

ACR Acquisitions LLC (Wilson Groves)

Comprehensive Plan Transmittal Hearing for Amendment to Figure 1-6

City of Port St. Lucie City Council
June 26, 2023

Requested Amendment Only Relocates Land Uses - NO IMPACT ON ROADS

- The City must transmit this amendment which **ONLY** relocates land uses within the project boundaries
- **NO change in density, NO change in intensity**
- This is merely a transmittal hearing
- The City will not face legal challenge if it transmits the amendment as requested because the amendment will come back for final adoption
- However, the City will create liability for itself if it does not transmit today, or if it appends a condition to the transmittal which bears no rational nexus to the impacts of the requested amendment and infringes on Wilson Groves' vested rights
- We ask that you transmit the amendment as proposed by ACR with no conditions of approval, or at least as recommended by PZB (though ACR continues to object to the conditions recommended by PZB)



History of Application

- **ACR's application was submitted in November 2022**
- **The Staff report submitted to PZB recommended approval with conditions unrelated to the construction triggers in the Wilson Groves DRI**
- **ACR objected (and still objects) to the original conditions requested by Staff**
- **GL submitted, via John Shubin, a letter in opposition to the applications days in advance of the PZB Hearing**
- **Representatives of GL were present and testified at the PZB Hearing**
- **Notwithstanding the opposition of GL, Staff testified in support of approval of the amendment subject to the conditions proposed in the staff report**
- **Notwithstanding the opposition of GL, the PZB unanimously voted in favor of recommending approval of transmittal of the amendment (and of the DO amendment to Map H) with the conditions recommended by staff in their report**
- **Since that time, NO ADDITIONAL DATA OR ANALYSIS HAS BEEN PROVIDED, yet, a week before this transmittal hearing Staff changed their recommendation to denial unless ACR agrees to amend its DRI for reasons wholly unrelated to the application currently pending**



WILSON GROVES IS VESTED DRI:

- **ACR Acquisitions has vested rights through in its Development Order**
- **ACR has invested approximately 54 million dollars on the construction of transportation improvements within the City, inclusive of Becker Road, in advance of its being approved to construct a SINGLE UNIT. The City would not be allowed to require this of a developer today – see Section 163.3180(5)(h), F.S.**
- **A City cannot use its comprehensive planning power to divest a landowner of its vested rights**
 - **Section 163.3167(5)** - Nothing in this act [Community Planning Act] shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380...
- **Conditions unrelated to the impacts of the application at hand are unconstitutional and contrary to state law**
 - **Section 380.06(7)(b)** - Any new conditions in the amendment to the development order issued by the local government may address only those impacts directly created by the proposed change, and must be consistent with s. 163.3180(5), the adopted comprehensive plan, and adopted land development regulations.
 - ***Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586 (2013)**
 - ***Meglodon, Inc. v. Village of Pinecrest*, 2023 WL 2324344 (March 2, 2023)**
- **Nothing cited by Staff or by GL's attorneys contradicts these principles of law**



The City acknowledged Vested Rights in DRIs at February 22, 2023, Workshop

- ▶ The City Council, on February 22, 2023, adopted a Policy to make every effort to eliminate existing DRI rights to use trip thresholds as triggers for road construction
- ▶ At that Hearing, City Attorney James Stokes cautioned (Page 13 of Transcript):
 - ▶ **“As far as anything that is existing, is going to take an individualized review of each one to see, and that is why we made sure that language of your direction is to authorize the Manager to make every effort to get us where the Council wants us to be as a policy consideration, as long as, we stay grounded in the fact that we cannot. And of course, as you know, these are ordinances right now, these are just policies because we cannot impose things that would violate any existing contracts or vested rights.”**
- ▶ To which the Mayor agreed (Page 13): **“Right”**
- ▶ Also acknowledged by Vice Mayor Caraballo (Page 9):
 - ▶ **“Their DO says that so unless they change their DO or they are willing to change their DO, they do not have to abide by our thoughts on Dwelling Units. So that is why there is a problem here.”**



The Truth About Traffic

- ▶ **Wilson Groves Traffic Study for this amendment IS NOT BASED ON AGE RESTRICTED UNITS**
- ▶ **Wilson Groves Traffic Study for this amendment REQUIRED TO INCLUDE PHASING analysis that loaded buildout of ALL commercial uses in Phase I**
 - ▶ Assistant Public Works Director Colt Schwerdt testified at the 2/22/23 Workshop that such an assumption is unrealistic
 - ▶ **Vice Mayor Caraballo (Page 12-13) - "if they stick to the DO in regard to their trip generation, if they take all of their Industrial and Commercial and then move it to another road and now you have higher trip generation there you might have to 2 or 4 lane that road but potentially, you can wipe out any trip generation on the other roads and then say you do not have to necessarily build them."**
 - ▶ **In response, Cole Schwerdt (Page 13) - "So those triggers would still be met and required. Another thing, Industrial might not fully flush this out but a lot of commercial, they are not going to go there unless the houses are there." (he goes on to use the Copper Creek project as an example)**
- ▶ **Even with these heightened requirements, Wilson Groves Traffic Study indicates NO additional impacts to Becker Road beyond what the existing Figure 1-6 would have.**



Fair Treatment Under the Law

- **The City has a legal and contractual duty to treat ACR fairly and consistent with its past treatment of the other developers in the Southwest Annexation Area in similarly situated circumstances. To do otherwise is breach of the Settlement Agreement regarding Becker Road, and constitutes arbitrary and capricious behavior that deprives ACR of due process (See Section 5 of Settlement Agreement)**
- **It is undisputed that the traffic study provided in support of ACR's requested amendment uses the same (and frankly a more stringent) methodology than used by GL in support of its application requesting the same change**
- **GL's (and Mattamy's) transmittal hearings were not treated as quasi judicial**
- **GL's transmittal hearing for its amendment to amend Figure 1-5 was transmitted without ANY conditions or ANY alteration to their existing DO conditions**



The Truth About GL and Fairness

▶ RIVERLAND KENNEDY

- ▶ 4,460 units approved by City to date through MPUDs
- ▶ Lane Miles that will be constructed for those 4,460 units using (age restricted trip generation methodology) = 12
- ▶ MPUD for Parcel E is currently under review which will add 2,061 units and only 1 additional lane mile of roadway

▶ WILSON GROVES

- ▶ To date, 0 approved units and 4 lane miles of Becker Road required to be constructed (in addition to tens of millions in funding for other improvements already provided by ACR)
- ▶ To trigger construction of 12 lane Miles
 - ▶ Existing DO Condition - 2200 units/2573 trips
 - ▶ Staff New Condition- 2200 units (2260 fewer units than Riverland was allowed for the same amount of construction)



GL HAS REPEATEDLY STATED CONDITIONS LIKE THAT PROPOSED BY STAFF HERE ARE ILLEGAL

- As applied to its development, GL Homes has **CONSISTENTLY** testified that the type of Amendment proposed by Staff here is **ILLEGAL**
- In a letter objecting to Staff Comments on its Parcel D application, dated June 17, 2022, GL's Azalina Goldstein stated:
 - **"As previously stated, the Riverland/Kennedy DRI Development Order is what governs the timing and construction of the Developer's roadway obligations set forth therein. There is no other legally justifiable basis for requiring the Developer to advance the completion of constructing N/S "A" to the intersection of Marshall Parkway (E/W 3) within 6 months after the intersection is constructed by others."**
- At the February 22, 2023 Workshop, GL's Kevin Ratterree stated (Page 1):
 - **"We disagree with and do not support any proposed elimination of the trip generation thresholds established in the DRI DOs."**
 - **"To be clear GL Homes is open to discussions and methods of getting the entire two-lane network built provided that the same rules will apply equally to all the developers in the Southwest Annexation area..."**



The City may not force amendments to the Wilson Groves DRI that are not warranted

- Understanding that the law does not allow the City to infringe on the vested DRIs, at the February, 22, 2023 Workshop, Councilman Pickett asked (Page 14):
 - “I do have a question, let's say we pass this today and give the City Manager the necessary leeway to negotiate this with the developers, what if they say no, what do we do then?”
 - To which the City Manager responded- **“I am sure we are going to be twisting their arms very tight, and it is going to hurt at the end.”**
- At this 11th Hour, in the face of testimony given just two weeks ago to the contrary, apparently emboldened by false assertions from ACR’s competitor GL Homes, Staff is suggesting that the City do as the City Manager suggested and twist ACR’s arm **very tight and make it hurt by refusing to transmit ACR’s amendment** until it agrees to divest itself of its right to use the trip generation trigger in its existing DRI DO
- We ask that you transmit the amendment as requested with no conditions, or at least as recommended by PZB (though ACR continues to object to the conditions recommended by PZB)



Questions & Discussion

