

**IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL  
CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL DIVISION**

DANIL K. RIDDLE AND JANE N.  
RIDDLE, et al

Petitioners,  
v.

Case No.: 2025-CA 001263

TOWN OF FORT MYERS BEACH, a  
Florida Municipal Corporation,  
SEAGATE FORT MYERS BEACH,  
LLC,

Respondents.

\_\_\_\_\_ /

---

**PETITIONERS' SUPPLEMENTAL APPENDIX TO  
RULE 9.100 PETITION FOR WRIT OF CERTIORARI**

---

**HAHN LOESER & PARKS LLP  
THEODORE L. TRIPP, JR., ESQ.**

Florida Bar No. 221856

ttripp@hahnlaw.com

**MICHAEL R. WHITT, ESQ.**

Florida Bar No. 725020

mwhitt@hahnlaw.com

**GABRIEL ARBOIS, ESQ.**

Florida Bar No. 1031204

garbois@hahnlaw.com

2400 First Street, Suite 300

Fort Myers, FL 33901

Phone: (239) 337-6700

Fax: (239) 337-6701

*Counsel for Petitioners*

## INDEX

<b>No.</b>	<b>Date</b>	<b>Description</b>	<b>Page</b>
1	10/29/2024	Fort Myers Beach Local Planning Agency Special Meeting Agenda	1267
2	10/29/2024	Fort Myers Beach Local Planning Agency Special Meeting Agenda Packet	1269
3	11/12/2024	Fort Myers Beach Local Planning Agency Minutes for October 29, 2024 Meeting	1289
4	11/13/2024	Fort Myers Beach Management & Planning Session Agenda	1295
5	11/13/2024	Fort Myers Beach Management & Planning Session Agenda Packet	1296
6	12/2/2024	Fort Myers Beach Joint Session with Local Planning Agency Minutes for November 13, 2024 Meeting	1319
7	10/27/2024	E-Mails from Gail Jasionowski to Fort Myers Beach Town Council Members regarding Opposition to Seagate Fort Myers Beach, LLC's Proposed Development Agreement	1325
8	12/2/2/2024	Notice to Property Owners Within 500 Feet (Draft)	1331

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of September, 2025, a true and correct copy of the foregoing was filed electronically with the Florida Courts E-filing Portal, which will email a copy to all attorneys of record.

Nancy Stuparich, Esq.  
Gretchen R.H. Vose, Esq.  
Vose Law Firm, LLP  
324 W. Morse Blvd.  
Winter Park, FL 32789  
[nstuparich@voselaw.com](mailto:nstuparich@voselaw.com)  
[cdarcy@voselaw.com](mailto:cdarcy@voselaw.com)  
[mguidone@voselaw.com](mailto:mguidone@voselaw.com)  
*Attorneys for Respondent, Town  
of Fort Myers Beach*

Richard B. Akin, II, Esq.  
Henderson Franklin Starnes &  
Holt, P.A.  
Post Office Box 280  
1715 Monroe Street  
Fort Myers, FL 33902-0280  
[Richard.akin@henlaw.com](mailto:Richard.akin@henlaw.com)  
[Kirsten.shultz@henlaw.com](mailto:Kirsten.shultz@henlaw.com)  
*Attorneys for Respondent,  
Seagate Fort Myers Beach, LLC*

Christopher D. Donovan, Esq.  
Donovan Appellate Law, PLLC  
9071 Bonita Beach Rd.,  
Suite 1378  
Bonita Springs, FL 34133  
[cdonovan@FLAppellate.com](mailto:cdonovan@FLAppellate.com)  
[yhibbert@FLAppellate.com](mailto:yhibbert@FLAppellate.com)  
*Attorneys for Respondent,  
Seagate Fort Myers Beach, LLC*

[SIGNATURE BLOCK ON NEXT PAGE]

**HAHN LOESER & PARKS LLP**

2400 First Street, Suite 300

Fort Myers, FL 33901

Phone: (239) 337-6700

*/s/ Michael R. Whitt*

---

**MICHAEL R. WHITT, ESQ.**

Florida Bar No. 725020

mwhitt@hahnlaw.com

kzamzow@hahnlaw.com

**THEODORE L. TRIPP, JR., ESQ.**

Florida Bar No. 221856

ttripp@hahnlaw.com

jdaniels@hahnlaw.com

**GABRIEL ARBOIS, ESQ.**

Florida Bar No. 1031204

garbois@hahnlaw.com

watilar@hahnlaw.com

*Counsel for Petitioners*



## **Fort Myers Beach Local Planning Agency Special Meeting**

**Town Hall Council Chambers  
2731 Oak Street  
Fort Myers Beach, FL 33931**

**Agenda**

**Tuesday, October 29, 2024**

**9:00 AM**

### **ORDER OF BUSINESS**

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. NOMINATION OF OFFICERS**
  - A. Election of Officers

Per the LPA policies and Procedures manual: Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.
- VI. APPROVAL OF MINUTES**
- VII. PUBLIC COMMENT**
- VIII. PUBLIC HEARINGS**
- IX. ADMINISTRATIVE AGENDA**
  - A. Public Benefits

Discussion regarding Public Benefits.
- X. LPA MEMBERS ITEMS/REPORTS**
- XI. LPA ATTORNEY ITEMS/REPORTS**
- XII. COMMUNITY DEVELOPMENT ITEMS/REPORTS**
- XIII. ITEMS FOR NEXT MONTHS AGENDA**
- XIV. ADJOURNMENT**

**NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.**

**IF THE LOCAL PLANNING AGENCY UNANIMOUSLY APPROVES A REQUEST FOR A VARIANCE, EXTENSION OR SATISFACTION OF CONDITIONS, A REQUEST FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL MAY BE MADE BY ANYONE IF THE REQUEST IS RECEIVED BY THE TOWN CLERK WITHIN 10 BUSINESS DAYS OF THE LOCAL PLANNING AGENCY DECISION PURSUANT TO SEC. 34-232 OF THE LAND DEVELOPMENT CODE.**

**IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE LOCAL PLANNING AGENCY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED IN ACCORDANCE WITH FLORIDA STATUTE 286.0105.**



**In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings. 239-765-0202**



## **Fort Myers Beach Local Planning Agency Special Meeting**

**Town Hall Council Chambers  
2731 Oak Street  
Fort Myers Beach, FL 33931**

**Agenda**

**Tuesday, October 29, 2024**

**9:00 AM**

### **ORDER OF BUSINESS**

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. NOMINATION OF OFFICERS**
  - A. Election of Officers  
Per the LPA policies and Procedures manual: Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.
- VI. APPROVAL OF MINUTES**
- VII. PUBLIC COMMENT**
- VIII. PUBLIC HEARINGS**
- IX. ADMINISTRATIVE AGENDA**
  - A. Public Benefits  
Discussion regarding Public Benefits.
- X. LPA MEMBERS ITEMS/REPORTS**
- XI. LPA ATTORNEY ITEMS/REPORTS**
- XII. COMMUNITY DEVELOPMENT ITEMS/REPORTS**
- XIII. ITEMS FOR NEXT MONTHS AGENDA**
- XIV. ADJOURNMENT**

**NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.**

**IF THE LOCAL PLANNING AGENCY UNANIMOUSLY APPROVES A REQUEST FOR A VARIANCE, EXTENSION OR SATISFACTION OF CONDITIONS, A REQUEST FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL MAY BE MADE BY ANYONE IF THE REQUEST IS RECEIVED BY THE TOWN CLERK WITHIN 10 BUSINESS DAYS OF THE LOCAL PLANNING AGENCY DECISION PURSUANT TO SEC. 34-232 OF THE LAND DEVELOPMENT CODE.**

**IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE LOCAL PLANNING AGENCY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED IN ACCORDANCE WITH FLORIDA STATUTE 286.0105.**



**In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings. 239-765-0202**

**Town of Fort Myers Beach  
Agenda Item Summary**

Yellow Sheet Number: **2025-21**  
**Meeting Date: October 29, 2024**

**1. Request:**

Discussion regarding Public Benefits.

**Why the action is necessary:**

The LPA requested a meeting to discuss the creation of a framework for determining appropriate "public benefits". It has become typical for new developments to request deviations for greater intensity than is allowed by right either through a Commercial Planned Development (CPD) or Development Agreement (DA) process. These requests included additional floor area ratio (FAR) or a higher density multiplier for the number of rooms or smaller setbacks or taller buildings. Applicants will often propose public benefits as a way to compensate for the additional development they are requesting. The LPA and Town Council determine if the public benefit that is being proposed is commensurate with the request for additional development and in some instances, whether the proposed benefit is even desirable to the Town.

Senior Planner Sarah Propst previously prepared a memo for a Town Council discussion on November 9th, 2023. That memo and two examples (Polk County and Destin, FL) of how public benefit is determined elsewhere in Florida are included in the agenda. Two members of the LPA have prepared their suggestions for a framework for making these determinations as well.

**What the action accomplishes:**

**2. Agenda:**

ADMINISTRATIVE AGENDA

**3. Requirement/Purpose:**

Other

---

**5. Background:**

At their Tuesday, October 22, 2024 meeting, the LPA requested a Special Meeting to discuss public benefits in Fort Myers Beach.

**Attachments:**

1. Public Benefit Memo
2. Polk County US 98 SAP Bonus Point Example
3. Destin FL Bonus Tier Example Comp Plan Policy
4. Public Benefits LPA Discussion 8.23.24
5. Public Benefits-Dunlap
6. Public Benefits-Boan

**Financial Impact:**

Unknown

**6. Alternative Action**

Discussion

**7. Staff Recommendations:**

**8. Recommended Approval:**

Date: October 23, 2024

---

Judith Frankel, Principal Planner

---

Frankie Kropacek, Operations & Compliance Director

Date: October 23, 2024

---

nancy stuparich, Town Attorney

Date: October 24, 2024

---

Amy Baker, Town Clerk

Date: October 24, 2024



**Town of Fort Myers Beach  
COMMUNITY DEVELOPMENT DEPARTMENT**

**To:** Town Council Management and Planning  
**From:** Sarah Propst, Community Development  
**Date:** November 9, 2023  
**Re:** Development Public Benefit

**BACKGROUND**

Staff has been directed to provide some information regarding what the Town should qualify as a public benefit in a development. When development asks for more development intensity than is allowed by right, such as additional floor area ratio (FAR) or a higher density multiplier for the number of rooms or smaller setbacks or taller buildings, they will often propose public benefits as a way to compensate for the additional development they are requesting. The Town Council has to determine if the public benefit that is being proposed is commensurate with the request for additional development and in some instances, whether or not the proposed benefit is even desirable to the Town.

This was discussed previously and staff suggested that the Town could have a bonus point system that made it clear what could be offered to the Town in exchange for development potential. A copy of the code that two communities use for bonus systems is attached. However, this fairly complex option did not seem like the direction that Council was interested in, at the time it was discussed. It is important to note that this type of system would provide clarity for developers but is fairly rigid.

Another option is to develop a list of the items that the Town considers to be high value public benefits and a list of lower value public benefits. This may be helpful to categorize benefits that many developers will list but may be more of a benefit to the development, not the Town. For example, a beach access in a location where one doesn't exist would be a benefit for the Town but building a structure to meet flood and building code requirements is not a benefit to the Town, it is required. Having a list of what qualifies as a public benefit will help developers know what the Town cares about but this will not provide the clarity of a point system.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



### **OPTIONS**

At the previous hearing there were many items brought up as public benefits. The list below are the items that seemed to get the most discussion during the meeting.

#### **Potential Public Benefits:**

- Giving the Town (local streets) or County (Estero Blvd) additional right of way width,
- Giving the Town beach access points, where desirable,
- Providing or cooperating with multi-modal transportation options (water taxi, airport shuttle, bus shelter, etc.)
- Pedestrian bridges over Estero Blvd,
- Right of way landscaping, where desirable,
- Views of the beach,
- Land for public parks,
- Land for public facilities,
- Public art,
- Affordable housing,
- Significant public infrastructure investment,
- Florida friendly plantings for the entire site, that do not require irrigation,
- Multi-use pathways and trails available to the public,
- Wildlife habitat/native plant community buffers

### **RECOMMENDATION**

Staff asks that the Town Council provide input on the list of options provided and discuss any additional items that might be considered a public benefit. Please also advise staff of how or if you would like this incorporated into the Land Development Code and if there is any interest in a point system.

### **EXHIBITS**

Exhibit A – Polk County Bonus System

Exhibit B – Destin Bonus System

**Section 401.04 US Highway 98 Selected Area Plan (Revised 12/1/10 - Ord. 10-082; 5/18/05 - Ord. 05-18)**

**O. Density and Dimensional Regulations**

Changes to the standards as listed in Section D of this SAP shall comply with the following:

1. Non-residential Development Floor Area Ratio (FAR) Range Table - The maximum FAR ranges for non-residential land use designations are provided in Table 4.13a below. The lowest number in the table for each Future Land Use designation is the maximum FAR permitted. However, FARs up to the highest shown in the table, for each Future Land Use designation, may be achieved through bonus points and/or a Planned Development (PD) pursuant to the Land Development Code. FAR standards will not apply to residential development;

<b>Table 4.13a</b>											
	Future Land Use Designations										
	<b>CEX</b>	<b>LCCX</b>	<b>NACX</b>	<b>ECX</b>	<b>INSTX</b>	<b>INDX</b>	<b>BPCX</b>	<b>TCX</b>	<b>LRX</b>	<b>OCX</b>	<b>CCX</b>
<b>P</b>	<b>0.30</b>	<b>0.35</b>	<b>0.35</b>	<b>0.70</b>	<b>0.50</b>	<b>0.65</b>	<b>0.60</b>	<b>0.50</b>	<b>0.50</b>	<b>0.35</b>	<b>0.25</b>
<b>B</b>	0.60	0.60	0.60	0.80	0.75	0.80	0.80	0.75	0.75	0.50	<b>0.50</b>
<b>PD</b>	0.75	0.75	0.70	1.50	1.00	1.50	1.50	1.0	1.0	0.70	<b>0.65</b>
<b>Notes:</b> P = Permitted with a Level 2 Review in the US 98 SAP. B = Density Bonus Points (Table 4.13d) are required and permitted with a Level 2 Review in the US 98 SAP. PD = Planned Development with the necessary Density Bonus Points (Table 4.13d) are required and permitted with a Level 3 Review in the US 98 SAP.											

2. Non Residential Ratio FAR Development - Table 4.13a shall be implemented as follows:
  - a. The FAR shown in the row designated with a "P" will be reviewed through a Level 2, unless other requirements of this Code require a different Level of Review;
  - b. Any FAR above those shown in the row designated as "P" and up to those shown in the row designated B, shall be reviewed through a Level 2, unless other requirements of this Code require a different Level of Review. However, to achieve a higher FAR than those shown in the row designated with a P, shall require 5 bonus points, using Table 4.13d, for an increase of .05 FAR. In addition, bonus points shall be used from at least three sections, even if the amount of bonus points achieved is more than needed. The purpose is to ensure variety of amenities for any development.
  - c. Any FAR above those shown in the row designated as "B" and up to those shown in the row designated as PD, shall be reviewed through a PD. Applicants requesting to use this option shall specifically demonstrate the following in the Level 3 application:
    - i. How the development is different and unique than other developments within the County either incorporated or unincorporated;
    - ii. How the development would improve the area surrounding the proposed development; and,

Created: 2022-10-06 12:09:31 [EST]

(Republication)

Exhibit A

- iii. Residential development within non-residential districts is required to obtain five bonus points for every one dwelling unit per acre du/ac of density.
3. Residential Development - The US 98 Selected Area Plan is planned for compact, efficient growth. In order to determine how to achieve a certain density, refer to Table 4.13b. This table indicates the maximum average lot size, the density range required, and the steps needed to achieve them. The maximum average lot size describes how development in this SAP may contain a variety of lot sizes provided the average for the entire development does not exceed the maximum allowed in that district. Development exceeding the allowable maximum average size may be requested as part of a Planned Development which includes bonus points from at least three different categories of those listed in Table 4.13d. If a desired density requires bonus points (B) or a Planned Development (PD) approval, the following shall apply:
- FAR standards will not apply to residential development;
  - Each request that is required to use bonus points shall, at a minimum, obtain bonus points from at least three different categories even if the points obtained is above the needed amount;
  - Suburban Planned Developments within the RSX land use district shall require 10 points to achieve a maximum of two du/ac and then 10 points for each half unit per acre (or fraction thereof) increase up to three units per acre; and,
  - Increases or decreases in density within the RLX land use districts as provided in table 4.13b, shall require five points for every half unit per acre (or fraction thereof) change;
  - Bonus points for Increases in density for RMX and RHX land uses are provided in Table 4.13b.

**Table 4.13b US 98 SAP Density Schedule (Revised 01/24/12 - Ord. 12-003)**

Residential Land Use Districts (Maximum Density du/ac) Maximum Average Lot Size (Square Feet) <sup>(1)(2)</sup>							
Density (du/ac)	RL-1X 30,000 <sup>(1)</sup>	RL-2X 15,000 <sup>(1)</sup>	RL-3X 10,000 <sup>(1)</sup>	RL-4X 8,000 <sup>(1)</sup>	Density (du/ac)	RMX <sup>(3)</sup>	RHX <sup>(3)</sup>
#1	P	B			> 5 - 8	B	
> 1 - 2	B	P	B		> 8 - 10	B	B
> 2 - 3	B	B	P	B	> 10 - 12		B
> 3 - 4	PD	B	B	P	> 12 - 15		B
> 4 - 5	PD	PD	B	B			
> 5 - 6	D	D	PD	B			
<b>Notes for Table 4.13b:</b> P = Permitted with a Level 2 Review in the US 98 SAP. B = Density Bonus Points are required and permitted with a Level 2 Review in the US 98 SAP. PD = Planned Development (a Level 3 Review) approval with the necessary Density Bonus Points is required in the US 98 SAP. D = Maximum density in the RL-1X and RL-2X can only be achieved with the donation of a public school site. (1) Maximum Average Lot Size - A development may contain a variety of lot sizes as long as the average for the entire development does not exceed the maximum allowed in that district. (2) Each single-family attached unit (including each duplex unit) shall be placed upon an individual lot and shall be bound to the maximum average lot restrictions of this table. (3) RMX and RHX do not have minimum lot sizes. The density requirements dictate land usage.							

Exhibit A

Table 4.13c Planned Development (PD) Density Bonus Points			
RM		RH	
Points Achieved	Maximum Density du/ac (#)	Points Achieved	Maximum Density du/ac (#)
35	#5.5	35	#8.0
30	6.0	33	8.5
25	6.5	31	9.0
20	7.0	29	9.5
15	7.5	27	10.0
10	8.0	25	10.5
15	8.5	23	11
18	9.0	21	11.5
21	9.5	19	12
24	10.0	17	12.5
		15	13
		13	13.5
		11	14
		9	14.5
		7	15

Table 4.13d Density and Floor Area Ratio Bonus Point Schedule<sup>(1)</sup>

Type of Amenity	Type of Bonus
<b>INFRASTRUCTURE AND SERVICE CATEGORY</b>	
Donation of usable land for public safety <sup>(2)</sup>	An increase in density of 5% for every acre donated. If an entire site is donated, accepted, and can be used for more than one services such as Fire and EMS, the maximum density or FAR of Table 4.13a and 4.13b can be used
Donation of usable land for schools (elementary, middle, or high) <sup>(2)</sup>	If the site is accepted by the School Board, the maximum density or FAR of Table 4.13a and 4.13b can be used. Only entire sites may be counted towards this density increase
Donation of usable land for community or regional parks <sup>(2)</sup>	2 pts per acre up to the amount needed by the County - If the site is accepted by the County, the maximum density or FAR can be used
Extending sidewalks beyond frontage	1 point for every 100 feet beyond the 100 additional feet required by the Chapter 7
Decorative Internal street lighting (historical, art deco, or neo-traditional street lighting). Binding lighting details required	1 pts
<b>DESIGN</b>	

Created: 2022-10-06 12:09:31 [EST]

(Republication)

Exhibit A

Public Art (murals and sculptures)	2 pts
Open space (beyond requirements)	2 pts per 5% (up to 12 pts)
Vertical development for mixed use buildings (does not include single unit residential development)	2 pts per story above 1 (up to 10 pts)
Traffic calming	1 point
(1) On street parking outside the TCX	
(2) Crosswalks with cobblestone or other similar pavers	2 points
(3) Intersections with cobblestone or other similar pavers	3 points
(4) Internal Tree lined roads with sidewalks	3 points
(5) Tree lined medians	3 points
(6) Roundabouts	3 points
(7) Others approved by DRC	3 points
Alternative driveways (alleys)	3 pts per phase
Garage entrance to side or recessed garage	1 pt for each 50% of development
Zero lot line/cluster development	2 pts
Village design (See definition)	5 pts
If not part of open space, landscaping the perimeter of storm water ponds with at least a type "A" buffer	2 pts
If not part of open space, shaping wet or dry retention ponds in a natural shape that exists in nature	2 pts per pond
Picnic areas, trails, open space, and natural areas connecting to adjacent offsite land	3 pts
Landscape on all sides of external wall	2 pts
<b>TRANSPORTATION</b>	
Open space with pedestrian use area or corridors to break up parking areas	2 pts
Sidewalks in divider median of parking lots to separate pedestrian and vehicular traffic provided at least every other drive isle	5 pts
Curb and gutter for internal roads (less than 3 du/ac)	1 pts
Mass transit stop including shelter and benches (if on a planned or committed route)	3 pts
Parking Structure (exempt from FAR calculation)	6 pts
<b>RECREATION</b>	
More than one active recreation site with amenities	5 pts
Publicly accessible passive recreation (walking paths/trails, bikeway, nature/hiking trail)	5 pts
<b>CONSERVATION</b>	
Florida Friendly, water-wise landscaping (does not need supplemental irrigation) for the entire project	6 pts
Restoration/creation of wildlife habitat that FFWCC certifies is capable of supporting wildlife	6 pts
Greenway Corridor (land area containing a multi-use paved trail that connects to proposed, committed, or existing greenway facility)	1 pt per 1/5 acre
Upland conservation, existing vegetation retained for (add 3 pts when adjacent to an off-site conservation area):	
15% of site	3 pts (6 pts)
20% of site	4 pts (7 pts)

Created: 2022-10-06 12:09:31 [EST]

(Republication)

Exhibit A

25% of site	5 pts (8 pts)
Existing Wildlife habitat or native plant community open space	5 pts per whole acre
Wetland/Waterbody buffer (in addition to the required vegetative buffer) averages an additional:	
25 feet upland	2 pt
50 feet upland	3 pts
75 feet upland	4 pts
Wildlife habitat/Native plant community buffer	
15 feet upland	1 pt
30 feet upland	2 pts
50 feet upland	3 pts
Land reserved for active agricultural production (platted)	4 pts per acre
Land planted as wildflower field (platted)	3 pts per 5000 square feet (may be linear)
<b>DEVELOPMENT</b>	
Affordable housing (based on HUD standards)	10% of project = 0.5 du/ac increase 5% of project = 0.25 du/ac increase
<p>Notes:</p> <p>(1) At a minimum, all development required to provide Density Bonus Points shall select points from at least three of the categories from this table.</p> <p>(2) An agreement must be made with the service provider prior to any approvals/acceptance that the site will be used by the public safety provider. Applicant may use property adjoining the proposed facility site, not within the proposed development, to ensure the total amount of acreage needed by the service provider for the service is secured. Commitment letter will be required by the adjoining land owner with a legal description attached, and final dedication prior to any construction.</p>	

( Ord. No. 19-055 , § 2, 8-20-2019)

3. Count I properly includes the Tier 3 development bonuses because the City cannot lawfully refuse to grant such development bonuses.

- a. *DFF is entitled to the Tier 3 development bonuses as a matter of right upon providing or paying for sufficient "public benefit."*

The City's 2010 Plan provided bonuses for height, intensity, and density ("development bonuses") for the DFF's Property if DFF provided "public benefits." The 2010 Plan specifically provides in pertinent part as follows:

**Policy 1-2.1.8: Height, Intensity, and Density Bonus Provisions.**

Height, intensity, and density bonus provisions are provided in the HDR, CMU, SHMU, NHMU, TCMU, GRMU, BRMU, HIMU and CBR Land Use Designations. These provisions shall be initiated to stimulate reinvestment in high standards of design through implementation of a tiered regulatory system that grants incentives for actions that are consistent with design criteria that cannot otherwise be mandated. The outcome shall result in high quality, innovative development that enhances site and building design, achieves land use compatibility, promotes non-motorized mobility, and provides the opportunities for achieving extraordinary public benefit. Height, intensity, and density provisions are provided in three levels or "Tiers" of development criteria. The tiered system of regulatory measures shall not be interpreted as establishing a guarantee of an increase in density or intensity. The tiered system simply promotes public-private partnerships, allows for equitable use of land, assists in avoidance of takings and promotes design initiatives that assist in Comprehensive Plan objectives, especially within major activity centers contributing potential transit ridership. Tiers 2 and 3 provide height, intensity and density bonus provisions.

\*\*\*

Tier 3: Allows the highest building height and density thresholds based on compliance with a planned unit development regulatory procedure that places special emphasis on attaining a heightened level of amenities beyond Tier 2 levels. The additional height and density will be achievable if the development meets all requirements of a Planned Unit Development (PUD) with special emphasis on providing a specified "public benefit." The Tier 3 development review procedures shall require adherence to Tier 2 development standards and submittal of engineered three-dimensional models, virtual computer images, architectural renderings, shadow analysis and/or other analyses that are appropriate to the character of development proposed. Such submittals shall demonstrate the

*Tier System*

*- But "reasonable" expectation.  
- City cannot keep requiring more + more - limits to the measure of public benefit it's being applied to the desired height, density and/or intensity*

*Analogy: Vending Machine*

*Tier 1 vs Tier 2 vs Tier 3*

impact of the project on access to light, impact on airflow dynamics, as well as other visual impacts that may be deleterious to adjacent properties, motorists, pedestrians, or segments of the population. Specific examples of “public benefit” promoted by Tier 3 thresholds include the following:

1. **Beach Access Improvements.** For improved access to the Beaches, this objective shall be carried forth within the GRMU, CBR and HIMU designated areas through private investment in the form of dedicating pedestrian easements to the public for access from public areas to the beach (public beach access points), the design, permitting and construction of beach/dune walkovers facilities that include public showers, and access to that portion of the beach from the mean high water line to a reasonable distance to the (public beach).
2. **Off-Site Public Parking Garage.** Within one year from Plan adoption, the LDC shall be amended to allow an additional percentage of the parking spaces required for non-residential uses to be located “off-site.” The “additional percentage” shall be greater than the percentage allowed in the LDC provision that implements Policy 2-1.3.7. However, the LDC shall be amended to require that a certain percentage of the total parking garage spaces built in the previously mentioned off-site parking garage shall be dedicated to the City for public use.
3. **Preserve Significant View of the Gulf and Harbor.** Preserve coastal water views that would clearly be imperiled without the provision of incentives. This incentive is applicable to sites with exceptional waterfront views. Applicants for such incentive must submit scaled three-dimensional models demonstrating the preservation of a valuable view corridor and vista is a public benefit.
4. **Develop Work Force Housing in the North Harbor Mixed Use Area.** The City shall develop a market sensitive affordable housing incentive program for the local low wage work force that generally cannot achieve access to the housing market. The affordable housing program shall include innovative approaches that address both demand and supply issues. The affordable housing program shall incorporate non-conventional housing options designed to meet the basic housing and service needs of the local low wage work force.
5. **Relocation and Conversion of Above Ground Utilities to Below Ground Locations.** Encourage private investment in relocation and converting above ground utilities both on and off site.
6. **Construct Open Space Malls and Arcades Equipped with Pedestrian-Oriented Furniture and Streetscape that Serve**

**as Gathering Spaces for the General Public.** Encourage private investment in public gathering places. Site plans must demonstrate architecturally designed open space malls and arcades equipped with pedestrian-oriented furniture streetscape.

7. **Create and/or Reinforce a Pedestrian Friendly Transit System.** Encourage private investment in creating and/or reinforcing a pedestrian friendly transit system. Such programs must demonstrate a transit friendly environment consistent with an adopted public plan for public transit. The plan shall include transit stops with dedicated area for safe and convenient off-street transit access and passenger shelters equipped with appropriate furnishings, architecturally design lighting and streetscape.
8. **Significant Improvements to Public Infrastructure.** Encourage private investment in off-site infrastructure improvements located anywhere within the city. Examples of such improvements include: purchase and/or dedication of land for rights-of-way, median landscaping;; public parking located within city rights-of-way; construction of sidewalks identified in city wide sidewalk improvement plan; recreational improvements identified in Policy 7-1.4.3; contributions, either in monetary or real property, that will hasten the implementation of any project identified in the most recently adopted five-year capital improvement plan; and any other significant public benefit that enhances public infrastructure throughout the city.
9. **Annexation into the City Limits.** Unincorporated properties seeking annexation shall be eligible for Tier 3 status within the Future Land Use Category established pursuant to an annexation agreement where Tier 3 heights or densities are necessary to maintain equality with the heights or densities achievable through applicable County plans and ordinances.

The height, intensity, and density limits of each of these Tiers is set forth within the "General Development Standards" tables of the respective Future Land Use Designation to which this policy applies. Some of the future land use designations, HDR, BRMU, and the HIMU in particular, have height bonus standards in Tier 2 and Tier 3, but do not have density bonus standards in Tier 2 or Tier 3 or either. The SHMU, NHMU, and TCMU future land use designations have floor area ratio bonus standards in Tier 2 and Tier 3.

See Policy 1-2.1.8, 2010 Plan. (underlined emphasis added)

## Public Benefits

Jim Dunlap: Public benefit should be offered by and argued for by the applicant in addition to the requirements of the code. They don't want staff to tell them what a public benefit is. Public benefit is dynamic.

James Boan: Public benefit needs to be in perpetuity. The zoning is forever and the trade off should be too. Public access or view.

John McLean: Does not feel that a commercial enterprise is a public benefit but he thinks that public access to the commercial enterprise is a public benefit.

# **Public Benefit Discussion Document**

## **Local Planning Agency – Fort Myers Beach**

### **Jim Dunlap**

Guiding Principles – To be considered as a Public Benefit-some or all of the following should apply:

- 1. Accessible to or for the benefit of all**
- 2. Unique in its nature or physical location**
- 3. A Long-term or perpetual commitment**

Potential Categories for activating the Public Benefit if the baseline Guiding Principles are met.

***Disclosure - I have included some potential actual examples of what might be included within a particular category. These are examples only and not meant to be a full list or comprehensive in any way.***

- **Financial** – Discounted price for FMB residents for products/services being offered to the public at full rates within the development or location of service. (Room rates, dining facilities, spas, day passes, etc.)
- **Philanthropic/Volunteerism** – Donations in time or money or people to local non-profits to a degree and magnitude that materially positively impacts their project or mission. Multi-year corporate underwriting for FMB sanctioned major events. (Fireworks, Parades, etc.) For example, this has already occurred by the services being offered to the Women's Club by Seagate Development and Studio A.D.
- **Amenity**- Beach Access with comfort stations and/or water/food availability. Public and/or resident access to dining facilities, quick stop shopping marts, or other on-campus amenities being offered to guests and residents of the resort/development.
- **Product or Service** – Transportation (vehicle, water taxi, lift/uber) to and from airport and other designated locations throughout the island. Include space within the development for public access to shipping (UPS/Fed-Ex, Amazon Return) drop site. Shelter/Safety Station – Propose a formal arrangement to allow, for a limited timeframe, public access to rooms and facilities during periods of natural disasters affecting Fort Myers Beach.

- **Expertise-** Providing access to high-quality in-house capabilities such as engineers, architects, financial and project planning, legal/accounting services to local small businesses, non-profits and/or the town of Fort Myers Beach directly.

### **Public Benefit Tiering and Financial Impact**

In addition to the categories mentioned above, I believe it would be appropriate and beneficial to have some sort of Tier based component with the type and financial impact of any proposed public benefit being considered.

Perhaps two tiers to start with, for example.

**Tier 1** – Baseline public benefit offerings that would be partially complementary to the development itself, while at the same time, offering or enhancing a benefit to the public as well.

**Tier 2** – Those public benefits with significant financial and community-wide impact beyond those adjoining and/or complementing the development itself. This category should include granular description and specific details on the community-wide impact or benefit (Infrastructure for example), as well as the projected financial investment or dollar value equivalent for any in-kind services being proposed.

Examples, for demonstration purposes only, and in some cases what other municipalities have adopted in Florida, of Tier 2 category projects:

- Beach Access Improvements – Could include design, permitting and construction of beach access with facilities that include public restrooms and showers.
- Offsite Public Parking Garage
- Develop Workforce Housing Project
- Relocation and Conversion of Above Ground Utilities to Below Ground Locations
- Construct Open Space Malls that are pedestrian oriented and streetscapes as gathering places for the General Public
- Create and underwrite an Island-wide Pedestrian Friendly Transit System
- Significant Improvements to Public Infrastructure – i.e., purchase of land for right of ways, median landscaping, recreation facility upgrades, construction of sidewalks, and/or other capital improvements projects and expenses currently in planning stages by the town of Fort Myers Beach.

Again, any and all of the above Tier 2 public benefits, would be further documented by the dollar investment and/or public cost offset, to a total beneficial financial impact to Fort Myers Beach.

**Process Recommendation-** I believe that during the application process, staff should analyze whether the applicant has met the baseline guiding principles criteria to be considered as a potential public benefit or not. Then, during the formal presentation process to LPA and/or Town Council, the applicant will be challenged with making the case for the type and suggested impact of public benefit being offered.

It would then be the responsibility of the LPA or Town Council to challenge, refine, and weigh the potential public benefit against the tradeoffs, exceptions or deviations being requested.

**Public Benefit “restaurant” considerations-** Assuming public access, I believe there is a significant value to the dining public in locating a restaurant within the confines of a resort or major development and consider it a public benefit.

It allows for a much higher quality product to be more fully patronized and therefore financially supported than a standalone, season-dependent facility would support. The risk of closure or quality deterioration of the restaurant is lower and the ability to recruit and train/cross train qualified employees within the overall operation is higher.

# TALKING POINTS FOR WHAT IS A PUBLIC BENEFIT

SINCE THE DEVELOPER/BUILDER'S REQUEST FOR A REZONING, CPD, INCREASED F.A.R., OR DEVELOPMENT AGREEMENT IS GENERALLY FOREVER AND RUNS WITH THE LAND; A PUBLIC BENEFIT SHOULD, LIKEWISE, BE PERPETUAL.

AN AMENITY IS SOMETHING THAT IS DESIRABLE, A CONVENIENCE OR "WOULD BE NICE TO HAVE". THERE IS NO GUARANTEE THAT AN AMENITY WILL ALWAYS BE THERE OR WILL CONTINUE TO BE IN THE FORM THAT WAS ORIGINALLY PRESENTED. BOTH HAVE VALUE TO THE RESIDENTS BUT BECAUSE A PUBLIC BENEFIT IS PERMANENT IT SHOULD BE GIVEN MORE WEIGHT THAN AN AMENITY.

## EXAMPLES OF A PUBLIC BENEFIT:

1. REDUCED DENSITY
2. VIEW CORRIDORS
3. PUBLICLY DEEDED OPEN SPACE AND BEACHFRONT ACCESS
4. PUBLICLY DEEDED PARKING SPACES
5. ROAD RIGHT-OF-WAY DEDICATION
6. ELIMINATING CURB CUTS ON ESTERO BLVD
7. PERMANENT SOURCE OF PERIODIC FUNDING FOR TOWN INFRASTRUCTURE.
8. OFFSITE IMPROVEMENTS TO PUBLIC INFRASTRUCTURE
9. INCREASED SETBACKS FROM ESTERO

## EXAMPLES OF AN AMENITY:

1. BARS AND RESTAURANTS
2. COMMERCIAL AND RETAIL SPACE
3. WATER TAXI AND AIRPORT TRANSPORTATION (UNLESS THERE IS A PERMANENT SOURCE OF FUNDING FOR MAINTENANCE AND OPERATIONAL COSTS)
4. WORKFORCE HOUSING UNLESS IT IS GUARANTEED TO REMAIN AS A PERMANENT PART OF THE APPROVED PROJECT
5. HEALTH CLUB, SPA, OFFICE SPACE.
6. PRIVATE BEACH CLUB
7. ENHANCED LANDSCAPING UNLESS PART OF AN APPROVED PLAN THAT IS REQUIRED TO BE MAINTAINED.

WHAT IS BEING REQUESTED BY AN APPLICANT(DENSITY, HEIGHT, INTENSITY, SETBACKS, INCREASED F.A.R., DEVIATIONS FROM THE COMPREHENSIVE PLAN OR CODES) SHOULD BE BALANCED WITH THE PUBLIC BENEFIT THAT WOULD BE GRANTED. EACH PROJECT SHOULD BE DECIDED ON ITS OWN MERITS SINCE WHAT IS A BENEFIT OR AMENITY ON ONE SITE MAY NOT BE OF THE SAME IMPORTANCE AT ANOTHER LOCATION.

CONTINUED ON THE BACK

THE ABOVE LIST IS NOT INTENDED TO BE DEFINITIVE OR ALL INCLUSIVE. THIS LIST OF "BENEFITS/ AMENITIES" IS ONLY INTENDED TO BE A START FOR THE DISCUSSION ABOUT "WHAT IS A PUBLIC BENEFIT" AND WHAT COULD BE CONSIDERED AS A TRADE-OFF FOR GRANTING THE RELIEF A DEVELOPER REQUESTS.

IN MY OPINION, FOR THE PUBLIC'S UNDERSTANDING AND DEVELOPER GUIDANCE, THE CRITERIA FOR WHAT CONSTITUTES A PUBLIC BENEFITS SHOULD BE AN OBJECTIVE LIST. HOWEVER, THE VALUE PLACED ON EACH ELEMENT AND THE IMPORTANCE OF THAT BENEFIT IS SUBJECTIVE AND DECIDED BASED ON A PARTICULAR SITE, THE REQUEST AND THE VALUE OF THE OVERALL PROJECT.

"DON'T SHOOT THE MESSENGER", THESE ARE ONLY MY THOUGHTS.

JIM



## Fort Myers Beach Local Planning Agency

Town Hall Council Chambers  
2731 Oak Street  
Fort Myers Beach, FL 33931

Minutes

Tuesday, October 29, 2024

9:00 AM

### ORDER OF BUSINESS

#### FINAL

##### I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Boan, LPA Member Dunlap, LPA Member Eckmann, LPA Member McLean and LPA Member Sudduth.  
Excused: LPA Member Plummer

##### II. INVOCATION

Not recorded.

##### III. PLEDGE OF ALLEGIANCE

##### IV. APPROVAL OF FINAL AGENDA

LPA Member Dunlap moved to approve the final agenda, seconded by LPA Member Sudduth.  
The motion carried unanimously.

##### V. NOMINATION OF OFFICERS

###### A. Election of Officers

**Per the LPA policies and Procedures manual: Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.**

LPA Member Boan nominated Anita Cereceda as Chair. No other nominations.

LPA Member Boan nominated Jane Plummer as Vice Chair. \*LPA Member Plummer accepted the nomination at the Nov. 11, 2024 meeting.

No other nominations.

The nominations were approved.

#### **VI. APPROVAL OF MINUTES**

No minutes.

#### **VII. PUBLIC COMMENT**

Katherine Cantlon, resident, asked that the LPA not allow tall buildings. She was not swayed by developers who added a restaurant and a park. She noted that Sanibel was sticking to their height restrictions. She encouraged the LPA to stick to their guns and follow the plan.

#### **VIII. PUBLIC HEARINGS**

No hearings.

#### **IX. ADMINISTRATIVE AGENDA**

##### **B. Public Benefits**

##### **Discussion regarding Public Benefits.**

Community Development Principal Planner Judith Frankel will compile their ideas and suggested they schedule a joint meeting with the town council afterward. She noted that it would be helpful if they defined terms such as view corridor and restaurant. Town Attorney Stuparich read a description of special benefits in Resolution 24-73.

LPA Member Dunlap explained how he created his tiered list of public benefits. He noted the applicant's responsibility was to prepare, provide, argue, demonstrate and defend what they wanted and how it benefited the town. LPA Member Sudduth liked the idea of how to quantify a public benefit and the tax benefit. He compared paying a private place to enter versus public access for a fee like the pool at Margaritaville. The view corridor and beach accesses on each side of the property should be fundamental. He did not really care what developers did as long as they were close to the plan.

LPA Member Eckmann commented that public benefit was hard to define and thought the challenge was to find a balance. He indicated that if developers ask for 17 stories, they should offer up the beachfront or part of the beachfront for a public park. The benefit had to be substantial for a substantial request, and it would be difficult, but they would have to find a compromise.

LPA Member Boan saw a difference between a public benefit and an amenity. A public benefit had to be perpetual. He noted that some benefits would be for the public and some for the developer, making it a hybrid, but it would not count as much as a true public benefit. He stated they needed a clear path to analyze the project.

LPA Member McLean thought they could recognize that there were different classes of offers from a developer and some would be in their self-interest while maybe benefiting the public, too. He used a restaurant as an example of a private enterprise that benefits the public. He felt that being open to the public free of charge in perpetuity was a top public benefit and adding beach accesses, including access to the sand behind the property, was critical.

Next would be view corridors and public parks. He felt that access to amenities would be another tier. He agreed with including the economic impact to the island.

Town Attorney Stuparich stated that private property rights were at stake and the rules created referred to a special benefit. She indicated they might want to elaborate and discuss a distinction. She stated that benefits should have a nexus to the development. She noted they cannot engage in contract zoning. LPA Member Dunlap commented that there should be consistency among applicants and the town should amplify what they thought was important and see how developers rise to the occasion voluntarily.

Chair Cereceda questioned why public benefit was used in the LDC (Land Development Code) while special benefit was in the development agreement. Town Attorney Stuparich stated that they could change it. Chair Cereceda felt that the terms conflicted with each other in the essence of what they meant. She felt that public benefits had to be exclusive to the public. She objected to the roundabout because it was not a public park, although the public could have access. She agreed that the guiding principles were essential and noted that Margaritaville had true public in perpetuity dedicated to public improvements. She questioned who would benefit if Mr. Price dedicated the entire beachfront to the public. The property would be taken off the tax roll, and the financial element would be negative; however, the community benefit would be enormous. She wondered how to balance that. LPA Member Dunlap addressed the resolution, which said the town shall balance the public benefits. He did not read it as a noun but as a concept; it was up to the LPA to start a new conversation and make it theirs. He was surprised that there was an official requirement for view corridors with the EIBC (Estero Island Beach Club) application. Community Development Senior Planner Jason Smalley disputed that anything was forced or required and the EIBC chose the design because it worked better for them.

Principal Planner Frankel explained how planning works in Florida and read the language in the code referring to view corridors and height. She added that the staff did not want to be in the business of negotiating with developers. Defining the view corridor was discussed. Senior Planner Smalley explained that if EIBC tiered their building with setbacks on floors three to ten they could have asked for slightly more. They were allowed to build a 60-story building over 70% of the property by right. LPA Member Dunlap thought that a view corridor was where an opportunity existed to have a clear line of sight without mass blocking light and views for the public on the street. LPA Member McLean felt that the view corridor was up to the sky.

LPA Member Sudduth commented that a view corridor might be blocked on the ground but open three stories up, benefiting the property across the street. LPA Member Dunlap stated that both could be true. LPA Member Eckmann brought up developers providing a view corridor beyond the required setback and making a special effort above and beyond what they had to do anyway. LPA Member Boan felt that a view corridor should be an unimpeded view of the beach or the bay and should be more than what was required by code.

Chair Cereceda agreed and defined the view corridor as an open, clear line of sight vertically and horizontally that opens space beyond the required setbacks. LPA Member Sudduth clarified that it could be within the property. The magnitude was significant to LPA Member Dunlap and Chair Cereceda. LPA Member McLean asked whether a three-foot wall detracted from the view corridor. LPA Member Sudduth felt that three feet should be the maximum. Public versus special benefits were discussed. LPA Member Dunlap felt that public was general and special was to whom and in what context. LPA Member Eckmann thought a public benefit was to dedicate access to the beach for everyone to use forever. A special benefit would be opening the beach club to the public as Margaritaville does by providing a discount to residents. Another example was a deeded beach access that benefited a specific group of people.

Tier 2 examples from LPA Member Dunlap's document were discussed. Beach access improvements were deemed a public benefit and an offsite public parking garage could be public and special. LPA Member Sudduth commented that workforce housing, which enabled people to live on the island, was a special benefit. LPA Member Boan added that it was a special benefit to the employee and a public benefit on an altruistic scale because it aided with staffing businesses. Relocating utilities underground is a public benefit, along with improving public infrastructure above and beyond code. Open-space malls are considered a public benefit. LPA Member Dunlap described an island-wide pedestrian-friendly transit system. Chair Cereceda summarized that a parking garage would be redefined and workforce housing would be considered special. The remaining items on the tier 2 list were considered public benefits. Town Attorney Stuparich questioned whether they wanted to add or public benefit rather than eliminate it.

The difference between a benefit and an amenity was discussed. LPA Member Sudduth felt that restaurants fell under special benefits. LPA Member Eckmann questioned whether all amenities fell under special benefits and LPA Member Sudduth responded that it was an amenity for the development if the public did not have access. A special benefit would be access for the public. LPA Member Boan brought up limiting access for 75 people who pay and LPA Member Sudduth felt that it was a very restrictive benefit and would throw it out of the benefit category.

The definition of blight was discussed. Principal Planner Frankel noted that the town had a process if blight referred to dilapidated buildings. LPA Member Eckmann suggested eliminating blight as a special or public benefit because it was part of the development agreement. LPA Member Dunlap discussed an economic benefit to the town after demolishing buildings.

Principal Planner Frankel responded that the developer had already agreed to clean up the property at that point in the development agreement process. LPA Member Dunlap discussed financial motivations and loss carried forward. He addressed the tax implications and benefits if the owner decided to leave the property damaged and unimproved versus scraping the property and making the land taxable without being able to claim losses against the damaged building. The LPA decided to leave that alone.

LPA Member Dunlap suggested putting numbers around what developers consider benefits. For example, the land Margaritaville donated would have a financial value to quantify it. LPA Member Sudduth added that civic organizations were looking for funding to rebuild. Town Attorney Stuparich stated that due to a recent statutory change, land use decisions would be included in a business impact estimate and that requirement might answer some of the questions presented. LPA Member Sudduth questioned whether Seagate purchasing the not-for-profit art association property across the street would be contract zoning. Town Attorney Stuparich did not think the town was involved in that. Chair Cereceda asked whether there was something they could formulate as criteria. Principal Planner Frankel was uncomfortable with defining the type of developers they wanted. The projects should be judged only on their merits. LPA Member Dunlap indicated that the Chamber of Commerce in Orlando was responsible for community outreach to potential businesses. Town Attorney Stuparich thought they could require community outreach meetings. LPA Member Sudduth asked whether Seagate's offering space in his building for a civic organization in perpetuity like the Art Association was a special benefit. LPA members agreed because it was rebuilding the community instead of one project.

Senior Planner Smalley mentioned quantifying parks and asked whether too many parks would decrease the value. Chair Cereceda commented that a passive park did not have a revenue stream and wondered if that negatively impacted the town.

Examples of public benefits provided by LPA Member Boan were discussed and examples of a permanent source of periodic funding for town infrastructure were provided. Principal Planner Frankel noted it had to have a direct nexus if required.

LPA Member Boan stated the development agreement was negotiated before the LPA saw it. LPA Member Dunlap was used to a town manager having a list of items that needed to be in negotiations and then addressing how the negotiations were added. Town Attorney Stuparich indicated that consistency with the comprehensive plan was vital to the development agreements.

Chair Cereceda stated that a public benefit was accessible to or for the benefit of all and unique in its nature or physical location for a perpetual commitment to Fort Myers Beach, as stated in LPA Member Dunlap's document. Town Attorney Stuparich will quantify the discussion and draft a document for their review on November 12, 2024.

**X. LPA MEMBERS ITEMS/REPORTS**

No items.

**XI. LPA ATTORNEY ITEMS/REPORTS**

No items.

**XII. COMMUNITY DEVELOPMENT ITEMS/REPORTS**

No items.

**XIII. ITEMS FOR NEXT MONTHS AGENDA**

No items.

**XIV. ADJOURNMENT**

LPA Member Dunlap moved to adjourn the meeting, seconded by LPA Member Sudduth.

The motion carried unanimously.

The meeting was adjourned at 11:24 a.m.

Minutes adopted as amended, November 12, 2024; Motion by LPA Member Boan and seconded by LPA Member Dunlap. Passed 6-0.



Amy Baker, Town Clerk



## Fort Myers Beach Management & Planning Session

Town Hall Council Chambers  
2731 Oak Street  
Fort Myers Beach, FL 33931

Agenda

Wednesday, November 13, 2024

8:30 AM

### ORDER OF BUSINESS

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ITEMS FOR DISCUSSION
  - A. Public Benefits / Special Benefits  
Discussion of Public Benefits and Special Benefits
- IV. ADJOURNMENT

**NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.**

**IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.**



**For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202**

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.



## **Fort Myers Beach Management & Planning Session**

**Town Hall Council Chambers  
2731 Oak Street  
Fort Myers Beach, FL 33931**

**Agenda**

**Wednesday, November 13, 2024**

**8:30 AM**

### **ORDER OF BUSINESS**

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. ITEMS FOR DISCUSSION**
  - A. Public Benefits / Special Benefits  
**Discussion of Public Benefits and Special Benefits**
- IV. ADJOURNMENT**

**NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.**

**IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.**



**For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202**

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Request:**

**Meeting Date:** November 13, 2024

Discussion of Public Benefits and Special Benefits

**Why the action is necessary:**

The Town Council and LPA have requested this meeting to discuss the definition and use of the terms "public benefit" and "special benefit". Clear definitions and application of the terms is intended to provide clarity for new development projects and aid in reaching Town goals.

**What the action accomplishes:**

The joint meeting allows for a thorough discussion between the Town Council and LPA with the goal of reaching consensus.

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

Unknown

5. **Background:**

On October 29th, 2024, the LPA held a public meeting to discuss creating a definition and/or process for determining the "public benefit" of a proposed development. The LPA discussed examples of public benefits and special benefits. They recommended that the next step be a joint meeting between the LPA and Town Council to develop a clear definition and use of public benefits. On November 7th, 2024, the Town Council further discussed "public benefit" and "special benefits" and agreed to hold a joint meeting.

Included in this agenda item is a summary of the LPA discussion with exhibits provided by 2 of the LPA members and the public benefits discussion staff memo and exhibits from November 2023.

**Attachments:**

1. Public Benefit Memo 11.13.2024
2. Public Benefit Memo 11.9.2023
3. Public Benefit Memo 11.7.2024
4. Exhibit A: Public Benefits-Dunlap
5. Exhibit B: Public Benefits-Boan
6. Exhibit A: Polk County Bonus Point Example 11.9.2023
7. Exhibit B: Destin FL Bonus Tier Example Comp Plan Policy 11.9.2023

**Financial Impact:**

Unknown

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

Date: November 11, 2024

nancy stuparich, Town Attorney

Date: November 11, 2024

\_\_\_\_\_  
Amy Baker, Town Clerk

\_\_\_\_\_  
Andy Hyatt, Town Manager

Date: November 12, 2024



**Town of Fort Myers Beach  
COMMUNITY DEVELOPMENT DEPARTMENT**

**To: Town Council and LPA**  
**From: Judith Frankel, Community Development**  
**Date: November 13, 2024**  
**Re: Development Public Benefit/Special Benefit**

---

**BACKGROUND**

On November 7th, 2024 the Town Council briefly discussed defining "public benefit" and "special benefits" of a proposed development. The prior LPA meeting discussing the same topic was also reviewed. Vice Mayor Atterholt stated that the discussion was important to make public town priorities, so developers have a sense of what the Town Council is seeking. The Town Council determined that the next step to reach consensus on the issue would be a joint meeting between the Town Council and the members of the LPA.

The following are brief summaries of the Town's Council discussion points which should be further considered with the LPA:

**Application of "Public Benefit"**

Vice Mayor Atterholt stated that the formulaic dynamic of the potential application of public benefits could be problematic. Councilor Safford stated that there should be a Delta or multiplier based on location or FLU or other factors particular to the property or site. Mayor Allers stated that he would not prefer a points system as a small development may not be able to provide the same benefits as a larger one, but a tiered system may be more appropriate. The process must be flexible as priorities change for the Town.

**Essential and Semi-essential Services**

Vice Mayor Atterholt suggested defining and considering "Essential Services" and "Semi-essential Services" as a part of any public benefit. These could be location dependent. A hotel could be important to the south end of the island, but not at the north end or beach adjacent public restrooms in certain locations. Additionally, greater consideration should be given to developers who are first to come and present the benefits or services. Some categories suggestions were:

Essential Services – Emergency Medical (Urgent Care); Medical professional office able to write prescription (MD, NP or PA); Dentist; or Physical Therapist

Semi-essential services – Bank; Salon; Veterinarian; Florist; a hotel on the south end of the island, public bathrooms

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



#### Economic Benefits

Councilor Woodson stated that the discussion on economic benefits was missing from the summary of the LPA discussion. There should be economic benefit overall to the community from a new development and this should be considered in the joint meeting.

#### Transportation System

Councilor Woodson stated that public benefits should include improvements to existing transportation systems or the development of new systems. An example of this is a water taxi/ferry system. Mayor Allers prefers a Town operated ferry with stop locations provided by a development.

#### Canal Upkeep and Waterways

Councilor Woodson stated that the definition of public/special benefits should include waterway maintenance or dredging, as this is an area the town has neglected and that impacts many residents. The Town's mooring field would be included in this category. This could be a policy or programmatic goal with monetary contributions to the project by developers. Councilor Safford added that developers should be good stewards of the waterways including the beach, bay and canals. May Allers would add seawalls to this category.

#### **JOINT MEETING DISCUSSION**

These topics listed above should be added to those identified by the LPA as discussion items for the joint meeting. The following points should be used to guide the meeting:

1. Town priorities or goals that could be addressed or contributed to by developers, which could include development of essential service; increasing mobility on the island; improved waterways; economic development; views of the beach and bay; park/open space
2. List of terms and definitions, including:
  - a. Public Benefit
  - b. Special Benefit
  - c. Amenity
  - d. Essential Services
  - e. View Corridors
3. Determination of benefit to developer/development from their contribution to a stated goal/priority.
4. Application method (formula, tier system, points system) for determining whether the offered public/special benefit is equal to the deviation requests by the developer



**Town of Fort Myers Beach  
COMMUNITY DEVELOPMENT DEPARTMENT**

**To:** Town Council Management and Planning  
**From:** Sarah Propst, Community Development  
**Date:** November 9, 2023  
**Re:** Development Public Benefit

---

**BACKGROUND**

Staff has been directed to provide some information regarding what the Town should qualify as a public benefit in a development. When development asks for more development intensity than is allowed by right, such as additional floor area ratio (FAR) or a higher density multiplier for the number of rooms or smaller setbacks or taller buildings, they will often propose public benefits as a way to compensate for the additional development they are requesting. The Town Council has to determine if the public benefit that is being proposed is commensurate with the request for additional development and in some instances, whether or not the proposed benefit is even desirable to the Town.

This was discussed previously and staff suggested that the Town could have a bonus point system that made it clear what could be offered to the Town in exchange for development potential. A copy of the code that two communities use for bonus systems is attached. However, this fairly complex option did not seem like the direction that Council was interested in, at the time it was discussed. It is important to note that this type of system would provide clarity for developers but is fairly rigid.

Another option is to develop a list of the items that the Town considers to be high value public benefits and a list of lower value public benefits. This may be helpful to categorize benefits that many developers will list but may be more of a benefit to the development, not the Town. For example, a beach access in a location where one doesn't exist would be a benefit for the Town but building a structure to meet flood and building code requirements is not a benefit to the Town, it is required. Having a list of what qualifies as a public benefit will help developers know what the Town cares about but this will not provide the clarity of a point system.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



### **OPTIONS**

At the previous hearing there were many items brought up as public benefits. The list below are the items that seemed to get the most discussion during the meeting.

#### **Potential Public Benefits:**

- Giving the Town (local streets) or County (Estero Blvd) additional right of way width,
- Giving the Town beach access points, where desirable,
- Providing or cooperating with multi-modal transportation options (water taxi, airport shuttle, bus shelter, etc.)
- Pedestrian bridges over Estero Blvd,
- Right of way landscaping, where desirable,
- Views of the beach,
- Land for public parks,
- Land for public facilities,
- Public art,
- Affordable housing,
- Significant public infrastructure investment,
- Florida friendly plantings for the entire site, that do not require irrigation,
- Multi-use pathways and trails available to the public,
- Wildlife habitat/native plant community buffers

### **RECOMMENDATION**

Staff asks that the Town Council provide input on the list of options provided and discuss any additional items that might be considered a public benefit. Please also advise staff of how or if you would like this incorporated into the Land Development Code and if there is any interest in a point system.

### **EXHIBITS**

Exhibit A – Polk County Bonus System

Exhibit B – Destin Bonus System



**Town of Fort Myers Beach  
COMMUNITY DEVELOPMENT DEPARTMENT**

**To:** Town Council Management and Planning  
**From:** Judith Frankel, Community Development  
**Date:** November 7, 2024  
**Re:** Development Public Benefit

**BACKGROUND**

On October 29th, 2024 the LPA held a public meeting to discuss creating a definition and/or process for determining the "public benefit" of a proposed development, which often comes up in discussions of Commercial Planned Development (CPD) applications. The LPA also discussed examples of special benefits, which is part of the Development Agreement process.

The following are brief summaries of where the LPA found agreement:

View Corridors – A view corridor is an unimpeded scenic view, from street-level/eye-level, of the Gulf or Bay that is open to the sky and is outside of any LDC required setback or landscaping. It is a clear line-of-sight, vertically and horizontally, to be enjoyed by the general public. It does not necessarily include any physical access to or through the corridor but could include beach access areas.

Public Benefit-A public benefit must be fully open to the general public in perpetuity. This is relative to CPD applications. Per LDC section 34-631(b)(5), *Particular attention would be paid to any permanent view corridors to gulf or bay waters that could be provided in exchange for allowing a building to be taller than the height limits in this chapter. In each case, the town shall balance the public benefits of the standard height limit against other public benefits that would result from the specific proposal.*

Examples identified by the LPA include:

- Undergrounding of utilities
- Sidewalk, bike path or other ROW infrastructure
- Visible landscape
- Public unrestricted beach access

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



- Public space through which to access private/commercial spaces
- Public parks
- Reduction in density
- View corridors
- Town Deeded parking
- ROW dedication
- Elimination of curb cuts on Estero Blvd.

Special benefit – The LPA defined special benefit as a benefit limited by fees/cost, neighborhood /HOA category and particular to a subset of the community. This is relative to Development Agreements. Resolution 24-71 in paragraph 2.26 of the Procedures for Development Agreements with Deviations requires “A description of any special benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.” The LPA suggested the following items also fall into this category:

- Workforce housing
- Paid Parking garage
- Private transportation system (ex. Water taxi)
- Defined public space for certain residents

Amenities – the LPA considers amenities to be items that contribute to the community but are essentially private in nature. Examples include a membership club, restaurant, or commercial enterprise.

The LPA did not discuss how the public benefits, special benefits or amenities could be quantified to determine the “balance” between height and benefit. The LPA would like the Town Council to provide input on that process if appropriate.

### **RECOMMENDATIONS**

The LPA recommended that the next step be a joint meeting between the LPA and Town Council to develop a clear definition and use of public/special benefits in new developments. Additionally, public meetings and opportunities for public input for the Town’s Comprehensive Plan and Land Development Codes should be scheduled for the next few months as aspects of the results of a joint meeting could be included in those updates.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



Staff asks that the Town Council provide input on the discussion of public benefits and advise staff of how or if you would like to proceed.

**EXHIBITS**

Exhibit A – Public benefit proposal from LPA member Jim Dunlap

Exhibit B – Public benefit proposal from LPA member James Boan

**Public Benefit Discussion Document**  
**Local Planning Agency – Fort Myers Beach**  
**Jim Dunlap**

Guiding Principles – To be considered as a Public Benefit-some or all of the following should apply:

- 1. Accessible to or for the benefit of all**
- 2. Unique in its nature or physical location**
- 3. A Long-term or perpetual commitment**

Potential Categories for activating the Public Benefit if the baseline Guiding Principles are met.

***Disclosure - I have included some potential actual examples of what might be included within a particular category. These are examples only and not meant to be a full list or comprehensive in any way.***

- **Financial** – Discounted price for FMB residents for products/services being offered to the public at full rates within the development or location of service. (Room rates, dining facilities, spas, day passes, etc.)
- **Philanthropic/Volunteerism** – Donations in time or money or people to local non-profits to a degree and magnitude that materially positively impacts their project or mission. Multi-year corporate underwriting for FMB sanctioned major events. (Fireworks, Parades, etc.) For example, this has already occurred by the services being offered to the Women's Club by Seagate Development and Studio A.D.
- **Amenity**- Beach Access with comfort stations and/or water/food availability. Public and/or resident access to dining facilities, quick stop shopping marts, or other on-campus amenities being offered to guests and residents of the resort/development.
- **Product or Service** – Transportation (vehicle, water taxi, lift/uber) to and from airport and other designated locations throughout the island. Include space within the development for public access to shipping (UPS/Fed-Ex, Amazon Return) drop site. Shelter/Safety Station – Propose a formal arrangement to allow, for a limited timeframe, public access to rooms and facilities during periods of natural disasters affecting Fort Myers Beach.

- **Expertise-** Providing access to high-quality in-house capabilities such as engineers, architects, financial and project planning, legal/accounting services to local small businesses, non-profits and/or the town of Fort Myers Beach directly.

### **Public Benefit Tiering and Financial Impact**

In addition to the categories mentioned above, I believe it would be appropriate and beneficial to have some sort of Tier based component with the type and financial impact of any proposed public benefit being considered.

Perhaps two tiers to start with, for example.

**Tier 1** – Baseline public benefit offerings that would be partially complementary to the development itself, while at the same time, offering or enhancing a benefit to the public as well.

**Tier 2** – Those public benefits with significant financial and community-wide impact beyond those adjoining and/or complementing the development itself. This category should include granular description and specific details on the community-wide impact or benefit (Infrastructure for example), as well as the projected financial investment or dollar value equivalent for any in-kind services being proposed.

Examples, for demonstration purposes only, and in some cases what other municipalities have adopted in Florida, of Tier 2 category projects:

- Beach Access Improvements – Could include design, permitting and construction of beach access with facilities that include public restrooms and showers.
- Offsite Public Parking Garage
- Develop Workforce Housing Project
- Relocation and Conversion of Above Ground Utilities to Below Ground Locations
- Construct Open Space Malls that are pedestrian oriented and streetscapes as gathering places for the General Public
- Create and underwrite an Island-wide Pedestrian Friendly Transit System
- Significant Improvements to Public Infrastructure – i.e., purchase of land for right of ways, median landscaping, recreation facility upgrades, construction of sidewalks, and/or other capital improvements projects and expenses currently in planning stages by the town of Fort Myers Beach.

Again, any and all of the above Tier 2 public benefits, would be further documented by the dollar investment and/or public cost offset, to a total beneficial financial impact to Fort Myers Beach.

**Process Recommendation-** I believe that during the application process, staff should analyze whether the applicant has met the baseline guiding principles criteria to be considered as a potential public benefit or not. Then, during the formal presentation process to LPA and/or Town Council, the applicant will be challenged with making the case for the type and suggested impact of public benefit being offered.

It would then be the responsibility of the LPA or Town Council to challenge, refine, and weigh the potential public benefit against the tradeoffs, exceptions or deviations being requested.

**Public Benefit “restaurant” considerations-** Assuming public access, I believe there is a significant value to the dining public in locating a restaurant within the confines of a resort or major development and consider it a public benefit.

It allows for a much higher quality product to be more fully patronized and therefore financially supported than a standalone, season-dependent facility would support. The risk of closure or quality deterioration of the restaurant is lower and the ability to recruit and train/cross train qualified employees within the overall operation is higher.

# TALKING POINTS FOR WHAT IS A PUBLIC BENEFIT

SINCE THE DEVELOPER/BUILDER'S REQUEST FOR A REZONING, CPD, INCREASED F.A.R., OR DEVELOPMENT AGREEMENT IS GENERALLY FOREVER AND RUNS WITH THE LAND; A PUBLIC BENEFIT SHOULD, LIKEWISE, BE PERPETUAL.

AN AMENITY IS SOMETHING THAT IS DESIRABLE, A CONVENIENCE OR "WOULD BE NICE TO HAVE". THERE IS NO GUARANTEE THAT AN AMENITY WILL ALWAYS BE THERE OR WILL CONTINUE TO BE IN THE FORM THAT WAS ORIGINALLY PRESENTED. BOTH HAVE VALUE TO THE RESIDENTS BUT BECAUSE A PUBLIC BENEFIT IS PERMANENT IT SHOULD BE GIVEN MORE WEIGHT THAN AN AMENITY.

## EXAMPLES OF A PUBLIC BENEFIT:

1. REDUCED DENSITY
2. VIEW CORRIDORS
3. PUBLICLY DEEDED OPEN SPACE AND BEACHFRONT ACCESS
4. PUBLICLY DEEDED PARKING SPACES
5. ROAD RIGHT-OF-WAY DEDICATION
6. ELIMINATING CURB CUTS ON ESTERO BLVD
7. PERMANENT SOURCE OF PERIODIC FUNDING FOR TOWN INFRASTRUCTURE.
8. OFFSITE IMPROVEMENTS TO PUBLIC INFRASTRUCTURE
9. INCREASED SETBACKS FROM ESTERO

## EXAMPLES OF AN AMENITY:

1. BARS AND RESTAURANTS
2. COMMERCIAL AND RETAIL SPACE
3. WATER TAXI AND AIRPORT TRANSPORTATION (UNLESS THERE IS A PERMANENT SOURCE OF FUNDING FOR MAINTENANCE AND OPERATIONAL COSTS)
4. WORKFORCE HOUSING UNLESS IT IS GUARANTEED TO REMAIN AS A PERMANENT PART OF THE APPROVED PROJECT
5. HEALTH CLUB, SPA, OFFICE SPACE.
6. PRIVATE BEACH CLUB
7. ENHANCED LANDSCAPING UNLESS PART OF AN APPROVED PLAN THAT IS REQUIRED TO BE MAINTAINED.

WHAT IS BEING REQUESTED BY AN APPLICANT (DENSITY, HEIGHT, INTENSITY, SETBACKS, INCREASED F.A.R., DEVIATIONS FROM THE COMPREHENSIVE PLAN OR CODES) SHOULD BE BALANCED WITH THE PUBLIC BENEFIT THAT WOULD BE GRANTED. EACH PROJECT SHOULD BE DECIDED ON ITS OWN MERITS SINCE WHAT IS A BENEFIT OR AMENITY ON ONE SITE MAY NOT BE OF THE SAME IMPORTANCE AT ANOTHER LOCATION.

CONTINUED ON THE BACK

THE ABOVE LIST IS NOT INTENDED TO BE DEFINITIVE OR ALL INCLUSIVE. THIS LIST OF "BENEFITS/ AMENITIES" IS ONLY INTENDED TO BE A START FOR THE DISCUSSION ABOUT "WHAT IS A PUBLIC BENEFIT" AND WHAT COULD BE CONSIDERED AS A TRADE-OFF FOR GRANTING THE RELIEF A DEVELOPER REQUESTS.

IN MY OPINION, FOR THE PUBLIC'S UNDERSTANDING AND DEVELOPER GUIDANCE, THE CRITERIA FOR WHAT CONSTITUTES A PUBLIC BENEFITS SHOULD BE AN OBJECTIVE LIST. HOWEVER, THE VALUE PLACED ON EACH ELEMENT AND THE IMPORTANCE OF THAT BENFIT IS SUBJECTIVE AND DECIDED BASED ON A PARTICULAR SITE, THE REQUEST AND THE VALUE OF THE OVERALL PROJECT.

"DON'T SHOOT THE MESSENGER", THESE ARE ONLY MY THOUGHTS.

JIM

**Section 401.04 US Highway 98 Selected Area Plan (Revised 12/1/10 - Ord. 10-082; 5/18/05 - Ord. 05-18)**

**O. Density and Dimensional Regulations**

Changes to the standards as listed in Section D of this SAP shall comply with the following:

1. Non-residential Development Floor Area Ratio (FAR) Range Table - The maximum FAR ranges for non-residential land use designations are provided in Table 4.13a below. The lowest number in the table for each Future Land Use designation is the maximum FAR permitted. However, FARs up to the highest shown in the table, for each Future Land Use designation, may be achieved through bonus points and/or a Planned Development (PD) pursuant to the Land Development Code. FAR standards will not apply to residential development;

<b>Table 4.13a</b>											
	Future Land Use Designations										
	<b>CEX</b>	<b>LCCX</b>	<b>NACX</b>	<b>ECX</b>	<b>INSTX</b>	<b>INDX</b>	<b>BPCX</b>	<b>TCX</b>	<b>LRX</b>	<b>OCX</b>	<b>CCX</b>
<b>P</b>	<b>0.30</b>	<b>0.35</b>	<b>0.35</b>	<b>0.70</b>	<b>0.50</b>	<b>0.65</b>	<b>0.60</b>	<b>0.50</b>	<b>0.50</b>	<b>0.35</b>	<b>0.25</b>
<b>B</b>	0.60	0.60	0.60	0.80	0.75	0.80	0.80	0.75	0.75	0.50	<b>0.50</b>
<b>PD</b>	0.75	0.75	0.70	1.50	1.00	1.50	1.50	1.0	1.0	0.70	<b>0.65</b>
<b>Notes:</b> P = Permitted with a Level 2 Review in the US 98 SAP. B = Density Bonus Points (Table 4.13d) are required and permitted with a Level 2 Review in the US 98 SAP. PD = Planned Development with the necessary Density Bonus Points (Table 4.13d) are required and permitted with a Level 3 Review in the US 98 SAP.											

2. Non Residential Ratio FAR Development - Table 4.13a shall be implemented as follows:
  - a. The FAR shown in the row designated with a "P" will be reviewed through a Level 2, unless other requirements of this Code require a different Level of Review;
  - b. Any FAR above those shown in the row designated as "P" and up to those shown in the row designated B, shall be reviewed through a Level 2, unless other requirements of this Code require a different Level of Review. However, to achieve a higher FAR than those shown in the row designated with a P, shall require 5 bonus points, using Table 4.13d, for an increase of .05 FAR. In addition, bonus points shall be used from at least three sections, even if the amount of bonus points achieved is more than needed. The purpose is to ensure variety of amenities for any development.
  - c. Any FAR above those shown in the row designated as "B" and up to those shown in the row designated as PD, shall be reviewed through a PD. Applicants requesting to use this option shall specifically demonstrate the following in the Level 3 application:
    - i. How the development is different and unique than other developments within the County either incorporated or unincorporated;
    - ii. How the development would improve the area surrounding the proposed development; and,

## Polk County Public Benefit

### US 98 SAP Bonus Point Example

- iii. Residential development within non-residential districts is required to obtain five bonus points for every one dwelling unit per acre du/ac of density.
3. Residential Development - The US 98 Selected Area Plan is planned for compact, efficient growth. In order to determine how to achieve a certain density, refer to Table 4.13b. This table indicates the maximum average lot size, the density range required, and the steps needed to achieve them. The maximum average lot size describes how development in this SAP may contain a variety of lot sizes provided the average for the entire development does not exceed the maximum allowed in that district. Development exceeding the allowable maximum average size may be requested as part of a Planned Development which includes bonus points from at least three different categories of those listed in Table 4.13d. If a desired density requires bonus points (B) or a Planned Development (PD) approval, the following shall apply:
- FAR standards will not apply to residential development;
  - Each request that is required to use bonus points shall, at a minimum, obtain bonus points from at least three different categories even if the points obtained is above the needed amount;
  - Suburban Planned Developments within the RSX land use district shall require 10 points to achieve a maximum of two du/ac and then 10 points for each half unit per acre (or fraction thereof) increase up to three units per acre; and,
  - Increases or decreases in density within the RLX land use districts as provided in table 4.13b, shall require five points for every half unit per acre (or fraction thereof) change;
  - Bonus points for Increases in density for RMX and RHX land uses are provided in Table 4.13b.

**Table 4.13b US 98 SAP Density Schedule (Revised 01/24/12 - Ord. 12-003)**

Residential Land Use Districts (Maximum Density du/ac) Maximum Average Lot Size (Square Feet) <sup>(1)(2)</sup>							
Density (du/ac)	RL-1X 30,000 <sup>(1)</sup>	RL-2X 15,000 <sup>(1)</sup>	RL-3X 10,000 <sup>(1)</sup>	RL-4X 8,000 <sup>(1)</sup>	Density (du/ac)	RMX <sup>(3)</sup>	RHX <sup>(3)</sup>
#1	P	B			> 5 - 8	B	
> 1 - 2	B	P	B		> 8 - 10	B	B
> 2 - 3	B	B	P	B	> 10 - 12		B
> 3 - 4	PD	B	B	P	> 12 - 15		B
> 4 - 5	PD	PD	B	B			
> 5 - 6	D	D	PD	B			

**Notes for Table 4.13b:**

P = Permitted with a Level 2 Review in the US 98 SAP.

B = Density Bonus Points are required and permitted with a Level 2 Review in the US 98 SAP.

PD = Planned Development (a Level 3 Review) approval with the necessary Density Bonus Points is required in the US 98 SAP.

D = Maximum density in the RL-1X and RL-2X can only be achieved with the donation of a public school site.

(1) Maximum Average Lot Size - A development may contain a variety of lot sizes as long as the average for the entire development does not exceed the maximum allowed in that district.

(2) Each single-family attached unit (including each duplex unit) shall be placed upon an individual lot and shall be bound to the maximum average lot restrictions of this table.

(3) RMX and RHX do not have minimum lot sizes. The density requirements dictate land usage.

## Polk County Public Benefit

### US 98 SAP Bonus Point Example

Table 4.13c Planned Development (PD) Density Bonus Points			
RM		RH	
Points Achieved	Maximum Density du/ac (#)	Points Achieved	Maximum Density du/ac (#)
35	#5.5	35	#8.0
30	6.0	33	8.5
25	6.5	31	9.0
20	7.0	29	9.5
15	7.5	27	10.0
10	8.0	25	10.5
15	8.5	23	11
18	9.0	21	11.5
21	9.5	19	12
24	10.0	17	12.5
		15	13
		13	13.5
		11	14
		9	14.5
		7	15

Table 4.13d Density and Floor Area Ratio Bonus Point Schedule<sup>(1)</sup>

Type of Amenity	Type of Bonus
<b>INFRASTRUCTURE AND SERVICE CATEGORY</b>	
Donation of usable land for public safety <sup>(2)</sup>	An increase in density of 5% for every acre donated. If an entire site is donated, accepted, and can be used for more than one services such as Fire and EMS, the maximum density or FAR of Table 4.13a and 4.13b can be used
Donation of usable land for schools (elementary, middle, or high) <sup>(2)</sup>	If the site is accepted by the School Board, the maximum density or FAR of Table 4.13a and 4.13b can be used. Only entire sites may be counted towards this density increase
Donation of usable land for community or regional parks <sup>(2)</sup>	2 pts per acre up to the amount needed by the County - If the site is accepted by the County, the maximum density or FAR can be used
Extending sidewalks beyond frontage	1 point for every 100 feet beyond the 100 additional feet required by the Chapter 7
Decorative Internal street lighting (historical, art deco, or neo-traditional street lighting). Binding lighting details required	1 pts
<b>DESIGN</b>	

Created: 2022-10-06 12:09:31 [EST]

(Republication)

## Polk County Public Benefit

### US 98 SAP Bonus Point Example

Public Art (murals and sculptures)	2 pts
Open space (beyond requirements)	2 pts per 5% (up to 12 pts)
Vertical development for mixed use buildings (does not include single unit residential development)	2 pts per story above 1 (up to 10 pts)
Traffic calming	1 point
(1) On street parking outside the TCX	
(2) Crosswalks with cobblestone or other similar pavers	2 points
(3) Intersections with cobblestone or other similar pavers	3 points
(4) Internal Tree lined roads with sidewalks	3 points
(5) Tree lined medians	3 points
(6) Roundabouts	3 points
(7) Others approved by DRC	3 points
Alternative driveways (alleys)	3 pts per phase
Garage entrance to side or recessed garage	1 pt for each 50% of development
Zero lot line/cluster development	2 pts
Village design (See definition)	5 pts
If not part of open space, landscaping the perimeter of storm water ponds with at least a type "A" buffer	2 pts
If not part of open space, shaping wet or dry retention ponds in a natural shape that exists in nature	2 pts per pond
Picnic areas, trails, open space, and natural areas connecting to adjacent offsite land	3 pts
Landscape on all sides of external wall	2 pts
<b>TRANSPORTATION</b>	
Open space with pedestrian use area or corridors to break up parking areas	2 pts
Sidewalks in divider median of parking lots to separate pedestrian and vehicular traffic provided at least every other drive isle	5 pts
Curb and gutter for internal roads (less than 3 du/ac)	1 pts
Mass transit stop including shelter and benches (if on a planned or committed route)	3 pts
Parking Structure (exempt from FAR calculation)	6 pts
<b>RECREATION</b>	
More than one active recreation site with amenities	5 pts
Publicly accessible passive recreation (walking paths/trails, bikeway, nature/hiking trail)	5 pts
<b>CONSERVATION</b>	
Florida Friendly, water-wise landscaping (does not need supplemental irrigation) for the entire project	6 pts
Restoration/creation of wildlife habitat that FFWCC certifies is capable of supporting wildlife	6 pts
Greenway Corridor (land area containing a multi-use paved trail that connects to proposed, committed, or existing greenway facility)	1 pt per 1/5 acre
Upland conservation, existing vegetation retained for (add 3 pts when adjacent to an off-site conservation area):	
15% of site	3 pts (6 pts)
20% of site	4 pts (7 pts)

Created: 2022-10-06 12:09:31 [EST]

(Republication)

**Polk County Public Benefit**

## US 98 SAP Bonus Point Example

25% of site	5 pts (8 pts)
Existing Wildlife habitat or native plant community open space	5 pts per whole acre
Wetland/Waterbody buffer (in addition to the required vegetative buffer) averages an additional:	
25 feet upland	2 pt
50 feet upland	3 pts
75 feet upland	4 pts
Wildlife habitat/Native plant community buffer	
15 feet upland	1 pt
30 feet upland	2 pts
50 feet upland	3 pts
Land reserved for active agricultural production (platted)	4 pts per acre
Land planted as wildflower field (platted)	3 pts per 5000 square feet (may be linear)
<b>DEVELOPMENT</b>	
Affordable housing (based on HUD standards)	10% of project = 0.5 du/ac increase 5% of project = 0.25 du/ac increase
Notes: (1) At a minimum, all development required to provide Density Bonus Points shall select points from at least three of the categories from this table. (2) An agreement must be made with the service provider prior to any approvals/acceptance that the site will be used by the public safety provider. Applicant may use property adjoining the proposed facility site, not within the proposed development, to ensure the total amount of acreage needed by the service provider for the service is secured. Commitment letter will be required by the adjoining land owner with a legal description attached, and final dedication prior to any construction.	

( Ord. No. 19-055 , § 2, 8-20-2019)

Created: 2022-10-06 12:09:31 [EST]

(Republication)

3. Count I properly includes the Tier 3 development bonuses because the City cannot lawfully refuse to grant such development bonuses.

- a. *DFF is entitled to the Tier 3 development bonuses as a matter of right upon providing or paying for sufficient "public benefit."*

The City's 2010 Plan provided bonuses for height, intensity, and density ("development bonuses") for the DFF's Property if DFF provided "public benefits." The 2010 Plan specifically provides in pertinent part as follows:

**Policy 1-2.1.8: Height, Intensity, and Density Bonus Provisions.**

Height, intensity, and density bonus provisions are provided in the HDR, CMU, SHMU, NHMU, TCMU, GRMU, BRMU, HIMU and CBR Land Use Designations. These provisions shall be initiated to stimulate reinvestment in high standards of design through implementation of a tiered regulatory system that grants incentives for actions that are consistent with design criteria that cannot otherwise be mandated. The outcome shall result in high quality, innovative development that enhances site and building design, achieves land use compatibility, promotes non-motorized mobility, and provides the opportunities for achieving extraordinary public benefit. Height, intensity, and density provisions are provided in three levels or "Tiers" of development criteria. The tiered system of regulatory measures shall not be interpreted as establishing a guarantee of an increase in density or intensity. The tiered system simply promotes public-private partnerships, allows for equitable use of land, assists in avoidance of takings and promotes design initiatives that assist in Comprehensive Plan objectives, especially within major activity centers contributing potential transit ridership. Tiers 2 and 3 provide height, intensity and density bonus provisions.

\*\*\*

Tier 3: Allows the highest building height and density thresholds based on compliance with a planned unit development regulatory procedure that places special emphasis on attaining a heightened level of amenities beyond Tier 2 levels. The additional height and density will be achievable if the development meets all requirements of a Planned Unit Development (PUD) with special emphasis on providing a specified "public benefit." The Tier 3 development review procedures shall require adherence to Tier 2 development standards and submittal of engineered three-dimensional models, virtual computer images, architectural renderings, shadow analysis and/or other analyses that are appropriate to the character of development proposed. Such submittals shall demonstrate the

*Tier System*

*- But "reasonable expectation"*  
*- City cannot keep requiring more + more*  
*- limits to the number of public benefit #s being applied to the desired height, density and/or intensity*

*Analogy: Vending Machine*

*Tier 1 vs Tier 2 vs Tier 3*

impact of the project on access to light, impact on airflow dynamics, as well as other visual impacts that may be deleterious to adjacent properties, motorists, pedestrians, or segments of the population. Specific examples of “public benefit” promoted by Tier 3 thresholds include the following:

1. **Beach Access Improvements.** For improved access to the Beaches, this objective shall be carried forth within the GRMU, CBR and HIMU designated areas through private investment in the form of dedicating pedestrian easements to the public for access from public areas to the beach (public beach access points), the design, permitting and construction of beach/dune walkovers facilities that include public showers, and access to that portion of the beach from the mean high water line to a reasonable distance to the (public beach).
2. **Off-Site Public Parking Garage.** Within one year from Plan adoption, the LDC shall be amended to allow an additional percentage of the parking spaces required for non-residential uses to be located “off-site.” The “additional percentage” shall be greater than the percentage allowed in the LDC provision that implements Policy 2-1.3.7. However, the LDC shall be amended to require that a certain percentage of the total parking garage spaces built in the previously mentioned off-site parking garage shall be dedicated to the City for public use.
3. **Preserve Significant View of the Gulf and Harbor.** Preserve coastal water views that would clearly be imperiled without the provision of incentives. This incentive is applicable to sites with exceptional waterfront views. Applicants for such incentive must submit scaled three-dimensional models demonstrating the preservation of a valuable view corridor and vista is a public benefit.
4. **Develop Work Force Housing in the North Harbor Mixed Use Area.** The City shall develop a market sensitive affordable housing incentive program for the local low wage work force that generally cannot achieve access to the housing market. The affordable housing program shall include innovative approaches that address both demand and supply issues. The affordable housing program shall incorporate non-conventional housing options designed to meet the basic housing and service needs of the local low wage work force.
5. **Relocation and Conversion of Above Ground Utilities to Below Ground Locations.** Encourage private investment in relocation and converting above ground utilities both on and off site.
6. **Construct Open Space Malls and Arcades Equipped with Pedestrian-Oriented Furniture and Streetscape that Serve**

**as Gathering Spaces for the General Public.** Encourage private investment in public gathering places. Site plans must demonstrate architecturally designed open space malls and arcades equipped with pedestrian-oriented furniture streetscape.

7. **Create and/or Reinforce a Pedestrian Friendly Transit System.** Encourage private investment in creating and/or reinforcing a pedestrian friendly transit system. Such programs must demonstrate a transit friendly environment consistent with an adopted public plan for public transit. The plan shall include transit stops with dedicated area for safe and convenient off-street transit access and passenger shelters equipped with appropriate furnishings, architecturally design lighting and streetscape.
8. **Significant Improvements to Public Infrastructure.** Encourage private investment in off-site infrastructure improvements located anywhere within the city. Examples of such improvements include: purchase and/or dedication of land for rights-of-way, median landscaping;; public parking located within city rights-of-way; construction of sidewalks identified in city wide sidewalk improvement plan; recreational improvements identified in Policy 7-1.4.3; contributions, either in monetary or real property, that will hasten the implementation of any project identified in the most recently adopted five-year capital improvement plan; and any other significant public benefit that enhances public infrastructure throughout the city.
9. **Annexation into the City Limits.** Unincorporated properties seeking annexation shall be eligible for Tier 3 status within the Future Land Use Category established pursuant to an annexation agreement where Tier 3 heights or densities are necessary to maintain equality with the heights or densities achievable through applicable County plans and ordinances.

The height, intensity, and density limits of each of these Tiers is set forth within the "General Development Standards" tables of the respective Future Land Use Designation to which this policy applies. Some of the future land use designations, HDR, BRMU, and the HIMU in particular, have height bonus standards in Tier 2 and Tier 3, but do not have density bonus standards in Tier 2 or Tier 3 or either. The SHMU, NHMU, and TCMU future land use designations have floor area ratio bonus standards in Tier 2 and Tier 3.

See Policy 1-2.1.8, 2010 Plan. (underlined emphasis added)



## **Fort Myers Beach Joint Session with Local Planning Agency**

**Town Hall Council Chambers  
2731 Oak Street  
Fort Myers Beach, FL 33931**

**Minutes**

**Wednesday, November 13, 2024**

**8:30 AM**

### **ORDER OF BUSINESS**

#### **I. CALL TO ORDER**

Town Council members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Safford and Council Member Woodson.

LPA members present: Chair Cereceda, LPA Member Boan, LPA Member Dunlap, LPA Member Eckmann, LPA Member McLean, LPA Member Plummer and LPA Member Sudduth (virtually).

LPA Member Dunlap moved to allow LPA Member Sudduth to participate virtually due to unforeseen circumstances, seconded by LPA Member Plummer.  
The motion carried unanimously.

#### **II. PLEDGE OF ALLEGIANCE**

#### **III. ITEMS FOR DISCUSSION**

##### **A. Public Benefits / Special Benefits**

##### **Discussion of Public Benefits and Special Benefits**

Chair Cereceda started the conversation and noted that LPA members Boan and Dunlap submitted ideas surrounding public and special benefits. LPA Member Dunlap did not think requiring staff involvement was fair or productive because they did not set policy. There had to be a set of guiding principles that they all agreed on and he referred to the three points in his handout, which were included in the agenda packet. He discussed the financial impact on the town. He stated it was the responsibility of the applicant to create a compelling case to present and explain why they believed it favorably impacted the town. He described his tier system and indicated that different parts of the island had other needs. He added that the LPA took a good stab at addressing public versus special benefits.

LPA Member Boan discussed a public, special, and amenity benefit. A public benefit would be perpetual in nature, special and unique. A special benefit

would be something that both the town and the development benefited from. An amenity was something that would be nice to have, but it did not carry any weight financially. He noted that the LPA agreed that the staff should not negotiate public benefits with the developer and should be given clear policy direction. The LPA also agreed that public benefits should be perpetual in nature. Chair Cereceda added that a special benefit was the pool at Margaritaville because the developer benefited and the public had access at a cost. The public benefits from the Neptune project are the parking spaces and open space on Delmar in perpetuity. She said she had discounted the financial element but changed her mind after the Neptune presentation.

Another critical element was not to put staff in the position of trying to figure out the policy decision surrounding a public benefit. She stated this was a general discussion about general policy because it would be different for every project.

Mayor Allers wanted to address how height, density and intensity could be related to a public benefit. He felt that a project doubling or tripling density created a detriment to the quality of life, as opposed to a project adding one or two stories. For example, if a project gets three stories, they must create a public park. Is the public benefit the same for a developer who wants to double or triple the density? He asked how to link intensity and density while staying at three stories above flood. Even though they were staying within the height restrictions, they massed the building, which was still detrimental to the quality of life. LPA Council amended 12/2/24. Member Safford did not think density was a detriment because small business owners wanted more density. Mayor Allers responded that as a business owner, more density meant that his business would do better, but not if people could not get anywhere. He supported more height if the density was decreased because of the traffic.

Chair Cereceda asked how they drew the line between density and traffic correlation. She stated that in 1976, it could take someone three hours to travel Estero Blvd. She indicated that even though there were fewer people, it took her 48 minutes to get off the island from the LPA meeting yesterday. Mayor Allers asked whether replacing a two-bedroom cottage with a much larger house impacted infrastructure. If they were going to use traffic and density, they had to use the same argument with intensity and infrastructure. Chair Cereceda felt they had to separate traffic from the impact on water, sewer, public safety, etc. She stated that the traffic on the beach was an anomaly.

Mayor Allers struck the word detriment and asked whether one had more of an impact than the other and he thought density did. He asked how to relate density and intensity to LPA Member Dunlap's tiers. For example, the Meyerside Project added height, density and intensity and should have been in the higher tier, but they could not meet it. He asked how to balance that. LPA Member Dunlap replied that they did not want to limit the creativity of what they were willing to offer, invest in, or provide for. They could offer other opportunities by being a viable economic participant. LPA Member McLean brought up Patrick Vanasse's presentation regarding the basket of

benefits and his creative list of benefits and commitments. They should ensure that staff can refer to public benefits, special benefits and amenities and bring them to the LPA as the overall package, as opposed to a view corridor for height, although he acknowledged that it was written that way in the code. If the project did not have the land to provide certain benefits, they could be creative and provide other benefits.

Council Member Safford did not think a point system would work and others agreed. Chair Cereceda listed other items the community needed to thrive and questioned how the project contributed to those items. Mayor Allers stated that the Margaritaville parking lot was a perpetual, tangible economic stimulus that the town did not have before and, therefore, a public benefit.

The parking lot was a financial benefit and he felt it was more important than a linear park. Council Member Safford questioned whether a beach bar was more important than a park. Chair Cereceda looked at a beach bar as an amenity. LPA Member Sudduth agreed because the property owner benefited economically. He discussed what they were willing to give for how much. LPA Member Dunlap added that an amenity open to all would get credit for being inclusive.

Chair Cereceda questioned what they were willing to tolerate and suggested they identify what they expected the community to look like. Mayor Allers responded that the comp plan addressed future growth. He thought it was dangerous to say what they would tolerate because tolerance should be driven by public input. Chair Cereceda clarified that she meant being tolerant of changes on the island with flexibility and an open mind.

Mayor Allers felt they should look at resiliency as a public benefit. He described the 15-foot curvy wall in Clearwater and indicated you could not tell a hurricane hit. Members agreed it was a benefit.

Council Member Safford discussed being lenient with small properties since everything had to be off the ground. LPA Member Plummer was concerned about increasing the size of units from what had been there. She stated they were creating their height by making the units huge. LPA Member Dunlap did not think it was any of their business, but the developers should have to make their case for what they wanted. Mayor Allers explained that their process allowed what was happening now. For example, 150 units are converted to a condo with 4,000 sq. ft. units. The process did not say adding four bedrooms increased density, but it was like adding three more hotel rooms. He felt that it was a breakdown of the code and process. Community Development Principal Planner Judith Frankel indicated that square footage should be captured under impact fees. Town Attorney Stuparich noted they could create a fund for developers to contribute to for the greater good of the community. Community Development Planner Sarah Propst added that they could create different types of plans and add funds to the plans. Council Member Safford suggested a seawall for a coastal protection system. Other plan ideas were canal dredging, vegetation and transportation. Planner Propst described how to create the plans.

LPA Member Boan mentioned there were approaches based on a bedroom

formula for contributions to schools and parks, so the impact of a larger unit would carry a more significant financial contribution to the town. Council Member Safford noted they had to remember that larger units probably would not be full year-round. He stated that one-bedroom units made the most money per person.

Council Member King preferred discussing and solving topics before moving on to the next topic. Regarding public benefits, he supported building on developers offering deeded parking spaces, pumping out the town's boat, or offering the town higher ground to park town vehicles.

LPA Member Eckmann described steering things toward their vision for the island. Vice Mayor Atterholt liked creating guidelines for public benefits and letting the developers make a creative pitch. He noted they could discourage developers from asking for additional height and density in the guidelines and he wanted to encourage early developers. He questioned whether the third and fourth hotels were as valuable as the first and second for public benefit. He brought up facilitating medical facilities and other public services. He felt that parking lots might be better off as parks. Chair Cereceda noted Vice Mayor Atterholt was talking about guidelines and she was talking about expectations. Vice Mayor Atterholt liked expectations and expecting something in varying degrees.

LPA Member Dunlap discussed setting expectations. Town Attorney Stuparich was concerned about extractions and needed flexibility. Chair Cereceda suggested using aspirations and Town Attorney Stuparich agreed. LPA Member Plummer noted that a specific timeframe for building rather than waiting years to build was a benefit.

Council Member Woodson stated there were only four or five places where developers could build huge projects. She felt that people mandated development with the election results. She thought they had to address resilience, transportation systems and cleaning waterways and canals. LPA Member Plummer added transportation to and from the airport.

Members discussed how magical it was that they all met to talk about the issues.

Council Member Safford asked how to help smaller lots develop. Principal Planner Frankel noted that the small projects needed the same things as larger projects. They needed deviations or variances for ground-level parking. Council Member Safford suggested taking parking out of it.

Principal Planner Frankel discussed using development agreements for smaller projects. She indicated that removing ground-level parking from the FAR would help projects progress. Council Member Safford agreed and noted the developers would have to figure out their parking. Mayor Allers was concerned about spot zoning and allowing special rules for smaller developments. LPA Member McLean discussed the intent of not counting parking but ensuring that you do not have someone building a five-story parking garage with five habitable stories above.

Planner Propst questioned whether they should ask what the town envisioned during public input for the comp plan and LDC (Land

Development Code) to help guide and drive development. She described having the community tell them what mattered to them and building up the comp plan and LDC with that vision. Principal Planner Frankel displayed her notes from the meeting. Members agreed with the summary. Vice Mayor Atterholt asked that essential services be included as an aspirational goal.

Mayor Allers agreed with including it as a guiding principle for essential services. Principal Planner requested that essential services be replaced with another terminology. Chair Cereceda suggested community services. She suggested allowing medically related facilities in more places and that goal can be addressed outside public benefits.

Mayor Allers would like to add corner stores since there was only one grocery store on the island.

Planner Propst asked for definitions. LPA Member Eckmann thought they could set conditions of a public benefit based on their discussion. LPA Member McLean reviewed the different categories as discussed. Mayor Allers felt they needed special, public, unique and amenity. What was unique in one location was not in another. Planner Propst commented that everyone thought their project was unique and she wanted to give them some criteria so the town had a way to say no. Chair Cereceda was not sure she wanted to qualify unique. LPA Member McLean described contributing to the eclectic culture and nature of Fort Myers Beach.

Town Manager Hyatt noted they would not solve traffic and he said to take it off the list. He focused on the infrastructure. He requested that the impact fees not be so precise that their vision would be limited. He talked about a transportation fund for months and stated parking would take care of itself. He indicated they were working on the strategic plan. He brought up offering developers protection from the storms. He noted that they had to focus on directing impact fees to general funds to help with projects. Operations & Compliance Director Frankie Kropacek discussed maneuvering through the first development agreement. He welcomed their guidance.

Principal Planner Frankel explained why she needed more guidance. Chair Cereceda agreed that they had to say what they wanted. Vice Mayor Atterholt questioned whether developer presentations could be entered into the record instead of verbally going through it to save time. Town Attorney Stuparich stated they could vote to enter the presentation into the record so it did not have to be presented. She offered to add that to the housekeeping items at the beginning of the hearings. She discussed applicants who presented new ideas during the hearings and having an automatic continuance depending on the significance of the new information. Mayor Allers brought up projects that changed details after the LPA and before the council. He requested that presentations be submitted before the meetings. Town Attorney Stuparich commented that they could set a time limit for presentations.

Public comment:

Dave Leigh, resident, supported the Neptune project and noted the process was perfect from beginning to end with no pushback from the community. He

stated they needed metrics on how many heads and beds they needed to use for decisions. He noted they needed to flush out the financial impacts of projects.

Chris Smuts from London Bay Development Group was encouraged by their efforts and supported their recommendations to include a list of items for public benefits. He agreed not to count the area below habitable towards FAR. He discussed the lack of amenities on the south end.

#### IV. ADJOURNMENT

LPA Member Dunlap moved to adjourn.

Chair Cereceda adjourned the meeting at 10:56 a.m.

Minutes adopted as amended, December 2, 2024. Motion by Council Member Woodson and seconded by Mayor Allers. Passed 5-0.



Amy Baker, Town Clerk

**From:** [Gail J](#)  
**To:** [Town Council](#)  
**Cc:** [gailmjasi@gmail.com](mailto:gailmjasi@gmail.com); [Amy Baker](#)  
**Subject:** Regarding Seagate Development Agreement  
**Date:** Sunday, October 27, 2024 10:33:37 AM

---

Mayor, Vice Mayor and Councillors,

I continue to express my opposition in writing to the proposed Home Rule Development Agreement Draft 109-243-24 (ORDINANCE NO. 24-34) between the Town and Seagate Fort Myers Beach, LLC (The Red Coconut Property). This particular agreement is not in the best interest of the residents of Fort Myers Beach.

The primary concern with this agreement are the proposed public benefits and height of the development. The agreement allows for a maximum of 149 residential units which they are allowed by right, but they are requesting a height of up to 235 feet above base flood elevation. These are massive structures - two 17 story towers that each have two 17 story sections, a 16 story section, a 12 story section and an 11 story section and are proposed in a mostly single family, low density area of the island. These will be the largest structures built on our island since our incorporation. Our Town was created to prevent just this kind of development and if this is allowed, it will have a significant impact on the character and charm of our community, as well as changing the landscape of our island forever.

**In addition, deviations granted in the agreement, which allow for variances from the Land Development Code in regards to building height, setbacks, and commercial design standards will set a precedent. Where will it stop? It won't and it can't. The decisions we make today will impact the future. Are we cognizant of what other neighboring beach towns are becoming? Residents of Fort Myers Beach understand commerce and tourism and what goes along with it. We also are here living out our lives. We choose to endure the storms and tourists and snowbirds. Yet we are the ones who are here 12 months a year. Not 3 or 6 or whatever works into our schedules. We are ones here picking up and living after the storms. After the tourists who leave trash, do not respect the water or the wildlife. Developers knew the rules when purchased the property. Why do we keep going over the same issues when they knew the rules up front?**

The public parks, access areas and the public benefits proposed in the agreement do not adequately address the needs of our community. The parks and access areas should be easily accessible to all residents, not just those living in the development. For those of us who live directly around this community will now deal with additional traffic not only on the road but the beach. This can likely look and feel like Bonita Beach road wherein residents fought that "public" could not walk in front of their places. The arrogance of what corporations and people believe they are entitled to. That's not what Fort Myers Beach has

been about.

In conclusion, my voice says that this proposed agreement is not in the best interest of the residents of Fort Myers Beach. I urge the council to carefully consider the potential impacts of this development and deny the Home Rule Development Agreement Draft 109-243-24 (ORDINANCE NO. 24-34).

Sincerely,

Gail Jasionowski

a Donora Blvd resident who has children and grandchildren that share in this life

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

**From:** [Gail J](#)  
**To:** [Scott Safford](#)  
**Cc:** [Amy Baker](#); [Gail Jasionowski](#)  
**Subject:** Re: Regarding Seagate Development Agreement  
**Date:** Sunday, October 27, 2024 1:44:31 PM  
**Attachments:** [Image.png](#)  
[Image.png](#)  
[Image.png](#)  
[Image.png](#)  
[Image.png](#)  
[Image.png](#)  
[Image.png](#)

---

Hi Scott,

Karen Woodson's response was similar in the "*thanks for the cut and paste*". While my email below reiterates all the "repetitious info" to confirm the draft/ordinance, etc. and reminder of the current codes, my message below is strong in preserving a community that wants to keep rational "home roots".

In answer to the "public benefit" question, perhaps I am remiss about an already established definition/parameters. Is it fair to assume the *term* is on paper but the parameters are not actually defined? If so, we are working backwards a bit and should have established protocol before companies arbitrarily come forth with what they perceive as being a public benefit.

Not sure how a public benefit is the *quid pro quo* for height and density? This is the "barter" approach which will have a very different outcome. FMB residents are actually hopeful to work with corporations (as well as the Council) to find a balance so when the corporation closes out this project and moves to the next, those of us remaining can have a community of camaraderie. A community they will not likely participate.

**Public benefit in return for height and density is not the quid pro quo. Corporations knew the rules before they purchased. Buying more property for a lot more money doesn't automatically buy entitlement. Or does it?**

Gail

On Oct 27, 2024, at 11:45 AM, Scott Safford <[scottsafford@fmbgov.com](mailto:scottsafford@fmbgov.com)> wrote:

Gail,

I appreciate your email, but I've gotten several emails that are just copy and paste... What do you think is public benefit that rewards height and density?

Scott

**Scott Safford**

*Council Member, Town Council*  
Town of Fort Myers Beach  
2731 Oak St  
Fort Myers Beach, FL 33931  
Phone: (239) 765-0202



[FMBgov.com](http://FMBgov.com)



---

**From:** Gail J <[gailmjasi@gmail.com](mailto:gailmjasi@gmail.com)>

**Sent:** Sunday, October 27, 2024 10:33:12 AM

**To:** Town Council <[council@fmbgov.com](mailto:council@fmbgov.com)>

**Cc:** [gailmjasi@gmail.com](mailto:gailmjasi@gmail.com) <[gailmjasi@gmail.com](mailto:gailmjasi@gmail.com)>; Amy Baker <[Amy@fmbgov.com](mailto:Amy@fmbgov.com)>

**Subject:** Regarding Seagate Development Agreement

Mayor, Vice Mayor and Councillors,

I continue to express my opposition in writing to the proposed Home Rule Development Agreement Draft 109-243-24 (ORDINANCE NO. 24-34) between the Town and Seagate Fort Myers Beach, LLC (The Red Coconut Property). This particular agreement is not in the best interest of the residents of Fort Myers Beach.

The primary concern with this agreement are the proposed public benefits and height of the development. The agreement allows for a maximum of 149 residential units which they are allowed by right, but they are requesting a height of up to 235 feet above base flood elevation. These are massive structures - two 17 story towers that each have two 17 story sections, a 16 story section, a 12 story section and an 11 story section and are proposed in a mostly single family, low density area of the island. These will be the largest structures built on our island since our incorporation. Our Town was created to prevent just this kind of development and if this is allowed, it will have a significant impact on the character and charm of our community, as well as changing the landscape of our island forever.

**In addition, deviations granted in the agreement, which allow for variances from the Land Development Code in regards to building height, setbacks, and commercial design standards will set a precedent. Where will it stop? It won't and it can't. The**

**decisions we make today will impact the future. Are we cognizant of what other neighboring beach towns are becoming? Residents of Fort Myers Beach understand commerce and tourism and what goes along with it. We also are here living out our lives. We choose to endure the storms and tourists and snowbirds. Yet we are the ones who are here 12 months a year. Not 3 or 6 or whatever works into our schedules. We are ones here picking up and living after the storms. After the tourists who leave trash, do not respect the water or the wildlife. Developers knew the rules when purchased the property. Why do we keep going over the same issues when they knew the rules up front?**

The public parks, access areas and the public benefits proposed in the agreement do not adequately address the needs of our community. The parks and access areas should be easily accessible to all residents, not just those living in the development. For those of us who live directly around this community will now deal with additional traffic not only on the road but the beach. This can likely look and feel like Bonita Beach road wherein residents fought that "public" could not walk in front of their places. The arrogance of what corporations and people believe they are entitled to. That's not what Fort Myers Beach has been about.

In conclusion, my voice says that this proposed agreement is not in the best interest of the residents of Fort Myers Beach. I urge the council to carefully consider the potential impacts of this development and deny the Home Rule Development Agreement Draft 109-243-24 (ORDINANCE NO. 24-34).

Sincerely,


Gail Jasionowski

a Donora Blvd resident who has children and grandchildren that share in this life

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

  
Town of Fort Myers Beach  
Community Development Services - Planning Division  
2731 Oak St.  
Fort Myers Beach, FL 33931

**NOTICE TO PROPERTY OWNERS WITHIN 500 FEET**


Notice is hereby given that the Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM  
DATE: 1<sup>st</sup> Town Council December 2, 2024, and 2<sup>nd</sup> Town Council December 16, 2024  
CASE: DA20240170  
ADDRESS: 3001 Estero Blvd  
APPLICANT: Seagate Development "Red Coconut"  
REQUEST: A development agreement to allow **mixed use development with 141 dwelling units, a beach club, and 1,000 square feet of commercial uses with a maximum height of 12 stories.**

TOWN CONTACT: SARAH PROPOST [SARAH.PROPOST@FNBGOV.COM](mailto:SARAH.PROPOST@FNBGOV.COM)

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the Town Council will review the application materials and hear testimony to make a decision **regarding the proposed ordinance**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application staff report, **proposed development agreement and draft ordinance** are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

  
Town of Fort Myers Beach  
Community Development Services - Planning Division  
2731 Oak St.  
Fort Myers Beach, FL 33931

**NOTICE TO PROPERTY OWNERS WITHIN 500 FEET**

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM  
DATE: 1<sup>st</sup> Town Council December 2, 2024, and 2<sup>nd</sup> Town Council December 16, 2024  
CASE: DA20240170  
ADDRESS: 3001 Estero Blvd  
APPLICANT: Seagate Development "Red Coconut"  
REQUEST: A development agreement to allow the development of a condominium resort with approximately 141 dwelling units and a beach club and restaurant.

TOWN CONTACT: SARAH PROPOST [SARAH.PROPOST@FNBGOV.COM](mailto:SARAH.PROPOST@FNBGOV.COM)

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the Town Council will review the application materials and hear testimony to make a decision. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

  
Town of Fort Myers Beach  
Community Development Services - Planning Division  
2731 Oak St.  
Fort Myers Beach, FL 33931

**NOTICE TO PROPERTY OWNERS WITHIN 500 FEET**


Notice is hereby given that the Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM  
DATE: 1<sup>st</sup> Town Council December 2, 2024, and 2<sup>nd</sup> Town Council December 16, 2024  
CASE: DA20240170  
ADDRESS: 3001 Estero Blvd  
APPLICANT: Seagate Development "Red Coconut"  
REQUEST: A development agreement to allow the development of a condominium resort with approximately 141 dwelling units and a beach club and restaurant.

TOWN CONTACT: SARAH PROPOST [SARAH.PROPOST@FNBGOV.COM](mailto:SARAH.PROPOST@FNBGOV.COM)

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the Town Council will review the application materials and hear testimony to make a decision. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

  
Town of Fort Myers Beach  
Community Development Services - Planning Division  
2731 Oak St.  
Fort Myers Beach, FL 33931

**NOTICE TO PROPERTY OWNERS WITHIN 500 FEET**

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM  
DATE: 1<sup>st</sup> Town Council December 2, 2024, and 2<sup>nd</sup> Town Council December 16, 2024  
CASE: DA20240170  
ADDRESS: 3001 Estero Blvd  
APPLICANT: Seagate Development "Red Coconut"  
REQUEST: A development agreement to allow the development of a condominium resort with approximately 141 dwelling units and a beach club and restaurant.

TOWN CONTACT: SARAH PROPOST [SARAH.PROPOST@FNBGOV.COM](mailto:SARAH.PROPOST@FNBGOV.COM)

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the Town Council will review the application materials and hear testimony to make a decision. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

Deleted: Development "Red Coconut"

Deleted: the development of

Deleted: condominium resort with approximately

Deleted: and

Deleted: restaurant

Deleted: and

Town of Fort Myers Beach  
2731 Oak St,  
Fort Myers Beach, FL 33931

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach  
2731 Oak St,  
Fort Myers Beach, FL 33931

Town of Fort Myers Beach  
2731 Oak St,  
Fort Myers Beach, FL 33931

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»

Town of Fort Myers Beach  
2731 Oak St,  
Fort Myers Beach, FL 33931