parcel K. It's a big one, and must as a matter of law kill it again.

It is undisputed that Parcel K is designated on the Future Land Use Map (FLUM) of the North Port Comprehensive Plan as “Low Density Residential”, with a maximum density of four units per acre. Article II, Section 1-18 of the ULDC incorporates by reference the definitions in Chapter 61 of the City Code. That includes the following:

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.

And this:

ACRE, GROSS — The total area within a parcel of land.

So, under the ULDC, density is calculated based on the number of units within a parcel of land. Here, that parcel is Parcel K.

Yet, Development Order MAS-23-160 was approved for 150 units on 9.78 acres. At four units per acre, that would allow not more than 39 units. The Development Order allows almost four times the density allowed on Parcel K by the Comprehensive Plan and ULDC!

Indeed, at a density of 15.34 units per acre, the density approved by staff on Parcel K by Development Order MAS-23-160 is even higher than the maximum of 15 units per acre allowed anywhere by the North Port Comprehensive Plan.

It is inconceivable that the high density multifamily housing which would be approved by Major Site and Development Plan MAS-23-160, as shown in the attached graphic rendering submitted to the City by the Applicant of just one of the several buildings to be squeezed onto Parcel K – again, exceeding even the highest density allowed by the Comprehensive Plan and ULDC for high density residential development – can be considered to be the Low Density Residential development under the limits of the North Port Comprehensive Plan. This sort of Orwellian “New Speak” defies both logic and common sense, betraying the reasonable expectations the appellant’s members had reason to rely upon in purchasing their Low Density single family homes in Heron Creek, and clearly violating the applicable law.

Under Map H of the Heron Creek Development of Regional Impact, Parcel K is designated simply as “Residential Parcel K.” That is the same designation given to all of the other residential parcels in the Heron Creek Community, all of which have been developed at a low density of less than four units per acre. That is because that is what is required by the North Port Comprehensive Plan.

There is nothing in the Heron Creek DRI Ordinance which purports to conflict with the Comprehensive Plan as to the maximum density on Parcel K, or to conflict with the Comprehensive Plan otherwise with regard to the allowable land uses on each of the various

parcels in the DRI. Even if it did, the DRI Ordinance cannot lawfully conflict with the Comprehensive Plan.

Sections 163.3161 through 3253, Florida Statutes is the Community Planning Act. Section 163.3161(6), Florida Statutes provides:

It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

Further, s. 163.3194(1)(a), Florida Statutes, provides:

After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

Section 163.3177(2), Florida Statutes provides that “each [municipal and county] local government shall maintain a comprehensive plan of the type and in the manner set out in this part ...” Section 163.3177(6), Florida Statutes provides that “the comprehensive plan shall include ... [a] future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public facilities, and other categories of the public and private uses of land” including “the general range of density or intensity of use ... in each ... land use category.” It also provides (emphasis added):

Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives.

So, the FLUM is part of the Comprehensive Plan and all development of land in the City must comply with it.

Section 163.3211, Florida Statutes provides that the Community Planning Act prevails over any conflicting statute “relating to local governments having authority to regulate the development of land.” There is in any event no conflicting statute on the point at issue, including in Section 380.06, Florida Statutes, governing Developments of Regional Impact.

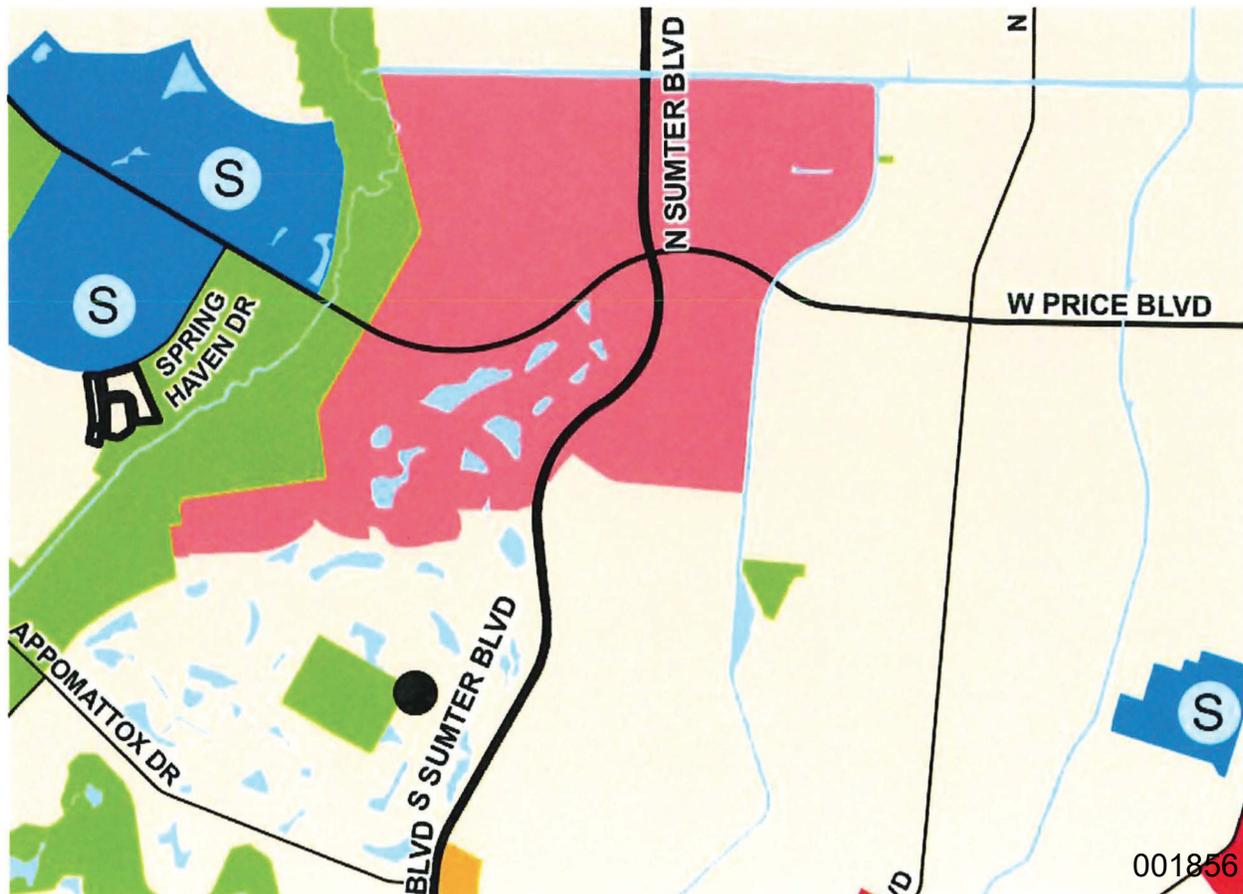
Section 380.06(7)(a), Florida Statutes includes the following:

Notwithstanding any provision to the contrary in any development order, agreement, local comprehensive plan, or local land development regulation, any proposed change to a previously approved development of regional impact shall be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan.

Again, fundamentally, there is nothing in the Heron Creek DRI Development Order which is inconsistent with the FLUM designation of Parcel K as limited to low density residences and Map H, which is an exhibit to that Development Order, simply shows “Residential Parcel K”, the same designation as the other Residential Parcels shown in the Community, all of which have been developed as low density residences.

Map H also includes “Residential” as being among the uses allowed in the four Mixed Use areas, outside of the Community, and outside of the FLUM designation for single family residences. That is where any multifamily development in the DRI belongs under the Comprehensive Plan, such as The Gallery at North Port and the Towne Center Apartments. More about in Count 2 below, as using up the allocation of multifamily development rights in the DRI Order. Indeed, it would be inconsistent with the Comprehensive Plan for the developer to be allowed to use its allotted multifamily units in a manner which fails to fulfill the mixed use requirements of Figure 1 of the Future Land Use Chapter, under Activity Center 2 and Policy 2.1.

This is the pertinent portion of the Future Land Use Map:



Parcel K is at and/or adjacent to the black dot, which is identified on the FLUM legend as “Inactive Privately-Owned Landfill.” The beige is shown as “Low Density Residential.” The pink is “Activity Center.” (The green is “Recreation Open Space”, a driving range).

The Comprehensive Plan designates the Activity Center, shown as dark pink on this FLUM excerpt as Activity Center 2, and provides for multifamily development as a component of its mixed use (in Figure 1 of the Future Land Use Chapter, under Activity Center 2 and Policy 2.1).

As to the portion of the Heron Creek Community shown on the FLUM as beige, however, is it is – certainly and without qualification – limited to Low Density Residential, defined as up to four units per acre (or up to 4.3 if already platted).

The North Port Comprehensive Plan includes the following in the Future Land Use chapter, in pertinent part:

Policy 1.1: Land development regulations adopted to implement this Comprehensive Plan shall be ... based on and be consistent with the following densities and intensities, presuming concurrency requirements are satisfied, for residential and non-residential development as indicated below:

Low Density Residential - These lands are designated for residential areas of low density (for currently platted single family lots: maximum density of 4.3 residential units per gross acre, 4.0 residential units per gross acre for unplatted areas). Again, Parcel K is designated in the Comprehensive Plan as Low Density Residential. (It is unplatted).

So what does the Heron Creek DRI Development Order say about consistency with the Comprehensive Plan? Section 1.17 of the amendment to the Development Order which is Ordinance 2013-16, as well as Section 1.16 which is the Development Order adopted as Ordinance 2011-33, states:

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.

The DRI Development Order is consistent with the Comprehensive Plan only if it is read (as it must) to be consistent with the FLUM, in limiting Parcel K to Low Density Residential development.

Section 4.17 of the DRI Development Order references the applicability of the North Port Unified Land Development Code (the Code) to development in the Heron Creek DRI.

Article II, Section 1-31 of the ULDC provides that City staff review of any proposed development shall be to ensure that the development complies with (among other requirements) the Comprehensive Plan. Sections 53-2 and 53-112 of the ULDC states that the zoning districts and regulations of the Code implement the Comprehensive Plan.

Parcel K is zoned on the City's Official Zoning Map as Planned Community Development (PCD). Chapter 53, sections 53-101 and 53-103 of the ULDC specifically provides that the PCD zoning district and regulations implement the Comprehensive Plan. Chapter 53, section 53-103 of the ULDC provides that any residential use is allowed in a PCD district "provided, however, that the proposed use shall be consistent with the City's Comprehensive Plan" Chapter 53, section 53-21 of the ULDC prohibits any buildings to be constructed which do not conform to the zoning on the property, particularly with regard to the density and number of units.

Chapter 53, section 53-6.A of the ULDC provides that any development in a PCD district requires filing and approval of a Development Master Plan and section 53-7.A requires that the developer "demonstrate that the proposed DMP complies with the City of North Port Comprehensive Plan, the zoning regulations and other sections of this Unified Land Development Code and other laws, ordinances and regulations, as applicable."

How could it be more clear, under the state statutes, the Comprehensive Plan, the ULDC and the DRI Order? Parcel K can be developer at up to four units per acre, just like all the land around it. And that's it.

This is not the first time this issue has come before the City of North Port. In 2009, City staff approved 180 multifamily units on Parcel K, with what has been determined by a records search was no legal opinion. It is evident that the City staff did not consider the violation by that 2009 plan of the Comprehensive Plan and Code and did not seek or receive counsel from the City Attorney in that regard. If any consideration of the issue did occur, it was incorrectly concluded. The November 19, 2009 staff report for the plan correctly shows on a color map and legend that the property was designated Low Density Residential on the FLUM but simply describes the designation as "Residential", without any mention of the allowable density by that designation or whether it applies.

City Manager Jerome Fletcher addressed this subject well in his November 10, 2021 letter to Ron York, a Manager for the developer. In response to a complaint by Mr. York that the City previously approved the 180 units in 2009 without a Comprehensive Plan amendment (before that approval expired), Mr. Fletcher stated that was due to "a mistake by staff" which he stated is now being corrected. He also later reported in an email that he told the Developer representative that "because we didn't do a comp plan amendment in the past can't substitute for it being the right thing to do today."

Mr. Fletcher was referring to the Development Services Department on October 7, 2021 rejecting an application by the developer for 180 units on Parcel K as "Does Not Meet Requirements." It states, "A Comprehensive Plan Amendment will be required as the property currently has a Future

Land Use of Low-density residential.” (It also noted that the application even exceeds the highest allowed density anywhere in the City, noting, “Further, maximum density for High-density residential Future Land Use is 15 dwelling units per acre. The current density proposed exceed (sic) this.”

Then came the definitive “nail in the coffin” for the developer with the attached memorandum of January 20, 2022 by Assistant City Attorney Margaret Roberts to City Manager Fletcher. That memo provides a thorough analysis of the law and the Comprehensive Plan and concludes that Parcel K is limited to Low Density Residential Development unless the Comprehensive Plan is amended to allow the high density development sought by the developer.

In response, the developer let its Parcel K application expire.

Subsequently, Carl Bengé of the Development Services Department took up the developer’s cause. In an undated memo to the City Manager, Mr. Bengé alleged a nonexistent conflict between Margaret Robert’s memorandum and one by legal consulting firm Bryant Miller Olive on a different subject – not the one at issue (attached). Mr. Bengé concluded, without stating any basis for support, that 150 units are allowed on Parcel K and requested that the latter firm be asked to resolve the “conflicting findings.”

That legal opinion was sought. It is attached. Without addressing the legal considerations set forth above in this Appeal, without pointing to any error in any of the points in Margaret Robert’s memorandum and indeed without stating any legal basis whatsoever, the law firm concluded that if the unused maximum density throughout the Low Density Residential area of the Heron Creek Community is used on Parcel K, that would allow 150 units to be developed on that parcel.

Then ultimately Carl Bengé approved that development on Parcel K in issuing the June 18, 2024 Development Order at issue in this Appeal.

He was clearly wrong in doing so, for all the compelling legal reasons the City instead denied that density before.

In addition to the Florida statutes and the City’s own ordinances, Florida case law is clear that the local government’s Comprehensive Plan governs all development within the jurisdiction of that local government, which includes a Development of Regional Impact. Bay Point Club, Inc. v. Bay County, 890 So.2d 256 (Fla. 1st DCA 2004); Dixon v. City of Jacksonville, 774 So. 2d 763, 764 (Fla. Dist. Ct. App. 2000); Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191, 197 (Fla. Dist. Ct. App. 2001), review denied, 821 So. 2d 300 (Fla. 2002); Mojito Splash, LLC v. City of Holmes Beach, 326 So. 3d 137 (Fla. 2d DCA 2021); City of Jacksonville Beach v. Prom, 656 So. 2d 581 (Fla. 1st DCA 1995)

Count 3 – Violation of Comprehensive Plan Policies as to Flood Zones

Approving -- and even encouraging by staff’s advocacy of a change in staff’s approach to how density is measured on the Heron Creek DRI -- density on Parcel K higher than the highest density

allowed anywhere in the City, on land designated by the Comprehensive Plan as Low Density residential, violates Policy 9.26 of the Comprehensive Plan, which provides as follows:

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."

The attached Property Record Information from the Sarasota County Property Appraiser shows Parcel K (aka Heron Creek Unit 12) as being in part in Flood Zone AE. Also, the attached June 8, 2021 Pre-Application Comments by City staff on the developer's prior application for Parcel K notes, "Portions of the proposed development will impact the flood zone AE and the X-shaded area. Please schedule a meeting with the City Stormwater Manager to discuss how to address this."

Count 4 – Violation of Comprehensive Plan Policies as To Compatibility

Policies 1.2.4, 1.2.6 and 9.27 recognize that increased density can create incompatibility with existing neighborhoods and requires that be analyzed and respected in the City's consideration and review of development proposals. There is no indication that was in fact done as to this Major Site and Development Plan, and the massive increase in density in a single family neighborhood without any attempt to limit it or to mitigate it with special development stipulations is evidence to the contrary. As such, these policies were violated as well.

Count 5 – Too Few Multi-Family Units Left in DRI – ALF Dwellings are Not an Office

The Heron Creek DRI Order allows the developer to build a limited amount of various types of land uses. So many square feet of shopping center development, so many single-family units and, at issue in this Appeal, so many multi-family units. The DRI Order allows the developer to convert one land use type to another under a certain matrix.

On January 25, 2023, the Heron Creek developer wrote to the City to convert 102,380 square feet of Retail Shopping Center to 430 Multi-Family Units. That allowed a total of 750 Residential Multi-Family Units in the current and final phase of the DRI.

The developer used up 580 of these multifamily units in obtaining City approval of the Towne Center Apartments (renamed The Hadley), that is 312 units in Phase I and 268 units in Phase II. That left 170 multifamily units. Some of them had to be used – even before the Towne Center Apartments -- to build an Assisted Living Facility, now completed and known at The Gallery at North Port.

In its 2018-20 required Biennial report prepared by its professional consultant (attached), the developer acknowledges that it had used up 133 of its multi-family units, of the original 300 that were allowed. The Development Activity Summary describes those used units as "133 Multi-Family Units (48 independent living units and 169 ½ Continuing Care Units)."

The attached application for City approval of the ALF indicates 167 residential units.

In various attached staff analyses, the ALF units are described as multi-family villas and the number of multifamily units attributed to the ALF is placed at 198.

Recognizing this as a problem if the developer is to have enough multifamily units for a development on Parcel K, the developer persuaded City staff, as shown on the attachments, to characterize the residential units in the ALF as an "Office" development, on the sole basis that it would generate as much traffic as an Office development. That is of course nonsense.

Sec. 61-3 of the Unified Land Development Code defines Adult Living Facility (ALF) and Office as follows:

ADULT LIVING FACILITY (ALF) — A residential land use, licensed under Chapter 58, F.A.C., which is any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one (1) or more personal services for a period exceeding twenty-four (24) hours to one (1) or more adults who are not relatives of the owner or administrator.

OFFICE, GENERAL — An administrative establishment providing direct services such as advice or the production of intellectual property to the public.

By this false characterization of The Gallery as an Office Development, rather than as consuming any of the 170 multifamily units left after the Towne Center Apartments, the developer was able to use 150 of those units for Parcel K. Characterized correctly, though, the developer only had 20 units available for approval and as such falls short by 130 of what is needed for approval.

Count 6 – Failure to Provide and Record Declaration of Condominium

The applicant failed to comply with the following mandatory "Submission Requirement" for a Major Site and Development Plan in Section 33-9-A (22) of the ULDC:

(22) Covenants and restrictions shall be submitted for review and approval by the City and shall be consistent with the major site and development plan and City Code.

(a) All covenants and restrictions shall be recorded by the developer at the developer's expense prior to the issuance of a development order.

The 150-unit multifamily development on Parcel K is proposed as a condominium, not an apartment complex. As such, the covenants and conditions for the property will include a Declaration of Condominium. The applicant did not, from the appellant's request for public records to the City, include that Declaration. Instead, all that the applicant filed with the City is the Master Declaration for the Heron Creek Community as a whole. There is also no evidence

that the Declaration of Condominium was recorded in the Sarasota County Public Records prior to the issuance of Development Order MAS-23-160.

Count 7 – Failure to Provide the Required Traffic Impact Study

The applicant failed to comply with the following mandatory “Submission Requirement” for a Major Site and Development Plan in Section 33-9-A (11) of the ULDC:

Traffic impact statement, three (3) copies, in accordance to Chapter 5, Concurrency Management, of this Unified Land Development Code signed and sealed by the Engineer of Record.

See Chapter 5 of the ULDC for the requirements of this “TIS” as well as page 6 of the attached June 8, 2021 Pre-Application Comments by City staff on the developer’s prior application for Parcel K.

The two-page memo by the Engineer of Record is not signed and sealed as required, omits any of the analysis of impacts on the capacity of affected roadways or other requirements of the referenced Chapter 5 of the ULDC, is not dated and is stated to be based on the outdated 2008 Institute of Traffic Engineers Manual.

Count 8 – Failure to Comply with Water and Sewer Impact Requirements

Section 3.01 on Page 5 of the Heron Creek DRI Order, Ordinance 2011-33(b), (c) and (d), applies certain conditions upon any transfer or conversion of land uses in the DRI. One of them, following a prohibition on any change to traffic trip generation, is that “no additional impact will occur to other public facilities (such as water and sewer).”

This is one of the requirements cited by Development Services staff, in page 18, of the attached June 8, 2021 Pre-Application Comments by City staff on the developer’s prior application for Parcel K.

The applicant never provided an analysis or evidence of compliance with that requirement when converting retail commercial square footage to change the allowable 300 multifamily housing units to 750 units, which would be essential to putting 150 multifamily units on Parcel K (even if that was not illegal otherwise for the reasons stated herein). No doubt the developer declined to make the attempt because certainly it would be expected that residents in 150 dwellings would use more water and sewer than shoppers in the 102,380 square feet of retail shopping center which the developer converted to those units.

Instead, in the January 25, 2023 letter by developer Ron York to the City making that conversion, he seeks to avoid the issue by stating:

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.

The DRI Order does not prohibit an additional impact on “entitlements.” It prohibits an additional impact to water and sewer facilities. That must be analyzed and reported by the applicant, and it was not.

A lesser requirement of the availability of adequate water and sewer service is required by the Concurrency requirements of Chapter 5 of the ULDC, in particular Sections 5-12 and 5-13. That also was not met by the applicant for this Major Site and Development Plan. All that the applicant has provided is the attached outdated May 17, 2021 letter from the City Utility Department stating that water and/or sewer connections are available as a general matter to development in the broad area which is Section 28 of the legal description of the overall property.

Count 9 - The Developer’s “Shift” of Land Use Rights to Get More Multifamily Units Exceeds the Substantial Deviation Limits Provided by Ordinance 2011-33

The Developer’s “shift” of land use rights to get the additional multifamily units needed for the subject development constitutes a substantial deviation from the existing Heron Creek DRI development plan approved by Ordinance 2011-33.

Section 3.01 of Ordinance 2011-33 provides that any modification of the Land Use Table by the Developer is subject to the conditions stated in (a) – (d). Section 3.01(d) of Ordinance 2011-33 states that any land use transfer is subject to the following condition:

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.** (*emphasis added*)

Under this restriction, the Developer may not make any modification to the Land Use Table that exceeds the substantial deviation criteria of subsection 380.06(19)(b), F.S., as it existed in 2011. Although the Florida Legislature eventually repealed the criteria from s. 380.06, F.S., in 2018, the 2011 substantial deviation criteria still apply to the Developer and the development under the incorporation by reference doctrine. In essence, Ordinance 2011-33 clones and preserves the substantial deviation criteria, and any modification of the Land Use Table by the Developer must abide by it. See State ex rel. Murphy v. Harllee, So. 866 (Fla. 1930) State ex rel. McFarland v. Roberts, 74 So.2d 88 (Fla. 1954), State ex rel. City of Casselberry v. Mager, 356 So. 2d 267, 268 n.3 (Fla. 1978)

As provided by s. 380.06(19)(b), F.S. (2011) the Developer’s “shift” of land uses exceeds the substantial deviation criteria and cannot be accomplished unilaterally as attempted by the developer.

Specifically, the Developer’s “shift” exceeds the percentage limits in s. 380.06(19)(b) F.S. (2011), and as such if it is to be effective necessitates formal amendment of Ordinance 2011-33, including with notice and a public hearing conducted by the City Commission.

Specifically, the Developer's "shift" of land uses from 300 multifamily dwelling units to 750 (the provided chart shows 70 available single family units in the current and final Phase IV, and 833 before that) violates the following substantial deviation limits contained in s. 380.06(19)(b), F.S. (2011) by excessively increasing various land uses beyond what was allowed prior to the purported amendment:

- Increases the number of dwelling units by 10 percent or 55 units, whichever is greater. Section 380.06(19)(b)4, F.S. (2011)
- The sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or more than 110 percent. Section 380.06(19)(b)9, F.S. (2011)

Conclusion

Any of the reasons cited in this Appeal is sufficient to reverse City staff's approval of MAS-23-160, the Major Site and Development Plan for Heron Creek Parcel K. Together, they offer an inescapable basis to compel that result.

We request notice of the hearings in this matter of the Planning and Zoning Board and the City Commission, whose considerations will be appreciated.

For **HERON CREEK COMMUNITY ASSOCIATION, INC.**



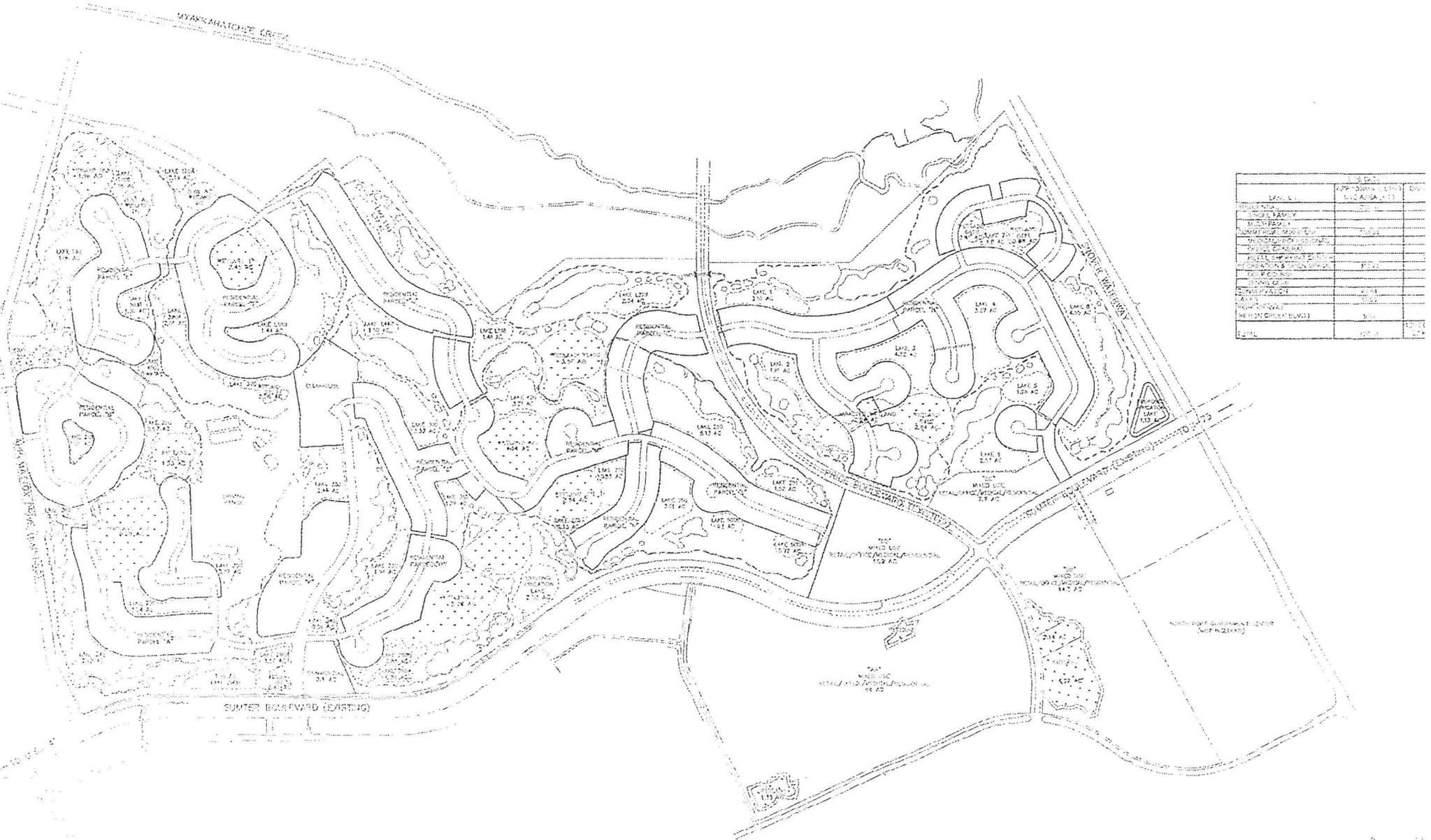
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001865

001865



DATE	11/11/11
PROJECT	HERON CREEK
DRAWN	W. J. BROWN
CHECKED	
APPROVED	

SCALE	1" = 100'
PROJECT	HERON CREEK
DRAWN	W. J. BROWN
CHECKED	
APPROVED	





CITY OF NORTH PORT DEVELOPMENT ORDER

4970 City Hall Boulevard
North Port, Florida 34286
941-429-7156

PROJECT: Heron Creek Parcel K

FILE NO.	MAS-23-160	Related Project Number:	PRE-23-015	Application Type:	Major Site and Development Plan
Department:	Development Services Department - Planning & Zoning Division		SDR Approval:		May 8, 2024
Prepared By:	Carl Bengé, Planner II		Issue Date:		June 18, 2024
Project Details:	A major site and development approval for a proposed 9.78+/- ac, 150-unit condominium development including all stormwater and roadway infrastructure.		Expiration Date:		June 18, 2026
			Revision Date:		N/A
			Legal Description:		See below
Reason for Revision: N/A					
Applicant/Project: Ronald A. York/Heron Creek Parcel K					
Approved plans signed by Matthew J Morris and dated March 27, 2024					

Legal Description:

A TRACT OR PARCEL OF LAND, SITUATED IN THE STATE OF FLORIDA, COUNTY OF SARASOTA, LYING IN SECTION 28, TOWNSHIP 39 SOUTH, RANGE 21 EAST, AND BEING FURTHER BOUND AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SEC770N 28; THENCE S. 00°16'26"W. ALONG THE WEST LINE OF SAID SEC770N 28 FOR 1679.45 FEET; THENCE S.89°36'36"E FOR 1157.50 FEET TO THE POINT OF BEGINNING; THENCE S.59°15'08"E. FOR 263.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°29'40" FOR 39.05 FEET; THENCE S.30°14'32"W. FOR 80.11 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 87.21 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°39'14" FOR 90.80 FEET; THENCE S.29°24'42"E. FOR 221.88 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 536.29 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 31°15'09" FOR 292.52 FEET; THENCE S.60°39'51"E FOR 104.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 97°40'05" FOR 85.23 FEET; THENCE N.21°40'05"E. FOR 253.96 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF HERON CREEK BOULEVARD (WIDTH VARIES), AS SHOWN PER THE RECORO PLAT OF HERON CREEK, UNIT I, A SUBDIVISION, AS RECORDED IN PLAT BOOK 40, PAGES 47 THROUGH 47G, PUBLIC RECORDS OF SAID SARASOTA COUNTY, FLORIDA; THENCE N.45°44'30"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 19.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1249.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 02°00'38" FOR 43.83 FEET TO THE BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 216.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 15°05'25" FOR 56.95 FEET TO THE BEGINNING OF A REVERSE A CURVE HAVING A RADIUS OF 184.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE ANO SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 10°54'21" FOR 35.02 FEET TO THE BEGINNING OF A REVERSE



**CITY OF NORTH PORT
DEVELOPMENT ORDER**

PROJECT: WELLEN PARK FSER

CURVE HAVING A RADIUS OF 1239.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 15°35'00" FOR 336.98 FEET; THENCE N.23°56'47"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 242.68 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 511.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 41°05'04" FOR 365.42 FEET; THENCE N.65°01'51"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 109.48 FEET; THENCE S.35°29'09"W. FOR 142.35 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 182.09 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30°42'33" FOR 97.59 FEET; THENCE S.04°46'36"W. FOR 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 150.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 54°06'25" FOR 141.65 FEET TO A POINT OF REVERSE CURVE HAVING A RADIUS OF 29.20 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 72°34'23" FOR 36.98 FEET TO A POINT OF REVERSE CURVE HAVING A RADIUS OF 35.50 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 82°29'42" FOR 51.11 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 9.78 ACRES MORE OR LESS.

GENERAL CONDITIONS:

1. **NOTICE TO PROCEED:** The applicant is responsible for contacting the Development Services Department at 941-429-7055 or email to jrogus@northportfl.gov to obtain a Notice to Proceed, which is required prior to the issuance of any land clearing permits.
2. **FINAL APPROVED PLANS:** All construction and land disturbing activities must be done in conformance with the approved final plan set. The applicant shall be given one (1) stamped and signed Approved Final Plan set; two (2) copies will need to be made and submitted with development permit applications.
3. **REVISIONS:** If there are any changes to the approved final plan set, the applicant must submit an application for the requested revisions for review and approval. The proposed revisions must be clouded on the revised plans.
4. **EXPIRATION:** The City shall void this Development Order if substantial work has not been accomplished within two (2) years.
5. **AS BUILTS:** Prior to the issuance of any Certificates of Occupancy (C.O.) for the Major Site and Development Plan (MAS), the applicant shall submit a complete set of as-built drawings, signed and sealed by a Florida Licensed Professional Engineer, the as-built application, and the completed checklist electronically to developmentpetitions@northportfl.gov for approval. The as-built application can be downloaded here.
6. **HISTORICAL RESOURCES:** If prehistoric or historical artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historical building materials, or any other physical remains that could be associated with Native American, or early European or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The applicant shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section at (800) 847-7278, as well as the City of North Port Planning Division of Development Services. Project activities shall not resume without verbal and/or written authorization. In the event that unmarked human remains are encountered during the permitted activities, all work shall



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PROJECT: WELLEN PARK FSER

stop immediately, and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

CONDITIONS OF APPROVAL: DEVELOPMENT SERVICES DEPARTMENT – ARBORIST

1. Applicant shall place all trees and landscaping per code. Applicant shall adhere to the "right tree, right place" policy. No medium or large canopy trees shall be placed within the setback of 20' and 30' respectively of overhead utilities. Trees categorized as small may be planted adjacent to power lines (a six-foot setback is recommended). Palms that will attain more than 10' of vertical height shall be placed with a setback equal to the maximum frond length plus 3'.
2. "See ULDC Chapter 45 for Tree Protection Regulations including permit requirements and best management practices."

CONDITION OF APPROVAL: NORTH PORT FIRE RESCUE DISTRICT

Hydrant and Fire Department Connection (FDC) locations must meet the ULDC, Chapter 60-8 & 60-9; placement of hydrant for the FDC must not be less than 25 feet and no more than 100 feet from a hydrant to meet the requirements. FDC location shall not be more than 10 feet from the curb line per 60 8 of the ULDC. The Hydrant shall not be more than 12 feet from the roadway as outlined in the Florida Fire Prevention Code (FFPC), 7th Edition (NFPA 1 – Fire Code, 2018 Edition with State of Florida Amendments) § 1:18.5.1.6.

CONDITION OF APPROVAL: DEVELOPMENT SERVICES DEPARTMENT – ENVIRONMENTAL

In the case where zero (0) gopher tortoise burrows are located during an initial limited or 100% gopher tortoise survey an additional 100% gopher tortoise survey may be required within 90 days of issuing a Notice to Proceed (NTP) and within 90 days of issuing a land clear permit.

CONDITION OF APPROVAL: SARASOTA COUNTY SCHOOL BOARD

School Concurrency Determination Expiration 05/15/25

- a. The 05/16/23 Letter of Receipt 23-032 encumbered school capacity for 150 multi-family (MF) dwelling units and expires 05/15/25.
- b. All local government approvals for this project must be approved within two years of the original date of this letter or a new letter of receipt will need to be issued by school district staff.

CONDITION OF APPROVAL: PUBLIC WORKS DEPARTMENT – STORMWATER

A copy of the following must be submitted prior to issuance of a notice to proceed (NTP) which will release the land clearing permit from the Building Division of Development Services Department:

- Southwest Florida Water Management District (SWFWMD) Environmental Resource Permit (ERP).
- SWFMWD stamped approved ERP Permitted Plan.
- For a project area over one (1) acre, Contractor or engineer will need to provide a copy of the response letter from the Department of Natural Resources approving the Notice of Intent (NOI) to use the Construction General Permit (CGP).
- Before any dewatering activities can begin that result in offsite discharge, a dewatering plan must be submitted to both the City Stormwater Manager and to SWFWMD for review and written approval. The plan should include the location of the dewatering sites, the dewatering



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pump, sediment sump and sizing calculation, methods to retain or detain discharge, methods of isolating the dewatering areas, flow path and points of discharge of the water. Include a note that requires turbidity reduction to no more than 29 NTUs above background level (indicate background level monitoring location) prior to discharge off site. Please note that flow over on-site undisturbed vegetation is an effective best management practice (BMP) to reduce turbidity. Use of well-point method of dewatering is encouraged.

CONDITIONS OF APPROVAL: UTILITIES DEPARTMENT

1. Before FDEP permits will be signed, North Port Utilities required the following:
 - a. Four complete sets of DEP permit applications (water and sewer) and four sets of construction plans. Both sets of items shall be signed and sealed by the engineer of record.
 - b. One engineer certified (sealed) estimate for the cost of utility construction.
 - c. A check for the Utility Construction Inspection Fee. The fee shall be 6.5% of the utility construction costs for projects \$0 to \$2 million, plus 2.5% of utility construction cost over \$2 million. The minimum fee is \$250.00.
2. Prior to commencement of utility site construction, three copies of shop drawings plus any copies required by the applicant shall be submitted to the Utilities Department for review and approval.
3. Irrigation system shall be designed and constructed to meet reuse standards.
4. Provide the Utilities Department with floor plans and plumbing risers for each individual unit so meter sizes and capacity fees can be calculated. Meter and Capacity fees shall be paid prior to issuance of the building permit.
5. Prior to utility site construction the Development Order, Department of Environmental Protection Permit and Development of Health Permit shall be posted at the project site and provided at the preconstruction meeting.
6. A developer agreement shall be negotiated with the utility department and approved by the Utility Director and City Staff prior to DEP or DOH permits being signed and released.

ADDITIONAL COMMENTS: NORTH PORT FIRE RESCUE DISTRICT

1. All proposed projects or developments shall comply with the Florida Fire Prevention Code (FFPC), 6th Edition (NFPA 1 – Fire Code, 2015 Edition with State of Florida Amendments) and the City of North Port Unified Land Development Code (ULDC), Chapters 37 and 60 as outlined prior to formal submittal.
2. No combustible products or materials are to be delivered or placed on site until fire hydrants are installed, tested, certified, placed in service and approved by the City of North Port Utilities & Fire Departments.
3. Throughout construction, a minimum of two all-weather emergency access roads shall be maintained.
4. All contractor vehicles and construction dumpsters shall be parked on one side of the street only to maintain a minimum of 12 feet clear width on the road for emergency vehicle access.
5. If there any questions regarding those requirements, please do not hesitate to contact this office @ (941) 240-8180.

FORMAL SUBMITTAL COMMENTS

Department: Neighborhood Development Services, Planning Division
 Staff Reviewer: Alison Christie, 941-429-7221; Rhea Lopes, 941-429-7005

1. Today's Date: ~~September 24, 2021~~ October 27, 2021

2. RECOMMENDED ACTION:

- Meets Requirements Meets Requirements with Conditions
- Does Not Meet Requirements/Resubmittal Required*
- No Objection
- Please call to schedule a meeting with Reviewer before Final Plans Submittal

* 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. Sec. 33-8 D.(b).

PLANNING RESUBMITTAL REQUESTED TO ADDRESS THE FOLLOWING:

1. A Comprehensive Plan Amendment will be required as the property currently has a Future Land Use of Low-density Residential.
2. ~~The Applicant has stated that it is not seeking a conversion of the land use (as specified in section 3.01 of the DRI Development Order) in Phase IV for the proposed residential multi-family development. Instead, the Applicant appears to be seeking to use the residential multi-family in Phase I and III, phases that have expired. The Applicant's counsel submitted additional information this week on this matter. The information is currently under review by the City's consulting legal counsel. The City will issue additional comments, requests for additional information and request for resubmittal, if needed, to make a determination on compliance for this development.~~
 After legal review, it was determined that the Heron Creek DRI Development Order is clear and unambiguous as to the allowable development in Phase IV and the ability of the Developer to modify the Land Use Table by transferring land uses amongst the phases of the development without further amendment of the Development Order and subject to the conditions of transfer or conversion therein. Based on this determination, we request that the applicant provide us information related to entitlements proposed to be used for this project. Please note that any proposed conversion must be consistent with the conditions listed in the Heron Creek DRI Development Order.
3. Further, maximum density for High-density Residential Future Land Use is 15 dwelling units per acre. The current density proposed exceed this.

4. Please adjust the parking requirements on the Development Master Plan sheet to be consistent with the reduced number of units. See Section 25-17.B.
5. A neighborhood meeting is required per Sec. 53-5.E.
6. Please provide an existing conditions map.
7. Please provide new elevations. The elevations should be examples of the architectural style required for this Activity Center but should not be pulled directly from the pattern book.
8. Per Sec. 60-11., gated entrance driveways shall accommodate pre-entry vehicular stacking of at least 3 cars and provide a turn-around area.

PLANNING CONDITIONS:

PLANNING COMMENTS:

1. Please clarify the location map. The portion labeled "Heron Creek" either needs to be relabeled as "Heron Creek Golf & Country Club" or the map needs to include the whole of the Heron Creek DRI.
2. If you are requesting any waivers, please indicate these on the Development Master Plan sheet. Please also provide an additional narrative for the requested waivers, if any.
3. If there will be phasing with this development, please indicate on the plan sheets.



City of North Port

Office of the City Attorney

Interoffice Memorandum

To: A. Jerome Fletcher II, City Manager

From: Margaret T. Roberts, Assistant City Attorney

Copy: Amber L. Slayton, City Attorney
 Jason Yarborough, Assistant City Manager
 Alaina Ray, Neighborhood Development Services Director
 Alison Christie, Acting Planning and Zoning Division Manager

Date: January 20, 2022

Re: Analyze – Parcel K Issue – Heron Creek

In the above referenced matter you asked whether an applicant for a development master plan on Parcel K in Heron Creek is required to amend the Comprehensive Plan for a multi-family development.

I. SUMMARY

1. Comprehensive plan amendment required. The applicant must first obtain a comprehensive plan amendment for the multi-family land use before the approval of a master development plan. However, the developer may request that the two applications be processed concurrently so long as the comprehensive plan amendment is approved prior to the development master plan approval.

II. COMPREHENSIVE PLAN AMENDMENT REQUIRED

Development of Regional Impact

Parcel K is in the Heron Creek Development of Regional Impact (DRI). The DRI was approved for a total number of residential units and commercial square footage.¹ The DRI did not specifically identify the locations of every type of residential land use.² The DRI identified Parcel K as Residential.³

¹ Heron Creek Development of Regional Impact, as amended.

² Heron Creek Development of Regional Impact Map H.

³ Heron Creek Development of Regional Impact Map H.

A DRI is also required to be consistent with the comprehensive plan, including binding letters and amendments.⁴ The approved DRI development order found that the DRI was consistent with the City's Comprehensive Plan.⁵

Comprehensive Plan

The comprehensive plan establishes the land use of every development.⁶ Since 2008, the Comprehensive Plan Future Land Use Map for Future Land Use⁷ designated Parcel K as Low Density Residential.

More specifically, the Comprehensive Plan requires the land development regulations to be consistent with the applicable land use categories as follows:

...

Low Density Residential - These lands are designated for residential areas of low density (for currently platted single family lots: maximum density of 4.3 residential units per gross acre, 4.0 residential units per gross acre for unplatted areas).

Medium Density Residential - These lands are designated for residential areas of medium density (maximum of 10.0 residential units per gross acre). Low density residential development is permitted within this designation.

High Density Residential - These lands are designated for high density residential areas with emphasis on multi-family use (maximum of 15.0 residential units per gross acre excluding bonuses, incentives or transfer of development rights).⁸

...

Parcel K is located in the Low Density Residential land use category. The multi-family use is not permitted in this category.⁹ However, multi-family use is permitted in the High Density Residential or Activity Center land use categories;¹⁰ but parcel K is not located in the portion of the DRI that is designated for Activity Center land use and Parcel K is not located in the High Density Residential land use category.

The city is required to implement and enforce land development regulations that are established in the Unified Land Development Code (ULDC) and that are consistent with the comprehensive plan.¹¹ All development must be consistent with the plan as adopted.¹²

⁴ § 380.06(3) and (5), Fla. Stat.

⁵ Ordinance No. 2000-13, Heron Creek Development of Regional Impact Development Order, as amended.

⁶ City of North Port Comprehensive Plan dated June 27, 2017, as amended.

⁷ City of North Port Comprehensive Plan Map 2-8.

⁸ Comprehensive Plan Chapter 2, Policy 1.1.

⁹ Future Land Use Element, 2-8 and 2-9, City of North Port Comprehensive Plan.

¹⁰ Future Land Use Element, 2-9, City of North Port Comprehensive Plan.

¹¹ § 163.3202(1), Fla. Stat.

¹² § 163.3194(1)(a), Fla. Stat. states that "After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted."

ULDC

Pursuant to the Unified Land Development Code (ULDC) Section 53-7A, the developer must demonstrate that the proposed Development Master Plan (DMP) complies with the City of North Port Comprehensive Plan.¹³

The City's adopted zoning map designates Parcel K as the Planned Community Development (PCD) District.¹⁴ In the PCD District, any use permitted either by right or as a special exception in any residential zoning district shall be permitted; provided, however, that the proposed use shall be consistent with the City's comprehensive plan.¹⁵ For consistency with the comprehensive plan, Parcel K must comply with the Low Density Residential land use.

Prior Development Concept Plan

In 2009 a Development Concept Plan (DCP) was approved by the City Commission¹⁶ but the DCP has expired and is not otherwise eligible for continuation. In the initial staff report, the staff determined the wrong land use designation and incorrectly applied the requirements of the Activity Center land use when recommending approval of the multi-family development. The Staff Report submitted to the City Commission identified the property correctly as being designated Low Density Residential. However, the report incorrectly recommended the development plan that is only permitted in the Activity Center or High Density Residential (multi-family) land use categories.

The erroneous recommendation led to the City approval of the development plan that was not consistent with the comprehensive plan.

Master Development Plan

Considering, the developer's current application for the DMP and all additional documents, the application does not show that the proposed multi-family use is consistent with the comprehensive plan based on the following:

1. Parcel K is not designated for an Activity Center land use.¹⁷
2. In the staff reports, the mistakes are obvious on the face of the reports referring to the multi-family development in the Activity Center #2 land use designation.
3. Prior approval for development of Parcel K has expired and is not eligible for renewal.¹⁸

¹³ ULDC Section 53-7A, City of North Port Unified Land Development Code.

¹⁴ City of North Port, Florida Zoning Map, dated September 5, 2019.

¹⁵ ULDC Section 53-103.

¹⁶ City Commission Meeting Minutes dated December 14, 2009.

¹⁷ Future Land Use Map 2-7, City of North Port Comprehensive Plan dated September 24, 2018.

¹⁸ DCP-09-115 Commission Agenda Item dated January 13, 2014 provided for an extension to December 14, 2015.

4. The expired plan for development of multi-family use is not sufficient to demonstrate compliance with the current comprehensive plan.
5. Approval of the master development plan before a comprehensive plan amendment is approved would render the comprehensive plan requirements meaningless.
6. There is no law, regulation or policy that supports skipping past the comprehensive plan requirements.

However, compliance can be achieved through a comprehensive plan amendment changing the land use from Low Density Residential to another land use designation that permits multi-family development. The application for the land use amendment and the development master plan may run concurrently but the land use amendment must be obtained first.

A request for legal services may be needed for legal review of any other issues related to the DMP. But prior to such a request, a Planning Division staff member must have a comprehensive understanding of the Heron Creek development and must have assembled the city's records. Additionally, the staff member must understand the other developments of regional impact in the City and the similarities and distinctions with Heron Creek.

Bryant Miller Olive

Attorneys at Law
One Tampa City Center
Suite 2700
Tampa, FL 33602
Tel 813.273.6677
Fax 813.223.2705
www.bmolaw.com

October 15, 2021

VIA PDF EMAIL

Amber L. Slayton, Esq., City Attorney
City of North Port
4970 City Hall Boulevard
North Port, Florida 34286
aslayton@cityofnorthport.com

Re: Heron Creek Land Use and Conversion Tables

Dear Amber:

You have requested that we provide the City of North Port ("City") with a written opinion on whether the Land Use Table contained in section 3.0 of Ordinance 2011-033 may be modified by the Developer to allow the transfer of land use entitlements from one phase to another phase.

I. Background

In responding to your request, we have reviewed the following materials provided by the City:

- Ordinances 2000-13, 2005-28, 2006-46, 2011-33, 2013-16;
- Resolution 01-R-5;
- Various emails and applications provided by the City;
- Biennial Status Report for Heron Creek (November 1, 2018 – October 31, 2020);
- September 7, 2021 letter from Dan Lobeck with attachments;

Amber L. Slayton, Esq.

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- September 20, 2021 letter from Morgan Bentley with documents referenced therein; and
- September 30, 2021 letter from Dan Lobeck with attachments;

A. Ordinance 2011 -33

On September 11, 2000, the City Commission (“Commission”) adopted Ordinance 2000-13 as the development order for Heron Creek, a development of regional impact (“DRI”). Throughout time, this development order has been amended several times. On March 10, 2010, the developer requested to update Map H with existing and proposed development, address affordable house stipulations, revise the current stipulations relating to the proposed pathway along the Myakkahatchee Creek, and propose a land use conversion matrix that would allow the developer to convert approved uses from one area to another without increase in external impacts. Specifically, in the Notice of Proposed Change (“NOPC”) that the developer revised in August of 2011, the developer explains that, due to changing market conditions in commercial development, the developer proposed a conversion matrix that would provide the developer flexibility in meeting the needs of the City and demands of the real estate market. The conversion matrix also demonstrates how residential, retail, offices and medical offices can be converted through the local development order process without exceeding thresholds that would trigger a substantial deviation to the DRI. The applicant proposed no change to the development intensity or the buildout or phasing dates of the project. On January 9, 2012, the Commission adopted Ordinance 2011-33 as the development order for Heron Creek (“Development Order”).

The Development Order specifically provides the following:

3.01 The amended ADA for 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 the DO), and is subject to the other provisions of the Development Order (including Attachment 4 of DO):

Land Use	Phase I (97-2001)	Phase II (02-2006)	Phase III (07-2011)	Phase IV (12-2017)
Residential Single Family	275 DU	377 DU	251 DU	

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(LUC 210)				
Residential Multifamily (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: *(The conversion table showing conversion from and to each land use in the land use table is omitted from this letter due to space constraints but can be found in section 3.01 of the Development Order).*
- 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) day notice of any conversion must be provided to the City, the Department of Economic Opportunity, Division of Community Planning and Development, and the 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.

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d) The transfer of 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.

Regarding the conversion matrix, the Development Order included the Sufficiency Comments from the Developer that explained how the proposed conversion matrix was established to ensure there would be no impact to the regional transportation system when converting units. The City had expressed concern that the proposed conversion matrix could permit a greater number of housing units than was allowed within any zoning district and the Developer agreed with proposed restrictive language to alleviate the City's concern. Additionally, the Developer attached a Technical Memorandum from Tindale, Oliver, and Associates, which established the methods and background information for the conversion table estimates. Specifically, the conversion rates were determined by comparing the previously approved Phases 1-3 development program and corresponding external trip generation, to a proposed development program. The proposed development program would provide for additional retail entitlements concurrent with a decrease in or "trade-off" of other entitled uses (i.e. office and residential). As approved, the entitlements of the Heron Creek DRI were estimated to generate approximately 2,804 net external trips during the PM peak hour. The conditions of the Development Order limit development based on external trips, with improvements conditioned at various trip milestones. The analysis determined that an updated development mix, incorporating additional retail entitlements, would not result in additional net external trip generation from the DRI and provided the following example to demonstrate:

An additional 245 ksf of retail is estimated to increase net external trip generation by 513 vehicles per hour or 2.095 vehicles per hour/per ksf. The multi-family decrease of 767 dwelling units is estimated to decrease net external trip generation by the site by 372 vph, or .486 vehicles per dwelling unit. Therefore $2.095/.486 = 4.31$ multi-family dwelling units trade-off for 100 square feet for retail.

As explained in the Technical Memorandum, the intent of the change to the Development Order was not to eliminate any intended land uses from development, but rather to allow for the reallocation of the quantities that are approved based on changes in the market demand

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The Development Order recognizes some of the land use entitlements have been developed (i.e. a grocery store) and improvements made (i.e. bus shelters and roads) while other land use entitlements from earlier, expired phases remain undeveloped (i.e. the Development Order recognizes that building permits for Phase II have not been issued and requires payment of application fees before their issuance even though the phase has expired)¹. The City is responsible for enforcement of the Development Order and the Development Order remains in effect until December 31, 2017, which is also the build out date. The Development Order further provides that the DRI shall not be subject to down-zoning, unity density reduction, or intensity reduction prior to December 31, 2017, unless the City of North Port can demonstrate that substantial changes in the conditions underlying the approval of the Development Order have occurred or that the Development Order was based on substantially inaccurate information provided by the developer, or the change is essential to the public health, safety, or welfare. Pursuant to information from City Staff and based on declarations of the state of emergency, the City subsequently extended the Development Order Phase IV and buildout date to March 9, 2024.

B. Ordinance 2013 -16

On October 14, 2013, the Commission enacted Ordinance 2013-16, which amended Section 4.10 of Ordinance 2011-33. This amendment provided for an additional local condition, where prior to any certificate of occupancy for any development beyond 286,000 gross square feet of development within the 84-acre parcel located at the southeast quadrant of Price and Sumter, the developer must construct an eight-foot-wide sidewalk including a pedestrian bridge over the Blueridge Waterway, if determined necessary by the City. At the time Ordinance 2011-33 was enacted, the developer had only received approval for the development of a 3,890 gross square feet McDonald's on the 84-acre parcel.

C. Subsequent Correspondence

On February 22, 2021, the City's Interim City Manager, sent a letter to the Developer regarding failure to comply with conditions of approval for Heron Creak DRI. Attached to that letter, the City listed 10 conditions where action was required. Two of the conditions were: 1) a biennial report was delinquent and 2) while the land use phasing

¹ Those fees were subsequently paid and building permits obtained nine months after the Development Order was approved.

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chart with conversion matrix "is not out of date; ... staff would just like to take this opportunity to note that the applicant has utilized this condition to transfer the undeveloped land uses into Phase IV."

Subsequently, the Developer filed its biennial status report for Heron Creek for the period of November 1, 2018 to October 31, 2020 ("Biennial Report"). The Biennial Report identified that the extension of the buildout date was granted during reporting period and minor changes to phasing dates and development allocation have been made as shown below.

Land Use	Phase I (97-2001)		Phase II (02-2006)		Phase III (07-2011)		Phase IV (12-2021)	
	Proposed	Actual	Proposed	Actual	Proposed	Actual	Proposed	Actual*
Residential Single Family (LUC 210)	275 DU 376 DU	376 DU	377 DU 457 DU	457 DU	251 DU		70 DU	
Residential Multifamily (LUC 220)	125 DU				175 DU		300 DU	133 DU
Golf Course (LUC 430)	18 holes	18 holes	9 holes	9 holes				
Tennis Club (LUC 492)			5 Courts	5 Courts				
Medical/Professional (LUC 720)					43,000 GLA		43,000 GLA	20,070 GLA
Office General (LUC 710)					40,000 GLA		40,000 GLA	
Retail Shopping Center (LUC 820)	90,000 GLA 68,075 GFA	68,075 GFA	30,000 GLA 34,240 GFA	34,240 GFA	488,000 GLA 3,890 GFA	3,890 GFA	137,500 GLA 639,295 GLA	102,374 GLA

*Staff provided the actual development in Phase IV to be 197 DU MF; 31,452 GLA medical; and 90,744 GLA retail.

Pursuant to Ordinance 2011-33, the total land use approved is 903 Single Family Residential units, 300 Multi-family unit, 27 Holes of Golf, 5 Tennis Courts, 43,000 SF of Medical/Professional, 40,000 SF of General Office and 745,500 SF of Retail Shopping

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Center. Pursuant to the Biennial Report, the total land use constructed is 833 Single Family Residential units, 133 Multi-family units (48 independent living units and 169 ½ Continuing Care units), 27 Holes of Golf, 5 Tennis Courts, 20,070 SF of Medical/Professional, 0 SF Office General, and 206,579 SF of Retail Shopping Center.

The Developer submitted an application for development under Phase IV and the application caused the City to ask whether the Land Use Table contained in section 3.0 of Ordinance 2011-033 may be modified by the Developer to allow the transfer of land use entitlements from one phase to another phase. It's worth noting that neither "transfer" nor "conversion" are defined terms in the City's Code, or the applicable Ordinances described above.

II. Interpreting Development Orders

A development order shall be interpreted using the fundamental principles applicable to statutes and ordinances. *Trafalgar Woods Homeowners Assn., Inc. v. City of Cape Coral*, 248 So. 3d 282, 284 (Fla. 2d DCA 2018). Hence, where the language of a development order is plain and unambiguous, there is no room for construction or interpretation, and the effect of the development order must be determined according to the literal meaning of the language therein. *Killearn Properties, Inc. v. Dept. of Community Affairs*, 623 So. 2d 771, 775 (Fla. 1st DCA 1993); *Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 553-54 (Fla. 1973). When a code does not define a term, Courts have turned to the dictionary meaning to find the plain and ordinary meaning of undefined terms. *Town of Longboat Key v. Islandside Prop. Owners Coal., LLC*, 95 So. 3d 1037, 1041 (Fla. 2d DCA 2012). However, Courts will not give an ordinance a literal interpretation that would produce an unreasonable or ridiculous conclusion. *License Acquisitions, LLC v. Debary Real Est. Holdings, LLC*, 155 So. 3d 1137 (Fla. 2014); *State v. Brogden*, 84 Fla. 520, 524, 94 So. 653, 654 (1922) ("While it is desirable that ordinances should be free from doubt, the court should strive so to construe them as to give reasonable effect to the object aimed at. Scrutiny unreasonably rigid will not be resorted to in considering the meaning of ordinances.")

In cases of ambiguity or doubt the meaning of the development order, courts are required to give effect to every word, phrase, sentence, and part of the ordinance, if possible, and words in an ordinance should not be construed as mere surplusage. *State v. Knighton*, 235 So. 3d 312 (Fla. 2018). Related provisions must be read together to achieve a consistent whole, and where possible, courts must give full effect to all ordinance provisions and construe related ordinance provisions in harmony with one another. *Id.*

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Further, Courts generally may not insert words into municipal ordinances in order to express intentions which do not appear and must give to an ordinance the plain and ordinary meaning of the words employed by the City Commission. *Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 553–54 (Fla. 1973). Courts are required to resolve doubts in the interpretation of an ordinance in a manner that will render the ordinance valid. *Lee Cty. v. Lippi*, 693 So. 2d 686, 689 (Fla. 2d DCA. 1997). The development order must be determined by that which preceded it and that which it was intended to execute. *MCZ/Centrum Flamingo II, LLC v. City of Miami Beach*, 08-22419-CIV, 2009 WL 10700922, at *17 (S.D. Fla. Aug. 12, 2009). If a development order cannot be interpreted from the language in the order itself, the entire record may be examined and considered for the purpose of interpreting the development order and determining its operation and effect. *Id.* Furthermore, deference is owed to a city commission's interpretation of its own rules and regulations "so long as its interpretation is based on a permissible construction." *Am. C.L. Union of Fla., Inc. v. Miami-Dade Cty. Sch. Bd.*, 557 F.3d 1177, 1228 (11th Cir. 2009). The city's interpretation of its own regulation is not only based on a permissible construction, but it may also be the only reasonable interpretation of that regulation. *Id.* Intent of the city commission in enacting a zoning ordinance is to be determined primarily from the language of ordinance itself and not from conjecture aliunde. *Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552 (Fla. 1973). Since zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner. *Id.*

III. Legal Analysis

The Development Order is clear and unambiguous as to the total amount of land use that was approved for the site, the phases that were planned, and the ability of the Developer to modify the Development Order without further amendment of the Development Order, subject to the conditions of transfer or conversion. The Development Order was adopted in 2012, when the development was already in Phase IV. At that time, according to the Land Use Table, the Development Order approved 137,500 SF of retail. This is also when the conversion matrix was first included in the Development Order. The conversion matrix allows for each of the undeveloped land uses to be converted to one of the other uses. (Note: At that time, the Golf Course and Tennis Club land uses were completed and were not included in the conversion matrix). The Development Order also specifies that the Land Use Table may be modified by the Developer without amendment to the Development Order so long as the 4 conditions of transfer or conversion are followed. The Development Order specifically says, "transfer

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or conversion.” This indicates that these terms have different meanings as related to the Development Order. It also is commonly understood that “conversion” and “transfer” are distinct terms. Several dictionaries define the words as follows:

- Transfer – to cause to pass from one to another, Merriam-Wester, <https://www.merriam-webster.com/dictionary/transfers>; to move from one place to another; to move something/somebody from one place to another, Oxford Learner’s Dictionaries, https://www.oxfordlearnersdictionaries.com/us/definition/english/transfer_1?q=transfer
- Conversion - the act of converting: the process of being converted; to change from one form or function to another, Merriam-Wester, <https://www.merriam-webster.com/dictionary/conversion>; the act or process of changing something from one form, use or system to another, Oxford Learner’s Dictionaries, <https://www.oxfordlearnersdictionaries.com/us/definition/english/conversion?q=Conversion>

Hence, the Development Order provides that the Developer may modify the Land Use Table by either: 1) converting land uses, meaning changing from one land use to another; or 2) transferring land uses, meaning moving land uses from one phase to another, in the Land Use Table. Any such modification, again, is subject to the four conditions of transfer or conversion. Therefore, it is clear from the plain, unambiguous commonly understood language of the Development Order taken in whole, that the Developer is permitted to transfer land uses amongst the phases so long as the four conditions of transfer or conversion are met.

Moreover, both the City, through enforcing its Development Order, and the Developer through its actions, have continually interpreted the Development Order to mean that the Developer could transfer land uses in the Land Use Table from one phase to another so long as the four conditions of transfer or conversion were met. This is demonstrated in numerous ways. First, the City approved 197 DU of multi-family, 31,452 GLA of medical and 90,744 GLA of retail for construction after the Development Order was entered into in 2012. This necessarily required a recognition that the Developer could transfer land uses from one phase to another. The Developer continues to apply for development of more retail and to reinstate approval of 180 multi-family units.

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Additionally, more than a year after the Development Order was adopted, the City enacted Ordinance 2013-16. In Ordinance 2013-16, the City provided that development beyond 286,000 SF in the 84-acre parcel would trigger the requirement that the developer construct a pedestrian bridge. Without the ability to transfer undeveloped land uses into Phase IV, the developer would never have been able to develop more than 286,000 SF on the 84-acre parcel. If the developer could not have transferred land uses amongst phases and therefore could never have exceeded 286,000 SF on that parcel, then Ordinance 2013-16 would have been meaningless. Also, in the February 2021 correspondence, the City confirmed the Land Use Table was not out of date and noted that the Developer had utilized the transfer/conversion condition to transfer all undeveloped land uses into Phase IV. In the Biennial Report, the Developer provided an updated Land Use Table that shows the transfer of undeveloped land uses into Phase IV.

If the City had intended that the Development Order result in the Developer losing its entitlements to the undeveloped land uses in the phases of the Land Use Table, upon the expiration date of those phases, then the City would have drafted the Development Order accordingly. It also would not have specified that the DRI was not subject to unit density or intensity reduction prior to the build out date. Furthermore, the City would not have included a provision in the Development Order requiring payment of fees prior to the issuance of any building permits for Phase II because that phase would have already expired. Additionally, the City would have created a conversion table showing that only the undeveloped retail shopping center land use could be converted to the other uses because it was the only land use shown in the Phase IV.

It is clear from the plain language of the Development Order and consistent with actions of the Developer and the City in its enforcement of the Development Order and adoption of the amendment to the Development Order, that both the Developer and City have understood from 2012 to the present that the Development Order allows for the movement of land uses from one phase to another, so long as the four conditions of transfer or conversion are met.

II. Conclusion

It is our opinion, that the Development Order is clear and unambiguous as to the allowable development in Phase IV and the ability of the Developer to modify the Land Use Table by transferring land uses amongst the phases of the development without further amendment of the Development Order and subject to the conditions of transfer or conversion therein.

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Should you need anything further on this matter, please feel free to contact us.
Thank you for providing us the opportunity to assist the City in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer R. Cowan", followed by a horizontal line extending to the right.

Jennifer R. Cowan, B.C.S.
BRYANT MILLER OLIVE, P.A.



City Manager's Office

Request for Legal Services

Date: _____

Requestor: Carl Bengé Department/Division: NDS/Planning

TYPE OF REQUEST (check one):

- Contract
- Ordinance/Resolution
- Research
- Meeting Attendance

Point of Contact for Other Party (If applicable): _____

Phone: _____ Email: _____

*Document to be reviewed is: Attached - Editable

REQUEST FOR SERVICE (Short Title): Review staff analysis/Clarify Legal conflicts

Description: (Please attach continuation page as needed)

The full legal request is to review staff analysis granted under the DRI Development Order and opine on the conflicting legal analysis provided from the ACM (1/20/22) and Bryant Miller Olive (10/15/21).

The oldest map of the area, Marsh Creek Country Club Community Layout, identifies Parcel K as "Golf Villas", which is typically classified as a multi-family use.

The Heron Creek DRI was first approved with Ordinance No. 2000-13 with the following entitlements: 1,970 Residential Units (903 Single-Family & 1,067 Multi-Family), 500,000 gross square-foot retail/service, 250,000 gross square-foot office, 269.38 acres of recreation/open space, 44 acres of conservation, 105 of lakes, 5 acres of roadways. 831.38 total acres.

Files Provided: Ordinance No. 2000-13, Ordinance No. 2011-33, Letter to NG, Letter to LB, BMO Legal Response, Interoffice Memorandum, Marsh Creek Country Club Community Layout, Map H, Heron Creek DCP1, Heron Creek Master Site Plan

APPLICABLE DEADLINES:

DATE of COMMISSION MEETING: 9/7/23 DATE item is due to FINANCE: _____

DATE item is due in LEGISTAR: 7/4/23 ANY OTHER DEADLINE: Legal Ad 7/3/23

APPROVALS:

Department Director: _____ Date: _____

Assistant City Manager: _____ Date: _____

City Manager: _____ Date: _____

Request for Legal Services Continued:**Description:**

"Original Map H" reflects the initial entitlements of the DRI. The map identifies Parcel K as Residential. Map H calls out numerous "Residential" areas. The map includes a table that shows "Multi-Family 1,067 du." in the top corner.

Ordinance No. 2006-46

Reduces the Multi-family dwelling units from 1,067 to 300 (-767), medical office from 130,000 sf to 43,000 sf (-87,000 sf), general office from 120,000 sf to 40,000 sf (-80,000 sf), and increase the retail commercial from 500,000 sf to 745,500 sf (+245,500 sf).

The proposed development for the Heron Creek Parcel K site (PRE-23-015) is for a 150 unit multi-family development. This is well under the 300 multi-family dwelling units called out in Ord. No. 2006-46.

In December 14, 2009, DCP-09-115 was approved for 180 multi-family units. Staff report states, "staff has contacted Department of Community Affairs (DCA) and the Regional Planning Council (RPC), for review of the change and there were no concerns by these agencies with this project." The "Heron Creek Master Site Plan" identifies Parcel K as "The Enclave Unit 12 Parcel K Multi-Family."

Ordinance No. 2011-33

Proposes a land use conversion matrix that would allow the applicant to convert approved uses from one area to another as shown in Section 3.01 with no increase in external impacts. This allows land use changes via matrix without making changes to the approved D.O. This is one of the points used by staff to concluded the proposed use does not exceed the allowed entitlements.

Attached to Ord. 2011-33 is a revised master site plan which identifies Parcel K as "Residential." Similar to the "Original Map H", the revised map has a table on the top showing the entitlement breakdown. The table shows "Multi-Family 300", and just like the original map "Residential" is used to label areas across the site plan.

Over the timeline of the DRI, there have been two letters to City Planning and Zoning Managers regarding the land use matrix modifications (10/13/20 Nicole Galehouse & 1/25/2023 Lori Barnes).

There have been multiple amendments to the original DRI ordinance, which are well described in the attached letter to City Attorney Amber Slayton from Bryant Miller Olive (10/15/2021). The conclusion of the letter states the opinion the Developer would be allowed to transfer land uses without further modifying the Development Order.

On January 20, 2022, Assistant City Attorney Margaret Roberts drafted an Interoffice Memorandum in which states, "the applicant must first obtain a comprehensive plan amendment for the multi-family land use before the approval of a master development plan. However, the developer may request that the two applications be processed concurrently so long as the comprehensive plan amendment is approved prior to the development master plan approval." This interpretation seems contrary to the conclusion found in the previous letter from Bryant Miller Olive.

Based on the property's history and current entitlements, staff has determined that the proposed 150 unit multi-family development does not exceed the entitlements of the original DRI. It is staffs position that the intent for Parcel K has always been multi-family residential based on the historic documents. Thus, the proposed multi-family development on Parcel K does not require an update to the already approved Development Order. Staff is looking for Legal's interpretation of the findings.

Staff also sees a possible contradiction in the interpretation given in the legal response from Bryant Miller Olive (10/15/2021) and the Interoffice Memorandum (1/20/2022) requiring a comprehensive plan amendment for multi-family development on Parcel K. Staff is looking for Legal's interpretation of the conflicting findings found by ACM and Bryant Miller Olive.



January 25, 2023

Lori Barnes, AICP, CPM
 Planning and Zoning Manager
 City of North Port, Florida
 4970 City Hall Boulevard
 North Port, Florida 34286

**Re: Heron Creek Development Order
 Revised Modification of Land Use Table**

Dear Ms. Barnes:

In accordance with your conversation with our land use counsel on Friday, January, 20, 2023, we are hereby revising the letter we sent you on January 11, 2023, for the purpose of modifying the Land Use Table contained in Section 3.01 of Ordinance No. 2011-33 of the City of North Port, Florida, the "Development Order" for Heron Creek (formerly Marsh Creek) Development of Regional Impact (DRI). Specifically, Heron Creek Associates, Ltd., has modified the Land Use Table to increase the Residential Multifamily uses with a corresponding reduction in Retail Shopping Center uses as shown below:

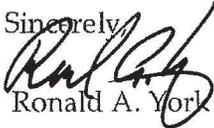
Land Use	Phase I (‘97-2001)	Phase II (‘02-2006)	Phase III (‘07-2011)	Phase IV (‘21-2024)
Residential Single Family (LUC 210)	376 DU	457 DU		70 DU
Residential Multi-Family (LUC 220)				750 DU
Golf Course (LUC 430)	18 Holes	9 Holes		
Tennis Club (LUC 492)		5 Courts		
Medical/Professional (LUC 720)				43,000 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

The Land Use Table has been modified to reflect the extended buildout date for Phase IV, which, due to various declarations of emergency issued by the Governor, has been extended by the Developer to November 8, 2024, pursuant to Sec. 252.363(1)(a), Florida

Statutes. 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.

We would ask that you kindly acknowledge receipt of this letter.

Sincerely,



Ronald A. York
Development Manager

cc: James Stansbury, Florida Department of Economic Opportunity
Margaret Wuerstle, Executive Director, Southwest Florida Regional Planning
Council

Dan Lobeck

From: Jennifer Strieby <jenniferstrieby@icloud.com>
Sent: Friday, June 25, 2021 10:01 AM
To: Dan Lobeck
Subject: Fwd: [EXTERNAL] Heron Creek DRI

Just got this.

Sent from my iPhone

Begin forwarded message:

From: Sam Hudson <shudson@cityofnorthport.com>
Date: June 25, 2021 at 8:20:22 AM EDT
To: Jennifer Strieby <jenniferstrieby@icloud.com>
Subject: RE: [EXTERNAL] Heron Creek DRI

Hello Jennifer,

Thank you again for your patience! The responses to your questions are in red.

Please let me know if I'm missing something or if I'm incorrect about the following –

Per Ordinance 2011-33 the Heron Creek DRI allows for 1203 residential units - 903 residential single family & 300 residential multi family units.

Currently there are 833 residential single-family homes (831 units have had certificate of occupancy issued + 2 empty lots) in the Heron Creek Golf & Country Club Community. There is also Parcel K located in the Heron Creek Golf & Country Club Community that is/was approved for single family homes but remains undeveloped since 2000.

There are 217/218 residential multi family units currently being built in Heron Creek Towne Center North.

You are correct in that the Assisted Living Facility and units in the Cottages will be counted towards the multi-family entitlement for Heron Creek; however, the memory care units will be counted as institutional. This equates to roughly 198 units of multi-family counted towards that 300 multi-family unit entitlement. Heron Creek Unit 12 Parcel K was planned as a multi-family development and we have received early plan submittals for the intent to build these units in the near future. The developers of Heron Creek are currently capped at 300 multi-family units in the entire Development of Regional Impact (DRI), but if they do wish to pursue more units, they would have to use the approved conversion matrix in Ordinance 2011-33, Section 3.

This leaves 70 residential single family & 82 residential multi family units per Ordinance 2011-33/DRI for potential development. Per the revised Pattern Book, the DRI & The City of North Port's land use code (Map H & zoning) the Assisted Living Facility (ALF) is to count towards the 300 max residential multi family units.

Based on the multi-family units utilized by the Gallery at North Port, there are 102 multi-family units yet allowed in Heron Creek.

Phases I, II, III of the 2011-33 Ordinance expired in 2011.

If you'd like any of my documentation that led me to my conclusions, please let me know and I will be happy to provide them to you.

In addition, Sam, I have a few questions I hope you can answer.

Phases I, II, III of Ordinance 2011-33/DRI expired in 2011. Do you have documentation showing if the DRI was extended for these phases? What are the City of North Port's requirements for issuing an extension? Other than the State of Florida Executive Orders for State of Emergency (I can't find any for this time period) what are the proper procedures for an extension? Shouldn't this have been addressed in Ordinance 2011-33?

Phases I, II, and III were completed prior to the expiration of the original DO. The original expiration date for Phase IV embodied in Ordinance No. 2011-33 was December 31, 2017. On January 14, 2013, the City of North Port extended the expiration date to April 30, 2019 in compliance with the Gubernatorial Executive Orders 12-140, 12-192, 12-199, and 12-217, which permitted the tolling and extension of an existing permit. The developers were then granted an extension of the buildout date for Phase IV to September 28, 2021 by utilizing the cumulative tolling of 699 days and 6 months granted by the Gubernatorial Executive Orders 17-177, 17-178, 17-285, 17-329, 18-47, 18-110, 18-177, 18-235, 18-279, 18-362, and 19-36, which were originally filed to declare a state of emergency for the entire State of Florida in response to the Opioid Epidemic. The Developer is eligible to receive an additional extension per F.S. 252.363 (1)(a) due to Emergency Order for the COVID-19 pandemic per EO 20-52, which has been extended thereafter multiple times. They are allowed to request an extension for the total tolling period and an additional 6 months.

Why would a DRI be extended when a Developer has not consistently met the requirements to keep the DRI in good standing, per the mutually agree upon, and executed, DRI? The DRI required protection of the Scrub Jay Habitat, a bike & riding trail, covered bus stops, and biennial reports. The Scrub Jay Habitat has major issues, there is no bike & riding trail nor are all the promised covered bus stops completed. Years went by without the required biennial reports.

All extensions granted to the DRI were done so in compliance with the legal rights of the developer as detailed above. The requirement for the greenway/bicycle and pedestrian pathway was removed with a previous change to the DRI. The City is currently working with the Developer regarding compliance with the Conditions of the Development Order. (FROM 2018-2020 BIENNIAL REPORT FOR THE PATHWAY, IMPORTANT DOCUMENTS FOLDER FOR THE SCRUB JAYS, AND MEMORY FOR THE BUS STOPS)

If DRI phases are extended past the expiration date, why are there phases/dates in the first place? I may be wrong in assuming Phases I, II, III have been extended after they expired. Please let me know what is correct.

Phases I, II, and III were not extended as all work was completed in the timeframe allotted.

Are there currently any permits or requests for permits, other than the ALF, for additional residential multi family units to be built in Heron Creek? Or residential single family units?

There are no active permits for additional residential units, as of today. There has been a pre-application submittal for the construction of multi-family units located on "Parcel K" within the Heron Creek Golf & Country Club community.

Hopefully this is helpful.

Cheers,

Sam Hudson

Per the revised Pattern Book, the DRI & The City of North Port's land use code (Map H & zoning) the Assisted Living Facility (ALF) is to count towards the 300 max residential multi family units.

Phases I, II, III of the 2011-33 Ordinance expired in 2011.

If you'd like any of my documentation that led me to my conclusions, please let me know and I will be happy to provide them to you.

In addition, Sam, I have a few questions I hope you can answer.

Phases I, II, III of Ordinance 2011-33/DRI expired in 2011. Do you have documentation showing if the DRI was extended for these phases? What are the City of North Port's requirements for issuing an extension? Other than the State of Florida Executive Orders for State of Emergency (I can't find any for this time period) what are the proper procedures for an extension? Shouldn't this have been addressed in Ordinance 2011-33?

Why would a DRI be extended when a Developer has not consistently met the requirements to keep the DRI in good standing, per the mutually agree upon, and executed, DRI? The DRI required protection of the Scrub Jay Habitat, a bike & riding trail, covered bus stops, and biennial reports. The Scrub Jay Habitat has major issues, there is no bike & riding trail nor are all the promised covered bus stops completed. Years went by without the required biennial reports.

If DRI phases are extended past the expiration date, why are there phases/dates in the first place?

I may be wrong in assuming Phases I, II, III have been extended after they expired. Please let me know what is correct.

Are there currently any permits or requests for permits, other than the ALF, for additional residential multi family units to be built in Heron Creek? Or residential single family units?

I understand this is quite a bit of clarification I'm asking for. I promise I'm not trying to be difficult. Being a resident of North Port, I felt I needed to understand the Pattern Book/DRI's and development of my City. However, it appears we have deviated from the Pattern Book and the DRI. I just want to ensure we get things back on track and all future development is in accordance with the Pattern Book, DRI and laws of our great State.

Thank you in advance for your help.

Jennifer Strieby

Sent from my iPad

On May 24, 2021, at 1:14 PM, Sam Hudson
<shudson@cityofnorthport.com> wrote:

Hello,

Just a quick update:

My understanding is, at the moment, none of the units are occupied, and so I cannot speak to where the 133 number originates in particular. Ultimately I am sure all 217-218 units will be accounted for. I am not familiar with the unit limitations within the Heron Creek DRI and will need to research on the topic. Unfortunately there has been a server error, which temporarily stopped my research Thursday afternoon, which is still being resolved. Once that is resolved, I could find whether there is a maximum or minimum number of Assisted Living units.

Thank you for your patience

Sam Hudson

From: Jennifer Strieby <jenniferstriebby@icloud.com>

Sent: Thursday, May 20, 2021 2:43 PM

To: Sam Hudson <shudson@cityofnorthport.com>

Subject: Re: [EXTERNAL] Heron_Creek_Letter_2.13.20.pdf



Hi Sam,

Thanks so much for the information. I do have a question. Exhibit A states 133 Multi Family units but then elaborates in parentheses 48 independent living units and 169 1/2 continuing care units which totals 217.5 residential units. The chart shows only 133. Are the 133 being completed now with the remaining units being built later? Or is this just what the biennial report shows through 2021? Where/how does the total 217.5 units fit in? Is there a minimum or maximum number of units for the Assisted Living Facility allowed?

I really appreciate you helping me understand how this works.

Thanks so much,

Jennifer Strieby

Sent from my iPad

On May 19, 2021, at 4:25 PM, Sam Hudson <shudson@cityofnorthport.com> wrote:

Hello,

Attached is a copy of the page I was referencing.

Let me know if you have any questions.

Cheers,

Sam Hudson

From: Jennifer Strieby <jenniferstrieby@icloud.com>
Sent: Wednesday, May 19, 2021 3:59 PM
To: Sam Hudson <shudson@cityofnorthport.com>
Subject: [EXTERNAL] Heron_Creek_Letter_2.13.20.pdf

[ALERT]

Sent from my iPad

E-mail messages sent or received by City of North Port officials and employees in connection with official City business are public records subject to disclosure under the Florida Public Records Act.

<pagefrombiannualreportoct12020.pdf>

From: [Fran Sabutis](#)
To: james.stansbury@deo.myflorida.com; mwuerstle@swfrpc.org
Cc: [Lori Barnes](#); [Ronald York](#); [Jim Bevillard](#)
Subject: [EXTERNAL] FW: Heron Creek Development Order - Modification of Land Use Table
Date: Tuesday, May 24, 2022 1:14:16 PM
Attachments: [05-23-2022 Letter to City of NP - Heron Creek Development Order - Modification of Land Use Table - Executed Signed.pdf](#)



Dear Mr. Stansbury and Ms. Wuerstle,

Please find attached a notice we sent to Ms. Lori Barnes at the City of North Port yesterday, with a copy to the Florida Department of Economic Opportunity and the SWFRPC. At the time, I did not have your email addresses when initially sending this to Ms. Barnes. Since then I have acquired them.

Ms. Wuerstle.... we inadvertently identified Ms. Carballo, your counterpart at SFRPC, as the executive director of SWFRPC, rather than you. Please forgive this oversight, which we are now seeking to correct that by providing you, not her, with the attached copy.

We would greatly appreciate you both acknowledging receipt of this notice. Thank you so much.

Sincerely,

Fran Weber-Sabutis
Executive Asst. for
Ronald A. York and James L. Bevillard, Development Managers
Heron Creek Development
Phone: (239) 542-1010
Fax: (239) 542-6792
Email: fran@nationallandgroup.net

From: Fran Sabutis
Sent: Monday, May 23, 2022 4:51 PM
To: Lori Barnes <lbarnes@cityofnorthport.com>
Cc: Ronald York <ron@nationallandgroup.net>; Jim Bevillard <jim@nationallandgroup.net>
Subject: Heron Creek Development Order - Modification of Land Use Table
Importance: High

Dear Ms. Barnes,

Mr. Ron York, Development Manager, for Heron Creek, has requested me to send you the attached

letter with respect to the Heron Creek Development Order modifying the Land Use Table.

We kindly request of you to acknowledge receipt of this letter via email.

Thank you.

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Phone: (239) 542-1010
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Email: fran@nationallandgroup.net

From: [Skylar Jones](#)
To: [Lori Barnes](#); [Noah Fossick](#)
Subject: RE: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table
Date: Thursday, June 23, 2022 8:21:00 AM
Attachments: [image002.png](#)

Good morning!

I just wanted to follow up on the Heron Creek MAS application and see if there was action I should be taking.

Thank you both for all your help!

All the best,

Skylar Jones
Planning Analyst
Planning & Zoning Division
Neighborhood Development Services
4970 City Hall Blvd. | City of North Port | www.cityofnorthport.com
O: 941.429.7087
sjones@cityofnorthport.com



A City where you can "Achieve Anything."

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From: Lori Barnes <lbarnes@cityofnorthport.com>
Sent: Thursday, June 2, 2022 8:42 AM
To: Noah Fossick <nfossick@cityofnorthport.com>
Cc: Skylar Jones <sjones@cityofnorthport.com>
Subject: RE: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table

Noah:

Please set up a teams meeting with Matt Morris/Ron York to discuss the multi-family unit count (312 vs 320) and the broader concern relating to the overall development activity summary and classification of the villas.

Thank you,
Lori

From: Noah Fossick <nfossick@cityofnorthport.com>
Sent: Wednesday, June 1, 2022 11:26 AM
To: Lori Barnes <lbarnes@cityofnorthport.com>
Cc: Skylar Jones <sjones@cityofnorthport.com>
Subject: RE: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table

Lori,

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Thank you,

Noah Fossick

Planner II

City of North Port, Florida
Neighborhood Development Services | Planning & Zoning Division
4970 City Hall Blvd., North Port, FL 34286
o. 941.429.7234 | e. nfossick@cityofnorthport.com



From: Skylar Jones <sjones@cityofnorthport.com>
Sent: Tuesday, May 31, 2022 3:15 PM
To: Lori Barnes <lbarnes@cityofnorthport.com>; Noah Fossick <nfossick@cityofnorthport.com>
Subject: RE: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table

Good afternoon,

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Thank you!

Skylar

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Sent: Monday, May 23, 2022 4:57 PM
To: Noah Fossick <nfossick@cityofnorthport.com>; Skylar Jones <sjones@cityofnorthport.com>
Subject: Fwd: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table

Sent from my iPhone

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From: [Skylar Jones](#)
To: [Noah Fossick](#)
Subject: RE: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table
Date: Monday, June 6, 2022 11:33:00 AM

Hi Noah,

I wasn't sure if you've already set this up, but could I please receive an invite as well?

Thank you!

Skylar

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Subject: RE: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table
Date: Thursday, June 2, 2022 8:41:42 AM

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To: [Lori Barnes](#)
Cc: [Skylar Jones](#)
Subject: RE: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table
Date: Wednesday, June 1, 2022 11:26:22 AM

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To: [Lori Barnes](#)
Cc: [Ronald York](#); [Jim Bevillard](#)
Subject: [EXTERNAL] Heron Creek Development Order - Modification of Land Use Table
Date: Monday, May 23, 2022 4:51:05 PM
Attachments: [05-23-2022 Letter to City of NP - Heron Creek Development Order - Modification of Land Use Table - Executed Signed.pdf](#)



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Phone: (239) 542-1010
Fax: (239) 542-6792
Email: fran@nationallandgroup.net

From: Nicole Galehouse

Sent: Tuesday, March 17, 2020 4:55 PM

To: Ronald York <ron@nationallandgroup.net>; Jim Bevillard <jim@nationallandgroup.net>

Cc: Everett Farrell <efarrell@cityofnorthport.com>; Frank Miles <fmiles@cityofnorthport.com>; Jason Yarborough <jyarborough@cityofnorthport.com>; Peter Lear (plear@cityofnorthport.com) <plear@cityofnorthport.com>

Subject: Heron Creek Meeting Recap

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. You will provide us with an updated land use matrix for the project file to account for the adjustment in land uses. As I mentioned, I would encourage close communication with our engineering team to ensure that any changes in use do not exceed the original permitted number of trips for the DRI. I have attached both of their cards for your convenience.
- Planning will look for the original approvals related to Parcel K and determine a clear path to move forward with development of that project.
- In order to evaluate a potential reduction in number of holes on the course, Planning will run the fiscal impact model for 100 acres of golf course, multi-family, and single-family to see what the different impact is for each type.
- Planning will be submitting a legal request in relation to the uses on Map H for the SW quadrant of the project, with our attorney coordinating with yours for history. We will determine if the change can be identified as a scrivener's error or if it needs to be included in a DO change if multi-family is desired on that site.
- Planning is working with Building, Finance, and IT to run a report on total transportation impact fees paid within the development. Once you receive this, you will provide us with the 2016-2018 annual monitoring report.
- We discussed the scrub jay issue, and made you aware that Commission has directed enforcement of the original provisions. In our conversation, you indicated that the City was supposed to be a partner in the management of the habitat, and are going to look through your files for this documentation. You are also going to look into the boundaries further and potentially get the data that we can overlay on property lines or other GIS features.

As we discussed, the DRI with current extensions expires on September 28, 2021. The intention is to continue the DRI through to buildout. In order to achieve that, you will be preparing an NOPC (or other amendment if staff determines a different process applies) for submittal to the City in early 2021 unless any additional state of emergencies apply to extend the project further.

Please let me know if there is anything I missed. I will be reaching out to you on these items in the coming weeks. I look forward to working with you on the continued development and buildout of the DRI.

Nicole Galehouse, AICP

Planning Division Manager

Neighborhood Development Services Department

Planning Division

[4970 City Hall Blvd.](#)

[North Port, FL 34286](#)

O [941.429.7098](#)

M [941.228.8879](#)

www.cityofnorthport.com "Achieve Anything"

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

June 3, 2020



To: Ronald A. York, Development Manager
 James L. Bevillard, Development Manager
 Heron Creek Associates, Ltd.
 C/O National Land Group, Inc.
 4524 SE 16th Place, Suite 3
 Cape Coral, Florida 33904

From: Peter Lear, CPA, CGMA, City Manager

Re: Past Due Biennial Reporting Requirements for Heron Creek Development of Regional Impact (DRI)

Dear Sirs:

This letter is in response to your request for answers to specific development questions/comments regarding the Heron Creek Development of Regional Impact (DRI). The following are the questions you submitted with corresponding answers:

1. "What category of land use will the NexCore ALF project fall into in terms of the Heron Creek DRI development matrix?"

In terms of the Heron Creek DRI Land Use Table (Section 3.01 of Ordinance 2011-33), the NexCore ALF project will count towards the "Office General" permitted square footage.

2. "Please confirm that when we utilize the flexibility of our development matrix to convert land uses within the DRI, we will not be required an NOPC."

As long as converted land uses remain within the framework established by the Land Use Conversion Matrix (Section 3.01 of Ordinance 2011-33), including conditions listed for conversion in Sections (b)-(d) of this Section, a Notice of Proposed Change (NOPC) will not be required.

3. "What conditions or potential conditions might the city request to convert our remaining parcels behind Publix into multi-family?"

This conversion would require compliance with Section 3.01 of Ordinance 2011-33, as outlined in question 2. In addition, this area of the DRI is currently permitted for uses outlined in Chapter 53, Article III of the Unified Land Development Code (CG). Multi-family is not a permitted use by right in this Article. Thus, a special exception would be required, or the Heron Creek Master Plan, adopted in the Heron Creek Towne Center Pattern Book, would need to be amended. Specific development conditions would be identified through the Staff Development Review (SDR) process by all City departments.



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001915



4. "In the event we move to convert existing golf course acreage into alternative development uses, please provide us with both the suggested pathway to approval, as well your best guess as to potential conditions that could arise as the result?"

Conversion of the golf course into a different form of development is not contemplated by the Land Use Conversion Matrix and will therefore require an NOPC. Special consideration will need to be made regarding the proposed traffic impact as well as any environmental concerns, including but not limited to arsenic contamination. Specific development conditions would be identified through the SDR process by all City departments.

In researching the requirements of the Heron Creek DRI, staff has noted that the Biennial Reporting Requirements (Section 3.03 of Ordinance No. 2011-33) have not been met. The latest Biennial Report on file covers a reporting period of November 1, 2012 to October 31, 2014. A current Biennial Report needs to be submitted to the City of North Port for review.

Among the other requirements, the status of the following items needs to be addressed in the required Biennial Report:

- Vegetation and Wildlife/Wetlands

Please provide documentation that the applicant continues to comply with all commitments contained in the Wildlife and Habitat Management Plan and Scrub Jay Management Plan. Additionally, the applicant has committed to preserving approximately 43.56 acres of wetlands and a minimum of 16 +/- acres of vegetated uplands. Please provide documentation that these requirements have been met.

Staff has reviewed the letter from Ian Vincent of Ian Vincent and Associates Environmental Consulting Services (IVA), dated March 22, 2017, indicating their opinion that, "conducting the activities outlined in the management plan would be ineffectual." Although the City notes the recommendation of IVA to, "eliminate the condition which required implementation of" the Scrub Jay Management Plan, the actual removal of these requirements would need to take place through an amendment to the DRI.

- Golf Course Design and Modification

The applicant needs to continue to plan for the preservation of native habitats when considering alteration to the current configuration of the golf course. Please provide documentation that the applicant is utilizing xeriscaping Best Management Practices (BMP's) in the landscape design of the golf course.

- Construction of Bus Shelters

Per the requirements of the Heron Creek DRI, the applicant has agreed to construct four (4) bus shelters. As of the latest Biennial Report, only two bus shelters have been reported to be completed. Please provide a timetable to complete the two (2) outstanding bus shelters.

001916



Achieve Anything

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- Stormwater Management

Per the requirements of the Heron Creek DRI, the applicant has agreed to conduct annual inspections of the Heron Creek Master Stormwater Management System. Please provide documentation that annual inspections have continued to be conducted since the reporting period of the last Biennial Report on file (November 1, 2012 to October 31, 2014) to the current reporting period. Furthermore, in the 2014 Biennial Report, the applicant reported that, "littoral zones with appropriate side slopes have been constructed where appropriate and required." Please provide documentation that the minimum requirement has been met and maintained.

The enforcement guidelines are enumerated in Section 7 of Ordinance No. 2011-33. The enforcement guidelines state,

"In the event it is determined by the City Commission of the City of North Port, after notice and hearing, that the applicant has failed to comply with any conditions, restrictions, requirements, or impact mitigating provisions contained or incorporated by reference in this Development Order, the City Commission may temporarily suspend the Development Order during which no development permit applications shall be granted within the development until compliance is achieved."

This letter is to serve as official notice to the applicant that the applicant has been found to be deficient in meeting the Biennial Reporting Requirements of the Heron Creek DRI.

Sincerely,

Frank Miles, MPA
Director, Neighborhood Development Services



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May 29, 2020

Ms. Nicole Galehouse, Planning Manager
City of North Port, Florida
4970 City Hall Boulevard
North Port, Florida 34286

Subject: Heron Creek Development of Regional Impact
Land Use Trade-Off for Senior Living Facility

Dear Ms. Galehouse,

I am writing on behalf of my client, Heron Creek Associates, Ltd. Regarding the land use trade-off exercised by the City for a recently approved "Assisted Living Facility" (ALF). Apparently, the City drew down from the approved office land use to approve the ALF on a square-foot by square-foot basis. Such land use tradeoffs are typically exercised on a p.m. peak hour trip basis rather than square footage, and my client has asked me to look at the trip-generation equivalency.

I've compared the traffic generation of the "ALF" to office uses on the attached spreadsheet. The ALF developer has clarified the actual planned usage of the main building as a combination of independent living, assisted living, and memory care. I suggest memory care would have trip generation characteristics similar to a nursing home. Since the main building has all three stages of senior adult living in it, I've considered it as a CCRC (Continuing Care Retirement Center). Then, the 48 "townhome" independent living units I've considered as "Senior Living - Attached" units. I've also attached the narrative descriptions of these land uses from the ITE Trip Generation reference. The City-assumed 223,238 s.f. draw-down of office uses would generate an estimated 244 p.m. peak hour trips, compared to the 40 estimated to be generated by the "ALF".

I've also "backsolved" to find the square footage of office uses that would generate the equivalent 40 p.m. peak hour trips that the "ALF" would, resulting in 34,400 s.f. of office uses.

(This space intentionally left blank.)

May 29, 2020

Page 2 of 2

Please review the comparison, and if City staff agrees, then Heron Creek Associates, Ltd. would agree to a draw-down of 34,400 s.f. of equivalent office square footage. If the City is in agreement, please so indicate by issuing confirmation to:

Heron Creek Associates, Ltd.
c/o National Land Group, Inc.
4524 SE 16th Place, Suite 3
Cape Coral, FL. 33904

If you have any questions regarding the above please do not hesitate to contact me.

Very Truly Yours

W.E. Oliver, P.E., LLC



William E. Oliver, P.E., PTOE
President

Attachments

Cc: Mr. Ron York, National Land Group
Mr. Dan Bailey, WPHD&G
Mr. Matt Morris, Morris Engineering and Consulting

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Table 1
Traffic Generation Estimate

Land Use	ITE Code	Qty	Daily		A.M. Peak Hour				P.M. Peak Hour			
			Trip Rate	Trip-Ends	Trip Rate	Total	In	Out	Trip Rate	Total	In	Out
Senior Adult Living Attached	252	48 d.u.	3.70	178	0.20	10	3	6	0.26	12	7	6
Continuing Care Facility	255	169 units	2.40	<u>406</u>	0.14	<u>24</u>	<u>15</u>	<u>8</u>	0.16	<u>27</u>	<u>11</u>	<u>16</u>
Totals:				583		33	19	15		40	17	22
General Office	710	223.238 ksf	10.36	2,312	1.06	236	203	33	1.09	244	39	205
General Office	710	34.4 ksf	10.96	377	1.16	40	34	6	1.15	40	6	33

A-1

Land Use: 252

Senior Adult Housing—Attached

Description

Senior adult housing consists of attached independent living developments, including retirement communities, age-restricted housing, and active adult communities. These developments may include limited social or recreational services. However, they generally lack centralized dining and onsite medical facilities. Residents in these communities live independently, are typically active (requiring little to no medical supervision) and may or may not be retired. Senior adult housing—detached (Land Use 251), congregate care facility (Land Use 253), assisted living (Land Use 254), and continuing care retirement community (Land Use 255) are related uses.

Additional Data

Time-of-day distribution data for this land use are presented in Appendix A. For the one general urban/suburban site with data, the overall highest vehicle volumes during the AM and PM on a weekday were counted between 11:45 a.m. and 12:45 p.m. and 12:00 and 1:00 p.m., respectively.

The sites were surveyed in the 1980s, the 1990s, and the 2000s in Alberta (CAN), California, Illinois, New Hampshire, New Jersey, New York, and Pennsylvania.

Source Numbers

272, 501, 576, 602, 703, 734, 741, 902, 970

Need # dwelling units

Land Use: 255 Continuing Care Retirement Community

Description

A continuing care retirement community (CCRC) is a land use that provides multiple elements of senior adult living. CCRCs combine aspects of independent living with increased care, as lifestyle needs change with time. Housing options may include various combinations of senior adult (detached), senior adult (attached), congregate care, assisted living, and skilled nursing care—aimed at allowing the residents to live in one community as their medical needs change. The communities may also contain special services such as medical, dining, recreational, and some limited, supporting retail facilities. CCRCs are usually self-contained villages. Senior adult housing—detached (Land Use 251), senior adult housing—attached (Land Use 252), congregate care facility (Land Use 253), assisted living (Land Use 254), and nursing home (Land Use 620) are related uses.

Additional Data

Caution should be used when applying these data. CCRCs are relatively new and unique land uses. These developments consist of various housing components (dwelling units, rooms, and beds¹) that often exist in varying proportions. Therefore, the use of a single housing component does not fully describe the trip generation characteristics of these communities. Based upon the limited data submitted for this land use, it was determined that a comprehensive independent variable, units, was the most appropriate descriptor of the characteristics. This variable is defined as an aggregate of all living accommodations common to these communities. The independent variable, occupied units, provides data on the number of units that were occupied at the study sites at the time of the survey.

To illustrate the varying proportions of housing options that exist, the following table is provided for nine of the CCRCs included in this land use as an example. Users are strongly cautioned to exercise proper professional judgment in applying these data.

Living Accommodations at CCRCs		
Occupied Dwelling Units/Rooms ²	Occupied Beds	Total Occupied Units
215	46	261
220	151	371
620	100	720
312	166	478
210	37	247
323	120 ³	443
233	121 ³	354
209	33	242
234	94	328

The sites were surveyed in the 1980s, the 1990s, and the 2000s in Connecticut, Illinois, Maryland, Massachusetts, Pennsylvania, and Virginia.

Need # Units

BI-ENNIAL STATUS REPORT
For
HERON CREEK
(FKA Marsh Creek)

November 1, 2018 to October 31, 2020

DRI # 11-9697-137
Ordinance # 06-46

Prepared for:
Heron Creek Associates, Ltd.
C/O National Land Group, Inc.
4524 SE 16th Place, Suite 3
Cape Coral, Florida 33904

Prepared by:



Morris Engineering and Consulting, L.L.C.
6997 Professional Parkway East, Suite B
Sarasota, Florida 34240
C.A. 28780

HERON CREEK BI-ENNIAL REPORT

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General Information

Reporting Period:	November 1, 2018 to October 31, 2020
Development:	Heron Creek (FKA Marsh Creek)
Location:	Intersection of Sumter and Price Boulevards – North Port
Developer/Contact:	Hans-Jurgen Reichardt, Principal Owner Ronald A. York, Development Manager James L. Bevillard, Development Manager Heron Creek Associates, Ltd. C/O National Land Group, Inc. 4524 SE 16 th Place, Suite 3 Cape Coral, Florida 33904
Agent for Monitoring Report:	Matthew J. Morris, P.E. Morris Engineering and Consulting, L.L.C. 6997 Professional Parkway East, Suite B Sarasota, Florida 34240
Reviewed By:	Southwest Florida Regional Planning Council
Date Submitted:	November 19, 1996
Review Date:	June 15, 2000
RPC Recommendation:	Conditional Approval – September 11, 2000
Council Review:	Accepted as Rendered – October 12, 2000
Project Type:	Mixed Use
Project Area:	+/- 831
Residential Units:	1,203
Commercial/Retail SF:	745,500 SF
Office/Medical SF:	83,000 SF
Other:	27 Hole Golf Course, 5 Tennis Courts
Build Out Year:	September 21, 2021 (via extensions, original 2019)

Standard Questionnaire

1. Describe any changes made in the proposed plan of development, phasing, or in the representations contained in the Application for Development Approval since the Development of Regional Impact received approval. Note any actions (substantial deviation determinations) taken by local government to address these changes.

- a. Describe changes in the plan of development or phasing for the reporting year and for the subsequent years.

Extensions of the Build-Out Date have been granted during the reporting period. Additionally, minor changes to the phasing dates and anticipated development allocated to each phase have been made and are included in the updated Exhibit A/

- b. State any known incremental DRI Applications for Development Approval or requests for a Substantial Deviation Determination that were filed in the reporting year and to be filed during the next year.

There were no such applications or requests made during the reporting period, and none are expected in the next year.

- c. Attach a copy of any notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer, pursuant to Paragraph 380.06(15)(f), F.S.

No modifications to the previously approved DRI Development Order were made during the reporting period.

2. Has there been a change in local government jurisdiction for any portion of the development since the development order was issued? If so, has the annexing local government adopted a new DRI development order for the project? Provide a copy of the order adopted by the annexing local government.

There has been no change in local government jurisdiction for any portion of this development.

3. Provide copies of any revised master plans, incremental site plans, etc., not previously submitted.

There are no new Master Plans for the project.

4. Provide a summary comparison of development activity proposed and actually conducted for the reporting year as well as cumulative total of development proposed and actually conducted to date.

See Exhibit A – Development Activity Summary

5. Have any undeveloped tracts of land (other than individual single family lots) been sold to a separate entity or developer? If so, identify tract, its size, and the buyer. Provide maps, which show the tracts involved.

Multiple outparcels within the Towne Center/Commercial portion of the DRI were sold. See Exhibit B – Sold Undeveloped Tracts for a location of the parcel.

6. Describe any lands purchased or optioned adjacent to the original Development of Regional Impact site subsequent to issuance of the Development Order. Identify such land, its size, and intended use on a site plan and map.

No additional lands have been purchased or optioned adjacent to the original Development of Regional Impact since the last reporting period.

7. List any substantial local, state, and federal permits which have been obtained, applied for or denied during this reporting period. Specify the agency, type of permit, and duty for each.

There have been no substantial local, state or federal permits obtained within the reporting period, other than development approvals for commercial outparcel development.

8. Provide a list specifying each development order condition and each developer commitment as contained in the ADA. State how and when each condition or commitment has been complied with during the annual report reporting period.

See Exhibit D for DO and ADA stipulations.

9. Provide any information that is specifically required by the development order to be included in the annual report.

Additional information is provided, as required within this report.

10. Provide a statement certifying that all persons have been sent copies of the annual report in conformance with Subsections 380.06(15) and (18), F.S.

See Exhibit E for Mailing List

Exhibit A – Development Activity Summary

As of the previous bi-ennial report, a total of 0 residential units have been constructed and 20,070 SF of Medical Office and 162,815 SF of Assisted Living has been constructed. This brings the total land uses constructed to 833 Single Family Residential Units, 27 Holes of Golf, 5 Tennis Courts and 206,579 SF of Retail Shopping Center, 20,070, SF of Medical/Professional and 133 Multi-Family Units (48 independent living units and 169 ½ Continuing Care Units). The total amount of approved development is 903 Single Family Residential Units, 300 Multi-Family Residential Units, 27 Holes of Golf, 5 Tennis Courts, 43,000 SF of Medical/Professional, 40,000 SF of General Office and 745,500 SF of retail Shopping Center.

<i>Year</i>	<i>1997-2001</i>		<i>2002-2006</i>		<i>2007-2011</i>		<i>2012-2021</i>	
<i>Land Use</i>	<i>Phase I</i>		<i>Phase II</i>		<i>Phase III</i>		<i>Phase IV</i>	
	Proposed	Actual	Proposed	Actual	Proposed	Actual	Proposed	Actual
Residential Single Family (LUC 210)	376 DU	376	457 DU	457	--	--	70 DU	--
Residential Multi Family (LUC 220)	--	--	--	--	--	--	300 DU	133
Golf Course (LUC 430)	18 Holes	18 Holes	9 Holes	9 holes	--	--	--	--
Tennis Club (LUC 492)	--	--	5 Courts	5 Courts	--	--	--	--
Medical/Professional (LUC 720)	--	--	--	--	--	--	43,000 GLA	20,070
Office General (LUC 710)	--	--	--	--	--	--	40,000 GLA	--
Retail Shopping Center (LUC 820)	68,075 GFA	68,075 GFA	34,240 GFA	34,240 GFA	3,890 GFA	3,890	639,295 GLA	102,374

Note: Residential Units depicted in the above table are the number of units **approved** for construction.

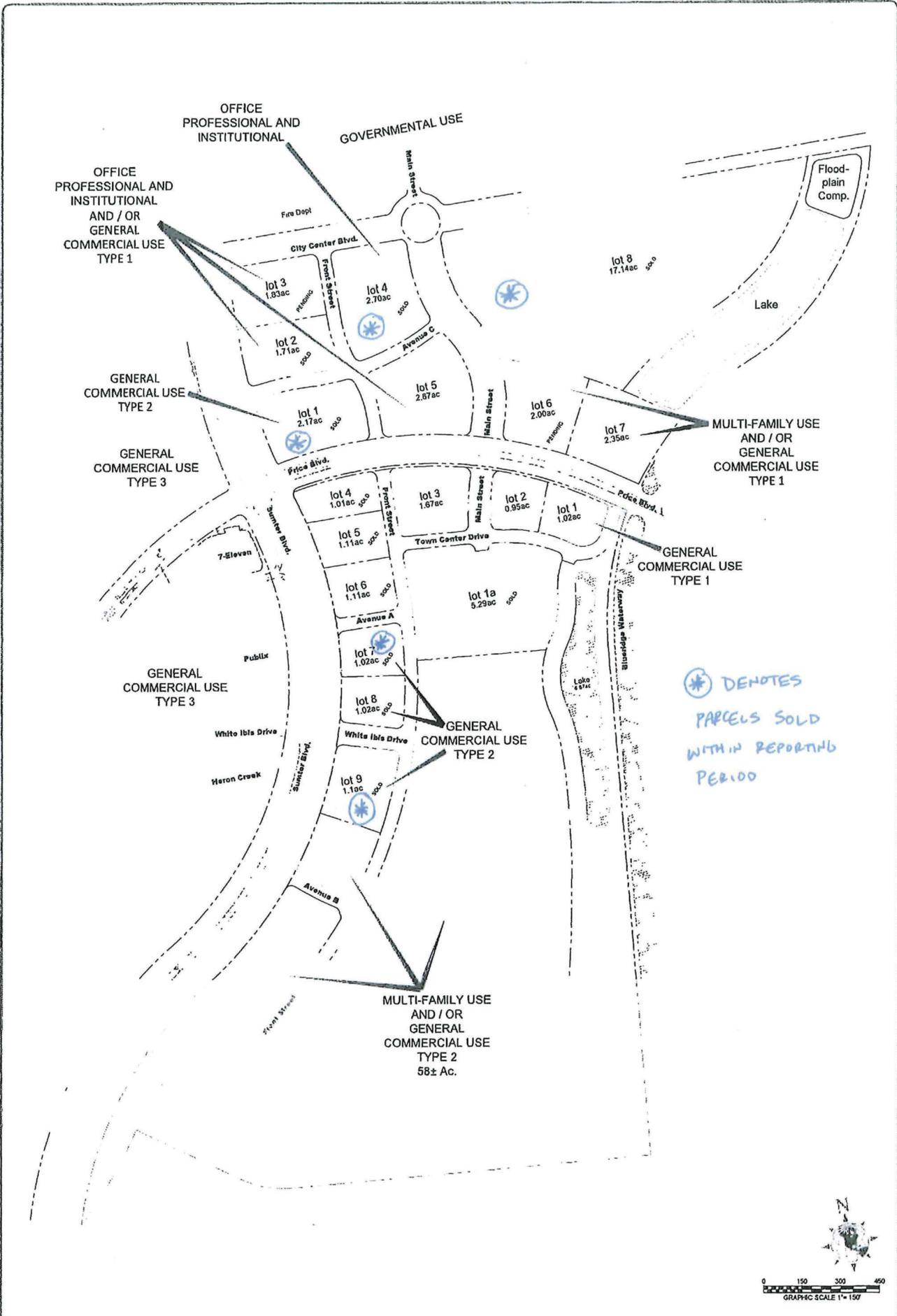


Exhibit C – ADA DRI Development Order Conditions

Additional Local Conditions

4.1. The Heron Creek DRI is partially located in Activity Center #2 identified in the Comprehensive Plan, adopted November 10, 1997, Ordinance No. 97-27 (as amended). All nonresidential development (except the golf course, clubhouse and fitness center) will be located in the Town Center, a subcategory of Activity Center #2. The Town Center is designated as a mixed-use pedestrian-oriented development. By February 2001, the applicant agrees to submit to the City of North Port Community Development Department, a draft pattern book that includes design guidelines that dictate urban form and architectural controls for nonresidential development in the Town Center. The pattern book will also address the urban form the City of North Port's civic development in the northeast quadrant of Price and Sumter. After sufficient staff and public review, the City of North Port will adopt the pattern book.

The applicant has submitted plans for a grocery store to be located in the southwest quadrant of Price and Sumter. This grocery store is exempt from the design guidelines.

Response: A Pattern Book for the Heron Creek Town Center was adopted by the City in 2002 and was revised in 2016. This Pattern Book incorporates design guidelines for urban form and architecture for non-residential buildings, as required. The referenced grocery store has been constructed, as well as multiple commercial developments within the Town Center, according to the Pattern Book.

4.2 The applicant shall construct a maximum of four (4) sheltered bus stops. The first bus shelter shall be constructed concurrent with the proposed grocery store identified in 4.1 above. All other shelter locations to be mutually agreed upon between the City and the applicant. Applicant not responsible for any shelters in the City of North Port's civic development. The sheltered design was not implemented through SCAT at the time of the first constructed bus stop. The City received \$5000.00 payment for construction of the bus stop located at Price Blvd. and Sumter Rd. The three remaining bus stop locations and design will be coordinated through SCAT (Sarasota County Area Transit), the City of North Port and the applicant.

Response: Acknowledged.

4.3 All roads in the Heron Creek DRI are private. If the applicant seeks approval to transfer jurisdiction from applicant homeowner's association to the City of North Port, a public hearing shall be held and this Ordinance amended.

Response: Acknowledged.

- 4.4 Open swales shall not be allowed in the right-of-way for Price and Sumter Boulevards when they are improved or expanded in the Town Center. This requirement shall not preclude use of open swales in other areas of the Heron Creek development.

Response: This requirement is acknowledged, and has also been incorporated into the Town Center Pattern Book.

- 4.5 The applicant shall promote efficient pedestrian and bicycle movement within the development. This shall be achieved through the design of bike lanes, shade trees, and provisions for bicycle racks in the Town Center. Bike lanes will be designed to be either on-street, off-street or other design acceptable to the City of North Port.

Response: This requirement has been met through the design of each subdivision within Heron Creek.

- 4.6 The applicant shall provide permanent sidewalks along both sides of Price and Sumter Blvd(s), within the project limits no later than the last day of the calendar year 2005, with the exception of:

The sidewalk on the east side of Sumter shall be constructed no later than the completion of the adjacent commercial development. All other commercial development within the Town Center will construct sidewalks concurrent with the development of the adjacent commercial property.

If all road improvements have not been designed or completed, the applicant shall be able to put in sidewalk sections that can be replaced at a later date, by a permanent sidewalk. An example is asphalt. Any replacement of permanent or temporary sidewalks that are damaged by the on-going improvements to Sumter Blvd will be replaced by the City of North Port.

Response: Pursuant to City of North Port Commission Decision of February 9, 2009, the City Commission Voted to waive the requirements for construction of sidewalks on both sides of interior roadways of Heron Creek and to only require sidewalks on one side of the street (in front of houses) and not on the side adjacent to project open spaces which currently exist. Currently, sidewalks have been installed throughout the developed areas of Heron Creek in accordance with this Commission decision. Sidewalks will be constructed in future development areas and parcels in accordance with plans approved by the City of North Port.

4.7 The applicant and the City of North Port will enter into a developer's agreement that includes the following projects, time frames, and funding commitments:

- (1) Sumter Blvd (4-lane adjacent to the proposed development). Sumter Blvd 4-laning may be subject to impact fee credits, and may be paid for from the proposed proportionate share contributions outlined in Table 2 of Exhibit B. Project substantially complete by the end of Phase II, or 2,177 trips gross pm peak hour estimates.
- (2) If the transportation analysis to be completed for Phase IV indicates that 4-laning of Price Blvd is warranted due to existing or expected traffic from the development, revise the development agreement to provide for 4-laning Price Boulevard adjacent to the proposed development prior to the completion of Phase IV (2017).
- (3) Provided that the transportation analysis to be completed showing the addition of two lanes to Sumter does not reduce the expected additional traffic on Pan American Boulevard from the development below 5%, the applicant agrees to pay a proportionate share of the traffic calming improvements proposed by the City.

Response: A Proportionate share Funding Agreement between the Applicant and the City was approved in July of 2005, which addresses the above requirements.

4.8 The City of North Port will prepare plans, utilizing their consultant, for the construction of an at-grade shell, or other cost comparable pervious material pathway within existing City-owned right-of-way along the eastern bank of the Myakkahatchee Creek, from Appomattox Drive to Price Boulevard. These plans will be utilized by the City for the purpose of permitting the pedestrian/bicycle trail through the appropriate regulatory agencies as well as for a Major Site and Development Plan Approval by the City. Within 120 days after Major Site and Development Plan Approval by the City, the applicant shall commence construction of the pathway as described above; or should the City elect to construct the pathway, the application shall provide funding that is cost comparable to the construction of an at-grade shell pathway. Should the City elect to construction the pathway other than at-grade or utilizing material other than pervious shell, the City shall be responsible for providing funding above the applicant's contribution as described above.

Response: Acknowledged. Applicant and City entered into an Agreement regarding the construction of the pathway, which will be built by the City and partially funded by Heron Creek.

4.9 The Public Works Director shall approve all access points to Price and Sumter Blvds.

Response: Acknowledged.

DRI Ordinance Conditions

1. Land Use

The ADA or the Heron Creek DRI is hereby approved for the following land uses and phases subject to the conditions contained herein consistent with Preliminary Master Plan Map H, dated February 200, and subject to the other provisions of this Development Order:

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 (d.u.)	Multi Family (d.u.)	Medical/ Professional (sq.ft.)	Office General (sq.ft.)	Retail Shopping Center (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. This 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.

d. Forty Five (45) days notice of any conversion must be provided to the City, FDCA and SWFRPC. 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.

e. 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.

Response: Noted.

2. Affordable Housing

Prior to obtaining a certificate of occupancy for development in excess 364,000 square feet of existing and future Retail Shopping Center Uses (LUC 820) , the Applicant or project employers shall provide supply data (such as Multiple Listing Services data) showing vacant, for sale and /or for rent units available within a 10-mile/20 minute radius of the project. To the extent the City of North Port or SWFRPC collect reliable data as to the adequate housing need or supply, then the determination of adequate housing supply for Heron Creek shall take such data into account. If analysis of the demand data provided in the Application for Development Approval (ADA) and the submitted supply data shows a shortage of affordable housing units that exceeds the threshold for significant impact for the DRI, whether in one phase or cumulatively for the entire DRI, the Applicant shall mitigate the need by following one of the options outlined in .Rule 9J-2.048, the Adequate Housing Uniform Standard Rule.

Response: Acknowledged. Development has not exceeded 364,000 square feet as of the date of this report.

3. Energy

The Applicant shall comply with all commitments for energy conservation contained in the ADA.

Response: The Applicant is, and intends to remain, in compliance with this requirement.

4. Stormwater Management

- a. The Heron Creek DRI shall require a Southwest Florida Water Management District (SWFWMD) Environmental Resource Permit for construction and operation of the surface water management system. At the time of permit application, the Applicant shall provide verification to District staff that the proposed system designs will meet District criteria in effect at that time.

Response: SWFWMD Environmental Resource Permits have been obtained for all development within Heron Creek to date. The Applicant will continue to design and permit additional components of the stormwater management system pursuant to SWFWMD Rules and Regulations.

- b. The Heron Creek DRI shall require a SWFWMD Water Use Permit for withdrawals from groundwater, project lakes, and/or other surface water bodies for irrigation or potable uses and dewatering associated with the construction of project lakes and/or roads or building foundations, in accordance with current regulations.

Response: A Water Use Permit has been obtained from the SWFWMD for all withdrawals currently occurring within Heron Creek. The Applicant continues to provide the SWFWMD with all required monitoring reports and updates to the Water Use Permit, as required.

- c. The applicant shall develop an integrated Fertilizer/Pesticide, Herbicide Management Plan as a component of the golf course design process to be approved by the City of North Port Public Works Department, with input from Sarasota county, SWFWMD, the Florida Fish and Wildlife Conservation Commission and the Florida Department of Environmental Protection (FDEP). The plan shall address the following items:

- Fertilizer, pesticide, herbicide and insecticide use, storage and safety
- Alternative pest control strategies
- Golf course management methods and procedures and
- Quality control and assurance procedures

Response: A copy of the approved Integrated Fertilizer/Herbicide Management Plan was included in previous reports. Additional copies are available if required.

- d. Elevations corresponding to a 100 year flood shall be used to set minimum building elevations on the site, taking into account the backwater elevations along various onsite flowways.

Response: All buildings within Heron Creek have been designed to meet this criteria. All future development will incorporate this design principal regarding building elevation.

- e. Best Management Practices shall be included on construction plans for development and should be submitted to the City of North Port for review and approval.

Response: Best Management Practices have, and will continue to be, incorporated into construction plans for review and approval by North Port and the SWFWMD.

- f. All internal stormwater management lakes and ditches and the onsite preserved/enhanced wetland areas shall be set aside as private drainage and/or conservation easements on the recorded final plat. Stormwater lakes shall include, where practical, adequate maintenance easements around the lakes with access to a paved roadway.

Response: Drainage and Conservation Easements have been set aside, as appropriate, throughout the development that incorporate appropriate components of the management system.

- g. During construction activities, the Applicant shall employ best management practices for erosion and sedimentation control. These practices shall be included with or presented on all construction plans and shall be subject to approval by the appropriate agencies prior to their implementation.

Response: Best Management Practices have been provided on all construction plans for approval by the appropriate agencies. Upon approval, these practices have been implemented throughout the duration of construction activities as required. This requirement will continually be adhered to throughout the development of heron Creek.

- h. Any construction silt barriers or hay bales and any anchor oil as well as the accumulated silt shall be removed upon completion of construction. Either the Applicant or the entities responsible for the specific construction activities requiring these measures shall assume responsibility for having them removed upon completion of construction.

Response: All Best Management Practice components, as well as accumulated silt, are removed immediately after stabilization of the construction site has been completed. This requirement will continue to be adhered to throughout the development of Heron Creek.

- i. The final stormwater management plan shall consider, as applicable measures to reduce runoff rates and volumes including, but not limited to, fixed control structures, perforated pipes, and grass swale conveyances. Swales shall be used whenever possible rather than closed systems.

Response: The stormwater management plan has been designed to reduce the runoff from the development site, and also to provide required treatment of stormwater. The system was designed in accordance with City of North Port and SWFWMD design guidelines.

- j. Any shoreline banks created along the onsite stormwater management system shall include littoral zones constructed on slopes consistent with SWFWMD and City of North Port requirements, and shall be planted in native emergent of submerging aquatic vegetation. The Applicant shall ensure, by supplemental replanting if necessary, that at least 80% cover by native aquatic vegetation is established within the littoral zone for the duration of the project.

Response: Littoral zones with appropriate side slopes have been constructed where appropriate and required. These littoral zones are continually monitored and maintained by Golf Course and Homeowner's Association staff to ensure their viability.

- k. The applicant shall conduct annual inspection of the heron Creek Master Stormwater Management System and the preserved/enhanced wetland areas on the project site so as to ensure that these areas are maintained in keeping with the final approved designs and that the water management system is capable of accomplishing the level of stormwater storage and treatment for which it was intended.

Response: Annual inspections have occurred, and will continue occur, as required. Copies of inspection reports and certifications have been filed with the SWFWMD.

- l. The Applicant shall confirm, to the satisfaction of all applicable federal, state and local review agencies and SWFWMD, that the proposed stormwater management system will not impact habitats of any state or federally listed plant and/or animal species potentially occurring onsite, or that such impacts shall be mitigated to the benefit of on site populations of those species.

Response: This requirement has been met through the permitting of the stormwater management system. Each component of the system that has been, or will be, permitted will adhere to applicable guidelines for the preservation, mitigation and protection of environmentally sensitive areas.

- m. The Applicant shall participate in any ongoing or future efforts by the City of North Port and Sarasota County to establish a countywide stormwater management system.

Response: Acknowledged.

- n. Ditch and swale slopes shall be designed to minimize discharges so that these facilities may provide some additional water quality treatment prior to discharge. Treatment swales shall be planted with grass or other appropriate vegetation.

Response: Swales and ditches within the development have been designed, and will be deigned, accordingly.

- o. The vegetated stormwater treatment areas shall be mowed on a regular basis as part of the normal lawn maintenance of the development. Any debris that may accumulate in project lakes, ditches or swales, or which may interfere with the normal flow of water through discharge structures and underdrain systems, shall be cleaned from the detention/retention areas on a regular basis. Any erosion to banks shall be replaced immediately.

Response: This requirement is being met by regular maintenance by Golf Course and Homeowner's Association staff, as well as through the annual monitoring of the system.

- p. Underdrain systems and grease baffles, if utilized within the Heron Creek DRI, shall be inspected and cleaned and/or repaired on a regular basis. In no instance shall the period between such inspections exceed eighteen months.

Response: Inspection of these components occurs annually with the inspection of the entire stormwater management system.

- q. Stormwater management system maintenance requirements shall include removal of any mosquito productive nuisance plant species (eg water lettuce, water hyacinth, and primrose willows) from all system nodes, reaches and percolation basis, as well as from the lake littoral zones employed in the system.

Response: This requirement is being addressed through regular maintenance and monitoring, as noted previously.

- r. To the extent consistent with applicable stormwater management system and environmental regulations, any isolated wading bird pools constructed in lake littoral zones shall be excavated to a depth which provides adequate habitat for mosquito larvae predators, such as *Gambusia affinis*.

Response: Acknowledged. This design guideline will be incorporated where appropriate.

- s. The Applicant shall comply with all commitments made in the ADA, and subsequent sufficiency round information related to Question 10 (General Project Description), Question 13 (wetlands), Question 14 (Water), Question 15 (Soils), Question 1q (Floodplains) and Question 19 (Stormwater Management) which are not in conflict with the above recommendations.

Response: The Applicant has complied with all commitments as noted above.

5. Transportation

- a. The Applicant or his successor or assigns shall be fully responsible for the site relate roadway and intersection improvements required within the Heron Creek DRI. The Applicant shall be required to pay the full costs for any site related intersection improvements (including, but not limited to, signalization, turn lanes and additional through lanes) found to be necessary by the City of North Port for the project access intersections onto Appomattox Drive, Sumter Blvd or Price Blvd. The site access points shall be located and developed consistent with the City of North Port access management standards and permit requirements.

Response: All roadway and intersection improvements and access points have been permitted and approved by the City of North Port. The City approved a Proportionate Share agreement for funding of portions of the roadway requirements in July of 2005.

- b. Based on the transportation assessment of significant project impacts, the following process shall determine what regionally significant transportation improvements shall be required prior to or coincident with development of the Heron Creek DRI, if adopted level of service conditions are to be maintained through Phase III (2011) on regional roadway segments and intersections.

Prior to any building permits for development exceeding those identified in Phase I plus Phase II land uses or for equivalent development generating 2,177 gross pm peak hour external trips as a Traffic Monitoring Study (TMS) shall be undertaken to confirm the estimates of the transportation alaysis. Prior to undertaking this monitoring study, a meeting shall be held with staff of the SWFRPC, FDOT and the City of North Port. The purpose of the meeting will be to identify the scope and procedures to be utilized in this study. At a minimum, the TMS shall contain pm peak hour, peak season trip generation estimates and turning movements at each of the access intersection and the off-site intersections listed below, and a calculation of the existing peak season level of service at these intersections and on the road segments indicated below. The levels of service shall be calculated according to current professional standards. The study shall also provide a calculation of the existing levels of service on the facilities and the estimated levels of service and project impact for the next increment for which development approval is desired. The TMS shall also identify and road improvements required to meet existing adopted level of service thresholds. Further, the study shall address the issues identified by all applicable review agencies in the SWFRPC staff assessment report. Specifically, the study shall confirm the allocation of traffic signal green time on US 41 and that road's ability to continue to meet traffic demands for the project phases through Phase III.

Regional Roadways

1-75: King's Highway to Toledo Blade Boulevard

1-75: Toledo Blade Boulevard to Sumter Boulevard

US 41: North Port Boulevard to Pan American Boulevard
 US 41: Biscayne Drive to Ortiz Boulevard
 US 41: Toledo Blade Boulevard to Enterprise

Regional Intersections
 I-75/King's Highway (all ramps)
 I-75/Toledo Blade Boulevard (all ramps)
 I-75/Sumter Boulevard (all ramps)
 US 41/North Port Boulevard
 US 41/Pan American Boulevard
 US 41/Biscayne Drive
 US 41/Ortiz Boulevard
 Price Boulevard/Sumter Boulevard
 Price Boulevard/Salford Boulevard
 Appomattox Drive/North Port Boulevard
 Appomattox Drive/Sumter Boulevard

The transportation impacts to the roads and intersections above shall be appropriately addressed consistent with Southwest Florida Regional Planning Council policies and the determination of the proportional share and/or pipelining of the regional road improvements shall be in accordance with Section 163.3220, F.S., which requires a Local Government Development Agreement.

Response: Funding commitments are summarized in Table 1, below. The Trip Generation analysis for the previous reporting period indicated a total of 17,115 gross daily trip ends, 1,363 gross pm peak hour trips and 1,252 net pm peak hour trips. As only a minor amount of commercial development has been added to the development as of the last reporting period, the increase in trips will be minimal for this reporting period, and would not be significant enough to trigger additional roadway improvements not already triggered.

- c. The applicant is eligible to apply for impact fee credits, pursuant to Chapter 380.06, Florida Statutes, and the City of North Port Ordinance No 2000-4, as it may be amended, and the applicant may receive credits as authorized by the Ordinance. Further, impact fee payments made prior to the time at which proportionate share payments are due, if mitigation (described below) is selected, shall be held in escrow by the City of North Port and applied against the proportionate share payment.

Response: This has been addressed via the Proportionate Share Agreement of July, 2005. A total of \$2,176,046.03 have been paid to the City for transportation impact fees to date. We are providing this total number of transportation impact fees collected for this reporting period based upon the current information received by the City staff, with the understanding that City staff is finalizing their reporting data. We request the opportunity to

continue to work closely with city staff to come to an agreement between Developer and City staff. We anticipate that the total number of transportation impact fees collected and further confirmed with City staff will be addressed in the forthcoming 2020-2022 Biennial Report.

- d. Mitigation Options. The following options are established for purposes of mitigating Phases I, II and III impacts. Prior to preliminary plat or preliminary site plan approval for 740 single family detached residential units, or equivalent land uses which will result in 651 net new external pm peak hour trips, the Applicant and the City of North Port shall select one or a combination of the following alternatives to mitigate the project's transportation impacts, provided that the combination(s) selected achieve the required degree of mitigation. The applicant shall report the option selected in the first required annual report following its selection. Further, the status of any transportation improvements required by the option selected shall be included in each subsequent required annual report. Continued issuance of development permits by the City of North Port for the project shall require a determination by the City of North Port for compliance with one of the options set forth below:

Response: Pursuant to the Proportionate Share Agreement of July, 2005; the Applicant has chosen Option 2, as described below.

- 1) Funding Commitments. For the purpose of this order, funding commitments shall be defined in Section 9J.2.045.(7).a.1, FAC. The improvements listed in the table below include roadway link and intersection improvements required for the development of Phases I through III.

**Table 1
Phases I, II and III (2011)
Required Link and Intersections**

Location	Improvement	% of Ph I, II & III (or net external trips)
Price @ Sumter	Signalize – Add EL, WL, WR, NL, NR, SL turn lanes	24% (651)
Appomattox @ Sumter	Signalize – Add ER, NL, SR turn lanes	31% (867)
I-75: Sumter to Toledo Blade	Widen to 6 lanes	54% (1,523)
Price @ Salford	Signalize – Add EL, WL, NL turn lanes	62% (1,735)
Appomattox @ North Port	Signalize – Add EL, WL, NL turn lanes	76% (2,168)
I-75: Toledo Blade to King's Highway	Widen to 6 lanes	98% (2,761)

With each preliminary plat or preliminary site plan, the Applicant shall submit a projection of gross external pm peak hour trips anticipated to be generated by the development included in the preliminary plat or preliminary site plan, plus any development for which a preliminary plat or preliminary site plan has been previously approved.

- a. No building permits shall be issued for land uses that will result in 651 net new external trips until funding commitments are in place for the first improvement identified in Table 1, above.
- b. No building permits shall be issued for land uses that will result in 867 new external pm peak hour trips until funding commitments are in place for the second improvement identified in Table 1, above. A traffic control signal shall be installed when warrants for signalization as published in the Manual on Uniform Traffic Control Devices are met.
- c. No building permits shall be issued for land uses that will result in 1,523 net new external trips until funding commitments are in place for the third improvement identified in Table 1, above.
- d. No building permits shall be issued for land uses that will result in 1,735 net new external trips until funding commitments are in place for the fourth improvement identified in Table 1, above. A traffic control signal shall be installed when warrants for signalization as published in the Manual on Uniform Traffic Control Devices are met.
- e. No building permits shall be issued for land uses that will result in 2,168 net new external trips until funding commitments are in place for the fifth improvement identified in Table 1, above. A traffic control signal shall be installed when warrants for signalization as published in the Manual on Uniform Traffic Control Devices are met.
- f. No building permits shall be issued for land uses that will result in 2,761 net new external trips until funding commitments are in place for the sixth improvement identified in Table 1, above.

In the event that funding commitments for the above transportation improvements are not in place, the applicant shall have the option to submit an NOPC to the City, DCA and the SWFRPC, pursuant to Section 380.06(10), Florida Statutes, with updated traffic counts on the impacted roadways that do not have commitments for required transportation improvements. The Applicant shall further submit projections of traffic volumes that include the currently approved project development plus the volumes to be generated from an additional increment of development for which the applicant is seeking approval and future background traffic. If the submittal, as approved by the above agencies, shows that the unimproved road will operate at an acceptable level of service, the City of North Port may issue building permits for the requested increment of development.

The funding commitments for the above improvements shall be assessed and reported in the required annual report. The City of North Port shall cease issuance of any further building permits if the annual monitoring report shows

that any of the required improvements is no longer funded as defined in Table 1, above.

Response: The Price and Sumter improvements have been completed. The signalization at Appomattox and Sumter was triggered previously. No other improvement thresholds have been triggered at this time.

- 2) Proportionate Share. This option shall only be available if the City of North Port Comprehensive Plan authorizes payment of proportionate share contribution for local and regional significant traffic impacts, in accordance with Section 163.3180(12), Florida Statutes, and Rule 9J.2.045(7).a.3, FAC. With City of North Port and FDOT approval, the Applicant may pay to the City of North Port a proportionate share contribution pursuant to Section 9J.2.045, FAC, of those improvement projects listed in Section 1, above, for which funding remains uncommitted. The proportionate share contribution shall be used to improve any one of the listed impacted roadways for which funding remains uncommitted, pursuant to a roadway construction agreement to be entered into between the Applicant, City of North Port and the responsible government agencies (if applicable), subject to the following terms and conditions:
 - a. No further building permits shall be issued by the City of North Port subsequent to the triggering of transportation needs shown in Table q. Table 1 will be mitigated by the selection of Option 2 until the roadway construction agreement is executed. Further, should the applicant default on the payment of the proportionate share, in accordance with the agreement, no further building permits shall be issued until the Applicant is in compliance with the agreement.
 - b. The agreement shall be in the form of either a clearly identified, executed and recorded local government development agreement consistent with Sections 163.3220 through 163.3243, Florida Statutes, an interlocal agreement, an FDOT joint participation agreement or a written acceptance by the affected local government board or the FDOT is appropriate. The agreement to accept proportionate share payments shall be attached as an exhibit to the development order through CH 380.06fl G) 0 2) e(2) amendment following the selection of this option and the execution of the agreement at the time of the next development order amendment. The agreement shall require the receiving local governmental agency to apply the contributed monies only towards the construction of one or more of the roadway improvements listed in Table q of this development order. If the contributed money is sufficient to fully construct one or more of the required improvements, the receiving governmental agency shall agree, as a condition of acceptance, to expeditiously apply the received monies for the construction of the improvement.

- c. The specific nature and scope of the selected improvement(s) shall be set forth in the roadway construction agreement. The roadway construction agreement shall address the timing of the applicant's payment towards design, ROW acquisition, construction and the selected improvement(s).
- d. The proportionate share amount is as set forth in Table 2 (attached and incorporated as part of this development order) in accordance with 9J.21.045(7)3, FAC. The proportionate share has been calculated in Year 200 dollars. This amount shall be updated at the time of payment, in accordance with the FDOT construction Cost Price Trends Index. The proportionate share in Table 2 mitigates the impacts of all development in Phases I, II and II. If any of the required improvements have been completed prior to the applicant's selection to pay the proportionate share, then the proportionate share amount shall be reduced by deleting the completed road improvement from the proportionate share computation.
- e. Any delay or change to the proportionate share payment due to a change in the development schedule shall require an analysis of the proportionate share amount as part of any amendment to the build out date of the development. Payment of the proportionate share does not release the applicant from the obligation to pay impact fees as provided for in the City's Transportation Impact fee Ordinance; however, the proportionate share is creditable against impact fees in accordance with state law.

Response: The Proportionate share Agreement of July, 2005 addresses requirements a-e for this Option.

- f. The applicant shall dedicate 50 feet of right of way for a greenway/bicycle and pedestrian pathway extending on the west side of the property, running parallel to the Myakkahatchee preserve from Appomattox to Price Boulevard.

Response: This topic was addressed with the NOPC that was approved during a previous reporting period and the referenced 50' of right-of-way is no longer required to be dedicated.

- g. The applicant shall promote efficient pedestrian and bicycle movement within the development.

Response: Sidewalks have been constructed in accordance with approved construction plans to meet the above requirements.

- h. The Applicant shall help to accommodate any local and/or express transit service, if established by the City of North Port or Sarasota County through the inclusion of bus stops or other means deemed necessary by the City of North Port or Sarasota County.

Response: Acknowledged.**6. Vegetation and Wildlife/Wetlands**

- a. The Applicant shall comply with all commitments contained in the Wildlife and Habitat Management Plan and Scrub Jay Management Plan (Management Plan) which is incorporated by reference into this Development Order. The Applicant shall also comply with the commitments in the ADA and subsequent sufficiency round information related to Question 10 (General Project Description), Question 12 (Vegetation and Wildlife) and Question 13 (Wetlands) to the extent that they are consistent with the Management Plan.

Response: The Applicant has, and will continue to, comply with the above requirements and the requirements set forth in the Management Plan.

- b. The Applicant must coordinate the location, size and management plan for the Florida Scrub Jay Preserve with the US Fish and Wildlife Service and Florida fish and Wildlife Conservation Commission in Vero Beach to avoid any permit delays.

Response: US Fish and Wildlife and Florida Fish and Wildlife have approved the current Scrub Jay Habitat provided for the Heron Creek Development. During the reporting period, this item was reviewed by both the City of North Port and Heron Creek, and found to be in compliance.

- c. The conservation easement over wetlands and uplands including the Scrub Jay preserve will be written to comply with the requirements of Rule 9J-4J.(9)(b)3, FAC.

Response: Conservation Easements have been written per this requirement.

- d. Native habitats will also be preserved as part of the golf course design and the open space requirements.

Response: The design of the golf course has incorporated native habitats where possible and required.

- e. In accordance with SWFWMD policy, Heron Creek will maintain or enlarge pre developed contributing areas to each wetland in the post developed condition to the extent possible.

Response: Preservation, enhancement and mitigation of wetlands has been incorporated into the design elements of the entire heron Creek DRI.

- f. The Proposed Mitigation Summary, as part of the last sufficiency, will serve as a framework for conceptual wetland mitigation approaches for the proposed impacts to 22 acres of wetlands.

Response: The Proposed Mitigation Summary continues to serve as the guideline for wetland mitigation throughout the project.

- g. Total of 43.56 acres of wetlands (36.2 acres of Freshwater Marshes and 7.4 acres of Hardwood Hammock) will be preserved and enhanced.

Response: These preservation requirements have been met.

- h. There will be a minimum of 16 +/- acres of vegetated uplands preserved plus additional upland acreage associated with the Scrub Jay Preserve, to be determined at final development design and layout.

Response: These preservation requirements have been met.

- i. The Applicant will preserve some of the cabbage palm hammocks in place and relocate other portions while attempting to preserve significant oak trees.

Response: Cabbage palm hammocks have been preserved where possible throughout the development.

- j. The Applicant shall, by the end of the calendar year 2007, record a conservation easement for the upland preservation area depicted on the Heron Creek Conservation Easement Upland Preservation Area Location Map.

Response: The required conservation easement has been recorded.

- k. The Applicant shall, by May 31, 2007, provide the City and the SWFRPC with an updated GIS shape file on the aforementioned upland preservation area in a State Albers Projection.

Response: Updated digital files have been provided, as required.

- l. The Applicant shall, by May 31, 2007, provide the City and the SWFRPC with an updated GIS shape file of the subject property consistent with the legal description contained in Resolution 01-R-5.

Response: Updated digital files have been provided, as required.

7. Wastewater Management/Water Supply

- a. The project shall utilize ultra low flow volume water use plumbing fixtures, self-closing and/or metered water faucets and other water conserving devices and methods consistent with the criteria outlined in the water conservation plan of the public supply permit issued to the City of North Port Utilities Department by SWFWMD.

Response: The development has, and will continue to, adhere to the above requirement.

- b. For the purpose of non-potable and/or reclaimed water conservation, the Heron Creek DRI shall, to the extent possible, utilize xeriscape principals in all common landscaped areas and in the landscape design of the golf course and other recreational facilities. Ecologically viable portions of existing (pre development) native vegetations shall be incorporated into the Development's landscape design to the greatest extent practicable.

Response: Xeriscape and native vegetation were utilized throughout the common areas and golf course where possible.

- c. The Applicant shall apply for water use permits as required for withdrawals from groundwater, project lakes and/or other surface water bodies for irrigation or potable use and for any dewatering activities proposed for the construction of onsite lakes and/or road or building foundations.

Response: Water Use Permits have been obtained for all withdrawals. Monitoring reports continue to be provided as required for these permits.

- d. At the time of application for the SWFWMD Water Use Permit for the proposed irrigation system, the Applicant shall provide verification that the proposed plumbing and irrigation system designs meet SWFWMD criteria in effect at the time.

Response: Appropriate information was submitted for the Water Use Permit, which has been approved and is currently active.

- e. The Applicant shall comply with the applicant's agreement with the City of North Port for the provision of potable water, wastewater treatment and non potable water by the City of North Port Utilities Department.

Response: These requirements have been met through the Developer's Agreement with the City.

- f. The requirements for reclaimed water for the Heron Creek development are governed by the Second Developer's Agreement between the City of North Port and the Applicant, dated June 5, 2000.

Response: Acknowledged.

- g. Prior to applying for any well permits from Sarasota County, the Applicant shall actively pursue alternative methods for obtaining non potable water. Such efforts shall include (but are not limited to) cisterns, reclaimed stormwater, reclaimed water from a regional resource, off site canals or any comprehensive approach that will reduce or eliminate the need for onsite wells.

Response: The development currently utilizes a mixture of reclaimed water supplied by the City and water from an on-site lake. In the event that this water is not adequate, recharge wells are utilized to provide irrigation water. These wells were permitted through the required agencies.

- h. The use of reclaimed water, pesticides, herbicides or fertilizers shall be prohibited within onsite wetland buffer and the wetlands they protect. Irrigation systems shall be designed and located so as to ensure that reclaimed wastewater does not contact or enter any open water canal or waterway within or adjacent to the DRI, which is ultimately tributary to the Myakkahatchee Creek.

Response: Acknowledged. The system has been designed appropriately.

- i. In order to help protect water quality within the Myakkahatchee Creek Watershed and to increase public awareness about local water supply sources and the natural systems that support them, the Applicant shall provide educational materials to property buyers, residents and businesses within the DRI concerning the proper use and disposal of chemicals and hazardous materials, as well as local and regional water quality issues. Such materials shall include guidelines for homeowners concerning lawn and landscape irrigation and the proper application, handling and storage of fertilizers, pesticides, herbicides and other chemicals. The Applicant may use existing publications covering these topics, if such are found to exist and to be suitable for the North Port area. The development shall also participate in any County or City sponsored Amnesty Days' program and should consider providing a central site for collection of hazardous materials.

Response: Heron Creek has developed Environmental Guidelines for Homeowners and Businesses, a copy of which was provided with the last report.

- j. Temporary septic systems may be utilized in conjunction with construction and sales offices and model homes. Septic systems shall not be allowed onsite, other than for construction and sales offices, golf course restrooms and model homes. All temporary septic systems shall be properly abandoned and/or removed by a licensed septic system firm at the time when permanent or interim wastewater treatment facilities come online.

Response: Acknowledged. The requirement has been adhered to, and will continue to be adhered to throughout the development.

- k. All potable water facilities shall be properly sized to supply average and peak day domestic demand, in addition to fire flow demand, at a rate approved by the City of North Port Fire and Rescue District.

Response: The potable water system has been designed and permitted pursuant to the above requirements.

- l. The Applicant shall comply with all commitments in the ADA and subsequent sufficiency round information related to Question 10 (General Project Description), Question 14 (Water), Question 17 (Water Supply) and Question 18 (Wastewater Management) that are not in conflict with the above recommendations.

Response: The Applicant has complied with the above requirements.

- m. Potable water for the Heron Creek DRI shall be served by the City of North Port Utilities Department. A Developer's Agreement between the Applicant and the City has been executed for the entire project. The agreement reserves potable water supply for Phase I of the Heron Creek DRI. The Developer's Agreement articulates specific water supply facility upgrades that are the sole responsibility of the Applicant.

- 1) In order to insure that water supply facilities will be in place and available to serve each phase of development no later than the issuance by the City of North Port of a certificate of occupancy, or its functional equivalent, the City and the Applicant shall comply with their respective obligations under the developer's agreements dated August 31, 1998 and June 16, 2000.
- 2) The City of North Port Utility Master Plan, dated March 1999, shall serve as the basis for projecting potable water supply demands and allocating appropriate capital expenditures to serve the Heron Creek DRI development. The Master Plan is incorporated herein by reference.
- 3) Annually, the City of North Port shall review the Utility Master Plan to ensure consistency with its Capital Improvements Program and the applicable water supply and sewer provisions in the comprehensive plan.
- 4) By 2001, the City of North Port shall update the Utility Master Plan and include an analysis of existing and future demands, capital expenditures and feasibility of purchasing water from a public regional water source.
- 5) Annually, the City of North Port Utilities Department shall prepare a report as to the status of the guaranteed improvements of the water supply improvements. The assessment shall be included in the annual DRI status report. If the report shows evidence that the needed potable water supply facility improvements are no longer scheduled or guaranteed, the City of North Port will cease to issue building permits until the supply facility improvements return to a guarantee or scheduled status.
- 6) Should the water supply improvements schedule change or cause delay to the Heron Creek DRI approved schedule, the applicant shall be required to amend

the approved development schedule through the Notice of Proposed Change provisions of Section 380.06(19), Florida statutes. This process automatically amends the development order.

- 7) Nothing herein shall relieve the City of the Applicant of their reciprocal obligations under the developer's agreements dated August 31, 1998 and June 16, 2000.

Response: The Applicant has complied with the requirements above and those set forth in the Developer's Agreement with the City of North Port for utility service.

8. Police and Fire Protection

- a. To assure the project does not dilute the delivery of service during the site and development/construction plan approval process, the Applicant shall meet with the North Port Police department to ensure that security features are incorporated within the project design.

Response: The Applicant has previously met with the Police Department with regard to incorporating security features into the development.

- b. Facilities qualifying under the Superfund Amendments Reauthorization Act (SARA), Title II and the Florida Hazardous Materials Emergency Response and Community Right to Know Act of 1988, shall file hazardous materials reporting applications in accordance with sections 302, 303, 304 or 311-312. Applications must be updated annually by each reporting facility.

Response: At this time, no facilities qualifying under any of the above have been developed within Heron Creek.

- c. Fire protection shall be provided according to existing standards or fire flow criteria promulgated by the City or recommended guidelines developed by the National Fire Protection Association.

Response: Fire protection is being provided appropriately throughout the development.

- d. The City of North Port Unified Land Development Code requires up to 1,500 GPM for residential and up to 4,000 GPM for commercial development. The Heron Creek potable water distribution/building fire sprinkler systems shall be designed to meet the City's requirements.

Response: The above referenced fire flow demands were incorporated into the design of the potable water system for Heron Creek.

9. Solid Waste/Hazardous Waste/Medical Waste

- a. Any business located within the heron Creek development which generates hazardous or infectious waste shall be responsible for the temporary storage, sitting and proper disposal of the waste generated by such businesses. Outside storage of hazardous waste or infectious waste should be prohibited. However, there should be no sitting of hazardous waste storage facilities contrary to North Port's Zoning Regulations.

Response: Currently, there are no businesses within Heron Creek that are anticipated to produce any hazardous or infectious waste.

- b. Loading, off-loading and storage areas for regulated substances shall be curbed and provided with impervious bases free of cracks and gaps to fully contain spills and leaks.

Response: All loading and unloading areas have been designed accordingly.

- c. All hazardous materials shall be handled, stored and applied in accordance with applicable regulations. FAC Chapter 62.730 is the governing regulation covering hazardous waste, which would be applied to any generator who may become a tenant at Heron Creek.

Response: Currently, there is no development within Heron Creek that is anticipated to produce hazardous waste.

- d. The project shall participate in the City of North Port's recycling program, which, at present, consists of curbside pickup of newspaper, cardboard, plastics, glass, tin and aluminum cans to aid in the reduction of solid waste sent to the landfill.

Response: The City's recycling program has been made available to all development within Heron Creek.

- e. The applicant shall explore the possibility of mulching trees and brush in the land clearing operations to meet onsite needs.

Response: This requirement has been adhered to where possible.

10. General Conditions

- a. All commitments and impact mitigating actions provided by the Applicant in the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval, outlined above are officially adopted as conditions for approval.

Response: Acknowledged.

- b. The development phasing schedule presented within the ADA and as adjusted to date of development order approval shall be incorporated as a condition of approval. If development order conditions and applicant commitments incorporated within the development order, ADA or sufficiency round responses to mitigate regional impacts are not carried out as indicated to the extent, or in accord, with the timing schedules specified within the development order and this phasing schedule then this shall be presumed to be a substantial deviation for the affected regional issue, except as provided in Section 7.m.6.

Response: There have been no substantial deviations within this reporting period.

- c. If the City of North Port, during the course of monitoring the development, can demonstrate that substantial changes in the conditions underlying the approval of the development order has occurred or that the Development Order was based on substantially inaccurate information provided by the applicant resulting in additional substantial regional impacts, then a substantial deviation shall be deemed to have occurred.

Response: Acknowledged.

- d. Pursuant to Chapter 380.06(16), the Applicant may be subject to credit for contributions, construction expansion or acquisition of public facilities, to the extent the Applicant is also subject by City ordinances to impact fees or exactions to meet the same needs. The City of North Port and the Applicant may enter into a capital contribution front ending agreement to reimburse the Applicant for voluntary contributions in excess of the fair share.

Response: The Applicant has, and would like to continue to, participated with the City with regard to the above. It is the Applicant's intent to continue to work closely with the City and other agencies to ensure that the development of Heron Creek continues to comply with all requirements of this DO.

Exhibit D – Statement of Certification

I, Matthew Morris, being the President of Morris Engineering and Consulting, L.L.C., and as representing Heron Creek Associates, Ltd, do hereby certify that appropriate copies of this report have been sent to the following agencies, listed below, on or before March 31, 2021.

Southwest Florida Regional Planning Council
1926 Victoria Avenue
Fort Myers, Florida 33901

Mr. Frank Miles
North Port Planning, Zoning and Engineering Services
4970 City Hall Boulevard
North Port, Florida 34286

Southwest Florida Water Management District
78 Sarasota Center Boulevard
Sarasota, Florida 34240

Department of the Army
United States Army Corps of Engineers
Wetland Monitoring Department
1520 Royal Palm Square Boulevard, Suite 310
Fort Myers, Florida 33901



City of North Port
Neighborhood Development Services
4970 City Hall Boulevard, North Port, FL 34286
Phone: (941) 429-7156 Fax: (941) 429-7164
Web www.cityofnorthport.com

Major Site and Development Packet

The following items are to be included in the submission:

- Major Site and Development Application
- Affidavit(s)
- Major Site and Development Checklist completely filled out
- Major Site and Development Fee Sheet and Fee
(*make checks payable to City of North Port*)

Note

Please be advised that each application is considered a separate petition and will be reviewed as such. Packets will not be processed if incomplete or missing requested information.

If there is more than one property owner of the subject property, all owners must complete an affidavit.



City of North Port
Neighborhood Development Services
 4970 City Hall Boulevard, North Port, FL 34286
 Phone: (941) 429-7156 Fax: (941) 429-7164
 Web www.cityofnorthport.com

MAJOR SITE AND DEVELOPMENT APPLICATION

Application Fee: *See Attached Fee Sheet*

Upon making any application to the City for any reason, the applicant agrees to comply with all the requirements of the Unified Land Development Code and further agrees to allow authorized city staff and personnel to enter and inspect the property during normal business hours

This section to be completed by staff

Accepted by: _____ PP: _____ Project #: **MAS** - _____ - _____

Project Name: Heron Creek Apartments

Applicant: Matthew J. Morris, P.E.

Corporation/LLC (If Applicable): Morris Engineering & Consulting, LLC

Mailing Address: 6997 Professional Parkway East, Suite B
Sarasota, FL 34240

Phone: 941-228-4729 Email: mmorris@morrisengineering.net

Property Owner: Marsh Creek Holdings Ltd.
(if different than applicant)

Mailing Address: c/o National Land Management, Inc., 4524 SE 16th Place, Suite 3
Cape Coral, FL 33904

Phone: 239-910-2982 Email: ron@nationallandgroup.net

Architect/Engineer: (If Applicable) Matthew J. Morris, P.E., Morris Engineering & Consulting, LLC

Mailing Address: 6997 Professional Pkwy East, Suite B
Sarasota, FL 34240

Phone: 941-228-4729 Email: mmorris@morrisengineering.net

Contractor: (If Applicable) N/A

Mailing Address: _____

Phone: _____ Email: _____

Surveyor: (If Applicable) Van Buskirk/Fish & Associates, Inc. Alan K. Fish, PSM

Mailing Address: 12450 Unit C Tamiami Trail
North Port, FL 34287

Phone: 941-426-0681 Email: _____

Purpose of Application

Please briefly state what the intended use of the property will be and/or purpose of application:
The project is for the proposed development of one of the Heron Creek Place Phase 2 lots to
include a multi-family apartment complex with related parking, stormwater management system
and utilities.

Property Description

Parcel I.D. No. (s) (Please list Additional Parcel ID's on an attached sheet)

0 9 7 8 - 0 1 - 0 0 0 6

Street Address (if any): 0 Sumter Boulevard, North Port, FL 34287

Legal: Lot(s): _____ Block: _____

Addition: _____ Tract or Parcel: Parcel 1, less Parcel 1A

Subdivision: Heron Creek Place

Section: 21 Township: 39S Range: 21E

Existing land use (e.g., house, commercial structure, vacant): Activity Center (TDR Receiving Zone - Except AC 3)

Zoning Designation PCDN Future Land Use Designation Activity Center (TDR Receiving Zone - Except AC 3)

NOTE: All properties designated Neighborhood Commercial
or are in an Activity Center require Design Review.

Surrounding existing land uses/zoning of adjacent properties:

Direction	Zoning Designation	Existing Land Uses	Future Land Use Designation
North	PCD	Vacant, 110A, 1009, 2630, 1140, 1110, 2210, 1410	Incorporated Area
South	RSF-2	7100, 0100, 0000	Incorporated Area
East	RSF-2	9630, 0100, 0000	Incorporated Area
West	PCD	111X, 1000, 3820, 1620, 0100	Incorporated Area

Is the property located in an Activity Center? No _____ Yes X

If yes, which Activity Center: AC 2 *NOTE: Public Art is required, Urban Design standards apply*

Is the property located in a Village District? No X Yes _____

If yes, which Village District: _____ *NOTE: Village District Pattern Book/Plan standards apply/ Approval from the West Villages Review Committee may apply*

Has this property undergone previous City development review and approval? No _____ Yes X

If yes, what type of application (DMP, MAS, SCP, INF, etc.) _____

If yes, when? (Month/Day/Year) _____/_____/_____

Has this property received variance, waiver, or special exception approval? No X Yes _____

If yes, please describe (attach extra sheets if necessary): _____

Provide the following information for the proposed development: (Answer all that apply)

Total Acres	13.33	Dwelling Units per Acre	
Total Wetland Acres		Percentage of Acres devoted to Storm Water	
Total Acres devoted to Recreational/Open Space	5.603	Percentage of Acres devoted to Open Space	39.18
Percentage of Lot Covered by Building	26.02	Floor Area Ratio	0.260
Total Commercial Acres		Total Building Square Footage of Commercial Use	
Total Residential Acres		Total Number of Residential Units	312
Total Government Acres		Total Building Square Footage of Government Use	
Total Industrial Acres		Total Building Square Footage of Industrial Use	

NEIGHBORHOOD MEETING: Is the development greater than 1 acre or abutting a residential development? No _____ Yes X If yes, a Neighborhood Meeting is required (see ULDC §33-10(U)).

FIRE & RESCUE: Nearest Fire Hydrant: 50 (feet)

TRANSPORTATION:

List the Roadways immediately serving the site: Convergence Way and Front Place

Nearest:

Signalized Intersection: 800 (feet or miles) Stop Sign: 300 (feet or miles)

Sarasota County Area Transit Stop: 0.05 miles (feet or miles)

UTILITIES:

How will Potable Water service be provided? Please contact North Port Utilities (941) 240-8000.

_____ Private Well (Submit a letter or application from the Sarasota County Department of Health.)

X North Port Utilities (Please provide a letter from the service provider stating that the proposed development is within their service area and that they have adequate capacity to serve the proposed development.)

How will Sanitary Sewer service be provided? Please contact North Port Utilities (941) 240-8000.

_____ Private Septic System (If the property is located within the Conservation Restricted Overlay Zone, a class 1 aerobic water treatment system is required for single family home sites. Submit a letter or application to the Sarasota County Department of Health.)

X North Port Utilities (Please provide a letter from the service provider stating that the proposed development is within their service area and that they have adequate capacity to serve the proposed development.)

ENVIRONMENTAL:

Are there any known Historical or Archaeological sites on the property? No X Yes _____
(If unsure, please contact Sarasota County – Division of Historical Resources (941) 316-1115.)

Please describe: _____

Does the property contain, or is adjacent to, an identified Brownfield site or area? No X Yes _____

Has an Environmental Assessment Report/Review been prepared for this property? No _____ Yes X
If yes, Date survey was conducted: _____

Does the property contain gopher tortoise burrows, scrub jay habitat, or any plant or animal species listed as "rare", "threatened", "endangered", or "species of special concern" by State and /or Federal agencies? If yes, the applicant will be required to produce documents on how listed species or habitats will be protected or managed at the Site Development stage. No X Yes _____

If yes, please indicate which species: _____

STORMWATER: Please contact the City Stormwater Manager, Elizabeth Wong at (941) 240-8321. (Flood Information can be found at <http://www.cityofnorthport.com> Search: Flood Update)

Is the application site in a FEMA Hazardous Flood Zone? No Yes
If yes, what zone? _____

Is the application site in the Conservation Restricted Zone? No Yes
If yes, what zone? _____

Is the application site in the Big Slough Watershed Flood Zone? No Yes
If yes, what is the 100-year 1-day flood elevation? _____ ft. NGVD

Does the application site contain wetlands? No Yes
If yes, how many existing wetland acres: _____

Has the Department of Environmental Protection been notified of wetlands? No Yes

Is the property located in the Myakka River Protection Zone? No Yes

Is the property adjacent to the Myakka River jurisdictional wetlands? No Yes
If yes, please provide acreage and map of the area and schedule a meeting with City Stormwater Manager.

SCHOOL CONCURRENCY: All projects with a residential component shall be approved by the Sarasota County School Board prior to submittal for development to the City of North Port. If applicable, a Letter of Receipt from the Sarasota County School Board must be included with the application.

Is there a residential component to this project? No _____ Yes
If yes, complete the information below and note the concurrency requirements.

How many multi-family dwelling units are projected? _____ School concurrency was addressed with the DRI Dev. Order. These proposed units are within the approved density for the DRI.

What is the projected construction start date? _____ School concurrency was addressed with the DRI Dev. Order. These proposed units are within the approved density for the DRI.

What is the projected build-out date? _____ School concurrency was addressed with the DRI Dev. Order. These proposed units are within the approved density for the DRI.

Will the project be phased? No Yes _____

Are there any deed restrictions or resident eligibility restrictions (e.g., adult community, work force housing)?
No: Yes: _____ If yes, please describe: _____

PLEASE CONTACT SARASOTA COUNTY SCHOOL BOARD REGARDING SCHOOL CONCURRENCY REQUIREMENTS (941) 927-9000 extension 69052. A School Concurrency Determination letter of receipt from the Sarasota County School Board must be included as part of the development review package submittal. A development order will not be issued until a school concurrency determination is approved by the Sarasota County School Board. <https://www.sarasotacountyschools.net/departments/lrp/default.aspx?id=1668>

All information provided on this application is true and correct to the best of my knowledge.



Signature of Applicant

April 22, 2022

Date

Matthew J. Morris

Print Applicant Name

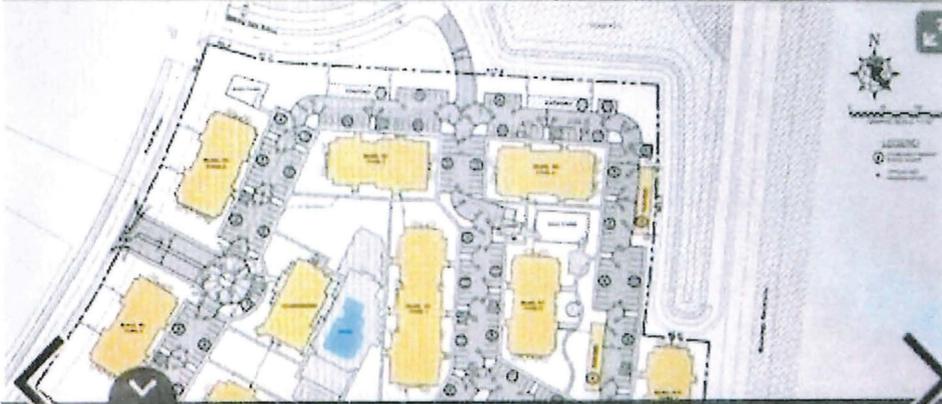
Dan Lobeck

S



A story map   

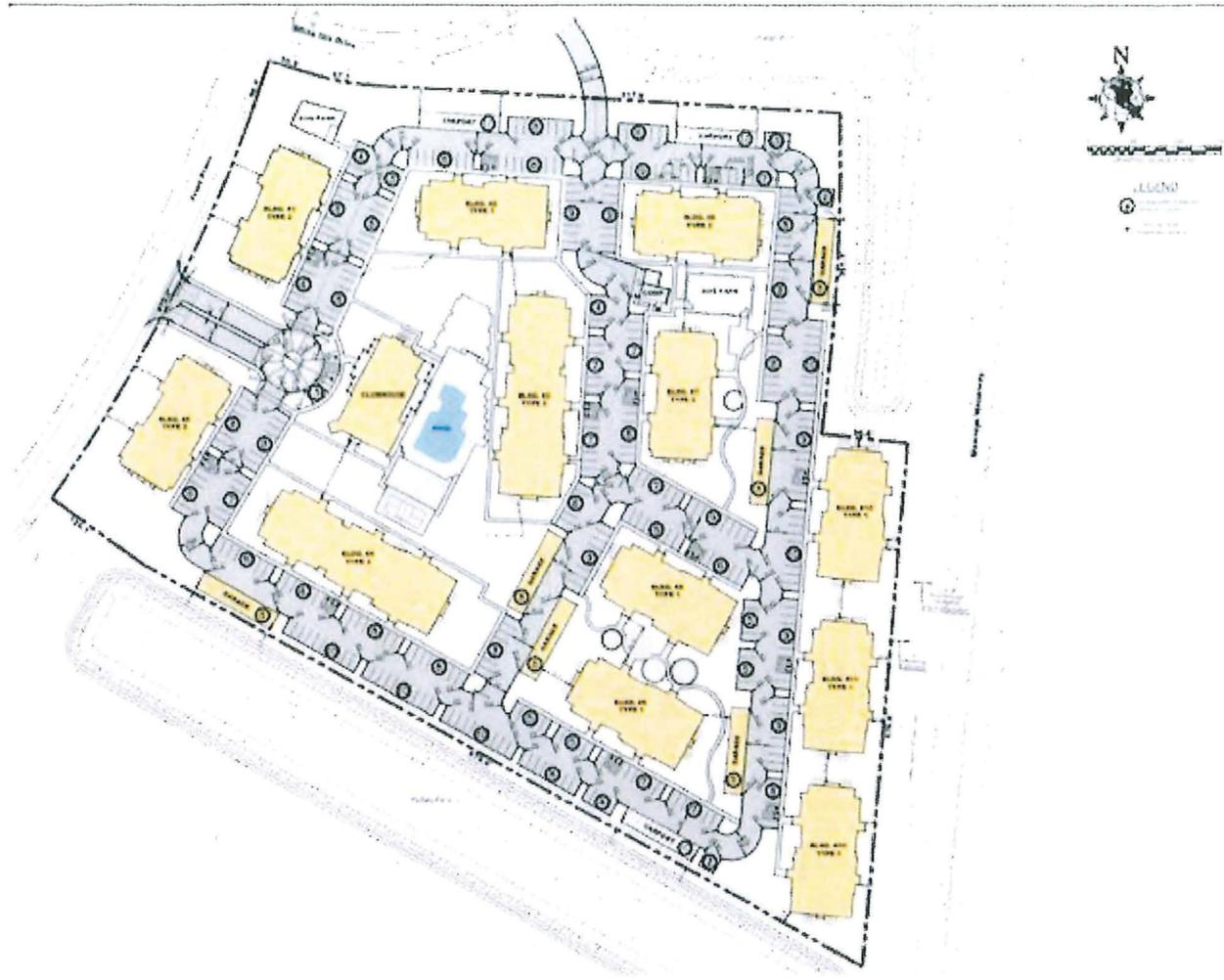
NorthPort
FLORIDA



MAS-22-125, Heron Creek Apartments

The project is for the proposed development of one of the Heron Creek Place Phase 2 lots to include a multi-family apartment complex with related parking, stormwater management system and utilities. The development includes twelve buildings, with 312 total units (3-stories high). There will be a mix of 1, 2 and 3-bedroom units. Separate garage buildings and carports are also planned. Onsite amenities are proposed, including a clubhouse with pool and two dog parks.

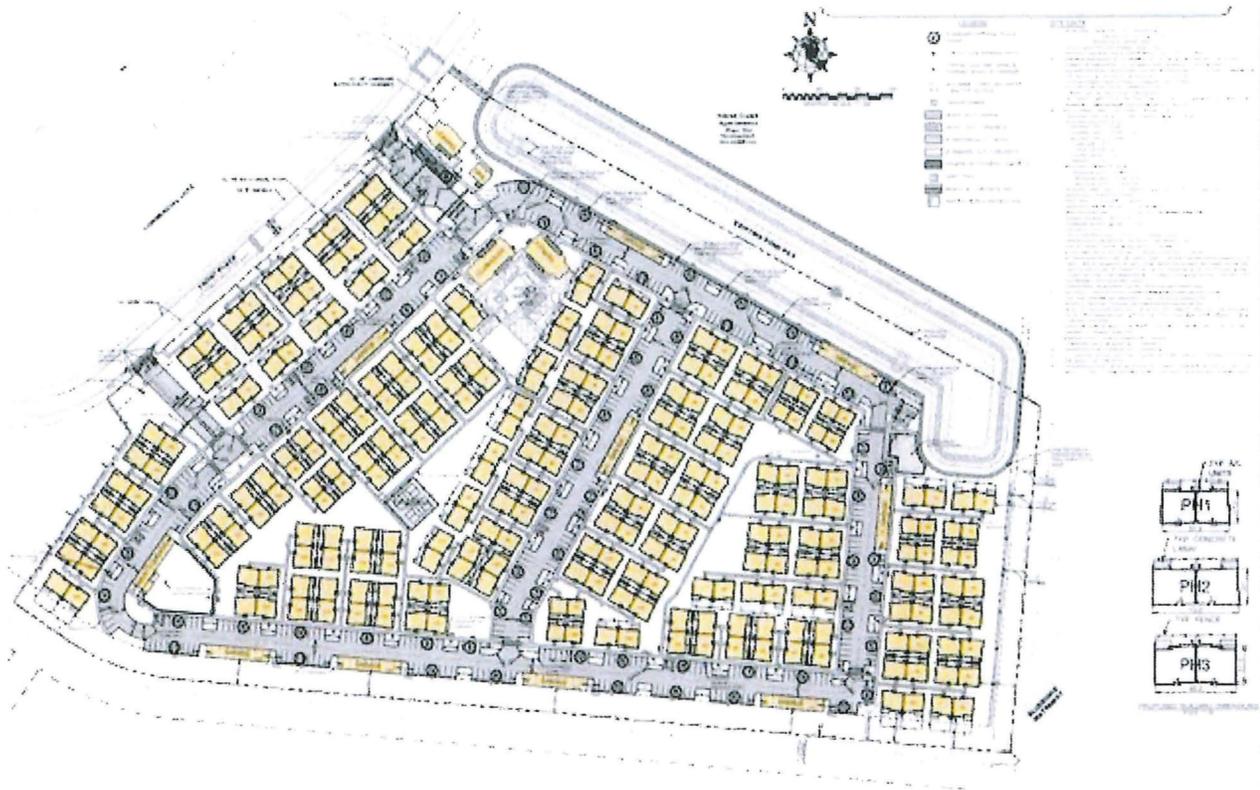




Sent from my iPad

Dan Lobeck

The Hadley - phase II



Sent from my iPad



CITY OF NORTH PORT
Neighborhood Development Services
Planning Division
4970 City Hall Boulevard
North Port, FL 34286-4100
www.cityofnorthport.com
Phone (941) 429-7156

DATE RECEIVED – DATE STAMP
CITY OF NORTH PORT
PLANNING
JUN 27 2019
RECEIVED

MAJOR SITE AND DEVELOPMENT APPLICATION

Upon making any application to the City for any reason, the applicant agrees to comply with all the requirements of the Unified Land Development Code and further agrees to allow authorized city staff and personnel to enter and inspect the property during normal business hours

Received ok to process 6/27/19
Date Application Received: 6/27/19 Accepted by: [Signature] Project No: MAS-19-140

Above to Be Completed by Planning Staff P.P. _____

Project Name: Experience Living at North Port

Name of Applicant: NX North Port Owner LLC

Name of Corporation/LLC (If Applicable): NX North Port Owner LLC

Street Address: 1621 18th Street, Suite 250

City: Denver State: CO Zip Code: 80202

Phone: 303-244-0710 FAX No. NA E-mail: william.maggard@nexcoregroup.com

Name of Property Owner: (if different from the applicant above) Marsh Creek Holdings LTD

Street Address: 4524 SE 16th Place, Suite 3

City: Cape Coral State: FL Zip Code: 33904

Phone: 239-542-1010 FAX No. NA E-mail: ron@nationallandgroup.net

Name of Architect: (If Applicable) Jami Mohlenkamp, AIA

Street Address: 3003 Larimer Street

City: Denver State: CO Zip Code: 80205

Phone: 303-861-5704 FAX No. NA E-mail: Jmohlenkamp@ozarch.com

Name of Engineer: (If Applicable) Peter T. Van Buskirk, P.E., Kimely-Horn

Street Address: 1412 Jackson Street, Suite 2

City: Fort Myers State: FL Zip Code: 33901

Phone: 239-271-2650 FAX No. NA E-mail: peter.vanbuskirk@kimley-horn.com

Name of Attorney: (If Applicable) NA

Street Address: NA

City: NA State: NA Zip Code: NA

Phone: NA FAX No. NA E-mail: NA

Name of Surveyor: (If Applicable) Scott Whitaker, P.S.M

Street Address: 13401 McGregor Boulevard, Suite 1

City: Fort Myers State: FL Zip Code: 33919

Phone: 239-481-1331 FAX No. 239-481-1073 E-mail: NA

Name of Contractor: (If Applicable) NA

Street Address: NA

City: NA State: NA Zip Code: NA

Phone: NA FAX No. NA E-mail: NA

Property Description: (Please list additional PID's on a separate sheet of paper) (Information can be found at <http://www.sc-pa.com/testsearch/>)

Parcel I.D. No(s): 1. 0 9 7 9 - 1 1 - 0 0 0 1 2.

Legal: Lot(s): 8 Block: 1 Addition: _____ Tract or Parcel: _____

Subdivision: Heron Creek Town Center North

Section: 21&22 Township: 39S Range: 21E Acreage: 17.14

Street Address: N Main St. North Port, Florida, 34286

Purpose of Application: Please briefly state what the intended use of the property will be or why you are making this application (e.g. general project description).

The applicant is planning the development of an Adult Congregate Living Facility, consisting of 167 units (80 independent living, (80 independent living, 60 assisted living, and 24 memory care) in approximately 170,325 SF of building area

Has this property undergone previous City development review and approval?

No: _____ Yes: If yes, when? (Month/Date/Year) SDP 14-104; INF 14-122; PLF 16-061

Has this property received variance, waiver or special exception permit approval?

No: Yes: _____ If yes, please describe: NA

Existing land use (e.g., house, commercial structure, vacant): Vacant

Surrounding existing land uses/zoning of adjacent properties:

North: GV - Government Use

South: PCD - Planned Commercial Development

East: RSF-2 - Residential Single Family 2

West: PCD - Planned Commercial Development

Is property located near a Gateway? No: X Yes: _____ (distance) _____ feet

Adopted Future Land Use Map Designation: Activity Center #2

Adopted Zoning Map Designation: PCD/OP1

Provide the following information relative to the proposed development: (Answer all that apply)

<u>17.14</u>	Total acres		
<u>1</u>	Total number of lots	<u>0.23 FAR</u>	Floor area ratio or dwelling units / acre
<u>0</u>	Total wetland acres	<u>0</u>	Total park acres
<u>17.14</u>	Total commercial acres	<u>0</u>	Total building square footage of commercial use
<u>0</u>	Total residential acres	<u>167</u>	Total number of residential units
<u>0</u>	Total government acres	<u>0</u>	Total building square footage of government use
<u>0</u>	Total industrial acres	<u>0</u>	Total building square footage of industrial use
<u>1</u>	Total number of buildings	<u>8.8%</u>	Percentage of lot coverage by buildings
<u>120</u>	Number of off-street parking spaces	<u>5</u>	Number of handicapped parking spaces
<u>56'-11"</u>	Building height measured in feet		
<u>1,111 ft</u>	Minimum depth of property		
<u>503 ft</u>	Minimum width of property		
<u>16.11 ac.</u>	Total maximum surface area of all impervious surfaces		
<u>21.4%</u>	Percentage of lot coverage of all impervious surfaces		
<u>0</u>	Drive-thru access (please check if applicable)		
<u>78.6%</u>	Percentage of acres devoted to open space and storm water requirements		

TRAFFIC:

List the Roadways immediately serving the site:

N Main Street

City Center Boulevard

Nearest: Traffic Control Light: 900 (feet) Stop Sign: 900 (feet)

FIRE & RESCUE:

Nearest: Fire Hydrant: 100 (feet)

UTILITIES:

How will Potable Water service be provided? Please contact North Port Utilities (941) 240-8000.

Private Well (Submit a letter or application from the Sarasota County Department of Health.)

North Port Utilities (Please provide a letter from the service provider stating that the proposed development is within their service area and that they have adequate capacity to serve the proposed development.)

How will Sanitary Sewer service be provided? Please contact North Port Utilities (941) 240-8000.

Private Septic System (If property is located in the Conservation Restricted Overlay Zone a class 1 aerobic water treatment system is required for single family home sites. Submit a letter or application the Sarasota County Department of Health.)

North Port Utilities (Please provide a letter from the service provider stating that the proposed development is within their service area and that they have adequate capacity to serve the proposed development.)

SCHOOL CONCURRENCY:

All projects with a residential component shall be approved by the Sarasota County School Board prior to submittal for development to the City of North Port.

Is there a residential component to this project? No: Yes: If yes, complete the information below and note the concurrency requirements.

How many multi-family dwelling units are projected? _____

What is the projected construction start date? _____

What is the projected build-out date? _____

Will the project be phased? _____

Multi-family (Range) or monthly rent: (please provide projected value) _____

Are there any deed restrictions or other demographics (adult community, work force housing)?

No: Yes: Please describe: _____

PLEASE CONTACT SARASOTA COUNTY SCHOOL BOARD REGARDING SCHOOL CONCURRENCY REQUIREMENTS At (941) 927-9000 extension 69052. A letter of receipt must be included as part of the development review package submittal.

A School Concurrency Determination from the Sarasota County School Board is required at the time of final plans approval. A development order will not be issued until concurrency approved by the Sarasota County School Board.

STORMWATER: Please contact the City Stormwater Manager/Environmentalist at (941) 240-8321.
(Flood Information can be found at <http://www.cityofnorthport.com> Search: Flood Update)

Is the application site in a FEMA Hazardous Flood Zone? No: Yes:
If yes, what zone? _____

Is the application site in the Conservation Restricted Zone? No: Yes:
If yes, what zone? _____

Is the application site in the Big Slough Watershed Flood Zone? No: Yes:
If yes, what is the 100-year 1-day flood elevation? _____ ft. NGVD

Does the application site contain wetlands? Yes _____ No If yes, existing wetland acres: _____

Has the Departmental of Environmental Protection been notified of wetlands? Yes _____ No

Is the property located in the Myakka River Protection Zone? No: Yes: _____

Is the property adjacent to the Myakka River jurisdictional wetlands? No: Yes: _____

(If yes, please provide acreage and map of the area and schedule a meeting with City Stormwater Manager/Environmentalist.)

ENVIRONMENTAL:

Are there any known Historical or Archaeological sites on the property?

(If unsure, please contact Sarasota County – Division of Historical Resources, (941) 316-1115.)

No: Yes: _____ Please describe: _____

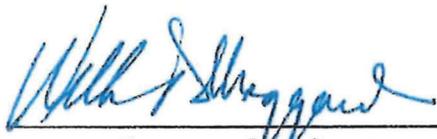
Has an Environmental Assessment Report/Review been prepared for this property?

No _____ Yes Date survey was conducted: April 2, 2019

Does the property contain gopher tortoise burrows, scrub jay habit, or any plant or animal species listed as "rare", "threatened", "endangered", or "species of special concern" by State and/or Federal agencies? If yes, the applicant will be required to produce documents on how listed species or habitats will be protected or managed at the Site Development stage.

No: Yes: _____ Please indicate which ones: _____

***All of the information provided on this application is true and correct to the best of my knowledge.**



Signature of Applicant

6.20.19

Date

William D. Maggard

Print Applicant Name



Bill Furst
SARASOTA COUNTY
PROPERTY APPRAISER

Property Record Information for 0991002050

Ownership:

HERON CREEK ASSOCIATES LTD
1990 MAIN ST STE 801, SARASOTA, FL, 34236-8000

Situs Address:

0 HERON CREEK BLVD NORTH PORT, FL, 34287

Land Area: 428,067 Sq.Ft.

Municipality: City of North Port

Subdivision: 1804 - PORT CHARLOTTE SUB 52

Property Use: 9900 - Acreage Not Ag

Status: OPEN

Sec/Twp/Rge: 28-39S-21E

Census: 121150027371

Zoning: RSF2 - RESIDENTIAL, SINGLE FAMILY

Total Living Units: 0

Parcel Description: PROPOSED HERON CREEK UNIT 12 DESC IN ORI
2005017560, CONTAINING 9.8 C-AC M/L

Buildings

Vacant Land

Extra Features

There are no extra features associated with this parcel

Values

Year	Land	Building	Extra Feature	Just	Assessed	Exemptions	Taxable	Cap
2024	\$1,058,400	\$0	\$0	\$1,058,400	\$926,110	\$0	\$926,110	\$132,290
2023	\$1,048,600	\$0	\$0	\$1,048,600	\$841,918	\$0	\$841,918	\$206,682
2022	\$980,000	\$0	\$0	\$980,000	\$765,380	\$0	\$765,380	\$214,620
2021	\$695,800	\$0	\$0	\$695,800	\$695,800	\$0	\$695,800	\$0
2020	\$695,800	\$0	\$0	\$695,800	\$695,800	\$0	\$695,800	\$0
2019	\$661,000	\$0	\$0	\$661,000	\$661,000	\$0	\$661,000	\$0
2018	\$630,500	\$0	\$0	\$630,500	\$630,500	\$0	\$630,500	\$0
2017	\$630,500	\$0	\$0	\$630,500	\$578,600	\$0	\$578,600	\$51,900
2016	\$526,000	\$0	\$0	\$526,000	\$526,000	\$0	\$526,000	\$0
2015	\$519,300	\$0	\$0	\$519,300	\$500,500	\$0	\$500,500	\$18,800

Property taxes may be affected with change in ownership. When buying real estate, you should not assume that property taxes will remain the same. Use our [tax estimator](#) to estimate your new taxes.

Current Exemptions

Homestead Property: No

There are no exemptions associated with this parcel.

Sales & Transfers

Transfer Date	Recorded Consideration	Instrument Number	Qualification Code	Grantor/Seller	Instrument Type
1/21/2005	\$1,730,000	2005017560	X2	MARSH CREEK HOLDINGS LTD,	WD
5/23/1996	\$3,918,800	2857/433	X2	MARSH CREEK HOLDINGS LTD	WD

Associated Tangible Accounts

There are no associated tangible accounts for this parcel

Property record information last updated on: 7/16/2024

 This property is in a SFHA or CFHA. Click to view the [Flood Zone Map](#).

 Different portions of a property can be in different flood zones. Click to view the [Flood Zone Map](#).

<u>FIRM Panel</u>	<u>Floodway</u>	<u>SFHA ***</u>	<u>Flood Zone **</u>	<u>Community</u>	<u>Base Flood Elevation (ft)</u>	<u>CFHA *</u>
0387G	OUT	IN	AE	120279	15.5	OUT
0387G	OUT	OUT	X	120279		OUT
0387G	OUT	OUT	X500	120279		OUT

* If your property is in a SFHA or CFHA, use the [Flood Zone Map](#) to determine if the building footprint is within the flood area.

** For more information on flood and flood related issues specific to this property, call (941) 240-8050

*** Federal law requires flood insurance for all properties in SFHAs with federally backed mortgages.

FEMA Flood Zone Data provided by Sarasota County Government as of 6/25/2024

For general questions regarding the flood map, call (941) 861-5000.



001972

	Allowable	Used	Transferred	Remaining	
Single Family	903	833	--	70	Units
Multi Family	300	312	450	438	Units
Golf Course	27 holes	27 holes	--	--	
Tennis Club	5 courts	5 courts	--	--	
Medical/Professional	43,000	26,933	--	16,067	Sq Ft
Office General	40,000	34,400	--	5,600	Sq Ft
Retail Shopping Center	767,425	203,736	-107,160	456,529	Sq Ft

Updated 3/24/23

001972

Residential			
<u>Project Name</u>	<u>ID</u>	<u>Units</u>	<u>Unit Type</u>
Parcel K	DMP-21-232	180	MF
Towne Center Apts	PRE-21-336; MAS-22-125	312	MF
Arcadia	MAS-23-XXX	268	SF

Non-Residential			
<u>Project Name</u>	<u>Lot # and Plat</u>	<u>ID</u>	<u>SQ FT</u>
Lot 3 Towne Center N	Lot 3, Towne Center North	MAS-21-267	7,346
Lot 7	Lot 7, Heron Creek Place 1	MAS-21-150	4,860
Florida Cancer Specialists	Lot 4, Towne Center North	MAS-20-091	20,000
The Gallery	Lot 8, Towne Center North	MAS-19-140	34,400
Taco Bell	1/2 of Lot 2, Towne Center North	MAS-17-218	1,925
Tommy's Car Wash	Lot 8, Heron Creek Place 1	MAS-17-155	5,000
Waffle House	1/2 of Lot 2, Towne Center North	MAS-17-107	1,635
O'Reilly's	Lot 9, Heron Creek Place 1	MAS-17-030	7,225
Lot 5 - Multi-Tenant	Lot 5, Heron Creek Place 1	MAS-16-241	9,866
Heron Creek Animal Hospital	Lot 4, Shoppes of Heron Creek	MAS-16-131	6,933
Circle K	Lot 1, Towne Center North	MAS-15-180	4,968
Walmart Fuel Station	Lot 6, Heron Creek Place 1	MAS-14-145	740
Walmart Neighborhood Market	Lot 1A, Heron Creek Place 1	MAS-14-144	43,101
Dunkin Donuts	Parcel C, Towne Center	MAS-14-057	5,000
McDonald's	Lot 8, Heron Creek Place 1	MAS-12-121	3,890
Lot 3 Shoppes - Bank	Lot 3, Shoppes of Heron Creek	MAS-07-072	5,000
Lot 2 Shoppes - Shoppes at North Port	Lot 2, Shoppes of Heron Creek	MAS-06-153	15,400
Walgreen's	Lot 1, Shoppes of Heron Creek	MAS-06-152	14,820
Lot 5 Shoppes	Lot 5, Shoppes of Heron Creek	MAS-05-004	5,155
7-11	Parcel A, Towne Center	MAS-02-019	2,690
Publix and Shops	Parcel B, Towne Center	MAS-00-106	65,115
Total square feet for commercial entitled			203,736
Total square feet for medical/professional entitled			26,933
Total square feet for office entitled			34,400

Traffic Impact Statement
Heron Creek Unit 12 (Parcel K) – Heron Creek Boulevard

Based on the Institute of Transportation Engineers Trip Generation, 11th Edition, 2008.

Proposed Land Use: LUC 230 residential Condominium/Townhouse (150 Units)

- Average Vehicle Trip Ends on a weekday vs. dwelling units
 150 Units *6.74 Trips/Unit = 1011 2-Way Trip Ends
 entering = 50% = 506
 exiting = 50% = 505

- Average Vehicle Trip Ends on a weekday, a.m. peak hour of generator vs. dwelling units

entering = 17	Right turn = 48% = 8	Left turn = 52% = 9
exiting = 54	Right turn = 52% = 28	Left turn = 48% = 26

- Average Vehicle Trip Ends on a weekday, p.m. peak hour of generator vs. dwelling units

entering = 53	Right turn = 48% = 25	Left turn = 52% = 28
exiting = 32	Right turn = 52% = 17	Left turn = 48% = 15

Traffic Mitigation Plan:

- Heron Creek Boulevard is classified as a private local roadway with a posted speed limit of 15 m.p.h. Traffic is controlled through stop signs and stop bars. Off-site impacts have been addressed through the Traffic portion of the Heron Creek D.R.I. Development Order.

- **Acceleration lane:**
 Only required on high speed facilities which are posted 40 m.p.h. or more and which have a significant traffic volume. Since this is a low speed facility and a low traffic volume, an acceleration lane is not required.

- **Deceleration and left turn lane (local street):**
 - 1) The posted speed is less than 30 m.p.h. (15 m.p.h)
 - 2) There are less than 60 left turning vehicles from the two lane local street during a.m. or p.m. peak hour, there are less than 500 opposing through traffic during a.m. or p.m. peak hour.
 - 3) The available sight distance for a left turning vehicle or approaching vehicle is not less than the value 125' for the posted speed limit.
 - 4) Access control is not an applicable warrant in this case.
 - 5) Traffic control: The intersecting street or access point driveway is not controlled by a traffic signal (stop signs and stop bars are used).

Therefore, a deceleration and left turn lane is not required.

- **Separate left turn lane (local street):**

- 1) The posted speed limit is less than 30 m.p.h. (15 m.p.h.)
- 2) There are less than 90 left turning vehicles from the intersection street or access point driveway during either a.m. or p.m. peak hour
- 3) Available sight distance is not an applicable warrant in this case.
- 4) Access control is not an applicable warrant in this case.
- 5) There is not an intersecting street or access point driveway controlled by a traffic signal (stop signs and stop bars used).

Therefore, a separate left turn lane is not required.

- **Deceleration and right turn lane (local street):**

- 1) The posted speed limit is less than 30 m.p.h. (15 m.p.h.)
- 2) The number of right turning movements from the local street is less than 60 during either the a.m. or p.m. peak hour.
- 3) If the available sight distance for a right turning vehicle to be seen by through traffic traveling in the same direction is not less than 125'.
- 4) Access control is not an applicable warrant in this case.
- 5) There is no intersecting street or access point driveway controlled by a traffic signal (stop signs and stop bars used).

Therefore, a deceleration and right turn lane is not required.

- **Separate right turn lane (local street):**

- 1) The posted speed limit is less than 30 m.p.h. (15 m.p.h.)
- 2) The number of right turning vehicles from the access point driveway is less than 120 during either the a.m. or p.m. peak hour
- 3) Available sight distance is not an applicable warrant in this case.
- 4) Access control is not an applicable warrant in this case.
- 5) Traffic control
 - i) Intersecting street or access point driveway is not controlled by a traffic signal.
 - ii) An acceleration lane is not provided on the local street and the right turn movement is controlled by a yield or stop sign.

Therefore, a separate right turn lane is not required.

With regard to the left-turn lane, there is even less of an impact (15 additional north-bound left-turns), therefore we would propose that the current left turn lane is sufficient.

I certify that this Traffic Impact statement for Heron Creek Unit 12 (Parcel K) was prepared by me, or under my direct supervision.

Matthew J. Morris, P.E.
FL PE No. 68434



Utilities Department
6644 West Price Boulevard
North Port, Florida 34291-4106
(941) 240-8000 Fax (941) 240-8023



AVAILABILITY OF WATER AND/OR SEWER SERVICES LETTER

Date: May 17, 2021

Customer Information:

Name: Heron Creek Associates, Ltd c/o Morris Engineering & Consulting, LLC
Phone Number: 941-400-2946 Fax: N/A
Parcel ID: 0991-00-2050
Per Your Inquiry of: Lot(s) Block Section 28
Street Name 0 Heron Creek Drive

*If water and/or sewer service is noted below as NOT being available, any representation contained herein is valid only for a period of thirty (30) days from the date of this letter. If an executed New Residential Service form, along with the proper payment, is not made within the prescribed period, said representation will be null and void.

Please note: A completed copy of this form will be required prior to a building permit being issued. No payment will be accepted without this form.

If you have any questions, please do not hesitate to contact our office at (941) 240-8000.

Sincerely,
NORTH PORT UTILITIES

FOR OFFICE USE ONLY

Verified By: Brandon Kersey Date: 5/24/2021

*Water Service: [checked] is [] is not [] is conditional**
*Sewer Service: [checked] is [] is not [] is conditional**

**CONDITIONAL APPROVAL PENDING WATER/SEWER LINES CERTIFIED AND TURNED OVER TO THE CITY OF NORTH PORT. METER FEES TO BE PAID BEFORE CERTIFICATE OF OCCUPANCY WILL BE ISSUED.

Type of Installation: [checked] set [] short [] long

Length of front footage for property: _____

Meter Set: [] Left [] Right
[] Other, please specify: _____

Per the North Port City Code Appendix A – B. PLANNING AND ZONING FEES

General Fees, the “Appeal to zoning board of appeal/zoning hearing officer” has a fee of \$750.00 + legal ads. The legal ads fee is based on the invoice provided by the local publication of which the legal ad was published in.

Appeal to zoning board of appeals/zoning hearing officer	\$750.00 + legal ads
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PRE-APPLICATION COMMENTS

Department: Building – Arborist Review

Staff Reviewer: David Jayroe 941-248-9477

Today's Date: June 9, 2021

- | | |
|--|--|
| <input type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input checked="" type="checkbox"/> No Objection | <input type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
-

COMMENTS:

1. Applicant shall place all trees and landscaping per code. Applicant shall adhere to the "right tree, right place" policy. No medium or large canopy trees shall be placed within the setback of 20' and 30' respectively of overhead utilities. Trees categorized as small may be planted adjacent to power lines (a six-foot setback is recommended). Palms that will attain more than 10' of vertical height shall be placed with a setback equal to the maximum frond length plus 3'.
2. All streets public and private will be required to landscape with trees from the Priority Street Tree List Ch. 45-20 ULDC. All planting locations must meet approval of City Manager or Designee prior to planting and be clearly shown on final landscape plans.
3. The landscape plan needs to identify each type of tree to be planted with a tree legend. In addition to the legend, a list of each tree and the quantity shall be stated to calculate canopy coverage. A minimum 35 % canopy coverage is required per the U.L.D.C. chap 45. Perimeter buffer trees or required street trees are not to account for the required 35% canopy coverage.
4. Submit the tree location survey. Pursuant to Unified Land Development Code (ULDC) Section 45-6, E. (1)-(8), this survey must clearly identify which trees are proposed to be saved and which trees are proposed to be removed. Also provide a table that lists the number, size and species of trees that are proposed to be removed and the number, size and species of trees that will be preserved
5. Per U.L.D.C. chapter 45-20 For all new developments being processed as a major site and development plan, preliminary or final subdivision plan, or development concept plan, the owner shall install street trees along all adjacent streets and streets that are internal to the development tract
6. Per U.L.D.C. chap 21-14(b) All required landscape areas shall be equipped with permanent irrigation systems. Where appropriate, it is strongly encouraged that micro irrigation be used and bubblers for each tree. This provision shall not apply to existing

plant or tree communities or to parcels for single family and two family dwellings. Please submit copies of purposed irrigation specs.

7. Per U.L.D.C 45-20. Where a tree(s) is planted closer than 5 feet (measured from center of the tree) from a street, sidewalk, driveway, or structure a root barrier shall be installed. Root barriers for trees shall be installed along the edge of the structure or paving or curb. The root barrier shall be a minimum of 24 inches deep, but depending on the size, location, and species of the tree to be planted, a larger barrier may be required. Please provide a detailed spec in the landscape plan.

PRE-APPLICATION COMMENTS

Department: Building - Structural/Zoning Review

Staff Reviewer: Contact Josh Thurmer (941) 429-7038

Today's Date: June 3, 2021

- | | |
|--|--|
| <input type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input checked="" type="checkbox"/> No Objection | <input type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
-

BUILDING COMMENTS:

1. Permit information shall be separated into site specific permits. Separate permits are required for each individual structure. Additional permits shall be submitted as required by Zoning Regulations. This may include Dumpster Enclosures, Signs, Shade Structures, etc. Shop drawings for special construction shall be reviewed and approved by Engineer of Record (EOR) and submitted with foundation design at time of request for permit to construct. When the proposed project is for a service station, plans for gas pumps, underground utilities, gas storage tanks, site lighting etc. shall be submitted and reviewed as a part of the main structures permit.
2. Current permit applications shall include a completed Data Summary sheet. The current Code cycle is 2020 Florida Building Codes and the 2018 Florida Fire Prevention Code 7th Edition. Provide correct Basic Wind Speed design in Miles Per Hour (MPH), Exposure C.
3. Plans shall include compliancy with the **City of North Port's Unified Land Development Code**. They are available @ www.municode.com library/Florida/North Port/Unified Land Development Code
4. For each permit, provide a side by side Florida Building Code (FBC) and Florida Fire Prevention Codes Analysis. Including **Chapter 60 Fire Safety Regulations, North Port ULDC**
5. These plans shall be compliant with Development Order. Update any modifications / revisions that may have occurred prior to Final Development Order. A copy of the approved Development Order with Comments shall be a part of the submittal.
6. Important Note: Fire Alarms, Fire Sprinklers, Fire Suppression permits require signed and sealed Engineering. When they are to be attached to a primary permit, they **shall not** be submitted until the primary permit has been **issued**.

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

PRE-APPLICATION COMMENTS

Department: Fire & Rescue Review

Staff Reviewer: Peter J. Marietti III, Fire Marshal – (941) 240-8180

Today's Date: June 9, 2021

- | | |
|--|--|
| <input type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input checked="" type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input type="checkbox"/> No Objection | <input type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
-

FORMAL SUBMITTAL SHALL ADDRESS THE FOLLOWING:

All proposed projects or developments must comply with the Florida Fire Prevention Code (FFPC), 7th Edition (NFPA 1 – Fire Code, 2018 Edition with State of Florida Amendments) and the City of North Port Unified Land Development Code (ULDC), Chapters 37 and 60 as outlined prior to formal submittal.

Emergency Access Plans (EAP) for Fire Apparatus Access must be submitted for review and approval prior to commencement of all new construction as outlined in Florida Fire Prevention Code (FFPC), 7th Edition (NFPA-1 Fire Code, 2018 Edition), § 1:18.1.3 and § 60-10(A-C) of the City of North Port's ULDC.

Per § 60-5 of the City of North Port's ULDC, Fire Sprinkler Systems must be provided in newly erected multi-family (**three or more attached units**) buildings. Each shall be designed and constructed with a complete fire sprinkler system in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems, 2016 Edition or NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 2016 Edition.

Per § 60-13 of the ULDC, Fire Alarms are required in all new structures and shall be electronically monitored 24 hours a day by a UL listed central station and installed in accordance with NFPA 72, National Fire Alarm Code and NFPA 70, National Electrical Code.

All sprinkler riser and fire alarm panels must be placed on the interior of the structure to provide an environment protected from the Florida climate as outlined in § 60-13 of the City of North Port's ULDC and Chapter 10 of NFPA 72 – National Fire Alarm and Signal Code, 2016 Edition.

Fire hydrants in multi-family (three or more attached units) subdivisions must be spaced not more than 400' apart and capable of delivering fire flows as outlined in with the Florida Fire Prevention Code, 7th edition (NFPA-1 Fire Code, 2018 Edition), § 1:18.4.5.3, Table 1:18.4.5.2.1 and § 1:18.5.

The Hydrant for the Fire Department Connection (FDC) must meet the ULDC, Chapter 60-8 & 60-9; placement of hydrant for the FDC must be on the same side of street or place the FDC on the same side as the hydrant to meet the requirements.

Residential Roadway turning radii must meet the requirements and points of measurement as outlined in § 37-38(A-B) of the City of North Port's ULDC.

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

Per § 60-11 A(4) of the City of North Port's ULDC, the Engineer of Record must submit drawings clearly indicating vehicle stacking and turning radii of all roads, entrances, cul-de-sacs and parking lots.

All new or existing commercial structures that do not support the required level of radio signal strength coverage for Emergency Responders as established by the AHJ must design and install a Two-Way Radio Communication Enhancement System. The system must be capable of transmitting all public safety radio frequencies to meet the requirements set forth in Florida State Statute, the Florida Fire Prevention Code and the AHJ for the City of North Port Fire Rescue.

Per § 60-12 E of the City of North Port's ULDC, shall provide the appropriate number of site elevations for fire department accessibility, a clearly delineated stabilized base approved by the AHJ and meet the requirements set forth in § 60-10 B for secondary or other access roadways. Buildings 1 and 6 would require additional stabilized base alongside Whispering Oaks Drive and Heron Creek Boulevard respectively.

Throughout construction, a minimum of two all-weather emergency access roads must be maintained. Contact the City Fire Marshal @ 941-240-8150 if more specific requirements are needed.

All contractor vehicles and construction dumpsters must be parked on one side of the street only to maintain a minimum of 12 feet clear width on the road for emergency vehicle access.

If there are any questions regarding these requirements, please do not hesitate to contact this office @ (941) 240-8180.

PRE-APPLICATION COMMENTS

Department: Public Works - Infrastructure Review

Staff Reviewer: Ben Newman, P.E. – (941)-240-8320

Today's Date: June 9, 2021

- | | |
|--|--|
| <input type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input checked="" type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input type="checkbox"/> No Objection | <input type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
-

FORMAL SUBMITTAL TO ADDRESS THE FOLLOWING:

The Traffic Impact Statement (TIS) shall include the following:

- Daily trips generated by the proposed development
- Peak AM Hour trips generated by the proposed development
- Peak PM Hour trips generated by the proposed development
- Trip generation rates shall be in compliance with the Institute of Transportation Engineers Trip Generation Manual, latest edition.
- The TIS should be prepared, signed and sealed by a professional engineer licensed by the State of Florida and qualified to prepare the TIS.

As-Builts

- Should denote all deviations to plans by clouds, strike-thru and red font for new data/information
- Should be certified as record drawings by the engineer-of-record.

Compliance with the North Port Unified Land Development Code.

COMMENTS:

PRE-APPLICATION COMMENTS

Department: Public Works / Solid Waste Review

Staff Reviewer: Frank Lama – (941) 240-8074

Today's Date: June 8, 2021

- | | |
|--|--|
| <input checked="" type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input type="checkbox"/> No Objection | <input type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
-

FORMAL SUBMITTAL TO ADDRESS THE FOLLOWING:

Dumpster/Compactor Corral Requirements

All commercial dumpsters/compactors must be placed inside of a corral. Each applicant is required to submit a plan showing solid waste and recycling collection points to ensure that they meet the City of North Port Solid Waste guidelines.

Dumpster/Compactor Corral Specifications:

- Corral pad must be constructed of concrete four inches thick
- Corral pad must be inclined from front to back to allow water to run off (one inch in twelve feet)
- A concrete corral will enclose the dumpster/compactor pad, minimum six feet high on three sides, with a gate on the front
- The front gate must be a double gate, the width of the corral frontal area, minus required structural supports on the sides
- Minimum gate opening is 20' x 10' x 6'
- The front gates must not have a center gate support that would impede access to the dumpster/compactor.
- The gates must have some sort of latch mechanism to ensure the gates remain open during entry, dumping process and exit
- The back corral wall must have a sturdy, reliable backstop to prevent damage
- Compactor must have guide rails, rails with stops or island

The most successful designs incorporate anchor or hurricane fence gates. The gate must be a material that is opaque or at least 75% translucent. Some designs employ a side gate(s) for easy tenant access. The side gate design avoids tenants having to open and close the heavier front gate doors. The front gate then is for the use of the solid waste crew to empty the dumpster

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

Minimum Size

Dumpster corral minimum interior dimensions must be twenty (20) feet wide by (10) ten feet deep allowing for both garbage and recycling dumpsters in the enclosure. That requires a minimum 20 feet respectively from any interior post or bumper to the closed gate. Tenants can then gain 360° access to the dumpster to fill it equally.

Compactor minimum corral size will depend on the size of the unit.

Compactor Minimum Size

	CORRAL SIZE		
Size of Unit (cubic yards)	Total Length	Width	Height
15	16'5"	9'	8'5"
20	18'11"	9'	8'5"
25	20'11"	9'	9'8"
30	22'5"	9'	9'8"

Plus 2 feet of clearance around a compacting unit.



HERON CREEK UNIT 12 PARCEL K
PRE-21-167

Approach Specifications:

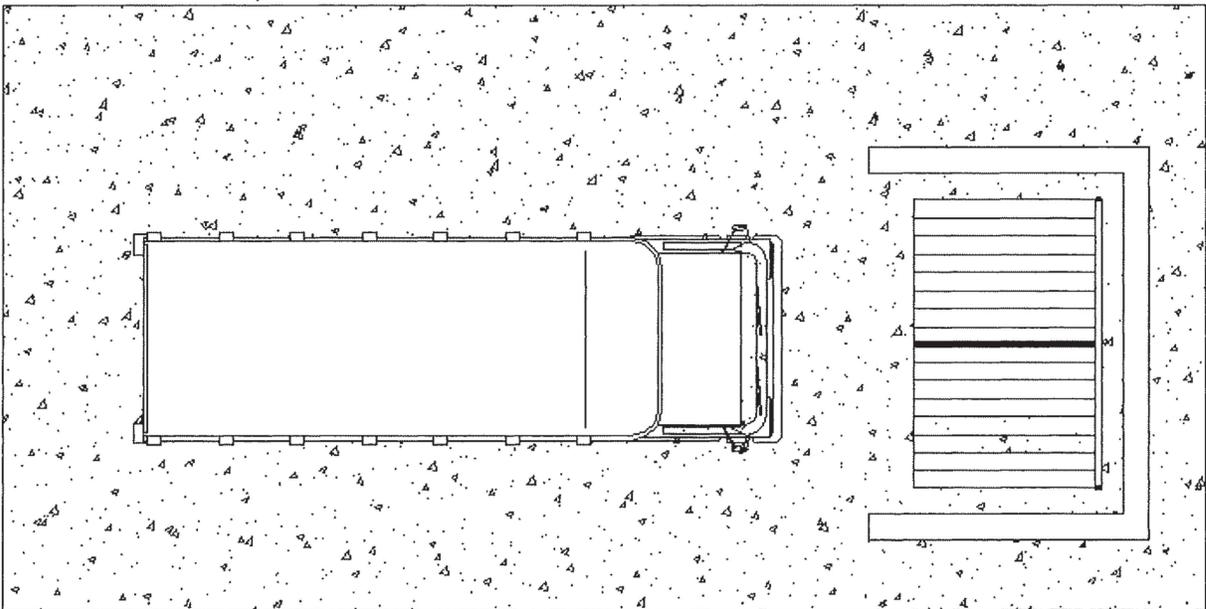
Asphalt/concrete driveways must be able to withstand trucks weighing up to 62,000 lbs gross vehicle weight. The approach elevation must be nearly level to allow alignment and meshing of the truck and the dumpster and straight for at least 50 feet.

Space in front of the corral must be sufficient to allow safe ingress and egress for the collection truck. Enclosure location must reduce or eliminate the need for the collection trucks to drive onto private property whenever possible. All collection truck access routes must have at least eighteen (18) feet vertical height drive clearance and 12 foot width clearance. Standard 209 inch wheel base, turning radius of 40 feet, curb to curb diameter is 83 feet.

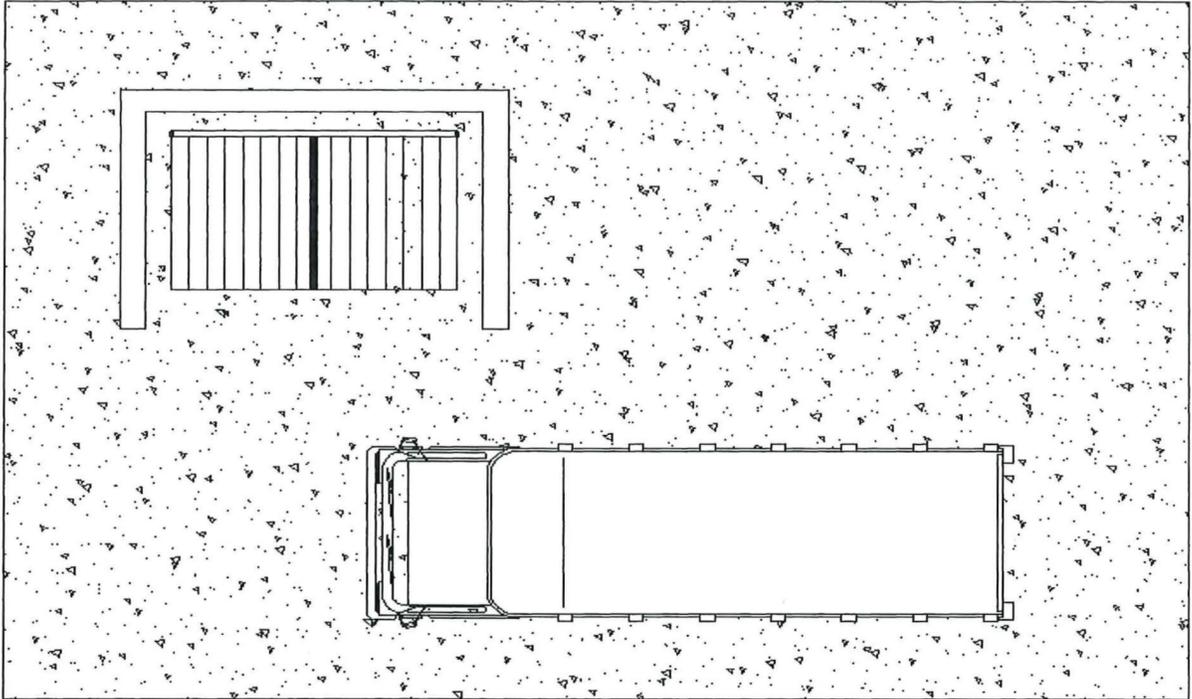
It is difficult and dangerous for a collection truck to back-up so backing up is limited to service of the container. A turnaround or separate exit that allows the truck to exit the site traveling forward once the container is serviced is required.

Opening/closing of gates and/or locking/unlocking of gates and lids is not included in the base service but performed at an additional cost.

Direct Access (Preferred)



Non-Direct Access (Not Preferred)



The Solid Waste Department reviews each application and reserves the right to modify the requirements herein or impose additional requirements in the interest of safety, aesthetics and the efficient operation of the department.

Any help or questions please call Customer Service at 941-240-8050 Monday thru Friday 8 am to 5 pm.

Solid Waste Service Information:

- All commercial solid waste customers must sign a service agreement with the City of North Port Solid Waste Division prior to service commencement.
- The Solid Waste Division will determine the level of service based on number and type of businesses using collection point but at a minimum, collection is required at least once a week.
- Nothing else shall be placed in a corral except the solid waste collection containers.
- Recycling is mandatory within the city limits. All generators of recyclable materials and yard waste within the City must separate their recyclable materials and yard waste from all other solid waste prior to disposal. Solid waste containing recyclable materials or yard waste will not be collected by the city for disposal.

COMMENTS:

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

PRE-APPLICATION COMMENTS

Department: Public Works Eng – Storm Water and Environmental
Staff Reviewer: Elizabeth Wong – (941) 240-8321

Today's Date: June 9, 2021

- | | |
|--|--|
| <input type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input checked="" type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input type="checkbox"/> No Objection | <input type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
-

FORMAL SUBMITTAL TO ADDRESS THE FOLLOWING:

1. Please provide a written itemized response to these preapplication comments and indicate clearly where the information can be found. The response should reference the document name and pdf page number(s).
2. Since plans are all now digitally submitted, it is not possible to verify dimensions with just a scale note eg. 1" = 40'. Please include a scale bar on all relevant Plan Sheets.
3. Please make sure that the Florida licensed professional engineer utilizing a digital signature to electronically sign and seal the final engineering plans, specifications, reports or other documents shall have their identity authenticated by a certification authority per 61G15-23.004 F.A.C.
4. Stormwater system design shall meet the ULDC Chapter 18-Stormwater Regulations. A copy of this document is available at the City website.
5. Please note that issuance of a City of North Port development order is not contingent on receipt of the approved SWFWMD Environmental Resource Permit (ERP) or other state or Federal permits. However, all State and Federal permits must be secured prior to start of construction. A copy of the SWFWMD approved Environmental Resource Permit (ERP) and approved set of plans must be submitted at the mandatory pre-construction meeting. If SWFWMD does not require a permit for the proposed work, please provide written verification from SWFWMD. For project areas greater than 1 acre, an FDEP Notice of Intent (NOI) approval letter to use Construction General Permit (CGP) will also be required. Online digital submittal and payment for the NOI is recommended for faster processing.
6. Please provide existing conditions survey with topographic elevations, benchmark and vertical datum used. Please include sufficient off-site topographic survey data to determine if there are offsite flow onto subject property that needs diversion.

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

7. Please provide a copy of the backup relevant stormwater calculations and plan from the master stormwater system with the allowable impervious, pervious and total parcel areas. Provide a comparison table for the permitted and proposed impervious, pervious and total parcel areas and corresponding impervious and pervious curve numbers and composite curve numbers. It is recommended that this tabular comparison be added to the Paving Grading and Drainage plan for ease of reference.
8. It is recommended to avoid locating catch basins/manhole in inverted drive aisles as much as possible, as over time, the traffic weight and water ponding over these structures can cause sinking and cracking. If catch basins/manholes are still proposed in inverted drive aisles, it is recommended that additional structural improvement such as a concrete apron or thicker asphalt and base around catch basins/manholes be specified on the plans and a detail provided.
9. Please provide sufficient cross sections on all sides of the proposed site to show how surface water runoff from the subject site is directed to the stormwater management system and the proposed grades do not adversely affect offsite flow. Cross section should show slopes not exceeding 4:1 (horizontal to vertical) per ULDC Section 18-7(D)(1)(g). Cross sections should be either to scale, or additional elevations and horizontal dimensions added so that proposed slopes can be verified.
10. Please check that the proposed slopes on the project are not steeper than 4:1 (horizontal to vertical) per ULDC Section 18-7(D)(1)(g).
11. For culverts proposed under driveway accesses, please provide detailed calculations supporting the proposed pipe sizes and invert elevations. Please include scaled cross sections to show slopes and connectivity to adjacent roadways.
12. It is recommended for all Condos, Commercial, Industrial and Institutional developments, that all roof drains directly to a catch basin or manhole. Please indicate how the roof runoff is discharged. If surface discharge is proposed, please show locations and check that the discharge will not cause erosion or standing water situation.
13. Please provide a 25-year storm HGL analysis supporting the design of the proposed development piping system. Please provide backup data that supports the tailwater elevation used in the analysis. Also indicate the vertical datum (NGVD 1929 or NAVD 1988) used on the analysis. Please also include a sub-basin map with acreages of each sub-basin, acreage of pervious and impervious areas, catch basins and pipe numbers that match the HGL analysis nomenclature, and flow direction arrows. If a spreadsheet Storm Tabs format is used for the analysis, it will be helpful for the review if the excel file is also provided in addition to the pdf.
14. Due to the change in vertical datum from NGVD 1929 to NAVD 1988 on various projects, a vertical datum note should be added, typically at the bottom right corner of all sheets where elevations are provided in order to avoid any issues during construction. In particular, please add the vertical datum note on PGD plan, cross sections, plan/profiles and control structure plans. This note should also be on the as-builts when provided. The datum note is usually on the General Notes plan sheet, but this plan sheet is typically not included in the as-builts. Also include the location of any associated benchmarks on the plans. Note that if the elevations shown are in NGVD 1929, please include the site specific conversion factor to NAVD 1988 on the construction plans.

15. Please list the Low Impact Development (LID) designs proposed for this project. Section 18-10 (D) of the City's ULDC requires the design engineer to demonstrate in the stormwater design, that LID practices are incorporated to the maximum extent practicable. Examples of LID design practices are to minimize impervious areas, use pervious pavement, direct runoff to bioretention/biotreatment or vegetated swale areas prior to discharge to the stormwater piping system to the pond, and reuse of stormwater for irrigation.
 - a. Since the surface water run-off from the site eventually enters the surface water conveyance system, please consider minimizing the amount of impervious area coverage proposed within the development. Not only is the peak rate of discharge of run-off important, but the additional volume of the surface water run-off generated by the proposed impervious areas can affect the capacity of the receiving waterways.
 - b. In addition to minimizing impervious areas, please evaluate the use of pervious pavement for the less-used parking stalls and sidewalks. In particular, the parking stalls proposed over the minimum amount required, is recommended to be of pervious pavement.
 - c. Please evaluate whether runoff from the paved areas, can be directed to grass strips/ vegetated swales where catch basins can be located. This will allow runoff to first flow over vegetation for water quality treatment prior to entering the catch basin. The catch basin top elevation can be set about 2 inches higher than the top of the sod in swale to allow for percolation through the vegetation. This is a practical LID.
16. Please specify the regrading of the swale along the property's roadway frontage for positive drainage and resod all disturbed areas. All sod should be evenly rolled along the ROW and top of sod must not be higher the edge of pavement.
17. Please provide a detailed operation and maintenance (O&M) plan for the stormwater system with a schedule of maintenance and list the O&M entity contact name, number and email address.
18. Please include the following on the Best Management Practices (BMP) plan:
 - As natural vegetation is a one of the best BMP methods to reduce turbidity leaving the site and control erosion, please include a note to minimize the area of disturbed vegetation and leave a strip of natural undisturbed vegetation outside of the silt fence to trap any silt not retained by the silt fence and avoid erosion issues. This strip of undisturbed vegetation should be as wide as possible and any needed grading of this strip can be done at the latest time possible when the majority of the site is stabilized.
 - Include a note that requires limit turbidity in discharge to no more than 29 NTUs above background level.
 - Please add a note to indicate all BMPs must be inspected weekly or after every 0.5-inch of rainfall event and all inspection reports must be available for inspection on site.
 - For a project area over 1 acre, Contractor or engineer will need to provide a copy of the response letter from the Department of Environmental Protection approving the Notice of Intent (NOI) to use the Construction General Permit (CGP). This can be submitted at the preconstruction meeting.

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

- Please add a note that requires contractor to file for a FDEP Notice of Termination (NOT) within 14 days of construction completion.
 - If hay bales are used, a note should be added to the plans that the hay bales must be from a source that is USDA certified to be free of invasive plants and seeds.
 - It is recommended that double row of silt fence be specified around wetlands.
 - Please provide detail drawings of silt fence, inlet protection and soil tracking device and show the locations of these BMPs on the plans.
 - Before any dewatering activities can begin that result in offsite discharge, a dewatering plan must be submitted to both the City Stormwater Manager and to SWFWMD for review and written approval. The plan should include the location of the dewatering sites, the dewatering pump, sediment sump and sizing calculation, methods to retain or detain discharge, methods of isolating the dewatering areas, flow path and points of discharge of the water. Include a note that requires turbidity reduction to no more than 29 NTUs above background level (indicate background level monitoring location) prior to discharge off site. Please note that flow over on-site undisturbed vegetation is a good best management practice (BMP) to reduce turbidity. Use of well-point method of dewatering is encouraged.
19. Please review the FEMA Flood Insurance Rate Map (FIRM) that is effective on November 4, 2016 on the City webpage <https://www.cityofnorthport.com/government/city-services/public-works/flood-information/fema-flood-map-updates> . The FIRM is based on the Big Slough Watershed 5/22/12 model. The base flood elevations (BFE) in NAVD 1988 can be assessed from this web page. Please specify and set the finish floor elevation to be higher than the BFE in accordance with the latest edition of the Florida Building Code. Floodplain compensation will be required for impacts to both the flood zone AE and the shallow <1ft flooding depth in the X-Shaded area (shown as yellow footprint on the City web application). **Portions of the proposed development will impact the flood zone AE and the X-Shaded area. Please schedule a meeting with the City Stormwater Manager to discuss how to address this.**

PRE-APPLICATION COMMENTS

Department: PW/P&Z - Environmental Review

Staff Reviewer: Savannah White – (941) 240-8064

Today's Date: June 9, 2021

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|--|--|
| <input checked="" type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input type="checkbox"/> No Objection | <input type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
-

FORMAL SUBMITTAL TO ADDRESS THE FOLLOWING:

- Please submit an Environmental Wildlife Survey Report completed by a qualified environmental professional to show how wildlife and other environmental resources will be protected or mitigated as a result of the proposed development. The Environmental Report shall include a wildlife survey conducted per the Federal Fish and Wildlife Service (FWS) and Florida Fish and Wildlife Conservation Commission (FWC) criteria, to indicate whether there are any endangered or protected wildlife species such as but not limited to scrub jays and gopher tortoise. **The wildlife survey should be no older than one year** from the date of formal submittal to the City and from the date of site clearing. Gopher Tortoise survey has separate requirements. Please indicate whether FWS requires a Bonneted Bat survey. If a project has wetland impact, a USACOE permit must be obtained, and USACOE consultation with the FWS may require a bonneted bat survey.
- A gopher tortoise survey no older than one year, must be completed for the entire project including all the pond sites, by an FWC Authorized Gopher Tortoise Agent to demonstrate how gopher tortoise will be protected or relocated as a result of the proposed project. Another Gopher Tortoise survey will be **required within 90 days of start of land clearing** activities. All gopher tortoise burrows found on-site must be avoided within the required 25 ft radius. If gopher tortoises are proposed to be relocated, an FWC relocation permit for the relocation is needed, and a copy provided to the City. On completion of the relocation actions, submit a summary After Action report to the City that identifies the total number of tortoises relocated to the designated property.

COMMENTS:

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

PRE-APPLICATION COMMENTS

Department: Utilities Review

Staff Reviewer: Darrell Smith – (941) 240-8021

Today's Date: June 9, 2021

- | | |
|--|--|
| <input type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input checked="" type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input type="checkbox"/> No Objection | <input type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
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FORMAL SUBMITTAL TO ADDRESS THE FOLLOWING:

1. Before FDEP permits will be signed, North Port Utilities requires the following:
 - a. Four complete sets of DEP permit applications (water and sewer) and four sets of construction plans both sets of items shall be signed and sealed by the engineer of record.
 - b. One engineer certified (sealed) estimate for the cost of utility construction.
 - c. A check for the Utility Construction Inspection Fee. The fee shall be 6.5% of the utility construction costs for projects \$0 to \$2 million, plus 2.5% of utility construction cost over \$2 million. The minimum fee is \$250.00.
2. Prior to commencement of utility site construction, three copies of shop Drawings plus any copies required by the applicant shall be submitted to the Utility Department for review and approval.
3. Irrigation systems shall be designed and constructed to meet reuse standards.
4. Provide the Utility Department with floor plans and plumbing risers for each individual unit so meter sizes and capacity fees can be calculated. Meter and Capacity fees shall be paid prior to issuance of the building permit.
5. A developer agreement shall be negotiated with the utility department and approved by the Utility Director and City Staff prior to DEP or DOH permits being signed and released.

Prior to utility site construction the Development Order, Department of Environmental Protection Permit and Development of Health Permit shall be posted at the project site and provided at the preconstruction meeting.

COMMENTS:

1. The existing water and sewer stub outs will need to be relocated to serve the new layout. Also fire line hot taps will need to be installed for fire sprinkler system.

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

PRE-APPLICATION COMMENTS

Department: Finance Review

Staff Reviewer: Tiffany Fowler – (941) 429-7106

Today's Date: June 8, 2021

Meets Requirements

Meets Requirements with Conditions

See Comments

Does Not Meet Requirements

No Objection

Please call to schedule a meeting with Review
before Formal Submittal

FORMAL SUBMITTAL TO ADDRESS THE FOLLOWING:

COMMENTS:

PRE-APPLICATION COMMENTS

Department: NDS Planning Division

Staff Reviewer: Sherry Willette-Grondin (941) 429-7229

Today's Date: June 8, 2021

- | | |
|---|---|
| <input type="checkbox"/> Meets Requirements | <input type="checkbox"/> Meets Requirements with Conditions |
| <input type="checkbox"/> See Comments | <input type="checkbox"/> Does Not Meet Requirements |
| <input type="checkbox"/> No Objection | <input checked="" type="checkbox"/> Please call to schedule a meeting with Review before Formal Submittal |
-

MEETING REQUIRED BEFORE FORMAL SUBMITTAL TO ADDRESS THE FOLLOWING:

Please contact the Planning & Zoning Division to schedule a meeting to discuss the land use table submitted to the City on October 13, 2020 to shift the remaining undeveloped uses to Phase IV. The land use table provided shows 300 multi-family units shifted to Phase IV. Of those 300 units, 198 have been encumbered as part of the ALF on lot 8, Heron Creek Town Center. This leaves 102 multi-family units remaining. The project proposes 180 dwelling units. If the intent is to convert the remaining 70 dwelling units shown on Phase IV of the land use table to multi-family, please submit the conversion matrix table and include the following as per Section 3.01 on page 5 of Ordinance 2011-33 (b), (c) and (d):

- 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. Development Master Plan Major Site and Development.
- 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.

In addition, to the above we will need to ensure any outstanding items as required by the approved DRI have been met. This meeting is required before any formal submittals for this project.

FORMAL SUBMITTAL:

After meeting with the Planning & Zoning Division and all outstanding issues have been resolved, please submit separate formal applications for the Development Master Plan and Major Site and Development Plan with all supporting documents.

COMMENTS:

1. If the owner is listed as a corporation, LLC or LLLC an Articles of Incorporation clearly showing the person(s) with authority to make decisions concerning the property shall be submitted with formal application.
2. Please include the setbacks of all buildings and structures including but not limited to mechanical equipment, stairways, decking, porches, and dumpster enclosures from the property lines. This includes, front, rear and side setbacks. Please include the required setbacks on the table on the site plan.
3. Please provide logos in .jpg or .png format with the formal submittal for the developer or end user (preferred) for use on the current development map available on the City's website.
4. Please provide a shape file for the plat and address plan in the following GIS coordinates:
NAD_1983_HARN_StatePlane_Florida_West_FIPS_090
5. All exhibits shall be labeled to match the application checklist on the electronic and paper submissions.
6. If an address plan is required for this project please note other requirements. In addition to any lots to be platted, include all proposed buildings, the locations of lift stations, fountains, monument signs, gates, entry ways, accessory structures, electrical boxes, and mail kiosks. Occupied structures will be assigned a permanent address. All others will be assigned a fictional address, and these will be noted on the address plan. The fictional address is for permits purposes only.
7. The Heron Creek development was approved for 300 multifamily units. Of this, 194 units have already been constructed and 106 are left.

At the DMP Stage:

1. A neighborhood meeting will be required before the Planning & Zoning Advisory Board hearing will be scheduled.

At the MAS Stage:

1. Kindly submit a landscaping plan in accordance with the regulations of Chapter 21 Landscaping Regulations and Chapter 45 Tree Protection Regulations of the ULDC.
 - a. Per Sec. 21-16.B.(2), the landscape plan must be prepared by and bear the seal of a landscape architect or other authorized person(s) per Chapter 481, Part II of the Florida Statutes.
 - b. 35% tree canopy coverage will be required per Sec. 45-8.
 - c. Please see Sec. 45-19. – Priority tree list for the approved list of trees that may be used.

HERON CREEK UNIT 12 PARCEL K
PRE-21-167

2. Per ULDC Sec. 25-5, wheel stops are required on all parking spaces abutting all landscaped and sidewalk areas, and abutting all areas containing a lamp post.
3. Per ULDC Sec. 25-10, handicapped parking spaces must be at least 12-feet by 18-feet in size.
4. Please submit a lighting/photometric plan that meets the requirements set within ULDC Sec. 37-50.
 - a. Please ensure that all lighting fixtures meet the design requirements of the North Port Urban Design Standards Pattern Book for Activity Center #2 Heron Creek (Page 55).
5. Any planned sidewalks must be at least 5-feet in width.
6. A street name and addressing plan will be required.
7. All planned pedestrian crosswalks are required to be brick paver and at least 5-feet in width per page 53 of the North Port Urban Design Standards Pattern Book.
8. If earth is being moved off-site or brought on-site, please provide the hauling route and stockpiling site. If not, please provide a note stating such.

PRE-APPLICATION COMMENTS

Department: Parks and Recreation – Pre-Application

Staff Reviewer: Tricia Wisner (941) 429-3570

1. **Today's Date:** June 16, 2021

2. **RECOMMENDED ACTION:**

Meets Requirements

Meets Requirements with Conditions

See Comments

Does Not Meet Requirements

No Objection

Please call to schedule a meeting with Review
before Formal Submittal

FORMAL SUBMITTAL TO ADDRESS THE FOLLOWING:

COMMENTS: