

# Memo

**To:** John D'Agostino, Town Manager  
**From:** Thomas J. Baird, Town Attorney  
**Date:** April 11, 2023  
**Subject:** Kelsey on the Park Abstract  
**Cc:** Nadia DiTommaso, Director  
 Karen J. Golonka, Anders Viane, Planners

## Preface

You have requested that I provide the Community Development Department staff with an analysis and opinion regarding the development of a conceptual 2.15 acre (the Property) residential project proposed by Adler at Lake Park LLC (the Developer). I understand that you require this analysis because the Developer continues to pressure staff and "lobby" the commission for waivers that it believes to be available to develop the Property at densities that exceed what is permitted by the Town's property development regulations. Staff has provided to me an un-dated narrative from the Developer, a site plan and a staff memo dated 1-31-23 which provides comments to the Developer based upon the Narrative and site plan. The staff's comments are detailed and go beyond what in my experience is normal in reviewing and commenting on a conceptual plan (assuming it is appropriate, or a good use of staff resources to review a conceptual plan). Based upon my review and analysis of the documents provided to me, and in particular, the staff's comments, I am surprised that the Developer continues to pursue its concept plan. My review and analysis has also taken into consideration Objectives 5 and 12 and the implementing polices set forth in the Town's Comprehensive Plan; and § 78-70 of the Land Development Regulations (LDR). My review confirms and expands upon many of the staff comments and conclusions reflected in the January 31, 2023 memo.

## The Conceptual Project

The Developer's un-dated narrative generally describes a multi-use development plan featuring 720 residential apartments, a parking deck of 321,428 sq. ft., and 17,998 sq. ft. of retail / commercial space which includes a 2,663 sq. ft. restaurant (the Project). The Project, as proposed, would be approximately 17 stories, which includes a 4-story parking deck<sup>1</sup>. This conceptual Project would be built on the southside of Park Avenue, east to the property line of the Post Office building property line. It would be constructed from the south side of Park Avenue to the North side of Foresteria and include the existing Barbie Restaurant property.

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<sup>1</sup> The Site Plan and the un-dated narrative conflict because the parking deck is shown as 7 levels or 6 stories, not 4.

### Pre-requisites or Contingencies to an Application

There are several pre-requisites or contingencies which must be addressed prior to an application being submitted, assuming the Developer elects to proceed with an application to develop this conceptual Project: (1) The Developer proposes that the Town sell a portion of the alleyway to it for its appraised value. First, this assumes the commission would agree to abandon an alley that was dedicated for the benefit of the public. Assuming, the commission agrees with the proposed partial abandonment, then to be legally entitled to abandon and sell a portion of the alley to the Developer, the Town must obtain the approval of the MacArthur Foundation. At staff's request, I did have some dialogue with the attorney at the MacArthur Foundation regarding this, but thus far there is no indication that an abandonment will be possible. (2) An application to the Historic Preservation Board (HPB) to "de-designate" a vacant historic building at 918 Park Avenue must be submitted and approved by the HPB. (3) To justify the density and magnitude of the Project the Developer must rely upon the assumption that a Tri-Rail Station will be constructed near the Project, and that the Project will be developed in accordance with Tri-Rail's Transportation Overlay District (TOD) policy<sup>2</sup>. According to the Developer's Abstract, the Project will be the central focus of a TOD. The TOD Policy encourages continuous infill development extending ½ mile from the mythical Tri-Rail station. Neither the Town's Comprehensive Plan, nor its LDRs have TOD policies or development standards. Accordingly, the Town would need to develop and implement such policies and standards in its Comprehensive Plan and LDRs. It should be noted that the Town of Jupiter took this action nearly 20 years ago and presumably is still anticipating a commitment for the expansion of Tri-Rail and a station.

### Analysis of the Project's Compatibility with the Core PADD

The Project is not compatible with the purpose and intent of the Town's LDRs as expressed in § 78-70, or with existing development in the PADD. The purpose and intent of the PADD is to facilitate development of "**small scale traditional downtown commercial areas.**" The only mixed use development which is reflective of the PADD's purpose and intent of small scale traditional commercial development is the mixed use project originally developed by the Ahrens Company on Park Avenue. This mixed use project was originally proposed as four stories, but as a result of a mediated settlement agreement was developed as 3 stories. There are a number of economic factors that have thwarted the development of this project, but it cannot be said that it's development was not compatible or consistent with the purpose and intent of the PADD. The density and height for projects in the PADD traditional downtown have slightly increased, but the purpose and intent of the PADD has not changed.

The only other project that has emerged in the vicinity of the PADD is the Oceana Coffee project on 10<sup>th</sup> Street. Originally it included a third floor, but the latest plans have scaled it back to two stories. This redevelopment proposal consists only of commercial uses; nevertheless, if developed it would be consistent with the purpose and intent of the PADD by delivering a "small scale commercial area." This project is expected to be a catalyst for the redevelopment of the 10<sup>th</sup> Street area and as such one would expect that other projects would be consistent with its small scale commercial character.

Contrary to the PADD's purpose of maintaining a "small scale traditional downtown" the Project's character, density, and intensity is such that it is comparable to, or exceeds the character, density

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<sup>2</sup> I do not have a copy of this policy, but have merely relied upon the Developer's representations in its narrative.

and intensity of mixed use developments in the downtowns of Miami, Ft. Lauderdale and West Palm Beach. For example, the Project's FAR of 12.75 substantially exceeds the FAR of 7 for mixed use projects in downtown West Palm Beach. The proposal to construct 13 floors and 720 studio, 1 and 2 bedroom residential units does not meet the purpose and intent of the PADD which contemplates maintaining the Town's historical downtown which is reflective of the early master plans and envision a **small scale traditional downtown commercial area**. The residential component of the Project overwhelms the commercial component of the Project and is not consistent with the envisioned traditional downtown commercial area. The Developer's proposal<sup>3</sup> to develop 720 residential units yields a density of 335 units per acre, or more than 700% greater than the maximum density of 48 units per acre pursuant to the Comprehensive Plan. The development of this number of residential units on 2+ acres would overwhelm Park Avenue and 10<sup>th</sup> street. While the implementation of a mobility plan might help, these streets are not entirely within the Town's control in terms of the collection and expenditure of mobility fees.

### **Analysis of the Project's Consistency with The Comprehensive Plan**

This conceptual Project not consistent with Objectives 5 and 12 and their implementing policies in the Future Land Use Element of the Comprehensive Plan. Objective 12 is entitled "Redevelopment of the Historical Downtown Area," and establishes a Future Land Use Classification to establish and facilitate the redevelopment of the historical Park Avenue downtown and the immediate surrounding area. This future land use is intended to produce a dense, vibrant, walkable mixed-use downtown with a balance of residences, businesses and include civic spaces. Projects in the historical downtown are intended to be well-integrated into the surrounding neighborhoods. This objective is implemented by *Policy 12.1* which seeks to deliver compact residential and non-residential or mixed used buildings that **complement the existing buildings**. The existing buildings in this area are small scale in character in keeping with the purpose and intent of the PADD. The surrounding neighborhoods are largely low density residential neighborhoods. While the objective is intended to facilitate development that contemplates a *future* tr-rail station, the objective does not rely upon a tri-rail station for these projects to succeed. The Project is not consistent with *Policy 12.1* of the Comprehensive Plan because it does not deliver a compact residential/nonresidential mixed use building that is well-integrated into the surrounding neighborhoods. On the contrary, it delivers a 17 story tower which is predominantly residential that would overwhelm and dwarf the existing buildings along this area of Park Avenue and would not be well-integrated with the surrounding residential neighborhoods.

*Policy 12.2* provides for a density of 48 units per acre and a FAR of 3.0 to be applied through the 32.13 acres in the PADD. The Project is not consistent with this policy of the Comprehensive Plan because it would absorb approximately half of the units allocated to the entire PADD area and its proposed FAR is 12.75, or more than three times the average maximum FAR for buildings in the PADD. This FAR is also not compatible with the purpose and intent of the PADD to encourage a small scale traditional downtown.

Although the Project is only 2+ acres the narrative does not suggest that any attention has been given to being consistent with *Policy 12.4* which directs redevelopment to be supported by publicly accessible civic space. A proposal to create 720 residential units would generate more than 1,000 residents. Where will they gather, in the street? If so, this certainly would not be consistent with

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<sup>3</sup> The Developer's represents that this 2.1 acre site must have 720 units in order to be financially feasible.

*Policy 12.5* the intent of which is to achieve the safe interconnectivity of vehicular, pedestrian and other non-motorized movement.

Returning to *Policy 12.2*, you may recall that I was not convinced that the amendments to the Comprehensive Plan promoted by staff permitting an “average” 48 units per acre within the 32.13 acre area was good policy. I advocated for an established general range of density for the PADD acreage as is required by Fla. Stat. § 163.3177 (6) (a). I remain dubious that the establishment of a bucket of units with an average density of 47 units per acre established for the area comprising the bucket is good planning. The conceptual Project illustrates why this approach is not good planning. One project can overwhelm all of the other potential redevelopment projects.

Given what has been proposed as the first project following the adoption of the amendments to the Comprehensive Plan and the PADD, I believe staff should re-evaluate those amendments. My analysis of what these amendments could deliver in terms of development suggests to me that *Policy 12.2* is internally inconsistent with *Policy 12.1* and *Objective 12*. *Objective 12* and *Policy 12.1*, along with the implementing LDRs of the PADD contemplate a small scale traditional commercial downtown that is well-integrated with surrounding neighborhoods. I do not believe that bucket approach and/or the increased height permitted in the PADD is consistent with *Objective 12* or *Policy 12.1* and this warrants a re-evaluation of the amendments to the PADD. I also believe that the amendment to the Code that essentially allows for a height waiver for up to four stories of structure parking is good planning practice and should be revisited before an actual application is submitted, either by this developer or someone else.

### **Conclusion**

Assuming an application is presented to staff for review, and based upon the analysis set forth hereinabove, I do not believe that the Project could be approved by the Commission. To approve it, the Commission would have to ignore Fla. Stat. § 163.3194 (1)(a). This statute provides “after a comprehensive plan has been adopted **all development** undertaken by, and all actions taken in regard to development orders [by the Town] ... shall be consistent with [the Comprehensive Plan].”