



Fort Myers Beach Joint Session Town Council with Local Planning Agency

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Thursday, March 9, 2023

1:00 PM

ORDER OF BUSINESS

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Recovery Planning issues

Discussion of Recovery Planning for residential zoning densities

B. Development Incentives

Development incentives to receive approval/additional intensity, such as public art, ROW dedication, affordable housing, beach access, open space or public open space allocation, public parking / contribution, public infrastructure upgrades.

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 accommodations, 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. **Requested Motion:**

Meeting Date: March 9, 2023

Discussion of Recovery Planning for residential zoning densities

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

Discussion regarding what data is available and acceptable in determining how many dwelling units a particular residential lot may be entitled to, and what the prerogative of the Town is when there is either a lack of useable data, or not enough data to make a good-faith determination on whether there were legally permitted, additional dwelling units/ accessory apartments on the lot.

Attachments:

1. Polk County US 98 SAP Bonus Point Example

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

John R Herin Jr, Town Attorney

Date: March 01, 2023

Amy Baker, Town Clerk

Date: March 02, 2023

Keith Wilkins , Interim Town Manager

Date: March 02, 2023

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;

Table 4.13a											
	Future Land Use Designations										
	CEX	LCCX	NACX	ECX	INSTX	INDX	BPCX	TCX	LRX	OCX	CCX
P	0.30	0.35	0.35	0.70	0.50	0.65	0.60	0.50	0.50	0.35	0.25
B	0.60	0.60	0.60	0.80	0.75	0.80	0.80	0.75	0.75	0.50	0.50
PD	0.75	0.75	0.70	1.50	1.00	1.50	1.50	1.0	1.0	0.70	0.65
Notes: 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,

- 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) ⁽¹⁾⁽²⁾							
Density (du/ac)	RL-1X 30,000 ⁽¹⁾	RL-2X 15,000 ⁽¹⁾	RL-3X 10,000 ⁽¹⁾	RL-4X 8,000 ⁽¹⁾	Density (du/ac)	RMX ⁽³⁾	RHX ⁽³⁾
#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.							

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⁽¹⁾

Type of Amenity	Type of Bonus
INFRASTRUCTURE AND SERVICE CATEGORY	
Donation of usable land for public safety ⁽²⁾	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) ⁽²⁾	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 ⁽²⁾	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
DESIGN	

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(Republication)

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
TRANSPORTATION	
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
RECREATION	
More than one active recreation site with amenities	5 pts
Publicly accessible passive recreation (walking paths/trails, bikeway, nature/hiking trail)	5 pts
CONSERVATION	
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)

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)
DEVELOPMENT	
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)

1. **Requested Motion:**

Meeting Date: March 9, 2023

Development incentives to receive approval/additional intensity, such as public art, ROW dedication, affordable housing, beach access, open space or public open space allocation, public parking / contribution, public infrastructure upgrades.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

With the recovery from Hurricane Ian, significant reinvestment is being made in Fort Myers Beach. Opportunity exists in our Comprehensive Plan and Land Development Code for requesting development options such as Transfer of Density Units, Variances, and other incentives. To evaluate the public benefit of granting incentives, a process to evaluate the return of public benefit for incentives granted, a matrix or other such tool has been requested. The first step in this process is to develop what public benefits are desired, and to prioritize the value those benefits so a comparison of benefit to incentive can be made. An example of such a process from Polk County has been attached to stimulate discussion and understand methodology.

Attachments:

1. Polk County US 98 SAP Bonus Point Example
2. Destin FL Bonus Tier Example Comp Plan Policy

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Date: March 02, 2023

John R Herin Jr, Town Attorney

Date: March 02, 2023

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Table 4.13d Density and Floor Area Ratio Bonus Point Schedule⁽¹⁾

Type of Amenity	Type of Bonus
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(Republication)

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Parking Structure (exempt from FAR calculation)	6 pts
RECREATION	
More than one active recreation site with amenities	5 pts
Publicly accessible passive recreation (walking paths/trails, bikeway, nature/hiking trail)	5 pts
CONSERVATION	
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)

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(Republication)

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	
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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)
DEVELOPMENT	
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)

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)