



## 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

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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:**

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nancy stuparich, Town Attorney

Date: November 11, 2024

Date: November 11, 2024

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Amy Baker, Town Clerk

Date: November 12, 2024

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Andy Hyatt, Town Manager



**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**

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**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**

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**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.



### **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**

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**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



- 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.



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><br>P = Permitted with a Level 2 Review in the US 98 SAP.<br>B = Density Bonus Points (Table 4.13d) are required and permitted with a Level 2 Review in the US 98 SAP.<br>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:
- a. FAR standards will not apply to residential development;
  - b. 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;
  - c. 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,
  - d. 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;
  - e. 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<br>(Maximum Density du/ac)<br>Maximum Average Lot Size (Square Feet) <sup>(1)(2)</sup> |                                |                                |                                |                               |                    |                    |                    |
|-----------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------|--------------------------------|-------------------------------|--------------------|--------------------|--------------------|
| Density<br>(du/ac)                                                                                                    | RL-1X<br>30,000 <sup>(1)</sup> | RL-2X<br>15,000 <sup>(1)</sup> | RL-3X<br>10,000 <sup>(1)</sup> | RL-4X<br>8,000 <sup>(1)</sup> | Density<br>(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>                                                                                                                     |                                                                                                                                                                                                                               |

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(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)                          |

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(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<br>5% of project = 0.25 du/ac increase |
| <b>Notes:</b><br>(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.<br>(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  
- links to the merits 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)