

**Comparison
Existing Development Agreement with Proposed Development Agreement**

21-Sep-03

Proposed Amended Development Agreement Sections:	What the current Development Agreement Says; with section noted, when possible:	What the changes are: What the concerns are:	Comments:
Section 1. Definitions	Original did have a definitions section	Not studied	
Section 2. Energy Conservation and Sustainability Goals 2.1.2 -Indicatest that the required information center is an accomplished fact. -...future phases shall provide the opportunity for commercial and non-residential development....	1.2.2.b Requires that this center be ongoing. Required that Developer ensure that mixed use development happened.	Change from "shall" to "may", converts a requirement to an option. Who will plan? How will it be integrated? Who will promote?	What is definition of "center?" Does what we currently have qualify, since it only has pamphlets and minimal displays?
2.2 Appears to be in conflict with other sections of the document. Changes to IMPACT only with City Council approval. But elsewhere indicates can be changed administratively.	The current DA also is ambiguous on this issue.		
3.1.1 Requires a comprehensive and inclusive planning but other language makes exactly what is required in this a bit vague	Similar language, but more clearly states that the inclusion of mixed-used planning is required.		We have already heard that Pulte will develop a plan for residential areas; someone else for commercial/retail areas. Who will be responsible for the integration of the two?
3.1.1.1 ... Developer MAY also prepare admentments to Master Block Plats, etc.	2.1.4 Developer SHALL do this	Weakens the requirement for mixed use development by suggesting it is an option, not a requirement, and being more vague about who is to implement.	
3.1.2 ...Developer MAY submit PAD's Then lists things a PAD MAY include (Note: PAD is a Planned Area Development, the new name for a Specific Plan)	Developer Shall do this, section3.3.1 Listed things the PAD MUST include.	The basic goals of Civano and all new urbanist or neo-traditional planning cannot be achieved without a special zoning district. Leaving this as a discretionary option is problematic.	
3.1.6 Developers obligation to Continue development is changed to an aggregate of 1250 homes, or until 4/1/12.	Developer required to build 100 homes per year or be declared in default. Or 200 homes over any two year period.	Having a minimum number of houses requirement forces the developer to develop marketing and sales that work, and to actively and aggressively promote the project, engage new builders when required, etc.	Without the annual requirement, a developer can stay with a minimal effort, just like we have now. NOTE: Civano Neighbors reached consensus in support of <i>not</i> having the annual requirement at May 2003 meeting.
6.1.2 Responsibility for promoting Civano is shifted from the developer to the City, especially as it relates to encouraging commercial and retail development.	The primary responsibility rested with the developer with the City assisting. 2.1.7	It is unrealistic to expect the city to do much more than find potential candidates. The implementation of the retail/commercial side of Civano has to be done by an experienced developer. Even Pulte is openly acknowledging that the idea of integrated mixed use planning and development has been abandoned. This is a critical change in the intent of the DA.	
8.6 Future assignment of developer land and rights are made easier to be done at the sole discretion of the developer.	Future assignment is made very difficult	Again, accountability for the overall, integrated development of a detailed master plan for Civano, all of it, is weakened.	
	1.2.1 The current DA makes it clear that the IMPACT standards now in place are minimum standards. The proposed DA leaves the door open for adjustments either way, depending on reports and studies to be made. However, those reports are not named, nor is the manner in which they would be reviewed and by whom.	The new language is basically an invitation to cease trying to find a way to successfully market the performance characteristics of Civano homes, and to back away from the current IMPACT standards.	We have had verbal assurances and some commitments, but little else than that from Pulte about implementation of the IMPACT goals. It makes some nervous that we won't see concrete proposals from Pulte until well after the DA has been changed. It would be better to see firm commitments before the changes are made to the DA.

Critical issue to be discussed: both the existing and the new DA state that the responsibility for promoting, monitoring, measuring, and evolving the IMPACT standards, and the other design and planning standards of Civano (whatever those are at this point) will become the responsibility of the various HOA's, once the developer has left. This represents a serious liability, both monetarily and in man hours. A lot of partnering can be done to achieve some of this, but even with that it will cost money. Where will this come from? Increased HOA fees? Grants? The \$234,000 endowment to a non-profit? A serious and detailed discussion of this needs to happen NOW. Furthermore, the way HOA's will be set up for Civano is a separate HOA for each neighborhood, all operating under one Master HOA. Which one will have the responsibility for the IMPACT Standards?

A general observation and comment:

The general thrust of the new DA is to off load responsibility and accountability. The city is primarily responsible for the commercial/retail development; many things that were required are now encased in language whose legal meaning is to open the door to their being optional. A subtle example is the use of the word "developer" in the new DA. It replaces the words "Community of Civano" in many cases in the existing DA. The implications are obvious: rather than having a specific entity held accountable for enforcing and implementing the DA and IMPACT goals, a door is opened to having several entities held partially responsible for differing aspects of the DA. This generally is not a good thing. It is not necessarily a bad thing, either. I think it could be acceptable, but in a radically different context: one which had in place a Specific Plan (PAD) for all of N2 and N3; a clearly defined and administered design review process; a truly comprehensive, integrated, and coordinated planning process for residential, institutional, commercial and retail components of Civano.