



Community Development Planning Division

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

July 18, 2011

DO-11-07

Mr. Nelson Davis, Jr.
413 Lakefront Drive
Panama City Beach, Florida 32413-1083

Subject: Review of 11-15-SP, Marbella, 6th Amendment (Villas), a Simple Deviation to a previously approved Major Development

Dear Mr. Nelson:

A request has been made for the City to approve an amendment to revise the previously approved Development Order and Site Plan to reflect the following changes to the Site Plan:

1. The development phasing is modified to show development of the five (5) "villas" on the west side of the property as Phase III.
2. Your request to develop the previously zero lot line villas, to lots having 5 foot wide setbacks on each side was previously approved via administrative determination as outlined in the letter of March 3, 2011 to you from Ken Gallander, AICP.
3. This Simple Deviation will be designated "Marbella, 6th Amendment (Villas).

The City has reviewed your request pursuant to the requirements of Article 2, Section 2.07.04, and has determined that the proposed amendment qualifies as a simple deviation, which can be approved by the Community Development Director or his designee without TRC and City Council action.

Staff has found that you have met all necessary requirements and conditions for the proposed revised development phasing, and has granted approval of the amendment with the following notes/conditions:

1. All previous conditions and requirements of the existing final development orders D.O. 02-35, D.O. 04-03, and D.O. 04-31 remain in effect and still apply.
2. The lots will be governed by the Marbella Master Association and will be developed per the current City of Destin Land Development Code standards.

Please keep a copy of this letter with the original Final Development Order and any subsequent amended development orders.

If I can be of any further assistance, please feel free to contact me at 837-4242.

Sincerely,

R. Ashley Grana
Planning Manager



RAG/hbw

cc: City Clerk
Permits & Inspection Division
Files: 11-15-SP, SP-02-20, SP-04-08, **DO Log** & Letter Log





Community Development Planning Division

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

December 22, 2011

Innerlight Engineering Corp.
Attn.: Mr. David Smith
P.O. Box 459
Fort Walton Beach, Florida 32541

Subject: Marbella, Phase IV – Development Order Status Final Determination

Dear Mr. Smith:

This letter is in response to your request, received on December 9, 2011, concerning the above-stated subject. I requested the City Land Use Attorney to provide a legal opinion based on your letter of request and the attached exhibits. On December 21, 2011 the City Land Use Attorney issued his legal opinion (refer to attachment 1). Based on this legal opinion, it is the City's position that the Development Order that covers "Phase IV" the Marbella development has not "expired" and is indeed "active." However, since this development is phased and a Certificate of Completion was issued by the City for Phase III on December 6, 2011, the owner of the property has until December 6, 2012 to commence construction in accordance with Land Development Code section 2.21.00 (refer to attachment 2). Failure to comply with provisions of LDC section 2.21.00 will result in the "expiration" of said Development Order.

If you feel this final determination has been made in error, then an Administrative Appeal application must be filed with the Planning Division within 30 calendar days from the date of this determination. The appeal process is described in Article 2, Section 2.22.00 of the Land Development Code (refer to attachment 3).

If you have any questions or concerns, please don't hesitate to contact me as soon as possible.

Please do not hesitate to call me if you have further questions or concerns regarding this determination.

Sincerely,

R. Ashley Grana
Planning Division Manager

RAG/

Attachments: 12/21/11 Legal Opinion
LDC Section 2.21.00. Extension of construction deadline
LDC Section 2.22.00. Appeals

cc: Community Development Director, Kenrick Gallander
City Land Use Attorney, Scott Shirley
File: Building Division – 772 Harbor Blvd.
File: 11-15-SP Marbella, 6th Amendment
File: Letter Log



Ashley Grana

From: Scott Shirley [sshirley@asrlegal.com]
Sent: Wednesday, December 21, 2011 9:05 AM
To: Ashley Grana
Cc: Ken Gallander
Subject: RE: Marbella 6th Amendment Phase IV DO Status Determination Request

Ashley:

You have requested that I review certain correspondence referenced as Marbella 6th Amendment Phase IV – Development Order Status Final Determination set forth in a letter from David E. Smith, P.E., dated December 9, 2011. This letter seeks a determination that the City DO approval for the Marbella 6th Amendment Phase IV is valid. Marbella 6th Amendment Phase IV is the site for a proposed, but as yet unconstructed, condominium structure to be located on the eastern most parcel of the Marbella site on Harbor Boulevard, in Destin (lot 7 of the Marbella Plat). That parcel was designated as Phase III of the Marbella Project in the Marbella 5th Amendment DO issued on October 4, 2004 (DO-04-31). The main condominium structure constituting Phase I has been constructed and COs have been issued. On July 18, 2011, the City approved a simple deviation to the Development Order by issuing the Marbella 6th Amendment (DO-11-07) which re-designated the Villas parcel as Phase III and the unconstructed condominium structure on Lot 7 as Phase IV. Construction on the various phases of the project have continued off and on since the original DO approval, affected, as may be expected, by the real estate downturn beginning in 2006. There does appear to have been a good faith effort to move the project forward in as much as market conditions have allowed.

In the recent approval of the DO 6th Amendment, the City did not raise any issue relating to whether construction activity had ceased for a period of one year or more under City LDC Section 2.21.00. The DO 6th Amendment acts essentially as a confirmation that the DO for the project was valid and active at the time that amendment was approved. Thus, as of July 18, 2011, the City staff took the position that the DO was valid and active and the current permittee(s) appears to have relied on that representation for purposes of additional investment as evidenced by the recent construction activity at the site. There may well have been additional reliance on that approval unrelated to the Construction activity of which the City is aware. At this stage the City is estopped to deny that as of July 18, 2011, the DO for the entire Marbella project was active.

The additional construction activity on Phase III under the DO 6th Amendment (infrastructure serving the Villas) has been completed. A CO approving this work was issued on December 6, 2011. Under LDC Section 2.21.00 construction activity must not cease for a period of one year from December 6, 2011. Stated differently, there must be some construction activity under the DO as amended within that 12 month period. There is some doubt among City staff and myself as to whether construction on the individual Villas would satisfy this requirement. Resolution of that issue is beyond the scope of this opinion. However, in order to avoid any doubt as to the continuing validity of the DO as related to Phase IV, it is recommended that construction activity actually occur within Phase IV of the project within 12 months of December 6, 2011, and that such construction activity not cease for a period of one year (12 months) until the work on that Phase is completed and the COs issued.

Please let me know if you have any questions or comments regarding this opinion. Scott

Scott Shirley
Ard, Shirley & Rudolph, PA
207 West Park Avenue, Suite B
Tallahassee, FL 32301
Office:(850)577-6500
Fax: (850)577-6512

- b. Cashiers check;
 - c. Money order; or
 - d. Cash.
3. The amount of payment shall be 120 percent of the total construction cost for the required improvements ("future improvement payment").
 4. In addition to the future improvement payment, developer shall pay an administrative fee.
- D. *Future improvement payment* shall be made prior to the to issuance of a development order for commercial projects or a building permit for residential projects.
- E. *Future improvement payment*. At such time that the improvements can be made to the public right-of-way, easement, or City-owned property, the City shall construct such improvements and use the future improvement payment to pay for the costs of the improvements. After completion of the improvements, any unused portion of the future improvement payment shall be returned to developer. If the future improvement payment is not sufficient to pay for the improvements, developer shall pay any shortfall to the City.
- (Ord. No. 04-23-LC, § 3, 8-16-04; Ord. No. 07-32-LC, § 5, 5-7-07)

2.21.00. Final development order and extension of the commencement of construction deadline.

A final development order is valid for a period of one year from the date of issuance. However, a building permit must be issued for either the construction of infrastructure or construction of the entire project and construction must commence within said one year period after which the permitted development activity may be completed provided the conditions of this section continue to be satisfied. If a building permit is not issued within one year from the date of issuance of the final development order or a building permit is issued and construction has not commenced within one year from the date of issuance of the final development order, then the development order

becomes null and void. "Construction of infrastructure" shall be defined as site work, grading, or other construction activity (not including land clearing and grubbing or demolition of existing structures) related to installation of roadways, access drives, parking lots, underground utilities, stormwater or drainage facilities, or building foundations. If construction activity ceases for a period of one year after a building permit for construction of the infrastructure or construction of the entire project has been issued, the development order will be considered null and void. No extensions to this deadline shall be allowed, except as set forth in section 2.21.01.

2.21.01. *Criteria for a request to extend the 12-month deadline to obtain a building permit and commence construction.*

- A. An applicant who desires to extend the 12-month deadline shall submit a written request to the community development department, no less than 30 days, prior to the expiration of the 12-month deadline to obtain a building permit and commence construction.
- B. An applicant may receive only one extension, and such extension shall not exceed one year.
- C. As a condition of approval for such an extension, the applicant's project shall meet any and all applicable code requirements that were adopted subsequent to the approval of the final development order for which an extension is being requested. The applicant will have to file an application, to amend to the previously approved development order, with the City prior to the issuance of any City permit for the subject property.
- D. Special economic condition extension. An applicant who desires to extend a previously approved active final development order shall submit a written request to the community development department, no later than December 31, 2009, which extension shall be deemed automatically granted. The extension shall commence from the date of the formal written request and shall terminate on December

31, 2011. Nothing herein shall be deemed to affect any other extension otherwise allowed by either this code or general law.

2.21.02. *Determination regarding request for extension.* All applications for extensions, as identified in section 2.21.01, shall be reviewed by the community development director with input from the appropriate technical review committee members for approval, approval with conditions, or disapproval.

2.21.03. *Establishing an application fee.* The City reserves the right to establish, by resolution, an application fee, for processing and reviewing requests for extensions of time authorized by section 2.21.01.
(Ord. No. 04-23-LC, § 3, 8-16-04; Ord. No. 09-17-LC, § 3, 10-19-09)

2.22.00. Appeals.

When it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official or the local planning agency in the enforcement of any requirement of this code, the Code of Ordinances or Land Development Code, now existing or to be promulgated in the future by the City, the issue in dispute shall be taken before the Board of Adjustment. Such issue may include, but it not limited to, a finding of concurrency deficiency or refusal on the part of the City to issue a final development order.

2.22.01. Any appeal by any citizen must be filed in writing with the City Manager, or designee, within 30 calendar days of rendition of the decision in question, and the reasons for such appeal shall be set forth therein. The City Manager, or designee, shall arrange for an appeal hearing before the Board of Adjustment and notify the appellant in writing of the date, time and place of the hearing.

2.22.02. The appellant shall have the burden of affirmatively demonstrating that the decision in question was in error. The administrative official(s) involved, or chairman of the Planning Commission, shall have the opportunity to present information and argument to support their decision.

2.22.03. The Board of Adjustment shall base its decision on the requirements of the City's Comprehensive Plan and this code. The Board shall make its decision based upon its usual voting procedures, the decision shall be issued in writing stating the reasoning involved, and it shall be rendered within 60 days of the close of the hearing. No further administrative appeal is available beyond this stage, though the appellant retains the right of appeal through the judicial system as provided by law.

(Ord. No. 04-23-LC, § 3, 8-16-04)

2.23.00. Reserved.

Editor's note—Ord. No. 04-26-LC, § 3, adopted Sept. 8, 2004, repealed § 2.23.00, which pertained to deviations to a final development order. See also the Land Development Code Comparative Table.

2.24.00. Development agreements.

A. *Definitions.* For the purpose of this section, the definitions set forth in F.S. § 163.3221, are hereby adopted by reference and shall apply and control all development agreements entered into by the City of Destin.

B. *Development agreement requirements.*

1. All development agreements shall, at a minimum, include the following:
 - a. A legal description of the land subject to the agreement.
 - b. A statement identifying the legal and equitable interest of all persons having any interest in the property described in a. above. The statement of ownership interests of any joint ventures, partnerships or corporations shall reveal all principals or directors and officers, as appropriate. Such statements shall be certified by a title company or an attorney-at-law licensed to practice in the State of Florida.
 - c. The duration of the agreement, which shall meet the terms set forth in subsection C. of this section.

2.21.00

DESTIN LAND DEVELOPMENT CODE

31, 2011. Nothing herein shall be deemed to affect any other extension otherwise allowed by either this code or general law.

2.21.02. *Determination regarding request for extension.* All applications for extensions, as identified in section 2.21.01, shall be reviewed by the community development director with input from the appropriate technical review committee members for approval, approval with conditions, or disapproval.

2.21.03. *Establishing an application fee.* The City reserves the right to establish, by resolution, an application fee, for processing and reviewing requests for extensions of time authorized by section 2.21.01.
(Ord. No. 04-23-LC, § 3, 8-16-04; Ord. No. 09-17-LC, § 3, 10-19-09)

2.22.00. Appeals.

When it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official or the local planning agency in the enforcement of any requirement of this code, the Code of Ordinances or Land Development Code, now existing or to be promulgated in the future by the City, the issue in dispute shall be taken before the Board of Adjustment. Such issue may include, but it not limited to, a finding of concurrency deficiency or refusal on the part of the City to issue a final development order.

2.22.01. Any appeal by any citizen must be filed in writing with the City Manager, or designee, within 30 calendar days of rendition of the decision in question, and the reasons for such appeal shall be set forth therein. The City Manager, or designee, shall arrange for an appeal hearing before the Board of Adjustment and notify the appellant in writing of the date, time and place of the hearing.

2.22.02. The appellant shall have the burden of affirmatively demonstrating that the decision in question was in error. The administrative official(s) involved, or chairman of the Planning Commission, shall have the opportunity to present information and argument to support their decision.

2.22.03. The Board of Adjustment shall base its decision on the requirements of the City's Comprehensive Plan and this code. The Board shall make its decision based upon its usual voting procedures, the decision shall be issued in writing stating the reasoning involved, and it shall be rendered within 60 days of the close of the hearing. No further administrative appeal is available beyond this stage, though the appellant retains the right of appeal through the judicial system as provided by law.

(Ord. No. 04-23-LC, § 3, 8-16-04)

2.23.00. Reserved.

Editor's note—Ord. No. 04-26-LC, § 3, adopted Sept. 8, 2004, repealed § 2.23.00, which pertained to deviations to a final development order. See also the Land Development Code Comparative Table.

2.24.00. Development agreements.

A. *Definitions.* For the purpose of this section, the definitions set forth in F.S. § 163.3221, are hereby adopted by reference and shall apply and control all development agreements entered into by the City of Destin.

B. *Development agreement requirements.*

1. All development agreements shall, at a minimum, include the following:
 - a. A legal description of the land subject to the agreement.
 - b. A statement identifying the legal and equitable interest of all persons having any interest in the property described in a. above. The statement of ownership interests of any joint ventures, partnerships or corporations shall reveal all principals or directors and officers, as appropriate. Such statements shall be certified by a title company or an attorney-at-law licensed to practice in the State of Florida.
 - c. The duration of the agreement, which shall meet the terms set forth in subsection C. of this section.





Community Development Planning Division

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

November 9, 2012

Innerlight Engineering Corporation
Attn: Mr. James A. Martelli
P.O. Box 459
Fort Walton Beach, Florida 32541

SUBJECT: Marbella, 6th Amendment (Phase IV) – Final Development Order No. 11-07 “Special Economic Condition” Extension Request – 772 Harbor Boulevard

Dear Mr. Martelli:

This letter is in response to your email dated October 23, 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 December 6, 2014. This determination enables the holder of the final development order to delay commencement or continuance of construction, if necessary, until December 6, 2014.

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
Planning Division Manager

RAG/

cc: **2011 DO Book**
Project File: 11-15-SP
Building File: 772 Harbor Boulevard
Letter Log



