

October 27, 2015

Re: Centennial Park and the Vue

Dear Mr. Mayor and City Council Members:

Centennial Park, once again, faces serious degradation from the proposed Vue condominium development. Our organizations have come together to voice our opposition to the developer's request for a fifth amendment to the Vue's planned unit development (PUD) ordinance and development agreement. This letter discusses the primary problem with the proposed amendment and why it should be denied. The developer requests that he be relieved of several PUD responsibilities to provide public benefits but still be allowed to build an 18 story condominium, possibly with some retail space. We examine this problem and a plethora of additional problems, especially parking, in more detail in the attached memorandum that tracks the points raised in the Department of Community Development (DCD) Staff Report.

The tortured history of the Vue, that included costly litigation, was resolved in 2009 with the fourth amended PUD. The stipulated settlement agreement between the Vue developer, the City of Fort Myers and Virginia Splitt incorporated the fourth amended PUD. The negotiation breakthrough came when the developer included several, major public benefits into the PUD that comprised five parcels of property. These public benefits made the PUD palatable. The new Vue developer owns two of the five parcels and cannot comply with the terms of the fourth amended PUD and settlement agreement. The developer cannot be permitted to pick and choose the terms and conditions with which he wants to comply.

The DCD Staff Report states "A new owner/developer has submitted an amended PUD application that due to a number of changes must stand on its own merit." This request cannot stand and the City Council should declare the Vue PUD null and void. If the developer wants to proceed with a project on the remaining two parcels, he must submit a new PUD, *not an amended PUD*, that complies with current zoning regulations.

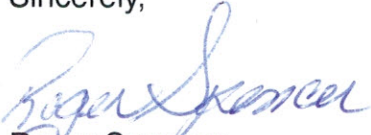
The proposed Vue development fails to comply with Action 1.14.3 of the City's Comprehensive Plan, which states: "A PUD is designed and developed in an integrated and cohesive fashion, under single ownership or unified control, (underlining for emphasis) providing for flexibility and clustering of uses." A review of the project history demonstrates that the project was approved as a total package for all five parcels with one owner. Only the 18 story condominium remains in the current proposed PUD with the most significant public benefits removed, along with essential parking.

For the City Council to set aside the court approved settlement agreement would have grave ramifications. At the March 16, 2009, City Council meeting, Attorney Nancy Stroud (outside counsel representing the City in the litigation) stated that "the public

benefits would remain plus transportation improvements...(and that) a significant change to the Development Agreement would be inconsistent to the Stipulated Settlement Agreement.” Dropping three property parcels, failing to construct a five story commercial office building with 7,000 feet of floor space for the Edison Sailing Center and not providing surface parking for oversized vehicles represents a significant change. Equally significant, the developer requests that he not be required to construct a river walk on the remaining parcels and make contributions for affordable housing.

At the March 2009 meeting, Councilman Mike Flanders made a motion that the City approve the stipulated settlement. Councilman Randy Henderson seconded the motion, which carried with unanimous approval. Keep this promise; protect the park!

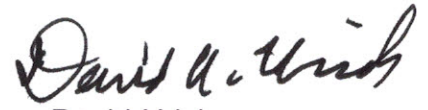
Sincerely,



Roger Spencer  
President  
DFMNA



Gene Gibson  
Vice-President  
CRCA/Riverwatch



David Urich  
Life Member  
RGMC

cc: Planning Advisory Board Members  
Saeed Kazemi, Acting City Manager  
Grant Alley, City Attorney  
Robert Gardner, Director, DCD

enclosure as indicated



## **Vue Memorandum**

This memo comments on the Department of Community Development (DCD) Staff Report concerning the proposed amendments to the Vue planned unit development (PUD). The format of this memo roughly tracks the format of the DCD Staff Report. As stated in the cover letter to this memo, we believe that the developer's failure to comply with the terms and conditions of the 4th amended PUD and stipulated settlement agreement render the Vue PUD null and void. The plethora problems regarding the Vue, in addition to the now diminished land size, are numerous and need addressing.

An important point to remember when reviewing the developer's proposal. Compare and contrast the proposed development with both the 2009 4th amended PUD and today's zoning requirements. Comparing the proposed project with the 2004 1st PUD makes for an inappropriate comparison.

### **2. Request**

1. Deadline extension: Concur. The letter requesting a PUD extension was timely filed.
2. Significant change: Object. Going through the full administrative process with proper notice is appropriate for most PUD amendments, but the requested amendment represents a significant change from the 4th amended PUD and settlement agreement. Consequently, the developer must submit a new PUD for the proposed project. See cover letter commenting on this issue. Furthermore, section 9 of the 4th amended PUD states: "Failure to comply with the terms of this Planned Unit Development Ordinance may result in the cancellation of the development approval...and the planned unit development approval may become null and void." Thus, the City has the authority to terminate the 4th amended PUD.
3. Amended PUD and settlement agreement: Object. The DCD Staff Report comment is unclear. It states that this amended PUD application "must stand on its own merits." DCD appears to say that this should be treated as a new PUD application, yet it references the "amended" PUD. We believe a new PUD is required.
4. Density: Object. The developer proposes 133 units on 1.34 acres. One hundred units per acre would give the Vue the highest density of any currently built condo in the River District. The only existing River District structure with a similar density is

Calusa Harbor with a density of 99 units per acre. And Calusa Harbor is a unique building; an assisted living facility with very small units. The proposed Cypress Club/ Allure condominium may have a density of 100-120 units per acre. But this condominium is not intended for a narrow strip of real estate in a sensitive location adjacent to Centennial Park. High Point Place, the largest condominium to date in the River District, has a density of 63 units per acre. If the developer wants to proceed, the developer should submit a new PUD application that complies with current zoning requirements and request bonus density for providing public benefits. Given the sensitivity of building on this property, any bonus density would necessitate close scrutiny.

5. Notice: Object. The 4th amended PUD was not properly advertised, but since five years have passed since the PUD's enactment the DCD Staff Report indicates the time has tolled to contest bad notice. However, as a matter of equity in considering the totality of the circumstances this should not constitute an absolute bar. The 4th amended PUD was a compromise between the litigants and the settlement agreement reflected these terms and conditions. The stakeholders thought this matter had been definitively put to rest.

Developer improvements: Object. The DCD Staff Report misinterprets the issue of the developer funding projects in Centennial Park. The beautification improvements may have benefits for Centennial Park and a developer can fund public benefits in Centennial Park. But, the beautification also benefits the developer and park property cannot be used for the benefit of commercial interests. This same principle applies for the proposed cross access easement.

The DCD Staff Report states "The use of Centennial Park as a park and open to the public will not change with these improvements." This may prove incorrect. The developer needs to provide a detailed rendering of the beautification project, indicating the height of any plants, before the administrative process continues. Landscaping on park property could serve as a barrier and prevent the public from using that section of the park that appears to be on Vue property. Furthermore, the landscaping should not be so high as not to block visibility through the ground floor (suppose to have glass walls) to the adjacent marina. We have additional concerns about the design and space planning for the beautification and access road, discussed fuller in section III(10)c.

We disagree with the DCD's interpretation of the language in the State of Florida Department of Natural Resources grant. The City's agreement to operate and maintain



the project recreational facilities at its own expense for a minimum of 25 years is immaterial to the prohibition of commercial interests benefitting from public property. The operative language is "...this Agreement does hereby dedicate the land ... to the public in perpetuity as a recreation area available to the general public for recreational purposes only" (our underlining for emphasis). Consequently, if the developer seeks to use park property this will trigger an environmental review pursuant to the National Environmental Policy Act (ACT).

## **II. Deviations**

Parking space dimensions: Object. There should not be a deviation for the parking area where large vehicles such as delivery trucks and service vans park. But since the Vue does not provide such parking an objection proves problematic since the bigger problem is not addressed. Section IIIa(6) discusses the parking problem in detail.

### **I. Terms and Conditions**

a(1) Zoning: Concur. But only if the developer complies with all the terms and conditions and public benefits specified in the 4th amended PUD and settlement agreement.

a(2) Public spaces: Concur. The Urban Plaza, the River Walk along the western edge of the property and the Sunset Plaza constitute desirable features. Additional comments on these features provided in section III(4)(b)(c).

a(3) Schedule of uses: Concur. Residential is an approved use, but it may prove problematic. Commercial/retail uses would work better in this location. Such uses would not be as likely to generate complaints about noise on weekends or in the evenings from concerts, festivals and the Sunday Drum Circle.

b: Density: Object. The developer cannot comply with the terms and conditions in the 4th amended PUD and settlement agreement. The proposed condominium has too great a density to comply with current zoning.

b(1): Hurricane Evacuation: Concur.

b(2): Workforce Housing: Concur. The developer has requested relief from this requirement. Such relief is inappropriate. There remains an unmet need for workforce

housing in Fort Myers. In particular, the City has indicated a need for more workforce housing in the Midtown District and plans to redevelop this area. While housing prices are not at pre-2005 levels, the market continues to rise and home prices are out of reach for many citizens. Releasing the developer from this requirement could set a precedent whereby developers that have development agreements with the City, but have yet to begin construction, would request release from their requirements.

b(3): Para-Transit: Concur.

b(4)(a): Urban Plaza: Concur.

b(4)(b): Beautification Area: Object. We certainly believe the Vue needs beautification, but the developer should not receive bonus density for landscaping that benefits the developer's interest. The landscaping needs to be on Vue property. While the 4th amended PUD and settlement agreement permitted landscaping on park property the new, proposed development does not comply with the 4th amended PUD.

We respectfully request that the City abandon the access road. The access road with a cross easement will contribute to parking problems, see parking discussion in section 6. If removed, the need for brick pavers has been eliminated. The City could relocate the dumpster and trash cans elsewhere in Centennial Park. A wall and landscaping could mask them. The City could service the restrooms with a golf cart that travels along the concrete plaza adjacent to the river. The developer should submit a rendering of the beautification area with the access road removed.

b(4)(c) Sunset Plaza: Qualified concurrence. The DCD Staff Report states that "The final design of the plaza to be determined at a future City Council meeting." Given the sensitivity of this project, the plaza design needs determining up-front and not left to a later time. In particular, seating areas on the sunset plaza need identifying.

b(4)(d) Public Pedestrian Riverwalk: Qualified concurrence. The Riverwalk should be 12 feet wide and not 10 feet as the DCD Staff Report recommends. The latest architectural rendering appears to indicate a Riverwalk, but it does not appear accessible to the public or the handicapped. The developer requests relief from having to provide the Riverwalk, but it constitutes an essential public benefit feature. The developer argues that boat lines present a hazard for people strolling along the Riverwalk. But dock lines will be on the dock that runs parallel to the western edge of the property; the



Riverwalk will be on land immediately adjacent to the building. To accommodate a 12 foot width, the Riverwalk could run under the Vue's second floor.

b(5) Mixed Uses: Concur.

b(6) Public/Private Parking: Object. The staff report fails to address the parking problem. Provision for adequate parking poses one of the most serious problems with the Vue. The DCD Staff Report only requires 14 public parking spaces and makes no mention of how many parking spaces the Vue has to provide, leaving us to conclude that it would be one space per unit pursuant to current code requirements.

As a practical matter, if these 14 parking places are on-site in the Vue garage they are NOT public parking spaces. How is the public suppose to know they can drive up the Vue ramp into the parking garage and use 14 of the spaces? Furthermore, Vue residents, will likely have two cars per unit and will have already taken these spaces. The developer should not receive bonus density unless the public parking spaces are provided off-site.

The Vue's ground floor will accommodate commercial/retail stores. Where will customers park who visit these stores? Where will staff park who work in these stores?

The 4th amended PUD called for the developer to provide a bike rack for public use in the Centennial Park beautification area. As a practical matter, Vue residents will take over this space with their bikes. One need only look at the overcrowded bike racks at other River District condominiums to see the magnitude of this problem. Any "public" bike racks the Vue provides should be on the east side of Centennial Park. The Vue should provide bike racks for its residents in the Vue parking garage.

Based on lessons learned from other River District condominiums, one space per unit as current zoning calls for, proves woefully inadequate. For instance, the High Point Place condominium has approximately 1.5 parking spaces per unit. When winter residents arrive, parking becomes a problem. The developer's request to amend the PUD indicates the developer would provide 1.44 to 1.73 parking space per unit. This represents an improvement over one space per unit. 1.73 spaces per unit should constitute the minimum. Vue residents, like other river front condominium owners, will likely have two cars. One advantage of a PUD is that it allows greater government input and approval to a project design. With the Vue, requiring an increased number of

resident parking spaces is certainly needed. The parking problems are amplified by the requested high density.

The most significant problem with Vue parking is that **NO** ground level parking outside the garage exists for visitors, service vehicles, panel vans and delivery trucks. Parking garages lack sufficient height for panel vans and delivery trucks to enter — even if the garage has vacant parking spaces. For instance, High Point Place has inadequate parking for service vehicles, panel vans, delivery trucks and visitors year round — not just in winter. Again, the Vue has no outside parking.

The previous Vue development agreement provided 34 surface parking spaces on the south Carson Street parcel. This would have addressed problems pertaining to service vehicles and visitor parking. The new developer, however, does not own this property. This situation further speaks to the “significant change” problem. This will lead to parking jams as Vue visitors and service trucks compete for parking with Centennial Park users. Moreover, Vue visitors and service trucks could end-up parking on the narrow strip that the City uses to access its dumpsters and service shed on the north side of Centennial Park near the river. Thus, another reason for the City to abandon this access road.

A major traffic bottleneck will develop in this area at the entrance to downtown. Cars travel fast when they come over the bridge and then immediately come-up on the exit to downtown. Furthermore, West First Street will become increasingly busy when First Street Village, Legacy Harbor and One West condominiums are built. The West First Street Traffic Study needs updating before moving forward with Vue approval.

b(7) Pedestrian friendly connection: Concur.

b(8) Water Dependent and Water Enhanced: Object. The developer needs to provide a rendering of the dock with slips and indicate what length boats the slips will accommodate. The developer does not indicate if the boat slips are for condominium residents or the public. If not the public, why award bonus density? The benefit will accrue entirely to the condominium residents. The 2009 Riverfront development plan indicated a small boat marina at this location. Slips for boats under 30 feet represents an unmet need on the river.

The developer's request to amend the PUD wanted no PUD limitation on the maximum linear feet of docks or number of slips. An unlimited number of slips of undetermined



lengths for mega yachts could potentially extend out to the channel and along the length of Centennial Park under the bridge to the fishing pier. A marina similar to what the developer possibly envisions would pose a hazard to navigation, put at risk children using the Edison Sailing Center and attract even more boats to this area, thus increasing the chances of injuring or killing manatees. Query, did the previous developer obtain building permits from the City to construct docks and what is the status of these permits?

The City could pursue an agreement in perpetuity with the developer for public use of the boat ramp on this property. The City would need to renovate the boat ramp and purchase property across the street for car and boat trailer parking. The City has long wanted to close the the boat ramp downtown across from Harborside. This would afford a reasonable alternative. The potential exists for further developing marine uses in this area, given the presence of the Legacy Harbor Marina and the Edison Sailing Center. This would comport with the Duany Plan which states "...along the riverfront, it is important to give high priority to water-dependent uses, such as marina, yacht clubs, ferry terminals or boat ramps."

b(9) Exceptional Architectural Design: Object. The DCD Staff Report references the building that an independent/outside architectural review committee evaluated. This is not the building that the developer now proposes to build. Given the prominence of such a tall building immediately adjacent to Centennial Park, the City should have an independent design review, perhaps by Duany, Plater-Zybeck and Company (DPZ), determine if the building merits bonus points for exceptional architectural design. The review should not be done in a vacuum just looking at architectural elevations. The building's site location next to Centennial Park, the shadow cast on Centennial Park and the lot size require consideration.

b(10) Police Cruiser: Concur.

Interactive children's fountain: The 4th amended PUD and the settlement agreement specified an interactive children's fountain. The DCD Staff Report fails to mention this fountain. While the developer does not want to proceed with this public benefit, the developer did indicate a willingness to make a \$100,000 contribution to a public benefit project specified by the City. Query, did \$100,000 reflect the estimated cost of the fountain?

We note that the children of Fort Myers do not benefit under the proposed 5th amended PUD as they did under the 4th amended PUD and settlement agreement. The 4th amended PUD provided a home for the Edison Sailing Center and Centennial Park received a children's fountain. Compounding the problem, children will be at risk when construction begins on the Vue, with the Centennial Park playground immediately adjacent to the construction site. Will Centennial Park become a staging area with a construction crane?

4c. Cross-access easement: Object. This will not be necessary if the City abandons the existing driveway, see previous discussion in 4(b).

4d. Comply with Americans with Disabilities Act: Concur.

4e. Timeframes for construction: Object. An extension is not warranted since the developer cannot comply with the terms and conditions of the 4th amended PUD and settlement agreement. Furthermore, over ten years have passed since the City Council approved the original PUD. This will be the Vue's fifth time extension. Outdated codes and regulations should not govern a major construction project, especially if the time period for commencing construction extends until 2026. Owing to the substantial changes requested, this is a new development and must comply with new zoning standards. Moreover, we are concerned about an emerging trend where developers request an extension of their PUDs and the City relieves them of the terms and conditions of their original PUDs, such as workforce housing.

## **6. Recommended Action**

1. Object to removing three parcels from amended PUD #4. However, since the original five parcels are no longer under the control of a single owner, amended PUD #4 is null and void.
2. Object to removing all references to the five story office building and Edison Sailing Center (ESC) from amended PUD #4. A new PUD has to be submitted that would not reference the building and ESC.
3. Object owing to amended PUD #4 being null and void. If submitted, a new PUD must comply with current zoning requirements.
4. Object. The DCD cannot adjust public benefits for bonus criteria in amended PUD #4 owing to the court settlement agreement.
5. Concur.



## ***Conclusion***

We continue to believe that the best course of action entails the City purchasing this property and extending Centennial Park to its natural western boundary. The City could revisit the issue of partnering with the County and non-governmental organizations (NGOs) to purchase the property. A park impact fee could provide the funds. Florida was in the midst of a severe recession when the City considered a park impact fee several years ago. Circumstances have improved greatly and the issue is ripe for review.

Alternatively, a long, narrow, low (2-4 story) commercial/retail building that echoes pier architecture could fit on this parcel. The 2009 Aquest Riverfront Development Plan recommended pier architecture as an appropriate style for the riverfront. Furthermore, when the City Council last discussed the Vue at its April 20, 2015 meeting, several Council Members indicated they would like to see a project that focuses on the horizontal rather than vertical development.