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**QUESTIONS AND COMMENTS CONCERNING THE DOWNTOWN  
AND MIDTOWN DENSITY STUDY AND PROPOSED AMENDMENTS  
TO THE FORT MYERS SMART CODE AND COMPREHENSIVE PLAN**

- 1. Environment:** Calusa Waterkeeper (CWK) supports the objective of dense infill development in Fort Myers. Especially in the Midtown area where significant infill opportunities exist. This represents good planning for Fort Myers and Lee County. It will relieve pressure to build in the Density Reduction Groundwater Resource area in eastern Lee County and thus help recharge the aquifer and protect Lee County's water quality.
2. As part of the River District streetscape, the City installed new water and sewer lines and plans to do something similar in the Midtown District. Please provide additional information as to this infrastructure's age and capacity. Raw sewage has been observed overflowing from manhole covers during high rain events. Does the City have adequate wastewater treatment capacity for the growth envisioned? If not, what does the City plan to do and when will it do it? Please explain how the City plans to fund this additional wastewater treatment capacity. Furthermore, the City continues to discharge millions of gallons of treated effluent into the Caloosahatchee River on a daily basis.
3. Central Fort Myers has a dense tree canopy. This improves air quality and reduces heat. An axiom of smart growth is that the best time to plant a tree is twenty years ago. The second best time is today. Will any of this canopy remain if the City implements the initiatives recommended?
- 4. Height Limits:** The only limit on height will be what the Federal Aviation Agency (FAA) requires. How many feet is this? For instance, will buildings be thirty stories, sixty stories, ninety stories, what? How was it determined that tall buildings with almost unlimited height are appropriate in the downtown River District, let alone Midtown?
- 5. Historic Preservation:** What will prevent buildings of near unlimited height in the historic district? A single tall building can affect the entire downtown. Allowing tall buildings almost anywhere downtown proves a poor planning model. Lower buildings prove more compatible with existing buildings, which certainly will not be replaced overnight.
6. A very real challenge that the City faces concerns what size structure will be built on the former First Methodist Church property bordered by First Street/Royal Palm Avenue/Fowler Street. To even build a seven story building, as permitted now, that takes up an entire city block will entail a massive structure. Adjacent to this lot lies the Burroughs Home, the Langford Kingston Home, the library and a block of one story commercial office buildings. What height will the FAA allow in this location? Under the current Plan, a density cap exists but with the proposed amendments allowed density becomes very fluid and a developer will be allowed whatever "surplus density" may exist. Relying on the "market" to limit height and density as suggested by some poses an unacceptable risk.
- 7. Gardner's Park:** This area consists primarily of small, viable, single family bungalow homes. The City in collaboration with the residents over the past few years developed the Gardner's Park Vision

Plan (GPVP) that provides increased density and height up to four stories and permits artisanal uses. Most of the residents have more-or-less bought into this plan and it is a good plan. How are the proposed amendments compatible with the GPVP? A resident with a small bungalow home could find a twenty story tower thirty feet away.

8. **Millennial Housing:** We support the recommendation to count units of 750 square feet or less as a 1/2 unit. Such units should be in a low rise of three-four stories but mid-rise buildings could be considered. As buildings become taller they become more expensive to build. Back in the 1960s, cities permitted tall towers with high density and no amenities. That did not work well then and why will it work now? Since this revision will prove the single most significant change that can benefit millennial housing, why is the “surplus capacity” scheme needed?
9. **Comparative Studies:** Approximately five other cities were studied to help inform this Study. West Palm Beach is the only city mentioned. But West Palm Beach has a height limit of six stories with the possibility of an additional two stories if they are residential stories. Has the Study cherry-picked features from various communities without looking at the big picture in these communities? What are the West Palm Beach features that the Study recommends? What are the other cities? Any cities on the west coast of Florida? Please provide information for height limits, density, public amenities required, or percent of contribution to community fund for these other cities. Also, how do their socio-economic demographics compare to Fort Myers? Is the Study comparing apples to oranges?
10. **Market Absorptive Capacity:** During the boom the River District was overbuilt with numerous high rise condominiums. It is only within the past two years or so that demand has begun to catch up with this overcapacity. But even today a large number of units remain for sale in these buildings. Campo Felice broke ground in 2016 and The Place recently broke ground. The Allure and Prima Luce may break ground in 2017. These high-rises will likely address the market demand for the next five years. Furthermore, at least, five additional large condominium projects have been permitted in the River District (e.g. One West, First Street Village, Legacy Harbor, The Vue, The One and additional towers at the Oasis and Allure). Why does the City need to provide more incentives given what is happening now and what is planned?
11. These unbuilt developments have received approval as planned unit developments (PUDs) and are required to provide various public amenities. If the City adopts the recommendations proposed will developers set aside their PUDs and build taller, denser buildings without the public amenities already negotiated? This could throw the planning process into chaos.
12. **The One Percent:** In order to incorporate new urbanism planning principles, the Duany Plan provided for increased height and density than that conferred by-right — if developers provided a variety of public amenities. Developers are allowed by-right 35 units per acre and if they provide public amenities can receive up to 70 units per acre. The Study appears to recommend that developers can build by-right buildings with 70 units per acre and not provide any public amenities. The Study also proposes that a developer contribute 1% of the construction cost into a Community Fund for buildings with a greater density than 70 units per acre and that the Community Fund will finance some public amenities. Is this correct?
13. How was the figure of a 1% contribution determined? Where else has this approach been used? For comparative purposes, what percent did the other cities studied require for a contribution?
14. This 1% financing scheme could face a legal challenge. Some developers object to funding public amenities for greater density, arguing that a rational nexus does not exist between their project and public amenities — especially work force housing. They are wrong. The City does not require them to construct a denser building and they can build a 35 unit building by-right without providing any

public amenities. Under this new scheme, all the public benefits that would come as exactions in exchange for higher density would be paid for with the 1% fee on construction costs. This fee constitutes 1% of the TOTAL project construction cost and goes well beyond costs represented by the additional density. Why would any developer accept having to pay a fee on the first by-right units, if those who stay within the by-right number do not have to pay? A fairer and more equitable financing formula could entail paying a 5% fee on construction cost for units beyond that allowed by-right.

15. Who will manage the Community Fund? What percent of the funds will go to which intended purpose? Will the money be spent in the River District or Midtown where a building is constructed? Will the funds only be used for the type of infrastructure projects designated or could the funds be used for city staff salaries of people who may be involved with the amenities to receive support and other expenses that would normally be paid out of general revenue?
16. **Mixed Uses:** The Study states that one of the primary objectives is to create mixed-uses, higher density buildings in the Midtown District. But the requirement to build a mixed use facility as a bonus density requirement is eliminated. Instead, the City will determine if a sufficient percent of the buildings in a district are commercial/retail. This may work if a sufficient number of such establishments already exist within walking distance of a cluster of condominiums. But what happens if sufficient commercial/retail space does not already exist?
17. **Transportation:** The proposed amendments seek to encourage residential options that include pedestrian connections to the government employment centers and downtown. While the Midtown District is close to downtown, it is not an easy walk. Multi-modal transportation and various types of people movers would facilitate such access. The City, however, lacks the resources to pay for such transportation, as evidenced by the difficulty to fully fund the trolley that runs only in winter months. The current plan appears to require a contribution to the downtown trolley. Would this be a requirement only if a building exceeds 70 units per acre and be funded by the Community Fund? If so, what percent of the Fund would support multi-modal transportation? More thought needs to be given to innovative modes of transportation in the River District and the Midtown District.
18. **Parking:** We support the requirement to increase the required parking from 1 space per unit to 1.5 spaces per unit. The previous bonus density option was flawed as it allowed a developer to earn bonus density by providing public parking in the development. As a practical matter, this was not public parking as the condominium residents used these spaces. In addition, parking needs to be provided for oversize service vehicles and delivery trucks. The Study states parking garages will be needed in Midtown. The Community Fund should dedicate a percent of its funds for public parking.
19. **Art:** Will the requirement to provide public art remain?
20. **Closing Streets:** The Study proposes vacating streets and turning the property over to a developer. What streets could be closed? Please explain how vacating public streets will contribute to any of the planning goals being pursued.
21. **Tax Increment Rebates:** The majority of the River District high rise condominium developers receive tax increment rebates where 80-95% of the property taxes collected each year on these condo units they built goes to pay their construction loans over the next 10-20 years. Will developers still receive the tax increment rebates previously awarded if they start the process over to build taller, denser, less-expensive buildings without public amenities along First Street?
22. The Study envisions a dramatic increase in population. How can the City afford to pay for the increased services these new residents will require if their property taxes are used to pay developers' construction loans?

23. The Study proposes that the City designate a tax increment financing district in the Redevelopment Area. What percent tax increment rebate will be used in this area? 20-39%, 40-59%, 60-79% or the currently used 80-95%
24. **Smart Code:** The draft document with the Smart Code revisions is dated 01/04/17, but a headnote indicates the City Council will consider 01/03/17. Has the City Council already approved the Smart Code amendments?

### **A Better Way**

This Study and proposed amendments appear written from the perspective of engineers and developers and will foster land speculation, as opposed to allowing growth in a sustainable, organic manner. The Study and proposed amendments need revising to incorporate the perspectives of urban planners and people who want to live and work in a sustainable, walkable community. This initiative appears on a fast track for approval. Before going forward, the Study and proposed amendments need revising to address the type of questions and concerns raised herein. CWK members have attended the Town Halls held to date and have not received explanations to the questions and comments raised herein.

Applicants complain that approval can take too long. This complaint has validity. Previously, the City had a planning staff of twelve at the Department of Community Development and now has a staff of three. Also, the process would benefit from greater automation.

The main reason for the time consuming process, however, lies with the applicants themselves. Several years ago to great fanfare, the City adopted a Smart Code that provides flexibility and streamlines the approval process. If an applicant wants greater density than that allowed by-right, the applicant can seek a PUD and will need to provide public amenities. The extent of the public amenities to be provided is fairly clear cut, but applicants know that if they vigorously object they can get the public amenities reduced. The problem with this negotiating process is that it proves very labor intensive for all parties concerned. In addition to time delays, the applicants incur significant expenses to contest the process. The only winners under this system are the attorneys and other consultants. The City needs to be firm.

In summary:

- The City could consider allowing greater density by-right, perhaps 50 units, but not 70.
- The current height requirements are fine, especially in the urban center.
- Allow units with 750 square feet to count as a half unit will address the issue of millennial housing and alleviate much of the time consuming PUD process.
- More information needed on the proposed Community Fund.
- The City needs to break its addiction to the unsustainable practice of providing excessive tax increment rebates for developers. Such a policy breaks with what is considered best practices for Community Redevelopment Agencies. Tax increment funding, however, if done correctly can prove a useful tool to fund public infrastructure.