

The City of Destin



Post Office Box 399 Destin, Florida 32540 (904) 837-4242 FAX (904) 837-3267
July 6, 1994

DO-94-24

*→ let closing
1st of January*

Mr. James F. Adams
5160 Highway 98 East
Suite 12
Destin, FL 32541

Re: **APPROVAL OF AMENDED DEVELOPMENT ORDER FOR PELICAN BEACH RESORT, A DEVELOPMENT OF REGIONAL IMPACT (19-STORY/340-UNIT CONDOMINIUM - 10.91 ACRES)**

Dear Mr. Adams:

Your request for the rendering of an Amended Development Order, pursuant to Chapter 380, Florida Statutes, on a Notice of Proposed Change for PELICAN BEACH RESORT, A DRI, previously approved as Riviera Plaza Hotel, was approved by Destin City Council on July 5, 1994 as evidenced by City Resolution 94-25. The Council approved these requested changes after first having determined that the changes do not constitute a Substantial Deviation as per Section 380.06(19), Florida Statutes.

Included in the changes to the Development Order is an extension of the build-out date of the project to December 30, 1998.

In addition to the conditions of the Resolution, the Report and Recommendation and the Technical Review Committee Report, the following items apply:

1. Any improvements that require disturbance to the City's rights-of-way or pavement cuts require utility permits from the Public Works Department and appropriate bonding;
2. The developer to install decel lane at no expense to the City (during construction phase);
3. Detailed dune restoration plan must be presented to City Council for final approval;
4. Provide copy of official condominium documents to reflect short term "resort" rental provisions;
5. DEP permit/Notice to Proceed for construction seaward of CCCL is required prior to the issuance of a building permit;

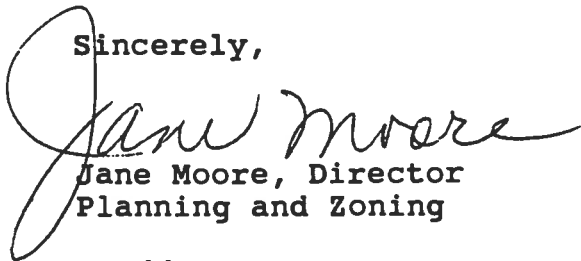
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6. DEP permit for lighting compliance with sea turtle protection requirements is required prior to the issuance of a building permit; and

7. DEP Stormwater Management permit is required prior to the issuance of a building permit.

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

Sincerely,



Jane Moore, Director
Planning and Zoning

JM:dd

cc: Inspection Department ✓
J.E. Dorman & Associates

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REPORT AND RECOMMENDATION

TO: DESTIN CITY COUNCIL

FROM: PLANNING COMMISSION AND STAFF

SUBJ: Proposed Changes to THE RIVIERA PLAZA HOTEL DRI
DEVELOPMENT ORDER - Including changing project name to
PELICAN BEACH RESORT

DATE: JULY 5, 1994

INTRODUCTION

The Development of Regional Impact (DRI) process involves an extensive review by local, regional and state agencies of proposed developments of certain thresholds. This process studies all impacts of the proposed development including, but not limited to, traffic, water, sewer and environmental issues.

In 1986, the Riviera Plaza Hotel DRI completed this process and was granted a Development Order by the City which is recorded. This DRI grants vested rights for the project until it expires in 1998.

In order for the DRI Development Order to be amended by City Council, there is a two-step process involved as outlined below in Parts I and II:

PART I--SUBSTANTIAL DEVIATION -- The City Council must first determine whether or not the requested changes to the above DRI constitute a "SUBSTANTIAL DEVIATION" from the recorded DRI in accordance with criteria established in Section 380.06(19), Florida Statutes. If Council determines that the proposed changes constitute a "SUBSTANTIAL DEVIATION" then the project becomes subject to further DRI review which involves state and regional agencies as well as the local government. (RECOMMENDATION AND SUGGESTED MOTION, pg. 2)

Part II--Consideration of Changes to Previously Approved Development of Regional Impact -- If the changes DO NOT constitute a "SUBSTANTIAL DEVIATION" then no further DRI review is required and you may proceed to review the proposed amendments to the Development Order. At this stage, your approval of the amended Development Order is final and not subject to further DRI review by the regional and state agencies. These agencies only become involved in the review if you find that the changes DO constitute a "SUBSTANTIAL DEVIATION". (RECOMMENDATION and SUGGESTED MOTION, pg. 6)

The applicant for Pelican Beach Resort wishes to make changes to the previously approved Development Order for the Riviera Plaza Hotel. The changes are summarized under Part II of this R&R and in more detail in SECTION 5.

PART I -- SUBSTANTIAL DEVIATION ISSUE

ISSUE

City Council to determine if the Notice of Proposed Change constitutes a SUBSTANTIAL DEVIATION to the original Development Order using the criteria established under Section 380.06(19), Florida Statutes. It should be noted that the fact that changes are being requested does not mean that the requested changes fall within the purview of "SUBSTANTIAL DEVIATION" as outlined in the Statutes. Many of the statutory criteria deal with INcreases in densities and this project proposes DEcreases across the board.

DISCUSSION

Section 380.06(19), SUBSTANTIAL DEVIATIONS, DETERMINATION PROCESS SECTION which outlines criteria that determines whether the requested changes to a DRI constitute a "SUBSTANTIAL DEVIATION" to the recorded DRI. SECTION 2 of this document outlines item by item the criteria for determining if a project is a "Substantial Deviation" and staff response to each criterion. The applicant's responses are also included. Staff has reviewed these criteria with the applicant, WFRPC and DCA and find no basis for considering that the requested changes constitute a "SUBSTANTIAL DEVIATION." To the contrary, the change dramatically reduces all areas of impact.

The DCA and the WFRPC reviewed the proposed change and may, within 30 days, notify the local government of their intent to participate in the Public Hearing. The DCA and WFRPC have both advised they will not be participating in the Public Hearing.

The Planning Director and representatives of the project met with DCA to discuss the proposed changes. The scope of the project was more thoroughly explained and it was pointed out that as far as the issue of hurricane evacuation, we now have the Mid-Bay Bridge to assist with evacuation which was not in existence at the time the DRI was approved in 1986. The Division of Emergency Management, DCA, has determined there will be no adverse impact on hurricane evacuation.

RECOMMENDATION

Staff recommends that the City Council find that the proposed changes do not constitute a "SUBSTANTIAL DEVIATION" to the recorded DRI and proceed with reviewing the proposed changes to the DRI.

SUGGESTED MOTION

Move that we, after reviewing the criteria in Section 380.06(19), Florida Statutes, find that the proposed changes to the recorded DRI, Riviera Plaza Hotel (a/k/a Pelican Beach Resort), do not constitute a "SUBSTANTIAL DEVIATION" and, therefore, is not subject to further development-of-regional impact review.

PART II -- REQUESTED CHANGES TO THE DRI

ISSUE

Consider requested changes to the recorded Development Order for the Riviera Plaza Hotel, a DRI, to be renamed, Pelican Beach Resort.

DISCUSSION

The requested major changes to the DRI are further outlined in detail in SECTION 5 (pages 2 & 3 of Notification of Proposed Changes) of this document. Briefly, however, the project (1) changes the name of the project; (2) extends the build-out date; (3) reduces the density (number of units); (4) reduces the number of parking spaces; (5) eliminates the retail space; (6) eliminates the restaurant space (except for a small snack bar/grill for on-site guests); (7) reduces the meeting room area; (8) moves the building landward from its original location; (9) reduces the impervious area; and, thereby, (10) increases the open space, and (11) reduces the traffic impact on Highway 98 by 81%. All other provisions of the original Development Order remain intact including strict requirements for replanting existing endangered vegetation and creating and enhancing an artificial dune.

During the Planning Commission Public Hearing held on June 16, 1994, the Regency Towers residents were represented by Attorney James E. Alexander. Mr. Alexander's major objections to the project were as follows (for a more detailed discussion, see the "Draft/Planning Commission Minutes 6-16-94, SECTION 8):

1. Mr. Alexander alleged that the legal advertising was defective asserting that the City is required to advertise it as per Section 380.06.(6)(b) which subsequently refers you to Section 163.3187(1)(c)3.d.

Response: The above cited statutes deal with applications for approval of DRI involving Comprehensive Plan amendments and advertising requirements for Comprehensive Plan amendments. The requested changes do not require or involve a Comprehensive Plan amendment; therefore, these Statutes do not apply to this project. The project is, in fact, consistent with provisions of the Comprehensive Plan and its concurrency requirements. The advertising for this project exceeds requirements. (See SECTION 11 for details.)

2. Mr. Alexander further alleged non-compliance with Sections 163.3184(15)(c), 163.3187, and 163.387(1)(c)3.d.

Response: Again, these Sections deal with Comprehensive Plan adoption procedures and requirements. Specifically:

Section 163.3184 is entitled "Process for adoption of comprehensive plan or plan amendments." Subsection (15)(c) concerns advertising requirements for Comprehensive Plan Amendments (including quarter-page ads) and this requirement

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does not apply to the request before you because there is no Comprehensive Plan amendment involved. Advertising for this project was done in accordance with Florida Statute requirements and our local ordinance requirements (which exceed requirements of Florida Statutes).

Section 163.3187, as noted before, deals with the Amendments of Adopted Comprehensive Plans and does not apply to this project.

Section 163.3187(1)(c)3.d. relates to advertising requirements for Comprehensive Plan amendments. Section d. does not allow for advertisement in the legal section to be substituted for quarter page advertisement requirements. The Section does not apply to this project.

3. Mr. Alexander asserts that under Section 161.053 (6)(b)(c) section only single family homes may be built on this property because of the 30-year erosion line.

Response: Mr. Ong-In Shin, DEP (DNR), advised during a telephone conference on June 21, 1994, that there are no "30 year erosion maps", per se, but that this data is based on DEP's study of historical shoreline changes. DEP determines where the line is on a site by site basis as they review projects. Mr. Shin further advises that the 30 year erosion line is not a big factor in most of the Panhandle because beach erosion is usually less than a foot per year in Okaloosa, Walton, Santa Rosa, and Escambia Counties. This rule was in effect when the original DRI was reviewed and approved by DNR and the placement of the buildings do not encroach into the 30 year erosion area.

4. Mr. Alexander stated that the requirements in Section 380.06.19., Substantial Deviation, have not been addressed.

Response: This Section deals with the criteria for determining if project amendments constitute SUBSTANTIAL DEVIATION as you reviewed in Part I above. It was pointed out to Mr. Alexander that these issues had been addressed specifically by the applicant as part of his submittal; staff has completed an independent review; and the changes have been reviewed with DCA and the WFRPC. (See SECTION 2 for detailed criteria and responses.)

5. Mr. Alexander stated that Mr. Adams had no vested rights in the project since he was not the property owner.

Response: Staff advised that Mr. Adams was acting as Agent for the property owner and has the owner's full authority to act on their behalf as per the notarized "Agent Affidavit" form on file with the City.

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6. According to Mr. Alexander, condominiums are a "Public Nuisance" under Section 161.053(6)(b) and (c).

Response: The Statute reference is incorrect. Section 161.053 deals with establishment of the Coastal Construction Control Line and the 30 year erosion line. Section 161.053.(7) states that any structure or excavation created in violation of the provisions of this Section are declared to be a public nuisance; DEP is the enforcing agency. There has been no engineering data submitted to support Mr. Alexander's claim that this project is in violation of the CCCL or the 30 year erosion line.

Factually, in 1992, after the CCCL had been relocated in December, 1991, DNR entered into an Agreement with the property owner. The Agreement sets forth the construction limits and zones specifically for this property and is recorded in the Official Records of the Clerk of Court's Office in Okaloosa County. This project is in compliance with that Agreement. (See SECTION 6 for recorded document.) The project is still required to have a DEP permit and Notice to Proceed prior to the issuance of a building permit.

7. Mr. Alexander questioned whether the project had received sufficient notification from RPC as required under Sections 380.06(9), (10) and (11).

Response: These Sections apply to the procedures required to initially obtain a DRI. Section 380.06(19)(2) requires submittal of proposed changes to a DRI to the RPC and to DCA. This notification requirement of proposed changes was submitted to both agencies on May 6, 1994. Their 30-day response time has elapsed. The 15-day notice requirement for this Public Hearing, as mandated by this Florida Statute, was met. (See SECTION 11, for legal requirements for advertising.)

8. Mr. Alexander stated he had been advised by the Department of Interior that this site included protected or endangered species (Golden Aster and the Choctawhatchee Beach Mouse); and was a habitat for the sea turtle.

Response: The Golden Aster is a species located on this site. Section 4 of the proposed Development Order (Res. 94-25) imposes specific conditions on the project. These requirements are essentially the same as in the original Development Order. Item F.2a (page 8) requires transplanting the Golden Aster to the artificial dune and 2b. further requires annual reporting on the on-going success of the transplantation.

During the review of the original DRI it was noted in the environmental report that this site was not the habitat for the Choctawhatchee Beach Mouse. Mr. Alexander did not present any environmental studies to support his assertions.

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Sea turtle nests are protected but there are no known nests on this site.

There was no other opposition to the project during the Public Hearing.

RECOMMENDATION

Completing its discussion of the propose amendments to the Development Order, the Planning Commission recommended project approval by a vote of 6-1, subject to the following conditions, and adopted the TRC Report as their Findings of Fact. Mr. Najarian cast the dissenting vote stating he did not satisfactorily understand some of the legal questions raised by Attorney Alexander.

CONDITIONS OF DEVELOPMENT ORDER:

1. The developer install decel lane at no expense to City (during construction phase);
2. DEP permit/Notice to Proceed for construction seaward of CCCL is required prior to issuance of building permit;
3. DEP permit for lighting compliance with sea turtle protection requirements is required prior to the issuance of building permit;
4. DEP Stormwater Management permit is required prior to the issuance of a building permit;
5. Detailed dune restoration plan presented to City Council for final approval; and
6. City provided copy of official condominium documents to reflect short term "resort" rental provisions.

SUGGESTED MOTION:

Move that we approve the proposed amendments to the Development Order for the approved DRI for Pelican Beach Resort by adopting Resolution 94-25.

END OF R&R

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TECHNICAL REVIEW COMMITTEE REPORT

PLANNING AND ZONING DEPARTMENT PELICAN BEACH RESORT A DEVELOPMENT OF REGIONAL IMPACT HIGHWAY 98 EAST JUNE 16, 1994

ISSUE

Request for approval of PELICAN BEACH RESORT, a Development of Regional Impact. The proposed project will consist of a 340-unit/19-story condominium and amenities. The project is to be located on Highway 98 East and the Gulf of Mexico between Regency Towers and Holiday Beach Resort. Request is made by Mr. James F. Adams, owner. Phase I property contains 10.91 acres, more or less. Phase II will contain 4.19 acres and the remainder of the units to a proposed maximum of 113 additional units. Total units for the 15 acres site is 453 at build out.

BACKGROUND

On September 16, 1986 the City Council passed Resolution 86-16, approving a Development Order for the Riviera Plaza Hotel, a Development of Regional Impact (DRI). This DRI remains in effect until 1998. The recorded DRI includes 944 hotel units; 15,000 s.f. of conference/meeting space; 10,000 s.f. of restaurant space; and 32,800 s.f. of retail/commercial space. As a recorded DRI, the property owner has a vested right to construct the project even though it will not be in compliance with our current regulations, densities, etc.

The proposal to amend the DRI includes a 52% reduction in the number of units; removal of all retail/commercial space; removal of restaurant facilities and reduces the meeting room space 10,000 s.f. to 7,500 s.f. There is an overall reduction in parking spaces required although the per unit requirement changes because of the use.

BOARD OF ADJUSTMENT VARIANCE

The Board of Adjustments granted a height variance on this project at its meeting on January 19, 1994 allowing the building to be constructed to a maximum height of 190' above MSL. FAA permit has been received and is included with this Report. At that hearing, some of the adjacent property owners objected to the variance and to the placement of the building.

ZONING/COMPREHENSIVE PLAN

The property is zoned BT (Business Tourism) District and the Comprehensive Land Use Category is MU (Mixed Use). The proposed land use and density are consistent with these regulations. The maximum density under the Comprehensive Land Use Plan for this land use designation is 30 units per acre which is the density of this project. According to staff's current tabulations, this project will utilize the remainder of the Mixed Use percentage allocated to the 30 units per acre and will actually create a deficit in that category. However, because this is a vested project, we cannot deny it on the basis that we will exceed the 4% allocation.

CONCURRENCY MANAGEMENT

Although this is a vested project, all concurrency requirements were met:

Sanitary Sewer	<u> X </u>	Potable Water	<u> X </u>	Roadways	<u> X </u>
Solid Waste	<u> X </u>	Recreation	<u> X </u>	Drainage	<u> X </u>

MYLAR - SUBDIVISION OR PUD

Mylar is not required for this project. Condominium documents providing for short term rentals must be filed with the State of Florida and be recorded with the Clerk of the Circuit Court. A copy of the recorded condominium site plan must be provided the City.

STORMWATER

The Stormwater Management Plan for the site has been approved by the City Engineer. The required DER permit has been applied for.

SIGNS

No special signs are requested. Signage must be located 10' from any property line and cannot utilize a parking space. Also, signage must be in compliance with all provisions of the City's sign regulations.

UTILITIES

Underground utilities are required.

WATER/SEWER

Water and sewer are available through Destin Water Users.

INGRESS/EGRESS

Access to the property is from Highway 98 East which has a 150' right-of-way. There is 1 driveway into the property which is 430' from the driveway to the West serving Dunes of Destin, Regency Towers and a portion of South Bay. The proposed entrance aligns with an existing median break which has a stack lane for West bound traffic to turn left into the project. The developer proposes a 12' decel lane for east bound traffic to access the project. Installation of this decel lane will be important to the continuing flow of traffic on Highway 98. Staff recommends that installation of this decel lane at the expense of the developer be a requirement of the Development Order provided that DOT will permit the improvement.

WHITE SANDS ZONE

The project lies within:

Zone #1 X Only white fill material may be used on site.

SETBACKS

The project meets or exceeds all City setback requirements under the Ordinances. A 19-story building requires side setbacks of 50'; the project provides 55' and 64'. The project is located 380' from the Gulf of Mexico.

SIDEWALKS

There are sidewalks on Highway 98, a portion of which will have to be relocated in order to accommodate the decel lane. Any damage to the sidewalks during construction will have to be repaired/restored by the developer.

LANDSCAPE

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

475,378 s.f. of property X 18% = 85,568 s.f. required

Site plan provides 23 % = 111,662 s.f. provided

TREES REQUIRED:

Reforestation 110 Perimeter 12 Parking Lot 34
(10 per acre) (1 per 25') (Islands)

Protected Trees on Site (12" to 23" diameter): None

Preserved Trees on Site (24" or more diameter): None

Credits for Protected/Preserved Trees : None

TOTAL TREES REQUIRED : 156
TOTAL TREES PROVIDED : 156

PARKING

The proposed development meets or exceeds the parking requirements based on the following standards:

340 rental units x 1.75 spaces per unit = 595 required/provided
(Includes 13 handicap parking spaces)

One (1) required loading space 10' x 25'.

There is lower and upper deck parking. Parking calculations of 1.75 spaces are for short term "resort" rentals. The draft condominium documents provide that all units are subject to daily or longer rentals. The final condominium documents with this provision for short term rentals must be presented prior to issuance of a building permit.

REFUSE COLLECTION

Refuse collection is provided by dumpster pick-up.

FIRE DEPARTMENT REVIEW

The project has been reviewed and approved by the Fire Department. The canopy must be 14' above grade to facilitate fire trucks and these changes have been agreed to.

ENVIRONMENTAL ISSUES

The proposed development order contains specific language requiring replanting of certain vegetation and dune restoration as outlined in the conditions set forth on pages 6-10.

BEACHFRONT PROPERTY

Developer is required to construct a coastal barrier dune as outlined in item F.1. (page 7) of the proposed development order. They must have a DEP notice to proceed before any construction can be initiated.

GENERAL COMMENTS

During the BOA hearing on the height variance, some of the adjacent property owners expressed objection to the project. We have received no written objections as part of this procedure.

Prior to issuance of a building permit, the following items must be received by the City:

1. DNR permit for construction seaward of the CCCL;
2. DER permit for Stormwater Management Plan;
3. DNR permit for lighting compliance with sea turtle protection requirements;
4. Official condominium documents to reflect short term "resort" rental provisions; and
5. Present a dune restoration plan to City Council for final approval because of impacts on primary dune.

Once construction is completed and prior to the issuance of a Certificate of Occupancy, the following is required by the City:

1. Project engineer must certify that the facilities were built in compliance with the Stormwater Management Plan (this is in addition to any threshold inspections, etc. required by the Building Department); and
2. Developer must provide one 24" x 36" recorded copy of the "as-built" site plan and one 11 x 17 site plan for permanent record.

The development order is binding on the applicant. Staff recommends that an additional stipulation be that the developer install at his expense the proposed decel lane as shown on the drawings provided that a DOT permit can be obtained for this improvement.

**ADDENDUM TO
TECHNICAL REVIEW COMMITTEE
REPORT**

**PLANNING AND ZONING DEPARTMENT
PELICAN BEACH RESORT
A DEVELOPMENT OF REGIONAL IMPACT
HIGHWAY 98 EAST
JUNE 16, 1994**

ISSUE

COASTAL CONSTRUCTION CONTROL LINE:

Attached is a copy of a recorded Agreement between the Florida Department of Natural Resources and the Federal Deposit Insurance Corporation recorded in Okaloosa County Clerk's Office on April 30, 1992. This document was entered into after the State relocated the CCCL in 1991 and remains in effect for five years (1997) unless otherwise terminated as provided within the document.

The Agreement establishes three zones on this property. These zones are delineated on the map attached to and part of the agreement. The written definition of the zones and the types of construction allowed within these zones is outlined on pages 4 and 5 of the agreement.

Zone I is the area seaward of the old CCCL Zone and only dune crosswalks and temporary construction access are allowed; only dune crosswalks are included on the plans plus a dune restoration plan; Zone II is the area between the old CCCL and a line 25' landward. In this zone, only minor structures are allowed and only minor structures are included in the plans. The building is setback from the old CCCL approximately 30' on the east and 40' on the west which exceeds the setback as required in the document (they could have built up to the seaward line of Zone III but have provided additional setback). The 60% shore parallel ratio would limit the width of the building to 177 l.f. and the building width is in compliance with this dimension.