

# Memo

**To:** Honorable Mayor & Commissioners

**From:** Thomas J. Baird, Town Attorney

**Date:** August 23, 2024

**Subject:** Density Downtown Workshop

**Cc:** John D'Agostino, Town Manager, Nadia DiTommaso, Karen J. Golonka, Anders Viane

This is a follow-up to the memo I authored on August 21, 2024. The information presented in my previous memo should not be taken as meaning that the Downtown cannot be redeveloped pursuant to the objectives and policies of the Comprehensive Plan (Plan). Rather, to the extent that I opined that objectives and policies were not being properly evaluated, it was due to the densities waivers that the two property owners were requesting yielding extraordinary densities of 200+ and 300+ units per acre to two properties in the Downtown. It was also intended to provoke a dialogue amongst the commissioners given that there are developers moving forward with applications based upon the (new) objectives and policies of the Plan and the Land Development Regulations (LDRs) implementing the objectives and policies.

While the Plan's existing objectives and policies for the Downtown *might* be consistent with the Plan and the intent of the LDRs, appropriate, it seems apparent that the **waivers** requested by the first two applicants are challenging, and if approved are likely to result in an unintended consequence. For example, the Plan establishes a "basket of units" approach and an average density for the entire Downtown of 48 units per acre. As noted in my previous memo, were the waivers to be granted for the two applicant property owners, the remaining Downtown property owners will find that their property rights have been diminished, and these property owners may not be able to achieve the redevelopment of their properties. This could leave Downtown property owners and businesses



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(except for the two property owners who have submitted applications) with the inability to redevelop their properties, or certainly diminished in the extent to which their properties can be redeveloped. To avoid this, the Commission must find a balance with respect to the two proposed projects currently requesting waivers that would result in extraordinary heights and densities in the Downtown to proceed, but leaving behind the other Downtown property owners. Based upon the existing Plan, the other property owners have the same development rights and an expectation of achieving an average density of 48 units per acre for their properties. It would be “unfair” and perhaps legally perilous to diminish the property rights of these other property owners by granting density and height waivers only to the first two property owners who are “first in.”

The proposed projects with the waivers for height and density being sought based upon the current objectives and policies of the Plan, is challenging given the capacity and level of service of existing roads and water and sewer capacity. For example, the ongoing dialogue with the Seacoast Utility Authority has revealed that based upon the density being sought (with waivers) by Forest Development, a new Master Lift Station is required to service its project and the remainder of the Downtown.

Moving forward with the discussion on density and height, a planning forum or series of forums or a mini-Charette may be appropriate where the Commission and stake holders, i.e. the public, property owners and businesses can discuss the application of the existing objectives and policies and implementing LDRs for the Downtown. It may be that there are revisions to the Plan and LDRs which should be made to accommodate the Commission’s vision for the Downtown.

At its last budget workshop, the Commission committed \$50,000 of ARPA funds toward the legal budget for an evaluation of the code and LDRs. Based upon the discussion regarding the RFPS that were issued, I understand that these funds may also be used for planners. A collaborative approach between my office, a consulting planner and the Town’s planners would be welcome. I can elaborate on this memo during my comments at your next commission meeting or before that if anyone would like to discuss this with me individually.

The future of the Town’s historic commercial downtown is of great importance to all and taking a measured approach with the inclusion of all stake holders regarding the Downtown’s redevelopment is in the best interests of the Commission, the public and property owners.