

Memo

To: Mayor and Town Commission
From: Thomas J. Baird, Town Attorney
Date: November 14, 2024
Subject: PADD / ZONING IN PROGRESS
Cc: Bambi Turner, Interim Town Manager; Nadia DiTommaso

I am including herein some background information regarding the justification of the Town Commission's decision to adopt a Zoning In Progress (ZIP) resolution for the PADD.

Wastewater Capacity

The chart below demonstrates the magnitude of the discrepancy between the residential units proposed by Kelsey on the Park and 10th and Park (collectively, the Projects) and the capacity of Equivalent Residential Connections (ERC)¹ for wastewater flow to serve the residential units currently proposed by the Projects. Please note that the commercial uses also have the need for wastewater flow, but we do not have any data from the Seacoast Utility Authority (Seacoast) as it pertains to the demand for wastewater generated by the commercial uses.

Project	Units	Density	Available ERCs	Commercial
Kelsey on the Park	500	233/acre units	70	16,830 sf
10 th and Park	595	203/acre units	150	16,309 sf

The ERCs shown above represent the ERCs available to serve the residential units the Projects which have been proposed. Seacoast has previously confirmed that a new lift station must be

¹ An ERC is the flow equivalent to one single family residence.



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installed within a reasonable proximity of the Projects to serve the residential units that have been proposed for the residential components of the respective Projects.

The redevelopment of other properties with a mixture of residential and commercial uses on the remaining 26.6 acres within the PADD will require an expansion of the wastewater capacity. Assuming the owners of the land which encompasses the Projects and other property owners within the PADD are unwilling to set aside land on their properties to accommodate their wastewater infrastructure needs on their properties, the delivery of land for a lift station might be satisfied on public property through one or more of the following options: (1) resolve any restrictions or reversionary interests in existing rights-of-way such that the rights-of-way can be used; (2) placement of a lift station on existing town or CRA property; (3) the Town and/or CRA could acquire property. Alternatively, property owners within the PADD could contribute financially their pro rata share of the capacity necessary to accommodate their redevelopment. These are the options, we should explore internally and with Seacoast during the zoning in progress time period.

Density

The Comprehensive Plan establishes an average density of 48 units/acre within the PADD. The total number of residential units contained within the “basket of units” established for the PADD by the Comprehensive Plan is 1,494. The Projects encompass 5.42 acres of the 32.13 acres of the PADD. Were the Commission to approve both Projects at the densities² they have sought, the remaining 26.7 acres in the PADD would only have 399 residential units available for development. Assuming an equal allocation of residential units per acre for the remaining properties within the PADD, their owners could only redevelop their properties at a density of 15 units per acre. This is less than 1/3 of the average residential density of 48 units per acre established by the Comprehensive Plan within the PADD. There would be an obvious disparity between the property rights of the owners of the Projects and the other property owners within the PADD who might want to redevelop their properties in accordance with the existing objectives and policies of the Comprehensive Plan and LDRs. This disparity in density does not seem fair, but more importantly it may well be a disincentive to those property owners who might want to sell their properties for redevelopment.

Were the Projects to develop at the average density of 48 units per acre established for the PADD, Kelsey on the Park could develop 120 residential units and 10th and Park 140 units. Based upon the math, as shown in the chart above, both projects currently have sufficient ERCs to develop at the average density established within the PADD. Because properties within the PADD have land use and zoning designations of mixed use, however, some allocation of wastewater flow for the commercial use square footage proposed for the proposed Projects would need to be calculated to

² With the waivers being requested by the property owners, the density of the 10th and Park project would be **203** units per acre and **233** units per acre for Kelsey on the Park, or more than **4 times** the average density established for properties within the PADD..

determine whether there is wastewater capacity for the Projects at the average density of 48 units such that the Projects with the commercial square footage proposed could ultimately develop at the average residential density established by the Comprehensive Plan. Importantly, the fact that the Projects could develop at or near the maximum residential density established within the PADD by the Comprehensive Plan renders property rights arguments by the owners of these properties impotent. Nevertheless, during the time the ZIP is in place, the land use, density and other land development regulations should be re-consider to determine whether they remain in keeping with the Commission's vision for the PADD.