Joint Exhibit 9

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 Use[7] 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 Commission[16] 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.