

Memo

To: Nadia DiTommaso, Community Development Director
From: Thomas J. Baird, Town Attorney
Date: March 18, 2025
Subject: PADD Study
Cc: Richard J. Reade, Town Manager, Karen J. Golonka, Anders Viane, Planners

BACKGROUND

This memo provides background on the issues which have given rise to the Town Commission's (Commission) enactment of Zoning In Progress (ZIP) due to concerns regarding the application of the 2022 amendments to the Park Avenue Downtown District's (PADD) Land Development Regulations (LDR) and Future Land Use objectives and policies in the Comprehensive Plan. It also discusses the availability of wastewater to serve the Downtown. The Commission's concerns were manifested after applications were submitted proposing the development of 500 residential units on 2.5 acres (233 units per acre) and 16,830 square feet of non-residential uses, and 595 residential units on 2.92 acres (208 units per acre) and 16,309 square feet of non-residential. Based upon the applications submitted, commissioners expressed concerns regarding traffic, density, height, massing, and FAR. During the remainder of the ZIP, the topics below are recommended for study.

WASTEWATER

There is limited wastewater for redevelopment in the Downtown. The introduction of residential units to the Downtown based upon the densities established in the Plan and LDR and an increase in commercial intensity necessitates a lift station to serve the Downtown. Neither applicant identified the need for a lift station on their properties to serve the units they proposed. Forest Development representatives and the Town engaged the Seacoast Utility Authority (Seacoast) to identify a site for a lift station to serve its proposed project. The search concentrated on public properties: Town Hall, the CRA parking lot; the alley from 8th to 9th streets and; a drainage area on 9th Street. In a January 27, 2025 email from Sam Bauer, the Town was advised that Forest had purchased a property near the Downtown which might be used to meet the demand for wastewater.

Based on information obtained from Seacoast, the current infrastructure serving the Downtown could accommodate only 150 ERC of the 595 residential units proposed and 79 ERC of the 500

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residential units proposed by the applicants. There would be no ERCs available for the 33,000+ square feet of the non-residential development proposed in the applications.

Seacoast has also advised the Town that it may be necessary to replace an 18-inch gravity sewer main along West Jasmine Drive, north of Palmetto with a 24-inch pipe. The replacement of the gravity sewer line may impact the residential neighborhoods in this area of town. Also according to Seacoast, it is likely that the 8-story apartment project in the Twin City Mall PUD will absorb the existing gravity sewer capacity in the Downtown.

Of legal concern is that sufficient wastewater be available for the redevelopment of projects in the Downtown in accordance with Fla. Stat. §163.3177(6)(c).

DENSITY & HEIGHT

Existing Plan Objectives and Policies and the Purpose and Intent of the PADD

The 2022 amendments to the Plan for the Downtown included Objective **12** and implementing Policies 12.1 -12.6. The purpose of Objective 12 is to facilitate the redevelopment of the “**historical Park Avenue downtown” and the immediate surrounding area.**” This objective seeks to facilitate the redevelopment of a mixed-use downtown that combines residences, businesses, and **civic spaces** that are **well integrated into the surrounding residential neighborhoods**. The amendments also promoted redevelopment to **compliment** the development of a future tri-rail station to serve Lake Park.

Pursuant to Florida law, Objective **12** and its implementing policies and the purpose and intent of the LDR for the PADD must be consistent with one another. With respect to the existing LDR, the purpose and intent of the PADD is to promote a redevelopment of the Downtown that is “**reflective of early master plans for small scale traditional downtown commercial areas.**”

Pursuant to the Plan’s current objectives and policies, and the density assigned by the LDRs, the maximum height in the Core Subdistrict of the PADD is 12 stories, or 160 feet¹. The maximum density in the Downtown is an “average” of 48 units per acre throughout the Downtown. To achieve densities of 200+ units per acre with four stories of structured parking and 12 stories of mixed use space, developers must be granted a *discretionary waiver* by the Commission.

The maximum density established for the Downtown is 48² units per acre for residential and FAR of 3.0 for non-residential. Policy **12.1** states that the density and FAR are to provide for the redevelopment of “compact residential and non-residential or mixed use buildings **to complement the existing buildings.**” The existing buildings in the Downtown are predominately 2-stories.

¹ Per the LDRs, the 12 stories of mixed use space could begin above 4 stories of structured parking if a waiver is granted, hence the concern regarding 16-story buildings in the Downtown Core Subdistrict.

² It is to be an average of 48 units per acre within the Downtown. Thus some properties might be developed greater than 48 units per acre while others would be developed at less than 48 units per acre.

Policy **12.2** of the Plan permits the Commission to approve a project at densities of more than 48 units per acre “so long as the average density of development within the entire contiguous Downtown area does not exceed 48 du/acre, **and** is consistent with the Plan’s objectives and policies **and** meets the purpose and intent of the LDR. One legal concern with the current Policy **12.2** is that it offers no standards for the Commission’s exercise of its discretion for densities greater than 48 units per acre. A second legal concern is the establishment of a basket of units³ for the Downtown. A “basket of units” approach may not comply with Fla Stat. §163.3177(6) which requires local governments to establish a range of densities in their various land use categories. Also of legal concern is that the basket of units allocation does not provide for equal opportunities for all property owners in the Downtown.

As an example, consider that the basket of units allocates 1,494 residential units to the Downtown. Were the Commission to grant the waivers such as those requested by the applicants, 1095 units, or 73% of the residential units allocated to the Downtown would be absorbed by just two projects. This leaves 399 residential units to be distributed to the remaining property owners in the Downtown. The other property owners in the Downtown could only achieve maximum densities of 15 units per acre. This may result in property owners in the Downtown not having sufficient economic incentive to redevelop their properties. This unequal playing field is of legal concern because it could give rise to property rights claims.

Someone previously communicated to property owners that the basket of units could be replenished. Such an action would require an amendment to the Plan, however doing so would also necessitate an increase in the average density of 48 units per acre throughout the Downtown, not just the Core Subdistrict.

The Plan’s basket of units and discretionary waivers permitting substantially increased densities rely on Policy **12.6** that sometime in the future a Tri-Rail Station in the Core Subdistrict. Tri-Rail currently has no plans for a Tri-Rail station in Lake Park, or north of its present terminus.

Because the Town is already well into Zoning In Progress (ZIP), I offer the following information based upon the limited work staff and I have produced for the consultants to consider.

Wastewater

The deficiency of wastewater capacity necessitates a lift station to serve the Downtown. Planners might consider: (1) Should there be a policy that developers must accommodate infrastructure such as lift stations necessitated by the density they propose on their properties; (2) If not, should the Town allow developers to locate a lift station on “stand alone” properties outside the Downtown. If so, the best locations for a lift station should be identified; (3) Is the residential property reportedly purchased by Forest a viable location for a lift station to serve all of the Downtown. (4) With respect to the location of a lift station on a residential properties outside the Downtown, it is known that lift

³ This approach was recommended by consultants for the redevelopment of the US 1 corridor and simply replicated in the Downtown, and to some extent as part of the Town’s C-3 District which governs the redevelopment of the Twin City Mall site.

stations create externalities such as odor and appearance. Given that, what siting criteria or standards would be appropriate to be included in the LDR for “lift stations” and/or other utility infrastructure in residential zoning districts? For example, the LDR might consider regulations such as setbacks, landscaping and other regulations to “buffer” residential neighbors from the adverse impacts created by lift stations.

Density / Basket of Units

The study should consider the use of the basket of units approach identified in Policy 12.2 of the Plan. Consideration should be given as to whether the Plan and PADD LDR should be amended to establish appropriate density ranges for the Downtown, as required by Fla. Stat. § 163.3177(6). The greater density established for the CORE Subdistrict should be evaluated as well as the necessity of two subdistricts. While it may have been appropriate to plan for greater base densities in the Core Subdistrict, this is a relatively small area of the Downtown.

Density/Waivers

Community Development staff recommended that a portion of § 78-70(b)(7), entitled “Waivers” be repealed. To the extent that “height” and “parking” waivers are concerns, subsections (7) 2. and 3. should be evaluated to address the concerns expressed by the Commission and public. Staff also proposed an amendment to Table 78-70-2 to reduce the height of buildings, without waivers in the CORE Sub-district from **12** stories and 160 feet to **8** stories and 112 feet.

The 2022 amendments created two subdistricts, with the more intense density being in the Core Subdistrict. Given the purpose and intent of the PADD, an evaluation of whether **8**-story buildings in the Core Subdistrict would be out of scale with the small scale downtown envisioned by the PADD. The study should evaluate whether uniform maximum density for Downtown properties might be better planning approach to facilitating the redevelopment.

Similar to the density provisions, Policy 12.2, which provides for a maximum FAR of 3.0 “*so long as the average FAR for the entire downtown does not exceed 3.0*”. Of legal concern is that the average approach to FAR should be evaluated because, like the average density basket of units approach, this has the potential to be applied such that Downtown property owners may not be provided with equal rights for their development in the Downtown.

The land use classification created by Objective 12 and its reliance on a Tri-Rail station for Lake Park as a basis for permitting substantial increases in density in the relatively small Core Subdistrict of the Downtown should be evaluated. An evaluation of whether Transient Oriented development appropriate for the Core Subdistrict.

Parking

Should there be a requirement to provide public parking on-site for the commercial businesses which may be included in the mixed use projects of the Downtown? Is the current policy which permits projects to provide public parking within the structured parking garages for mixed use projects a good approach? Could an impact parking fee be developed. What role can the CRA

parking lot play in the redevelopment of the Downtown? Could the Town require the payment of a fee on each building permit in the Downtown to be used toward the construction of low-intensity structured parking at the CRA parking lot, thereby diminishing the public parking in structured parking serving the mixed use projects?

Traffic in and around the Downtown

To objectively evaluate traffic, something more than the conclusion that there is adequate capacity based upon the County's TPS should be evaluated. All developers eventually satisfy this standard as a measurement of traffic. The reliance solely on the TPS and traffic concurrency does not provide a useful tool for evaluating the actual impact of traffic from projects on a community. The Commission has expressed concerns regarding traffic overwhelming the Park Avenue and other roadways serving the Downtown and Town. There must be an evaluation of the traffic that would be generated at current densities with waivers and of based upon a reduction of the densities that can be achieved given the 2022 amendments. In essence, an evaluation of the appropriate carrying capacity of the roads and intersections in and around the Downtown seems necessary. Of particular concern is the impact of the densities that can be achieved based upon the 2022 amendments to intersection at Park and 10th Street and the railroad crossing.

Height Waiver for Structure Parking

The current policy which permits a waiver for the height of buildings where up to four stories of structured parking is provided should be re-examined in the context of the objective and policies discussed above related to density, height, massing, and FAR.

Civic Spaces

Identify opportunities for civic spaces to compliment the pedestrian activity and gathering opportunities.