Joint Exhibit 28

# AZB-24-122
# Appeal to Heron Creek – Parcel K Development Order

## Zoning Board of Appeals
## December 16, 2024

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

# 150-Unit Multi-Family on 9.78
# Development Order MAS-23-160
# Issued on June 18, 2024

# Count 1 - Lack of Staff Jurisdiction to Approve Major Site/Development Plan

Sec. 33-8. - Procedure for securing major site and development plan approval. D. Review of application. Upon a determination that the plans submitted are complete, the application shall be logged into the City's database and placed on the staff review schedule.

(1) **The City staff shall review the plans** within a timely manner of receipt of the application…

(3) Upon resolution of all outstanding issues and a unanimous decision of "Meets Requirements," "Meets Requirements with Conditions," or "No Objection" by the City staff, the applicant shall submit all required copies of the final plans showing all required corrections…

(4) Upon receipt of the final corrected plans, the plans shall be stamped approved **and a development order shall be issued to the applicant.**

# Count 2 - Violation of Comprehensive Plan and ULDC as to Density

- Urban Infill Area at ADA
- Entitlements for 831 acre unsubdivided DRI
- 1,970 residential units (903 single-family units and 1,067 multifamily units), 500,000 gross square feet of commercial retail/ service space,  and 250,000 gross square feet of office…
- Map H
- Density in low-density residential future land use 1.4 du/ac

# Count 3 - Violation of Comprehensive Plan Policies as to Flood Zones

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

- The approval of the Heron Creek Parcel K development order does not change the maximum density of the portion of the DRI that is assigned a low-density residential future land use.

# Count 4 - Violation of Comprehensive Plan Policies as to Compatibly

GOAL 1: Ensure that the character and location of land uses maximize the potential for economic benefit and the enjoyment of natural and man-made resources by citizens' while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses, and environmental degradation.

Objective 1: Future development activities shall continue to be directed in appropriate areas as depicted on the Future Land Use Map, and shall encourage the use of innovative land development regulations, consistent with sound planning principles, minimal natural limitations, the goals, objectives and policies contained within this plan, and the community character.

# Count 4 - Continued

Policy 1.2: Expansion, reclassification or replacement of land uses shall be compatible and consistent with the Future Land Use Map. Each land use type will be reviewed individually and for their impact on the remainder of the Plan. Land use types cumulatively will be evaluated based on:

1. Extent and provision of infrastructure systems;
2. Location and gateways;
3. Distribution;
4. Density;
5. Intensity;
6. Compatibility with existing and future neighborhoods or Activity Centers;
7. Suitability;
8. Functional relationship;
9. Land use combinations;
10. Demonstrated need over the planning period;
11. Financial Impact.

# Count 4 - Continued

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

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

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

Land Use

Conversion Matrix

| 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 |

# Count 5 – Continued

- **Heron Creek Pattern Book dated May 1, 2002, and amended December 14, 2015, and September 2022**

  2.1 Towne Center Land Use Categories - The following use categories are referenced for the parcels in the Towne Center:…

  2.1.2 Office, Professional & Institutional Use - designated space for professional and business offices, institutional uses, and very limited industrial uses.

# Count 5 – Continued

**2.1.2.1 Permitted, accessory, conditional and prohibited uses shall be as stated in zoning ordinance for "OPI Office, Professional, Institutional District" with the following exception:**

Residential and Commercial uses, subject to Heron Creek Towne Center Pattern Book restrictions regarding their size and location within Office, Professional & Institutional buildings, shall be considered permitted accessory uses, **and nursing homes, adult congregate living facilities** and "High Tech," non-obtrusive, industrial uses **shall be considered permitted uses.**

# Count 5 – Continued

**Sec. 53-10. - Appeals.**

A. Appeal procedure exclusively for developments governed by a previously adopted "Pattern Book." **Where such a "Pattern Book" exists, it** shall constitute an approved Development Master Plan (DMP)/Development Concept Plan (DCP) that shall not be subject to further review by the Planning and Zoning Advisory Board or the City Commission, and **shall take precedence over and be superior to the provisions of this Code to the extent of any conflict.**

(1) Where the Pattern Book is silent in any area, this Unified Land Development Code shall apply.

# Count 6 – Failure to Provide and Record Declaration of Condominium

Section 33-9.A(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.

Sec. 1-14.- Provisions declared to be minimum or maximum requirements.

In their interpretation and application, the provisions of these zoning regulations shall be held to be minimum or maximum requirements, as the case may be, adopted for the promotion of the public health, safety, or general welfare. **Whenever the requirements of these zoning regulations are at variance with the requirements of any other governmentally adopted statute, rule, regulation, ordinance or code, the most restrictive or that imposing the higher standards shall govern.**

# Count 6 – Continued

- Florida Statutes Chapter 718 vs. 177

- Florida Statutes 166.033(5) For any development permit application filed with the municipality after July 1, 2012, **a municipality may not require as a condition of processing or issuing a development permit or development order that an applicant obtain a permit or approval from any state or federal agency** unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

# Count 7 – Failure to Provide the Required Traffic Study

- Updated Traffic Study

- Offsite Transportation Impacts – Ord. No. 2000-13 & Ord. No. 2025-28

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

- Unified Land Development Code Chapter 5
- Florida Statutes 163.3180(b)(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. **Prior to approval of a building permit or its functional equivalent,** the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Environmental Protection to serve new development.

# 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 original entitlements included 1,970 residential units (903 single-family and 1,067 multifamily units).

- Any substantial deviation measurement, if still applicable due to changes in legislation regarding DRIs, it should be based on the number of units approved in 2000, which calculation results in a reduction of residential units.

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