CITY of DESTIN
4200 Two Trees Road • Destin, Florida 32541
www.cityofdestin.com

April 20, 2009 **Order No. 09-12**

Preliminary Development Order:

"HENDERSON BEACH RESORT"
A MAJOR TIER 3 DEVELOPMENT
(SP-09-04)

Based upon City Council's approval of the Tier 3 public benefits portion of the proposed project at its April 13, 2009 meeting, this document will serve as your Preliminary Development Order, and includes all of the provisions and conditions approved by City Council during their meeting.

ISSUE:

Shannon Howell of Devcon Services, Inc. and David Smith of Moore Bass Consulting of Destin, Inc., on behalf of Dunavant Gulf, LLC, Village Baptist Church of Destin, Inc., and Regatta Bay Manor, LTD. is requesting preliminary approval of a Tier 3 Major Development order application identified as "Henderson Beach Resort." The proposal seeks preliminary Tier 3 approval based upon the required and negotiated public benefits to allow for a development that includes 5 stories/60 feet in height, a total of 312 short-term dwelling units, and 237,790 square feet of non-residential floor area. This request is one story and 10 feet and 157 dwelling units above the maximum allowed under the Tier 1 limits of 4 stories (50 feet), 156 dwelling units, and 284,229 square feet of non-residential floor area. The proposed mixed-use development is generally located at 2700 Scenic Highway 98, more specifically known as Property Appraiser's parcel I.D. number 00-2S-22-0000-0030-0010, 00-2S-22-0000-0032-0010, 00-2S-22-0000-0031-0000; 002S-22-0000-0031-0030, 00-2S-22-0580-0014-0010, 00-2S-22-0000-0032-0040, 00-2S-22-0580-0015-0010, 00-2S-22-0000-0031-0020, 00-2S-22-0000-0032-0030, 00-2S-22-0580-0041-0010. The total proposed site area is 13.05 acres, more or less.

DETERMINATIONS:

At its April 13, 2009 special meeting, the City Council voted 6-1, with Councilman Destin casting the dissenting vote. to find the applicants proposed public benefit package (refer to Exhibit "A" – Tier III Findings of Fact date April 7, 2009) acceptable with certain modifications. Those modifications include the following:

1. The applicant must have a firm agreement with the State of Florida to build the two story public observation tower that is ADA compliant:

2. The applicant must secure ownership of the disputed green area; and

3. The applicant must provide public access to the beach.

FINAL DEVELOPMENT ORDER APPROVAL NECESSARY. This preliminary development order (D.O. No. 09-12) **does not** constitute FINAL development approval for this project by the City of Destin. You are required to apply for and receive approval of a Final Development Order from the City of Destin

in order to secure any vesting of development rights or the ability to apply for and receive approval of any permits for development or development activity (as defined in the City's Land Development Code) grant to the applicant.

Application for FINAL Development Order approval must be submitted within one (1) year of the approval date of the Preliminary Development Order on **April 20, 2009** (no later than **April 20, 2010**).

WARNING: If the applicant/owner has not obtained submitted an application for FINAL Development Order within one (1) year from the issuance of the preliminary development order, the preliminary development order will become null and void and the application for development order approval must be re-initiated.

THE FOLLOWING ITEMS ARE CONDITIONS OF APPROVAL THAT WILL APPLY TO THE FINAL DEVELOPMENT ORDER FOR "HENDERSON BEACH RESORT", A MAJOR TIER 3 DEVELOPMENT:

1. After City Council approval of the Final Development Order application, but prior to staff issuance of the Final Development Order, the two properties (Regatta Bay Manor, LTD., and Village Baptist Church of Destin, Inc. located north of Scenic Hwy 98 and currently not owned by the applicant (Dunavant Gulf, L.L.C.), must be owned by the applicant;

2. The applicant must have a firm agreement with the State of Florida to build the two story public observation tower that is ADA compliant;

3. The applicant must secure ownership of the disputed green area;

4. The applicant must provide public access to the beach; and

5. Any and all standard and special conditions as are determined necessary as a result of the review of the Final Development Order by the Technical Review Committee, TRC members, and City staff, and including any additional special conditions that the City Council determines are necessary.

SIGNATURE BLOCK:

On behalf of the City of Destin:

R. Ashley Grana 4-20-09
R. Ashley Grana — Date
Planning Manager

On behalf of the Applicant(s):

8-06-09
V.B.C. of Destin, Inc. — Date
Owner
Steven A. Davies
President

On behalf of the Applicant(s):

William O. Hagerman 8-03-2009
Dunavant Gulf, L.L.C. — Date
Owner
William O. Hagerman
Managing Member

8/8/09
Regatta Bay Manor, LTD. — Date
Owner
(Legendary Apartments, Inc. General Partner)
Peter H. Bos
Chairman

Community Development

Planning Division

4200 Indian Bayou Trail | Destin, FL 32541 | Phone: 850-337-3123 | Fax: 850-650-0693 |www.cityofdestin.com

September 15, 2011

Mr. Steve Hall
Hall & Runnels, P.A.
4399 Commons Drive East, Suite 300
Destin, Florida 32541-8439

Subject: **Final Development Order No. 09-12, Henderson Beach Resort, 2700 Scenic Hwy 98 Special Economic Condition Extension Request**

Dear Mr. Hall:

This letter is in response to your letter of September 7, 2011 requesting a "special economic condition" extension to the above referenced development order. By a 2009 act of the Florida Legislature and the subsequent adoption of Ordinance 09-17-LC, all previously approved active final development orders were automatically granted a two (2) year extension if the extension was requested in writing. The extensions expire on December 31, 2011. During the 2011 legislative session, the "special economic condition" provisions were extended another two (2) years by House Bill 7207.

Your written request for the additional "special economic condition" extension for Final Development Order No. 09-12 was received prior to the December 31, 2011 expiration of the current extension. Based on meeting this criterion and by adhering to the criteria of the extension as stated in Article 2, Section 2.21.01.D, the extension is granted until December 31, 2013. This extension vests the final development order and enables the holder of the orders to delay commencement or continuance of construction, if necessary, until December 31, 2013.

Should you have any further questions or concerns, please do not hesitate to call.

Sincerely,

R. Ashley Grana

R. Ashley Grana
Interim Community Development Director

RAG/hw

cc: Project File: SP-09-04, Building File & Letter Log

Hall & Runnels, P.A.
Attorneys at Law

Steven R. Hall
Davage J. "Trey" Runnels, III

2011 SEP
RECEIVED
CITY MANAGER'S
OFFICE

September 7, 2011

Mr. Ken Gallander
Community Development Director
City of Destin
4100 Two Trees Road
Destin, FL 32541

By U.S. Mail Certified Return Receipt Requested

RECEIVED
SEP 13 2011
COMMUNITY DEVELOPMENT

SUBJECT: Henderson Beach Resort – Order No. 09-12

Good Afternoon Ken,

This letter serves to confirm my understanding that the above-referenced Order remains tolled while the remaining legal challenge to its validity is pending in the Okaloosa County Circuit Court. I am writing in my capacity as legal counsel for Dunavant Gulf, LLC, Village Baptist Church of Destin, Inc. and Regatta Bay Manor, LTD. as permittees for the referenced Preliminary Development Order.

In our ongoing communications since the original certiorari appeal and declaratory case filings by the adjacent property owners, it has been our express understanding that the twelve month timeline for the filing of an application for Final Development Order for the project was tolled until both challenges were resolved. While the certiorari appeal (Case No. 09-CA-2740) was denied by a June 18, 2010 order and that denial was upheld by the First District Court of Appeal on Feb. 8, 2011, the adjacent property owner continues to pursue the action for declaratory and injunctive relief (Case No. 09-CA-4986S) in the local circuit court. Accordingly, the one year timeframe for submission of the application for final development order for this project is not triggered at this point.

The catalyst for my conversation with you and City Land Use Counsel on this subject was my review of pending development orders held by my clients in light of the State Legislature's creation of an additional two year extension for certain development authorizations in former HBs 7001 and 7207 last session. While these provisions do not directly apply in the circumstances of this DO because of the challenge related tolling of the order's internal timelines, it seemed a good time to confirm our understanding of the permit status.

As always, with best regards,

Steve Hall

4399 Commons Drive East, Suite 300 Destin, FL 32541
Ph: (850) 337-4600 Fx: (850) 337-4720
www.hrlaw-destin.com

Community Development

Planning Division

4200 Indian Bayou Trail | Destin, FL 32541 | Phone: 850-337-3123 | Fax: 850-650-0693 |www.cityofdestin.com

October 16, 2012

Dunavant Gulf, LLC
Attn.: Mr. Shannon Howell
2705 Scenic Highway 98
Destin, Florida 32541

SUBJECT: Henderson Beach Resort – Final Development Order No. 09-12 "Special Economic Condition" Extension Request – 2700 Scenic Highway 98

Dear Mr. Howell:

This letter is in response to your letter dated October 10, 2012, requesting a "special economic condition" extension to the above referenced development order. Based on the legal guidance set forth in Section 24 (1) of Ch. 2012-205 Laws of Florida this development order is extended to the fullest extent possible to April 20, 2015. This determination enables the holder of the final development order to delay commencement or continuance of construction, if necessary, until April 20, 2015.

Should you have any further questions or concerns, please do not hesitate to contact me either via e-mail (agrana@cityofdestin.com) or phone (850-582-4525).

Sincerely,

R. Ashley Grana

R. Ashley Grana
Planning Division Manager

RAG/

cc: 2009 DO Book
Project File: SP-09-04
Building File: 2700 Scenic Highway 98
Letter Log