

Memo

To: Nadia DiTommosso, Karen J. Golonka, Anders Viane
From: Thomas J. Baird, AICP, Town Attorney and Peter J. Henn, AICP, Esq.
Date: October 3, 2025
Subject: P-3 Marina PUD Round 5 Comments
Cc: Richard Reade, Town Manager

THIS MEMO AND ATTACHED CHECKLIST RELATE TO THE P-3 MARINA PUD. IT IS IMPORTANT FOR YOU TO FIRST REVIEW THE MEMO BEFORE THE CHECKLIST SO YOU FULLY UNDERSTAND OUR ONGOING CONCERNS AFTER FIVE ROUNDS OF COMMENTS.

PREFACE

This Memo addresses the 7/5/25 draft of the staff comments letter for the PUD and site plans that have been submitted by Forest Development, LLC (the Developer). We offer our comments to you as certified planners in an effort to assist and refine the Department's response to the Developer's fifth submittal. You may choose to incorporate our comments into the Department's "comment letter" to the Developer and/or include our memo with your response. Either way we urge you to provide your comment letter to the Developer as soon as possible, but no later than next week.

Unlike a development proposal from a developer who owns property and proposes to develop it, the Developer proposes to develop approximately 2 ½ acres of *public* property owned by the Town. The PUD to be developed consists of parcels comprising the Lake Park Harbor Marina (Marina) and the former Kahn property, which was purchased with public funds to provide parking for boat trailers, (collectively referred to as the Property). The Town will remain the owner of the Property, and as such is entitled to participate in the planning of the redevelopment of the Property.

The Developer's five submittals pertaining to the PUD and site plans submitted to develop the Property have changed little despite previous rounds of comments from the Community

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Development Department (the Department). The nature of the Developer's proposed PUD and site plan submittals reveal an intent to maximize private development on the Property with little consideration to provide accessible, usable open space for the public. In this sense, the Developer's plan for the PUD is contrary to a "*public*, private project," as it fails to deliver usable and accessible open space for the public. The ability to deliver public space has been, in part, compromised because of the Developer's failure to plan in advance for a lift station to serve its Nautilus 220 project. Inexplicably, the Developer planned and constructed its Nautilus 220 project without planning in advance for the location of a lift station on the Developer's property, or on other private lands in proximity to Nautilus 220 to accommodate its development. As a result, after the Nautilus 220 project was constructed, the Developer sought to place a lift station on public property in the Marina. Given that Nautilus 220 had already been constructed and had to demonstrate the availability of wastewater services so that the Town could issue certificates of occupancy for the purchasers of Nautilus 220 units, the Town essentially had little choice but to provide an easement on public land in the Marina so that buyers of Nautilus 220 could move in. The Developer's failure to plan for the infrastructure necessary to serve its Nautilus 220 project should not constrain the Department, and ultimately the Town Commission, from doing the right thing and designing a PUD and site plan that preserves the public's access to the waterfront and public spaces within the Property. It may be that the right thing is to reduce the intensity of the Hotel and/or Boat Storage uses, or to eliminate one of the hotel use altogether (given that boat storage is a more appropriate use for the Marina).

COMMENTS ON THE ROUND 5 SUBMITTAL FROM THE DEPARTMENT

We offer the following comments sequentially in line with your comments on the PUD. Our comments also take into consideration the Department's comments on the fifth submittal of the site plans. Our comments are followed by a Checklist for your convenience.

A. Land Development Regulations

The Department notes that amendments to the Comprehensive Plan (the Comp Plan) and Land Development Regulations (LDRs) are required to accommodate the proposed uses within the public zoning district. It's not clear from the materials we have reviewed what specific uses are proposed that would require amendments to both the Comp Plan and the LDRs. These uses must be identified in the Department's comments letter, and an analysis prepared of the appropriateness of these uses on the Property given that the Town is the owner of the Property. As the owner of the Property, the Town must ultimately determine whether these uses, and their location as clearly identified on the PUD Master Plan, are deemed by the Town Commission to be appropriate for the public's Property.

B. Useable Open Space for the Public

A PUD of approximately 2 ½ acres is a relatively small area for development. Given the Property's proximity to the Intracoastal Waterway, one would expect that any development

would maximize water views, not just for guests of the hotel and Nautilus 220, but also for the public visiting or using the Marina, and beyond to the Intracoastal Waterway. View corridors of the water and Marina should be a focal point of the PUD Master Plan. In addition to water views, the redevelopment of the Marina offers a unique opportunity to provide the public with enhanced access to the water from vessels in the Marina and those launched from the boat ramp in the Marina. Significant portions of the upland acreage are to be developed for a hotel with conference center and a boat storage building, but little space is devoted to public open space, parks or a Promenade. Of great concern is the loss of the boat trailer parking area for use by the public and the replacement of this land with a hotel and conference center. The square footage and heights of the proposed hotel and Boat Storage structures next to one another, connected by a 4-story "bridge" which also includes developed space next to the 20-story Nautilus 220 buildings, effectively "walls off" any view looking east from Federal Highway of the waters of the Marina and the Intracoastal Waterway. At the very least, the PUD Master Plan should be re-designed to provide for view corridors to the water. This necessarily would result in some re-design of the buildings to reduce the mass, height, and connectivity between the hotel and Boat Storage building. The "bridge" which is not really a bridge, but simply more habitable space and parking structure has been an issue discussed for some time (through all five submittals) and yet no revisions have been made to the PUD or site plans other than splitting one site plan into 2 site plans (as has always been required by the P-3 Comprehensive Agreement) to address the Department's previous comments.

The Department must be an advocate for the Town and the public and insist that the Developer re-design the PUD Master Plan that yields useable and adequate open space and a true Promenade, because it is public land. Toward this end, we note that planning in the public interest is one of the aspirational principles in the AICP Code of Ethics. The Department has appropriately observed this aspirational principle and concluded that the three "*open spaces*" proposed by the Developer are insignificant as public amenities because they do not provide the public with any meaningful, usable open space for the public. Given the Department's conclusions regarding the inadequacy of the Developer's planned open space for the Property, the PUD Master Plan must be re-designed to deliver adequate useable, accessible open space, and a pedestrian Promenade throughout the Property for the public. Consistent with, and to bolster the Department's comments, we offer our analysis of the three "open spaces" proposed by the Developer.

(i) Event Lawn

The Event Lawn is an open space measuring 40' wide and 140' long next to the lift station being constructed to meet the demand for wastewater created by Nautilus 220. In the PUD Master Plan, the Developer has not addressed any buffering for the lift station. Seacoast has advised that lift stations generally require a 100' setback, although there can be exceptions. Even with an exception, the lack of planning for this utility infrastructure by Nautilus 220,

essentially renders the “Event Lawn” useless as adequate and accessible open space for the public. The Developer must be advised that the PUD Master Plan needs to be redesigned to recognize that the lift station has compromised an area that could have been a more robust public open space amenity and provide for useable and adequate public open space elsewhere within the Property. The Developer may have to accept the fact that the private development uses on Property cannot be developed with as great an intensity as is currently proposed and the PUD Master Plan needs to be redesigned. *The Property is, after all, public land; and this is a public-private development project.*

(ii) Elevated deck

This public “open space” is on top of the Boat Storage building. It has also been the subject of much discussion through all five submittals. The Developer apparently continues to insist that it is open space available for the public, but the Developer, and more likely the hotel operator, will control any public access to this space. Of great significance, and as appropriately noted by the Department, the elevated deck does not comply with Code § 78-83(j) (i) e. and, therefore, cannot even be counted toward meeting the PUD open space requirements. Yet, after five submittals the Developer continues to maintain that it is “open space” accessible to the public. To be accessible to the public and to comply with the LDRs, the open space must be provided at grade level.

Instead of continuing with submittals that do not comply with the LDRs, once and for all the Department must advise the Developer that the elevated deck cannot be counted toward meeting open space requirements for the PUD and that the PUD must be re-designed to meet the LDRs requirements. Although the Developer can maintain the elevated space as a hotel amenity, we note that this feature is more of an “accessory hotel use” and not associated with the use of boat storage. The Department may want to advise the Developer that assuming the hotel use remains, the elevated deck could be designed as a hotel amenity or accessory use, but it should be eliminated as “open space” or as an “amenity” on top of the Boat Storage building.

(iii) Marina Plaza

It seems obvious that this “open space” is not large enough to function as an entertainment venue that can accommodate “street festivals” and “special events.” Of concern, and as the Department has noted, this area is basically the extension of the sidewalk and most of the “plaza” is in the public ROW. A public ROW cannot be counted toward an open space requirement. Moreover, there could be liability associated with planning for large crowds of pedestrians in a public ROW. As such, the Developer must be informed that the PUD Master Plan needs to be revised to provide an “entertainment venue” that is of sufficient size and location that it can be a true open space venue for street festivals and special events. Again, this may only be possible if the intensity of the private development is reduced.

C. Loss of Waterfront Promenade and Boat Trailer Parking Lot

The PUD Master Plan eliminates approximately 250 linear feet of the Waterfront promenade. A waterfront pedestrian promenade has been a part of the Town's planning since at least 2004. A promenade concept was first conceived when the County purchased the Kahn property using funds from its "Access to the Waterfront" bond issue. This property was conveyed to the Town for a boat trailer parking lot. Public funds from the Waterfront Access Bond was to be restricted to uses that provide the public with access to the waterfront. Pursuant to the PUD Master Plan (and site plan), the Kahn property would be converted from a boat trailer parking area, to a private hotel, thereby eliminating the public's access to the waterfront by displacing the boat trailer parking lot that was acquired by the County for \$2.4 million. The Town has reimbursed the County with \$2.4 million of Town funds. Accordingly, in both cases, public funds have been used to secure land for the public's access to the waterfront. Because the Town has reimbursed the County the bond proceeds it expended to provide for the boat trailer parking lot, it may be that the Kahn property is no longer restricted for access to the waterfront uses. *Given the expenditure of \$2.4 million of public funds to acquire the Kahn property we are hesitant to conclude that this property may be developed for an exclusively private use (hotel). Consequently perhaps the Town should ask the Inspector General to weigh in to be sure. It would be unfortunate for both the Town and the Developer to find out after approvals are given by the Commission that the Kahn property cannot be used for private development.* In any event, the PUD Master Plan must be re-designed so that a waterfront promenade that meets Code § 78-74 is provided.

Finally, the Department has noted that in its draft 8/1/25 comment letter on the *site plan*, that the loss of the open air tertiary street (caused by the four story "bridge") disrupts the continuity of the pedestrian promenade experience going south along Lake Shore Drive. Furthermore, the Department notes that the massing of the hotel and boat storage buildings on the street encloses this area and effectively prevents any views of the water or the Marina. These comments make it clear that the PUD and site plans must be revised.

D. Documented and Detailed Commitment to Public Benefits Required for a PUD

The Developer is requesting 14 waivers for a 2 ½ acres site. While some of the waivers, such as the number of street trees provided as part of the streetscape may be "minor," these waivers have been necessitated by the Developer's proposed building configuration and, in particular the buildings' relationship to Federal Highway. There are, however, a number of other substantial waivers: a waiver of the maximum *height* for the Boat Storage building; the request to use the FHNUDO parking standards as opposed to general standards; the floorplate design standards to accommodate the envelope of the parking garage and the design concept of a 110' high "bridge" with four floors of development, 26 feet above a ROW; the loss of a tertiary street; and the design of street widths and roadway sections. These waivers are significant departures from the Town Code and suggest that the PUD Master

Plan and site plans are significantly more intensive than what is contemplated by the Town's LDRs. The Developer is required to justify the necessity for each of the waivers, including these substantial waivers and demonstrate how the special exception criteria in Section 78-714 has been met for each waiver requested. We could not identify from the fifth submittal any justification for these substantial waivers. Finally, even if some justification for the waivers was presented, it is not clear to us what public benefits the Developer is proposing in exchange for each waiver.

E. Proposed Building over the Lakeshore Drive South ROW

The P-3 Comprehensive Agreement did not contemplate two different uses in two components being linked by building mass, 110' in height, 26' above a ROW. This massive "bridge" above the ROW proposes to contain four levels of structured parking, two level of boat storage, and hotel venue space. This design does not comply with the current Code regulations and cannot be approved as a "waiver." Specifically, Lakeshore Drive South would not be open to the sky and would not meet the requirements as a greenway. Given the Code, the Department has no choice but to inform the Developer that the PUD Master Plan and the site plans for the Hotel and Boat Storage components must be redesigned to eliminate the "bridge."

CONCLUSION

The Developer's PUD Master Plan and site plans for the hotel and boats storage components which melds a hotel, a structured parking garage and the Boat Storage building into one massive facade fronting Federal Highway is inconsistent with the spirit and intent of the P-3 Comprehensive Agreement and the Town Code and is not in the public interest.

While the PUD maximizes the private development of the Town's property, it sacrifices the availability of open space for the public and diminishes the public's access to the water because of a substantial reduction in the slips in the Marina and the loss of the boat trailer parking lot. While the Department's comment letter is very good and thorough, it seems the Department is required to make the same or similar comments in its response to each submittal. This approach cannot continue. The Department is encouraged to take a more proactive approach with respect to the planning of the Town's property by either doing its own design or retaining an outside professional planning firm to assist it in planning the Town's property.

CHECKLIST

1. Determine what Comp Plan amendment(s) are needed.
2. Determine what LDR amendment(s) are needed.
3. Determine what *uses* necessitate the need for the amendment(s) in items 1 and 2 above.
4. Establish an appropriately sized view corridor to the water and marina.
5. Establish better and more public access to the water and marina and identify an area for boat trailer parking to replace the publicly purchased land for access to the waterfront which is to be replaced with a hotel.
6. Reduce the massing, volume, and eliminate the connectivity of the proposed hotel and Boat Storage buildings to enhance the view corridor to the water and marina referenced in item 4 above and to enhance the public access to the water and marina referenced in item 5 above.
7. Re-design the PUD Master Plan (and related individual site plans) to accomplish items 4, 5, and 6 above.
8. Eliminate the massive “bridge” more than 100 feet in height which does not comply with the P-3 Comprehensive Agreement or Code by connecting the Hotel and the Boat Storage Components.
9. The area on top of the Boat Storage building cannot be credited toward the Code’s public open space requirements, and the PUD Master Plan (and related individual site plans) need to be re-designed to provide useable and adequate public open space pursuant to the LDRs and as determined by the Department and Town Commission.
10. The PUD Master Plan (and related individual site plans) need to be re-designed to provide a pedestrian Promenade along the waterfront and marina areas for the benefit of the public that is acceptable to the Town.
11. The PUD Master Plan (and related individual site plans) need to be re-designed to provide an event lawn near and/or along the waterfront and marina areas that is acceptable to the Town Commission that is of sufficient size, is accessible and useable by the public as a community entertainment area.
12. An update Justification Statement/Project Narrative with respect to the 14 Waiver requests must be provided by the Developer that is satisfactory to the Department for its analysis of whether or not the waivers are justified and that there is a public benefit associated with each waiver.

13. *Given that there may be a hearing in December with TIIF, the Department should require the Developer, the proposed Marina operator, and their consultants to immediately address the Department's comments, this Memo and Checklist. We note that there is only a very short time before DEP staff must receive the Town's direction to proceed with the TIIF meeting in December, but it seems somewhat perilous for the Town to proceed with its request to TIIF to modify the restrictions without knowing what revisions to the PUD and site plans will be proposed to provide an adequate "public" component to the public, private project.*
14. The Department is encouraged to engage a planning firm with sufficient capacity to evaluate the development that the Property can accommodate and to assist it in exploring an alternative PUD Master Plan and site plans that address the comments herein.