Joint Exhibit 6

MEMORANDUM
Development Services Department

TO: Amber L. Slayton, B.C.S., City Attorney

THRU: Alaina Ray, AICP, Development Services Director

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

SUBJECT: Heron Creek Residential Entitlements Under the Development of Regional Impact & Neighborhood Meeting Requirements

DATE: October 2, 2023

All referenced documents are available for review in shared files at this link:

https://cityofnorthport.sharepoint.com/teams/NDS-Internal/Shared%20Documents/Forms/AllItems.aspx?id=%2Fteams%2FNDS%2DInternal%2FShared%20Documents%2FHeron%20Creek&viewid=52150242%2D1355%2D4f65%2Da2f4%2D202d80bd8dfd

On September 10, 1996, the Southwest Florida Regional Planning Council held a pre-application meeting to discuss the proposed Marsh Creek Development of Regional Impact (now known as Heron Creek). The pre-application meeting document submitted by the engineer of record described the project as follows "Marsh Creek is a proposed 807--acre community located in Sections 21, 22, 28 and 29, Township 39 South, Range 21 East, in the City of North Port, Sarasota County, Florida. The development will provide a maximum of 1,800 residential dwelling units, to include both single-family and multifamily structures in a mixed use, golf course community. Marsh Creek' s focal point will be the new town center of North Port and will be developed adjacent to a 52-acre municipal complex, currently being planned by the City (27 acres of which were donated by Marsh Creek, Ltd. to the City). Proposed to be developed within the Marsh Creek Town Center are recreational, commercial, office and medical facilities."… (See PDF Pages 8 and 11 Pre-Application Documents). (Take note of the description of the golf course community containing single-family and multi-family structures versus the town center with recreational, commercial, office and medical facilities).

The Heron Creek Application for Development Approval (ADA) was submitted for review on November 19, 1996. At that time, the Comprehensive Plan provided for an Urban Infill Area, allowing for a mixture of uses. (See PDF Pages 35 and 39 of 1988-1998 Comprehensive Plan). The Heron Creek property was located in the Urban Infill Area as shown on the Future Land Use Map at the time of ADA review (Page 39 of CONP 1989-1999 Plan), where medium and high-density residential growth areas were designated (4.1-15 units per acre), despite the portion of the property where Parcel K lies being identified as having a Future Land Use designation of Low Density Residential 1-4 units per acre.

During review of the Heron Creek ADA, the question of as to whether all the land was located within the Future Growth Area (FGA) (Planned Community Development Districts), (See PDF Page 29 and 39 of the 1988-1998

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Comprehensive Plan) and the potential need for a Comprehensive Plan Amendment was raised. (See December 16, 1996, correspondence from Charles Gauthier, AICP, State of Florida Department of Community Affairs to Wayne Daltry, Southwest Florida Regional Planning Council, copied to Sam Jones, North Port Planning Director). (See Page 3, Sufficiency Review).

However, while an EAR Based Amendment (Ordinance 97-27) was submitted to the State in November of 1997, establishing Activity Center 2 (among other amendments), it did not expand the former FAG (Planned Community Development District) or the Activity Center 2 overlay to include all the Heron Creek land area. Ordinance 2001-01, an ordinance amending the Comprehensive Plan related to the Heron Creek DRI did not address future land use designation changes either.

Nevertheless, on September 11, 2000, the North Port City Commission approved the Heron Creek Development Order (DO) (Ordinance 2000-13) for the 831 acre Development of Regional Impact. At the time of Development Order (DO) approval the development was entitled to construct 1,970 residential units (903 single-family units and 1,067 multi-family units), 500,000 gross square feet of commercial retail/service space and 250,000 gross square feet of office, 269.38 acres of recreation and open space, 27-holes of golf, buffers and tennis center with 12 courts, 44 acres of conservation lands (wetlands and scrub jay habitat), 105 acres of lakes for water management and acres of internal road rights-of-ways. The Original DO established a build out date of 2017, which has since been amended multiple times.

Entitlements were provided for in Section 3 of the DO, consistent with the Preliminary Master Plan, Map H:

…"SECTION 3. Approval of the Heron Creek Development of Regional Impact with Conditions.

3. 1 The ADA for the Heron Creek DRI is hereby approved for the following land uses and phases, subject to the conditions contained in herein, consistent with Preliminary Master Plan, Map H, dated February 2000, and subject to the other provisions of the Development Order"…

Map H, dated February 2000, did not specify the location of multi-family residential versus single-family residential, but did include a site data table indicating the number of multi-family and single-family units proposed and approximate acreages. Map H showed Parcel K as a 9.73 acre tract, not bifurcated by a roadway (like other residential areas shown on the plan) which would be indicative of a single-family residential lot layout, and simply indicated "Residential" use.

The approved DO, neither via Map H, nor other conditions, addressed specific placement of multi-family versus single family within the development. Furthermore, within Section 1 of the DO, the development was deemed consistent with the City of North Port Comprehensive Plan:

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

"1. 13 The proposed development, subject to the conditions imposed herein, is consistent with the North Port Comprehensive Plan and does not appear to conflict with other local land development regulations."…

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Additionally, in Section 11,

…"11. 2 This DRI shall not be subject to down -zoning, unit density reduction or intensity reduction prior to December 31, 2017, unless 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 Applicant or that the change is clearly established by City of North Port to be essential to the public health, safety, or welfare.

Subsequent Ordinances amending the DRI included the language above as well, consistent with State law.

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

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

In addition, staff requests a legal opinion regarding the applicability of neighborhood meetings to individual project sites, including Parcel K, within Heron Creek. Staff analysis is as follows:

Development applications within the Heron Creek Development of Regional Impact (DRI) are processed internally using the Major Site and Development application process, however, in the event of a conflict between the provisions of the DRI and the ULDC, the DRI shall prevail (Ord. 2011-33, Sec. 12.01).

The DRI, as amended, stipulates when neighborhood meetings and public hearings are required for development within the DRI. The only neighborhood meeting required by the DRI is described below and was held prior to approval of the Neighborhood Walmart Major Site and Development application.

4.16. Prior to the issuance of a Development Master Plan, Subdivision Plan or Major Site and Development Plan approval, the developer shall hold a neighborhood meeting to explain and gain input on the design of the site and the buffer yard treatment along the eastern property line of the site. The developer shall notify the property owners within a 1320 foot radius from the property line of the development. The neighborhood meeting shall be held after 6 pm in a location convenient to the neighborhood. The developer shall copy City staff on all correspondence to the citizens in the neighborhood.

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As such, processing of all Major Site and Development Plans within the Heron Creek DRI has adhered to the historical interpretation that the above referenced neighborhood meeting is the only neighborhood meeting required for any Major Site and Development Plan application within the Heron Creek DRI, as long as such applications are consistent with the provisions of the DRI, as amended. The only exception to this is if/when the applicant requests deviations and/or waivers from the provisions within the DRI, as amended, and its associated regulatory documents. If a development does not propose any deviations and/or waivers, and adheres to all conditions stipulated by the DRI, as amended, then the application is not subject to further public meetings.