*The City of Destin*

Post Office Box 399 Destin, Florida 32540 (904) 837-4242 FAX (904) 837-3267

September 9, 1993

DO-93-18

Mr. Curtis Gwin, Agent
Destin Guardian Corporation
Post Office Box 1805
Destin, Florida 32540-1805

**RE: FINAL DEVELOPMENT ORDER FOR DESTIN POINTE RESORT A PLANNED UNIT DEVELOPMENT AND A MAJOR DEVELOPMENT**

Dear Mr. Gwin:

Based upon the City Council's approval of the above referenced project at its meeting on September 7, 1993, this letter will serve as your Final Development Order to include all the provisions of the attached Staff Report and with the following conditions:

1. Under the requirements of the Land Development Regulations and Destin's Code of Ordinances, development must commence within a twelve-month period and building permits for this project must be obtained prior to September 6, 1994, or this approved Development Order will expire and the project will have to be resubmitted for review.

2. Maximum density approved for 298 units which includes an existing 66-unit condominium, and approval of a small commercial general store type facility for use by the residents and guests of the property as an accessory building. Project consists of 116 lots which will contain single family homes with some lots also having an additional garage-apartment type second unit containing no more than 450 square feet. All structures must meet all minimum setbacks, landscaping and site requirements of the City's Code.

3. The nesting area will be fenced to keep people, pets and vehicles out. Any paths or dune walkovers will be made to direct pedestrians away from the nesting areas. These restrictions to be included in the Restrictive Covenants.

4. Informational\warning signs will be posted to notify the public about the bird nesting area.

5. The developer will have personnel policing the nesting area against trespassers and monitor the number of birds nesting each year. (Personnel must fully discuss law enforcement on the site with proper officials, and nest survey needs and methods with the Florida Game and Fresh Water Fish Commission (FGFWFC) before beginning to protect the site.

6. Deed restrictions or similar binding regulations will be instituted to require homeowners to keep dogs and cats indoors, penned, or on a leash at all times.

7. Construction activity within bird nesting areas will be restricted during the nesting season, which is normally April 1st - August 31st. This means that if birds are nesting on a particular lot construction activity cannot take place on that particular lot but it would not necessarily mean that construction cannot take place on another lot within the development which would not impact a bird nesting area.

8. Implementation of the approved master plan for dune crossovers which will control beach access, protect the dunes, and further protect bird nesting areas.

9. Homeowner's Association Documents must include the minimum annual amount of $3,733.33 in Reserves in their association's operating budget for the maintenance of the private streets and water and sewer lines within the development.

10. Streetlights are required as part of the infrastructure and <u>prior to initiation of construction of the infrastructure, complete construction drawings locating the placement of streetlights must be approved by the City Engineer.</u>

11. Prior to the issuance of a building permit, the following documents are required:

(a) The final Homeowner's Association Documents, Restrictive Covenants, and the Design Building Code which must be approved by the City Attorney.

(b) A Department of Environmental Protection (DEP\DNR) Permit for stormwater management plan.

(c) A Department of Environmental Protection (DEP\DNR) Permit for lighting compliance with sea turtle protection requirements.

(d) A Department of Environmental Protection (DEP\DNR) Permit for each building footprint for all lots seaward of the CCCL.

12. If the development is initiated within a one-year period your concurrency status is protected for five years through September 7, 1998.

Best of luck with this project. Let us know if we can be of any further assistance.

Sincerely,

Jane Moore

Jane Moore
Planning & Zoning Director

JM:jf - Attachment
cc: Inspection Department

**CORRECTED**
**REPORT AND RECOMMENDATION**

**TO : DESTIN CITY COUNCIL**

**FROM : DESTIN PLANNING COMMISSION**

**SUBJECT: REQUEST APPROVAL FOR DESTIN POINTE RESORT, A PLANNED UNIT DEVELOPMENT AND A MAJOR DEVELOPMENT**

**DATE : SEPTEMBER 7, 1993**

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**BACKGROUND**

Request for approval for a modification to the previously approved Planned Unit Development, Destin Pointe Resort, to allow the remainder of the property to be changed from a high density, multi-family project to single family dwelling units. The request is for 116-lots with the stipulation that no more than two (2) structures may be constructed on a lot. The property is located on Holiday Isle at the Destin Pointe Resort Condominium site. The site contains 44.7 acres more or less. Several of these acres are included in the lake and wetlands.

**DISCUSSION**

The project has been pending before the Planning Commission since December, 1992 and the Planning Commission conducted a Public Hearing on the project at their September 1, 1993 Special Meeting. No one in the audience spoke in opposition to the project.

The Developer explained that the project would contain a multi-family, mid-rise structure (existing), a small general store for use by the residents and guests of the development, and 116 lots which will contain single family homes with some lots also having an additional garage-apartment type second unit containing no more than 450 square feet. The developer explained that their restrictive covenants were very restrictive and allowed only 33% coverage by the structures.

Staff reviewed the environmental concerns previously raised regarding protection of the bird nesting areas and the necessity to increase the Association's budget to include sufficient dollars to maintain the private streets within the development. It was noted that the developer had agreed to the requirements included in the Staff Reports and that it would be necessary for the City to be provided copies of the final Homeowner's Association Documents, Restrictive Covenants, and the Design Building Code which must be approved by the City Attorney prior to the issuance of any building permits.

Mrs. Moore reminded the developer that the lots abutting Gulf Shore Drive would not have access to their property from Gulf Shore Drive but must use the internal streets within the complex. Staff also

advised that in the event a homeowner desired a larger house than would be allowed within the confines of the property, they would not be eligible for a variance before the Board of Adjustments.

**RECOMMENDATION**
After reviewing the Staff Reports and the Developer's Findings of Fact (dated 12-4-92), the Planning Commission voted 5-0 to approve the revised Destin Pointe Resort Planned Unit Development and incorporated the three Staff Reports and documents as their Findings of Fact.

**SUGGESTED MOTION**
I move that we approve the amended site plan for the Destin Pointe Resort Planned Unit Development as recommended by the Planning Commission to include a maximum density of 298 dwelling units and that the City Clerk hold the Mylar until Ordinance compliance for infrastructure are met.

| Reviewed and Approved by: | | Date |
|---|---|---|
| City Manager | | 9.3.93 |
| P&Z Director | | 9-3-93 |

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# STAFF REPORT #3
## PLANNING AND ZONING DEPARTMENT
## DESTIN POINTE RESORT
## A PLANNED UNIT DEVELOPMENT AND MAJOR DEVELOPMENT
## HOLIDAY ISLE - GULF SHORE DRIVE
## September 1, 1993

**ISSUE**

Request for approval for a modification to the previously approved Planned Unit Development, **Destin Pointe Resort**, to allow the remainder of the property to be changed from a high density, multi-family project to single family dwelling units. The request is for 116-lots with the stipulation that no more than 2 structures may be constructed on a lot. The property is located on Holiday Isle at the Destin Pointe Resort Condominium site. The site contains 44.7 acres more or less. Several of these acres are included in the lake and wetlands.

**BACKGROUND**

This project has been previously considered by the Planning Commission on December 17, 1992, and January 21, 1993. It has been continued pending finalizing the plans and the mylar.

As a matter of information, this project does not include the parcel which has a COE easement.

**RECOMMENDATIONS**

In previous staff reports staff had identified specific areas of concern. Below are the issues previously raised. Staff's recommendation are indented and it is recommended that these be included as part of the Development Order:

**1. The nesting area will be fenced to keep people, pets and vehicles out. Any paths or dune walkovers will be made to direct pedestrians away from the nesting areas.**

These restrictions will be included in the Restrictive Covenants.

**2. Informational/warning signs will be posted to notify the public about the bird nesting area.**

Agreed to do so.

**3. The developer will have personnel policing the nesting area against trespassers and monitor the number of birds nesting each year. (Personnel must fully discuss law enforcement on the site with proper officials, and nest survey needs and methods with FGFWFC before beginning to protect the site.**

Should be included in management policies.

**4. Deed restrictions or similar binding regulations will be instituted to require homeowners to keep dogs and cats indoors, penned, or on a leash at all times.**

Agreed to include in Restrictive Covenants.

**5. Construction activity south of the lake that is near the nesting area will be restricted during the nesting season, which is roughly April 1st - August 31st.**

Agreed to. This means that if birds are nesting on a particular lot that construction activity cannot take place on that particular lot but it would not necessarily mean that construction cannot take place on another lot within the development which would not impact a bird nesting area.

**6. Establishment of a master plan for protection of the dune system.**

Developer has submitted a master plan for dune crossovers which will control access to the Beach and further protect bird nesting areas. This plan is being included as part of the plan approval.

The developer has amended his association budget to increase the amount assessed for Reserves for maintenance of the streets. They had originally projected a $24,000 budget (collected over a priod of fifteen years) and the revised assessment will accrue approximately $56,000. This is a more realistic cost figure to maintain the infrastructure for this project.

The Mylar has been submitted and includes the required signatures.

It is the Planning Staff's recommendation that the Development Order includes the recommendations in items 1-6 above.

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# STAFF REPORT #2
## PLANNING AND ZONING DEPARTMENT
## DESTIN POINTE RESORT
## A PLANNED UNIT DEVELOPMENT AND MAJOR DEVELOPMENT
## HOLIDAY ISLE - GULF SHORE DRIVE
## JANUARY 21, 1993

**ISSUE**

Request for approval for a modification to the previously approved Planned Unit Development, **Destin Pointe Resort**, to allow the remainder of the project to be changed from a high density, multi-family project to single family detached dwelling units. The request is for 159 lots. The property is located on Holiday Isle at the Destin Pointe Resort Condominium site. The site contains 44.7 acres more or less. Several of these acres are included in the lake and wetlands.

**BACKGROUND**

This project was continued by the Planning Commission at its meeting on December 17, 1992. The developer requested a continuation of the project because the mylar was not ready for presentation.

In addition, as pointed out in the 12-17-92 Staff Report, the site includes several environmentally sensitive areas: wetlands around the lake; bird nesting areas; and dunes. The applicant has provided a copy of a wildlife survey completed by Environmental Services Inc. Based on site visits, bird nesting areas were identified for the least terns and snowy plovers both of which are classified as threatened species by the Florida Game and Fresh Water Fish Commission.

The developer's environmental study recommended measures to help mitigate any potential adverse impacts to the colony. The Florida Game and Fresh Water Fish Commission has concurred that the following mitigation measures might help maintain and protect the nesting area. **Staff recommends these be adopted as part of the development order:**

1. **The nesting area will be fenced to keep people, pets and vehicles out. Any paths or dune walkovers will be made to direct pedestrians away from the nesting area.**

2. **Informational/warning signs will be posted to notify the public about the bird nesting area.**

3. **The developer will have personnel policing the nesting area against trespassers and monitor the number of birds nesting each year. (Personnel must fully discuss law enforcement on the site with proper officials, and nest survey needs and methods with FGFWFC before beginning to protect the site.)**

4. Deed restrictions or similar binding regulations will be instituted to require homeowners to keep dogs and cats indoors, penned, or on a leash at all times.

5. Potential new nesting habitats will be created on the roof of the existing condominium by placing white gravel on the roof. (Note: All or part of the roof is currently gravel-covered, so little gravel may be needed.)

6. Construction activity south of the lake that is near the nesting area will be prohibited during the nesting season, which is roughly April 1-August 31.

**BEACHFRONT PROPERTY**

This property abuts the State owned lands which constitute the beach front. The development includes a commons area adjacent to this beachfront. No master plan for the commons area has been filed. It appears that there is a Corps of Engineers (COE) easement on at least a portion of this commons area. Staff has not received any information regarding the COE's position on the proposed use of this area.

Staff has suggested a master plan for controlling foot traffic to the beach but the developer has declined to present such a plan. Staff's concern is that if each of these lots located along the beach provided direct access for foot traffic directly across the sand to the beach--as opposed to having a planned boardwalk--there will be greater damage to the bird nesting areas and to the dune system.

Staff recommends that a master plan controlling access to the beach be required as part of the development order.

**GENERAL COMMENTS**

Staff feels that as outlined previously in the first Staff Report there are unresolved issues dealing with:

- environmental concerns relating to the preservation of the bird nesting area for the environmentally threatened species;

- dune crossovers master plan to protect dune system and encourage reestablishment and further protect bird nesting areas;

- evidence of sufficient dollars to adequately maintain the private streets and water/sewer lines.

- Mylar, duly signed, must be presented (as of Tuesday evening, 1-19-93, this had not been received by staff).

As we stated before, we do not feel these issues make the project unachievable. However, these concerns should be more adequately addressed by the developer.

# STAFF REPORT
## PLANNING AND ZONING DEPARTMENT
## DESTIN POINTE RESORT
## A PLANNED UNIT DEVELOPMENT AND MAJOR DEVELOPMENT
## HOLIDAY ISLE - GULF SHORE DRIVE
## DECEMBER 17, 1992

**ISSUE**

Request for approval for a modification to the previously approved Planned Unit Development, Destin Pointe Resort, to allow the remainder of the project to be changed from a high density, multi-family project to single family detached dwelling units. The request is for 159 lots. The property is located on Holiday Isle at the Destin Pointe Resort Condominium site. The site contains 44.7 acres more or less. Several of these acres are included in the lake and wetlands.

**BACKGROUND**

The Destin Pointe Resort project was approved by the City of Destin on 4-22-85 for 798 units which included a mix of high-rise to low rise structures. One building containing 66 units has been constructed in addition to administrative offices, pool, tennis courts, etc.

**ZONING/COMPREHENSIVE PLAN**

The property is zoned RIA (Residential Intensive Apartments) and the Land Use Category is HDR (High Density Residential). The maximum density allowed is 19.9 units per acre (889.5 units total would be allowed). The project density, including the existing units, is 5.03 units (for a total of 225 units at buildout).
By making the proposed changes to overall development plan, this will become a mixed-type of development by integrating multi-family with single-family residential. The developer has submitted his proposed Findings of Fact to support why he should be allowed to deviate from the standard subdivision requirements for lots, setbacks, etc. They are attached to this report.

The project includes development seaward of the old CCCL which is in conflict with existing Comprehensive Plan policy 7.A.6.1. However, this policy is being amended and the amendment is expected to be adopted on second reading by the Destin City Council at its meeting on December 21, 1992. Language in the amendment has been approved by DCA and the LPA recommended approval to the City Council. The DNR also has approved the master plan with the proposed construction seaward of the CCCL based on the fact that the proposed development is located landward of the 30 year erosion line.

**CONCURRENCY MANAGEMENT**

This project is a previously approved project within which construction had been initiated. It would be considered a vested project as far as concurrency is concerned. However, it does meet all the concurrency requirements.

MYLAR - SUBDIVISION OR PUD
As of the writing of this report, no mylar had been presented for review.

STORMWATER
The stormwater management plan has been approved by the City Engineer. A DER permit is required and must be submitted to the City before any building permits can be issued.

SIGNS
No special signs are requested for the project.

UTILITIES
All utilities must be underground. Water and sewer are available from Destin Water Users. The lines will have to be maintained by the Association since they will be located on private property.

STREETLIGHTS
Developer is required to install streetlights as part of the infrastructure requirement. Prior to initiation of construction of infrastructure, complete construction drawings locating the placement of streetlights must be approved by the City Engineer.

INGRESS/EGRESS
Access to the project is off of Gulf Shore Drive onto the existing roadway which currently provides access to the condominium building. The rights-of-way throughout this project are designed to be 40' wide and are private streets. In order for the City to allow these rights-of-way to be less than the required 50' they must be private streets and be maintained by the association. It is essential for the City to determine there will be sufficient funds available for adequate maintenance. The Association Documents show that there will be an annual allocation of $2,000 for twelve years for pavement resurfacing (total of $24,000).

With the streets initially constructed to City standards, barring some unforeseen problems, the initial construction should hold up for approximately fifteen years. The estimated cost of resurfacing the roadways (assuming normal wear and tear and not major reconstruction) $10 per linear foot at today's cost. The project contains approximately 7,048 l.f. of roadway - 7,048 l.f. x $10.00 per l.f. = $70,480 (allowing for no inflation of cost). Staff is concerned that the projected reserves for road repaving will not be sufficient to adequately maintain the road system. In addition, no reserves are being established for the maintenance of the water and sewer line which will be the responsibility of the Association since Destin Water Users will not maintain these lines on private property (as per a telephone conversation 12-16-92 with Eric Smith, General Manager, DWU).

Staff recommends these items be readdressed by the developer and revised to more realistically reflect future costs of maintenance/or replacement of infrastructure.

WHITE SANDS ZONE
The project lies within Zone 1. Only white materials may be used.

**SETBACKS**
The typical setbacks shown meet the newly adopted minimum setback requirements.

**SIDEWALKS**
Sidewalks are required throughout the development.

**LANDSCAPE**
The project meets or exceeds the landscape requirements as follows:
OPEN SPACE:

| | | | | |
|---|---|---|---|---|
| 1,947,132 s.f. of property X 18% | = | 350,484 | s.f. required |
| Site plan provides 29 % | = | 569,420 | s.f. provided |

TREES REQUIRED:

| | | | | | |
|---|---|---|---|---|---|
| Reforestation (10 per acre) | 447 | Perimeter (1 per 25') | 508 | Parking Lot (Islands) | n/a |

| | |
|---|---|
| Protected Trees on Site (12" to 23" diameter): | 0 |
| Preserved Trees on Site (24" or more diameter): | 0 |
| Credits for Protected/Preserved Trees : | 0 |
| TOTAL TREES REQUIRED : | 955 |
| TOTAL TREES PROVIDED : | 955* |

*The landscaping around the existing condominium building will be credited against the overall site requirements. The figures shown above included the entire site including the existing building.

**PARKING**
Parking for the single-family lots will be on each site. The existing condominium already has its parking allocated.

**REFUSE COLLECTION**
Refuse collection is provided by curbside pickup for the single family units: the multi-family will continue to use a dumpster.

**FIRE DEPARTMENT REVIEW**
The project has been reviewed and approved by the Fire Department.

**ENVIRONMENTAL ISSUES**
The site includes several environmentally sensitive area: wetlands around the lake; bird nesting areas; and dunes. The applicant has provided a copy of a wildlife survey completed by Environmental Services Inc. Based on site visits, bird nesting areas were identified for the least terns and snowy plovers both of which are classified as threatened species by the Florida Game and Fresh Water Fish Commission.

Environmental Services, Inc. recommended measures to help mitigate any potential adverse impacts to the colony. Section 11.01.06, Land Development Code, (pg. 11-4) states that ..."In order to provide sufficient protection for Environmentally Sensitive Areas, additive environmental protection measures may be required by the City Council."... Section 11.06.00.C.1, Land Development Code (pgs, 11-25/11-26) also required that any development which would impact areas known to be important to animal species designated as endangered or threatened.....must by approved by the City and the Florida Game and Fresh Water Fish Commission. Staff has faxed a

copy of the proposed development, the Environmental Services, Inc. report to the FGFWC but has not received their approval.

Staff feels these minimum measures to provide protection and mitigate damage, as proposed by Environmental Services, Inc. should be required as part of the development order:

- Additional protective fencing and visual screens such as trees and shrubbery.
- Posting of informational/warning signs.
- Policing/monitoring the area during the nesting season.
- Deed restrictions prohibiting homeowners from keeping dogs and cats (domestic cats can be a major predator of such birds).
- Creation of new nesting sites such as adding white gravel/sand to the condominium rooftop.
- Enhancement/preservation of existing nesting sites. Preservation could be accomplished with a conservation easement. Enhancement could entail such measures as periodically controlling the amount of vegetation in order to maintain a more open condition that is optimal for nesting.
- Directing pedestrian/vehicular traffic along specific routes away from the colony.

STATE/FEDERAL PERMITS REQUIRED

The project has received DNR site plan approval; COE and DER approval for dredging/filling in the wetlands area. Still required is the FGFWFC permit regarding the nesting area.

BEACHFRONT PROPERTY

This property abuts the state owned lands which constitute the beach front. The development includes a commons area adjacent to this beachfront. No master plan for the commons area has been filed. Staff has suggested a master plan for controlling foot traffic to the beach but the developer has declined to present such a plan. Staff's concern is that if each of these lots located along the beach is able to walk directly across the sand to the beach--as opposed to having a planned boardwalk--there will be greater damage to the bird nesting areas and to the dune system. Staff recommends that a master plan controlling access to the beach be a part of the development order.

GENERAL COMMENTS

Staff feels that as outlined above there are unresolved issues dealing with:

- environmental concerns relating to the preservation of the bird nesting area for the environmentally threatened species;
- dune crossovers master plan to protect dune system and encourage reestablishment;

- evidence of sufficient dollars to adequately maintain the private streets and water/sewer lines.

We do not feel these issues make the project unachievable. However, these concerns should be more adequately addressed by the developer.

In addition, the following items are required:

- Approval by the Florida Game and Fresh Water Fish Commission is essential prior to final approval by the City Council.

- Mylar, duly signed, must be presented.

( ) Performance or surety (insurance) bond(s) issued by insura[illegible] companies licensed to do business in Florida

( ) Certificates of Deposit issued by State or Federally insured licensed banks provided Certificate of Deposit can be converted to cash (or any other asset) only with prior approval of the City. NOTE: Interest earned on Certificate of Deposit shall be in favor of applicant if provisions of Section 2.14.00.C.d. are met.

4. STORMWATER:
City Comprehensive Plan Concurrency Certification Attached: ~~N/A~~
DER Stormwater Permit Required: Yes Permit Attached: No
Stormwater Check List is Completed/Attached: Yes

5. INGRESS/EGRESS:
DOT Approval for State Highways Required: Existing Permit Attached: _____
Okaloosa County Driveway Permit Required: Existing Permit Attached: _____

Width of Driveways:
Maximum Allowed: N/A Provided: 43 ft. divided (existi
No. of Driveways into Project: 1 Distance Between: N/A
Access Provided from the following street(s): Gulf Shore Drive

Sidewalks Required: 4 ft. wide, both sides Provided: 4 ft. wide, both side

6. WHITE SANDS ZONE:
Project is Located in:
( X ) White Sands Zone #1
( ) White Sands Zone #2
( ) Does Not Lie Within Either Zone 1 or Zone 2

7. AIRPORT PROTECTION:
FFA Permit Required: N/A Permit Attached: N/A
Project Lies Within Airport Noise Zone: *Yes _____ No X
Project Lies Within Airport Clear Zone: *Yes _____ No X
Project Lies Within Airport Expansion Area: Yes _____ No X
(If "YES", attach statement from Okaloosa County of "Approval" or "No Objection" to encroachment within proposed expansion area)

NOTE: *Discuss Additional Requirements with Planning Director

8. LANDSCAPE:
Landscape Area Required: 350.484 (Total Site) S.F. Provided: 569,420 (Total Site) S.F.
(18% of Site Required) Percentage of Site Devoted to Landscaping: 29.2

Number Protected Trees on Site (12" to 23" diameter) None
(Locate on Site Plan)

Number Preserved Trees on Site (24" or more diameter) None
(Locate on Site Plan)

[illegible]mber of Trees Required: _____ Provided: _____
[illegible]forestation: 447 Perimeter: 508 Total: 955
6 per ac
[illegible]scape Check List Completed/Attached: Yes



Destin Pointe PUD

Materials and debris resulting from clearing and grubbing operations shall be removed from the site promptly. Grading operations shall not adversely affect adjacent properties. Finish grading shall be such that the washing of water onto adjacent properties is kept to a minimum. Newly graded areas shall be protected against erosion at all times.

### 3.3 Existing Vegetation

Construction shall be located sympathetic to existing vegetation so as to retain as much of the existing vegetation as is practical.

Existing vegetation may be cleared to a maximum of 4 feet beyond the edge of the building unless approved by the DRB as part of the landscape plan. No vegetation shall be removed or destroyed on any lot prior to DRB approval of the final landscape plans and specifications.

### 3.4 New Planting

When designing the landscape plan, it is recommended that plants native to the locale be utilized, to insure healthy growth and hardiness. A list of native plants may be obtained from the DRB office.

The maximum area allowed for a grassed lawn will be 150 square feet within the front yard setback and 300 square feet for the entire property.

The homeowner is required to plant on his property the following:

(A) Four trees--type(s) to be selected from the Approved Plant List below. These trees shall be a minimum of 1-1/2" caliper 8-10' tall.

(B) Eight Shrubs--type(s) to be selected from the Approved Plant List below. These shrubs shall be a minimum of ------ ---.

### 3.5 Approved Plant List

**Trees**

Southern Magnolia (Magnolia Grandiflora)
Sand Pine (Pinus Clausa)
Loblolly Pine (Pinus Taeda)
Southern Live Oak (Quercus Virginiana)

**Shrubs**

Pfitzer Juniper (Juniperus Chinensis 'Pfitzerana')
Pampas Grass (Cortaderia Selloana)

Elaeagnus, Russian Olive (Elaeagnus Pungens)
Southern Wax Myrtle (Myrica Cerifera)

## 4.0 APPROVAL PROCESS

### 4.1 General

The property owner shall be responsible for contacting the Design Review Board (DRB) office to determine the time and dates of the DRB meetings and the cutoff dates for submission of applications. Application forms may be obtained from the DRB office.

In addition to the requirements of the DESIGN CODE, the owner is responsible for making sure that construction conforms to all Federal, State, County, and local codes, ordinances, and regulations.

### 4.2 Design Review Board

The Design Review Board (DRB) is the vehicle for maintaining adherence to the DESIGN CODE. The DRB shall have an administrator responsible for coordination between the DRB and the property owner and the owner's architect. It is not the intent of the DRB to make arbitrary and subjective value judgments, nor to discourage creativity, but to insure that all construction is in compliance with the design standards and to insure compatibility with the overall concept, character, and design quality of the community. The goal of the DRB is to review and process all applications fairly and to evaluate their compatibility with the DESIGN CODE.

Applications shall be approved or denied based upon compliance with the provisions of the DESIGN CODE. The Design Review Board may also consider the quality of materials, harmony of the design with the spirit of the development, as well as purely aesthetic considerations, which in the sole opinion of the DRB will affect the overall concept and intent of the development.

The DRB assumes no responsibility for structural adequacy, soil erosion, soil conditions, or compliance with Federal, State, County, or local codes, ordinances, and regulations.

### 4.3 Process and Scheduling

Prior to submission of plans to the DRB, the owner shall schedule a meeting with his architect and the Design Review Administrator of the DRB, to discuss the site, the approval process, and DESIGN CODE. It is imperative that the architect have a clear understanding of the DESIGN CODE prior to commencing with design in order to prevent unnecessary modifications and revisions to the plans.

### 4.4 Initial Review Requirements



Destin Pointe Design Code • Copyright 1992 by The Vogt Group/Architects, a.p.c.

# ORDER

The City of Destin Board of Adjustments considered the application of **DESTIN GUARDIAN CORP.**, to request a variance to the maximum height limitation from 35' to 44' for houses in Destin Pointe, a Planned Unit Development (PUD) at 480 Gulf Shore Drive, Destin, FL 32541, to be located seaward of the Coastal Construction Control Line (CCCL) as determined by the Department of Environmental Protection (DEP). Due public notice of the hearing was given by publication of appropriate notice in the Destin Log on March 20, 1996 and March 27, 1996. The Board, having considered the application, testimony and exhibits of the applicant, the report of the city staff and all other relevant testimony, exhibits, and other evidence, pursuant to Chapter 21, Sections 21-71 through 21-81, Destin's Code of Ordinances, finds and orders the following:

## FINDINGS OF FACT:

I. Special conditions exist which are peculiar to the land, structure or building involved and which are not applicable to other lands and buildings in the same zoning district.

New minimum elevations imposed by DEP require height variance to allow towers that were, prior to this increase, within the city code.

II. The special conditions and circumstances do not result from the actions of the applicant.

III. The granting of the variance does not confer on the applicant any special privileges denied by Chapter 21, Destin's Code of Ordinances, to other lands in this same zoning district.

IV. The literal interpretation of the provisions of the applicable zoning ordinance would deprive the applicant of the rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant as:

Residents would be unable to enjoy their right to a tower, thereby losing a view of the sea.

V. The request represents the minimum variance that will make possible the reasonable use of the land and building, specifically:

The variance will allow a maximum height of 44" from ground level to a point at the average height of the roof; the tower, or widow's walk, on the third floor will be limited to a maximum of 200 square feet of enclosed space; the ground floor may not be habitable space.

VI. The granting of this variance will be in harmony with the general intent and purpose of the Ordinance and will not be injurious to the area involved or otherwise detrimental to the public welfare.

ORDER

I. The application is granted.

The Order was adopted upon a roll call vote of 6 to 0 to grant the variance.

Ordered this 30th day of May, 1996.

CHAIRMAN - BOARD OF ADJUSTMENTS

PLANNING & ZONING SECRETARY

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*The City of Destin*

4200 Two Trees Road Destin, Florida 32541 (904) 837-4242 FAX (904) 837-3267

March 7, 1997

Ms. Ann Wait
Destin Guardian Corporation
480 Gulf Shore Drive
Destin, FL 32541

Subject: Destin Pointe, Our File No. 462

Dear Ms. Wait:

I acknowledge receipt of your Letter of Credit No. 31451/6078 from Regions Bank dated February 24, 1997.

This letter will be your authorization from the City of Destin to initiate your paving project. Please be advised that the city will expect that the paving will be installed in accordance with the approved Baskerville-Donovan, Inc. plans.

Upon completion of all the infrastructure improvements, they must meet city/state mandated criteria and the project will be inspected in this regard.

You may proceed accordingly and I wish you the best with your project. If you have any questions, please don't hesitate to call.

Very truly yours,

Charles L. Meister, P. E.
City Engineer/Public Works Director

CK:dr

cc: Kelly Carpenter, Community Development Director
Larry Ballard, Building Official

\pwk\let\destin.pointe

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Tallahassee, Florida 32302
(850)222-1055

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SAMANTHA D. BOGE
OF COUNSEL
*ARBITRATOR FOR*
*AMERICAN ARBITRATION ASSOCIATION*
*CERTIFIED MEDIATOR*

May 26, 1998

VIA HAND DELIVERY

Mr. Robert P. Franke, AICP, Principal Planner
Mr. Steven S. Fitzgibbons, City Planner
Community Development
City of Destin
4200 Two Trees Rd..
Destin, FL 32541

RECEIVED
MAY 26 1998
PLANNING & ZONING

RE: Destin Pointe, A Planned Unit Development
Our File No. DGC05000

Dear Bob and Steve:

In sequence to my discussions with Steve Fitzgibbons and Senior Planner Gary Muller regarding Paragraph 12 of the Final Development Order dated September 9, 1993 for Destin Pointe Resort, please accept this letter as an application for a renewal or extension of the Development Order respecting the protection of the concurrency status for the as-yet-constructed single family dwellings that will be built on previously platted and approved lots at Destin Pointe. The Order was issued by the-then Planning and Zoning Director Jane Moore.

Paragraph 12 states:

If the development is initiated within a one-year period your concurrency status is protected for five years through September 7, 1998.

Construction of the Destin Pointe infrastructure was initiated within the 12 month period after issuance of the Final Development Order, and the project is in compliance with the requirements of the Order. It is understood that all future dwellings must comply with the permitting and construction requirements of the City of Destin, and that such single family lot permits are not issued through the Development Order. It is also understood that all concurrency "counts" for

traffic, water, sewer, etc. for the "project" (and any redesign that could have occurred within the first 12 months after issuance of the Order, although there were none), would have continued to be incorporated by the City's planners in the City's calculations of available capacities, so long as the project was commenced within the 12 months after September 7, 1993.

I also understand your position that the Order is in essence void, now that all of the infrastructure has been built and the maintenance bond was approved for release by the City. Steve Fitzgibbons indicated that the paragraph poorly states what he believes was intended, and that Paragraph 12 has no application to the vacant platted lots at Destin Pointe.

However, as we discussed, the ambiguous nature of the statement in Paragraph 12 as to concurrency status, and the references to the lots in Paragraph 2 of the Order, have resulted in a request from my client that I obtain a written representation from the City regarding the "expiration" of the concurrency status for Destin Pointe Resort on September 8, 1998, and request a renewal or extension of such concurrency protection with regard to the remaining lots on which no dwelling has been built on the approved plat. These issues are of particular concern given the discussions of a traffic moratorium which could affect traffic emanating from Destin Pointe.

Therefore, we request appropriate written documentation from the City respecting the status of platted lots at Destin Pointe that are described in Plat Book 14, Page 90, in view of the provisions of the Final Development Order. Thank you for your assistance in this matter, and please call me if there are any issues that I might clarify.

Very truly yours,

Mary K. Kraemer

MKK/slf

cc: Ann Wait, General Manager

G:\USERS\CLIENT\DGC\SUBDIVIS\CITYCONC.LTR

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*AMERICAN ARBITRATION ASSOCIATION*
*CERTIFIED MEDIATOR*

July 29, 1998

VIA HAND DELIVERY

Mr. Robert P. Franke, AICP, Principal Planner
Community Development
City of Destin
4200 Two Trees Rd..
Destin, FL 32541

RECEIVED
JUL 30 1998
1:45 pm
PLANNING & ZONING

RE: Destin Pointe, A Planned Unit Development
Our File No. DGC05000

Dear Bob:

The enclosed letter to you and Steve Fitzgibbons was delivered by me to City Hall at the end of May. In early June, you indicated that you would provide a response, but that you needed to review the City's files first. No response has been received.

I understand that you will return to the office on August 7, and I would request your response at your earliest convenience thereafter. Thank you.

Very truly yours,

Mary K. Kraemer

MKK/slf

cc: Ann Wait, General Manager

*The City of Destin*

4200 Two Trees Road, Destin, Florida 32541 (850) 837-4242 FAX (850) 837-3267

September 11, 1998

Ms. Mary Kraemer
Stowell, Anton & Kraemer
727 Highway 98 East
P.O. Box 489
Destin, Florida 32540

Subject: Destin Pointe PUD Vesting for Concurrency

Dear Ms. Kraemer:

This will confirm our recent telephone conversation regarding Destin Pointe's vesting for concurrency. I have consulted the City's Land Use Attorney, David A. Theriaque; who provided a response to my inquiry regarding your request for a determination on vesting of a subdivision's individual lots. I have attached Mr. Theriaque's letter for your files.

I am of the opinion that the Destin Pointe PUD should be treated as a whole, and vesting for concurrency is reserved for all unbuilt single family lots in the subdivision. This determination is based on our understanding that all infrastructure, for the development, has been constructed and all bonds released.

If I can be of further assistance please do not hesitate to contact me.

Sincerely,

Robert P. Franke, AICP
Community Development Director

cc: City Land Use Attorney\David A. Theriaque
Destin Pointe P.U.D. file
h:\p&z1\letters\dpointe.trf

DAVID A. THERIAQUE, P.A.
ATTORNEYS AT LAW

909 EAST PARK AVENUE
TALLAHASSEE, FLORIDA 32301

TELEPHONE (850) 224-7332
FACSIMILE (850) 224-7662

**MEMORANDUM**

RECEIVED
SEP 03 1998
PLANNING & ZONING

**TO:** BOB FRANKE
COMMUNITY DEVELOPMENT DIRECTOR

**FROM:** DAVID A. THERIAQUE
CITY LAND USE ATTORNEY

**DATE:** SEPTEMBER 2, 1998

**RE:** DESTIN POINTE CONCURRENCY

---

You have inquired whether the single-family lots in the Destin Pointe PUD will lose their concurrency reservation that was provided in Paragraph 12 of the Final Development Order dated September 9, 1993. For the following reasons, it is my opinion that the issue of whether concurrency remains reserved for the individual lots in the Destin Pointe PUD is a policy question.

Paragraph 12 of the Final Development Order states that:

> If the development is initiated within a one-year period your concurrency status is protected through September 7, 1998.

It is my understanding that: (1) the development was initiated within the requisite one-year period; (2) all of the infrastructure has been constructed; and (3) the maintenance bond has been released. Thus, all of the development that was authorized by the Final Development Order has been completed.

It is also my understanding that some of the single-family lots in the Destin Pointe PUD have not been developed. Thus, the question is whether concurrency remains reserved for these single-family lots after September 7, 1998 - which is the expiration date set forth in Paragraph 12.

There are two possible methods to address this issue. The first approach would be to treat the concurrency reservation on a lot by lot basis. Pursuant to this approach, the concurrency reservation expires on September 7, 1998, and every undeveloped single-family lot owner would have to demonstrate that concurrency is available before that owner could construct a single-family home.

The second approach would be to treat the Destin Pointe PUD as a whole. Pursuant to this approach, the City would continue to reserve concurrency for each of the unbuilt single-family lots if all of the development that was authorized in the Final Development Order has been completed. This approach would be akin to reserving capacity for all of the condominium units in a condominium building even though some of the individual units may not have been sold. The key is the completion of the development as a whole. Moreover, you could implement this approach through an administrative interpretation of the City's Land Development Code, and, thus, a LDC amendment would not be necessary.

I am unaware of any provision in the Growth Management Act or Rule 9J-5 which mandates how a local government is to address the concurrency reservation issue. Additionally, I have spoken with the Department of Community Affairs and confirmed that the issue of how a local government treats concurrency reservations is a local matter. Thus, it is my opinion that the City of Destin can legally utilize either of the two approaches that I have set forth above.

DO Book

DAVID A. THERIAQUE, P.A.
ATTORNEYS AT LAW

837 EAST PARK AVENUE
TALLAHASSEE, FLORIDA 32301

TELEPHONE: (850) 224-7332
FACSIMILE: (850) 224-7662

# MEMORANDUM

RECEIVED
AUG 30 1999
PLANNING & ZONING

**TO:** GARY MULLER
ACTING COMMUNITY DEVELOPMENT DIRECTOR

**FROM:** DAVID A. THERIAQUE, ESQUIRE
CITY LAND USE ATTORNEY DAT

**DATE:** AUGUST 29, 1999

**RE:** FINAL DEVELOPMENT ORDER FOR THE DESTIN POINTE RESORT, DATED SEPTEMBER 9, 1993

---

**Issue:**

You have requested that I provide an opinion regarding whether the Final Development Order for the Destin Pointe Resort, dated September 9, 1993, allows garage-apartment type units to be rented. It is my understanding that these garage-apartment type units are located on single-family lots and that each such unit is owned by the owner of the single-family lot on which the garage-apartment type unit is located. Thus, the garage-apartment type units function as guesthouses.

**Factual Background**

On April 22, 1985, the City approved a Planned Unit Development known as the Destin Pointe Resort. The Destin Pointe Resort project was to include a mix of high-rise to low-rise structures with a maximum of 798 units.

After one building with sixty-six (66) units was constructed, the property owner requested approval to modify the Destin Pointe Resort project by changing the remainder of the project from high-density, multi-family units to single-family detached dwelling units on 159 lots. According to the Staff Report, dated December 17, 1992, the total number of units at build-out, if the requested modification was approved, would be 225 units (existing 66 units and 159 single-family dwelling units). The Staff Report also stated that "[p]arking for the single-family lots will be on each site." (*See* Exhibit A).

On January 21, 1993, a revised Staff Report was issued. Staff Report #2 also stated that the request was for 159 single-family detached dwelling units. (*See* Exhibit B).

On September 1, 1993, another revised Staff Report was issued. Staff Report #3 stated that the "request is for 116-lots with the stipulation that no more than 2 structures may be constructed on a lot." (*See* Exhibit C).

On September 7, 1993, a Corrected Report and Recommendation was issued. The Corrected Report and Recommendation also stated that the "request is for 116-lots with the stipulation that no more than 2 structures may be constructed on a lot." The Corrected Report and Recommendation further stated that:

> The Developer explained that the project would contain a multi-family, mid-rise structure (existing), a small general store for use by the residents and guests of the development, and 116 lots which will contain single family homes with some lots also having an additional garage-apartment type second unit containing no more than 450 square feet.

The suggested motion referred to a maximum density of 298 dwelling units. (*See* Exhibit D).

On September 9, 1993, the City issued the Final Development Order for the Destin Pointe Resort. Paragraph 2 of the Final Development Order states that:

> Maximum density approved for 298 units which includes an existing 66-unit condominium, and approval of a small commercial general store type facility for use by the residents and guests of the property as an accessory building. Project consists of 116 lots which will contain single family homes with some lots also having an additional garage-apartment type second unit containing <u>no more</u> than 450 square feet.

(*See* Exhibit E) (emphasis in original).

**Analysis:**

The Destin Pointe Resort property is zoned Residential Intensive Apartments ("RIA"). Section 7.12.01(E)(1) of the City's Land Development Code ("LDC") sets forth the permitted principal uses and structures in the RIA Zoning District. One category of principal uses states that:

> Guesthouses are permitted but shall not be rented.

Section 7.12.01(E)(1)(f). Thus, it is clear that the rental of garage-apartment type second units would violate the restrictions established by section 7.12.01(E)(1)(f).

Additionally, the fact that the project was a Planned Unit Development does not alter the prohibition against the rental of guesthouses. Section 7.14.02 states, in pertinent part, that:

> Planned unit developments, if approved, may be located in any land use category **provided the uses proposed in the PUD are allowed by the zoning district(s) that implements the underlying land use category**.

(Emphasis supplied). Thus, the PUD cannot be used as a vehicle to allow the rental of the garage-apartment type second units because such rental is not allowed in the RIA zoning district.

Lastly, it is my opinion that the provision in Paragraph 2 which allows a "[m]aximum density approved for 298 units" cannot be relied upon as a basis to violate the prohibition against the rental of guesthouses. There is nothing in any of the Staff Reports or the Final Development Order which states that the garage-apartment type second units can be rented. Rather, the 298-unit maximum is simply the total of the existing sixty-six (66) units and the possibility of two (2) structures on each of the 116 single-family lots (66 + 232 = 298).

**Conclusion:**

Even if it could be argued that the language of the Final Development Order is ambiguous regarding the rental of the garage-apartment type second units, it would be inappropriate to utilize an inference that would violate the express prohibition, which is set forth in section 7.12.01(E)(1)(f), against the rental of guesthouses. Accordingly, based upon the foregoing analysis, it is my opinion that the garage-apartment type second units cannot be rented.