

MEMORANDUM

TO: Sara Hedges
FROM: Julia Mandell
DATE: December 21, 2023
SUBJECT: Application by Gator Trace on the Greens, LLC (“Developer”) for an amendment to the Gator Trace Planned Unit Development Site Plan (“Gator Trace PUD”) for Phase I.

You have asked me to analyze whether Developer of Phase I of the Gator Trace PUD can proceed forward with its pending PUD which increases the number of units which were previously approved for Phase I from 67 units of two-story townhouses to 83 units of two-story townhouses (“Proposed Amendment.”). The Gator Trace PUD was approved with an associated Developers Agreement (“DA”).¹ That DA is an agreement between the City of Fort Pierce (“City”) and the Developers of Phase I and Phase II of the Gator Trace PUD to provide for additional conditions and obligations of development, including infrastructure improvements. The DA specifies in a “whereas” clause, which whereas clauses were adopted into the DA, that the Developer intends to develop the Gator Trace PUD in two phases with Phase I approved for a 67-unit two-story townhouse development and Phase II as a 264-unit four-story building. It is my understanding that the developer of Phase 2 has not given any authority to proceed forward with the Proposed Amendment, and in fact, is objecting to the Proposed Amendment.

The City of Ft. Pierce Code (“City Code”) Section 125-212(f)(3) provides an opportunity for PUD developments to proceed forward without the permission of all property owners to the PUD. Specifically, City Code Section 125-212(f)(3) provides as follows:

Prior to build-out of fifty percent of the land in a Planned Development, the property owner shall have the right to initiate any amendments to any developed or undeveloped portions of the Planned Development. After fifty percent or more of the land in a Planned Development has been built out, the property owner may initiate any amendment to the undeveloped portions of the planned development; however, amendments to developed portions of the Planned Development may only be initiated by:

- (a) the property owner for an amendment to the Planned Development which is not applicable to all developed portions of the Planned Development (emphasis added.)

Since the Gator Trace PUD was approved as a phased development, both phases are considered for the fifty percent threshold set forth in Section 125-212(f)(3). I understand from City planning staff that the Gator Trace PUD is developed at 89 percent of development. In addition, I understand that Phase I of the Gator Trace development is not part of the developed area of Gator Trace in Phase II. Additionally, according to City planning staff, Phase I, although undeveloped, has not expired as the Gator Trace PUD is approved to develop in phases and the Gator Trace development has received permits for over 350 units.

¹ The DA was not adopted as a statutory 163 Development Agreement pursuant to 163.3221 Florida Statutes.

After reviewing City Code Section 125-212(f)(3) (a), regarding amendments to PUDs and also determining that the Gator Trace PUD Phase I has not expired, it is my opinion the Developer for Phase I **does have the right to proceed forward** with the Proposed Amendment to the Gator Trace PUD for Phase I without obtaining the permission of the Developer/Property Owner of Phase II of the Gator Trace PUD.

However, as noted above, there is an existing DA which does provide for conditions and obligations of the approval of the Gator Trace PUD, including requiring certain infrastructure and other improvements. The DA was executed by the City and the property owners of both Phase I and Phase II of the Gator Trace PUD and is applicable to the entire Gator Trace PUD. As noted above, the DA specifies that Phase I was approved as a 67-unit two-story townhouse development. The Proposed Amendment is seeking to increase that number of units in Phase I. Thus, it is my opinion that even if the City approves the Proposed Amendment for an increase in units, the Developer for the Proposed Amendment for Phase I **would be required to amend the DA** in order achieve the increase in units.

The parties to the DA are Symphony Builders at Gator Trace and Symphony Builders at Gator Trace, LLC and the City. DA Section 8 Amendments provides:

This Agreement shall not be changed, modified or amended except by an instrument in writing and executed by the parties, or their successors in interest. It is a complete recitation of the terms of this Agreement existing between the Parties that may not be varied, added to or detracted from by any offer or oral or written statements.

Thus, the DA would require that all parties to the DA, or successor in interest, must execute any amendment to the DA. I would also advise that any approval of the Proposed Amendment contain a condition that the approval is subject to an amendment to the DA.

Finally, I understand from City planning staff that not all the conditions in the DA have been met. I would recommend that the City meet with the Developers/Property Owners of the Phase I and Phase II of the Gator Trace PUD to develop a timeline for compliance with those conditions.

Conclusion:

1. The Developer to the Proposed Amendment does have the authority under City Code to proceed forward with its Proposed Amendment application for Phase I without the authorization of the Developer/Property Owner for Phase II.
2. Any development of Phase I over the already approved 67 units of two-story townhouses would require an Amendment to the DA consistent with Section 8 of the DA.
3. The City should meet with all Developers/Property Owners of the Gator Trace PUD to gain clarity of the timeline for compliance with the conditions and obligations in the DA. In addition, the City should determine what remedies it has if the Developers/Property Owners of the Gator Trace PUD fail to comply with the terms and conditions of the DA.