



**WALTON COUNTY DIVISION OF
PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT**

To: The Walton County Board of County Commissioners

Through: Wayne Dyess, AICP, and Director

From: Renee Bradley, Planner II

Date: June 6, 2014

Developer: Sandestin Investments, LLC
Thomas Becnel

Agent: Dana Mathews, Esquire; Dean Burgess, Engineer; Keith Dantin, Consultant

Subject: Sandestin Development of Regional Impact - Compliance with Development Order

**Summary of
Staff's Findings:**

As a result of the extensive review by staff of the 2013 Annual Report submitted by the Developer, the prior documentation and reports submitted by the Developer and subsequent material recently provided, Staff has determined that the Sandestin Development of Regional Impact ("Sandestin") is **NOT** in substantial compliance with its development order. Though there are numerous deficiencies and errors which exist in the documentation submitted for Sandestin over the years and require correction through the Notice of Proposed Change process, it is Staff's determination that Sandestin is in substantial non-compliance with its development order based upon the following:

- There is a decrease in open space required by the development order and that the decrease is by more than 20 acres. This amount constitutes not only a substantial deviation as defined by section 380.06 (19) b. 8, Florida Statutes but is to such an extent that it also represents substantial non-compliance with the development order.
- There has been an increase in commercial development beyond what is authorized by the development order and is contrary to section 380.06 (19) (b) 6, Florida Statutes and demonstrates that it is not in substantial compliance with its development order.

- There has been an increase in residential acreage of 128.1 acres beyond what was identified in the 1984 Agreement which has not been documented or explained.
- There has been an increase in residential acreage, combined with a decrease in commercial acreage that is contrary to section 380.06 (19) (e) 5. b., Florida Statutes which represents a substantial deviation.

APPLICABLE LAW

Developments of Regional Impact are primarily governed by section 380.06, Florida Statutes. The following excerpts are relevant to Staff's analysis of Sandestin and its compliance with its development order.

Section 380.06 (19), Florida Statutes

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

6. An increase in commercial development by 60,000 square feet of gross floor area or of parking spaces provided for customers for 425 cars or a 10 percent increase

8. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

(e) 5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c) and (d) and residential use.

In regard to local monitoring of a Development of Regional Impact, the applicable provisions governing the status of Sandestin is section 380.06 (17), Florida Statutes which provides:

(17) LOCAL MONITORING – The local government issuing the development order is primarily responsible for monitoring the development and enforcing the provisions of the development order. Local governments shall not issue any permits or approvals or provide any extensions of services if the developer fails to act in substantial compliance with the development order.

Therefore, if a development of regional impact is found to be not in substantial compliance with its development order, then the local government shall not issue any permits or approvals nor provide any extension of service.

HISTORY OF SANDESTIN DRI

The Walton County Board of Commissioners approved the original Sandestin DRI development order on October 19, 1976, authorizing 8768 residential units and other development on 1,960 acres. Density for North of US Hwy. 98 was listed as 6829 residential units. This acreage was divided by US Hwy. 98 and classified as “Beach Property” and “North of U.S. 98 Property”. Additionally, there was an area identified as Phase I area consisting of 350 acres of vested property (“Vested Area”).

On August 28, 1984, Resolution 84-24, and an updated Master Plan was approved by the Walton County Board of County Commissioners. However, the Department of Community Affairs (“DCA”) questioned the legal and factual determination of non-substantial deviation made by the Walton County Board of County Commissioners. In order to resolve their differences, Sandestin and the DCA entered into a section 380.032, Florida Statute agreement with the developer in settlement of the Department’s threatened appeal of the Walton County’s determination of non-substantial deviation (the “1984 Agreement”) (Exhibit A).

The 1984 Agreement required Sandestin to provide to DCA various supplemental material to DCA (this supplemental material is also included within Exhibit A):

(iii) The 1984 master plan approved by Walton County as a nonsubstantial deviation on August 28, 1984, with all land divided into number-coded parcels, together with a description containing approximate and conceptual identification for each development parcel of the following: location and acreage; current ownership; intended land use; number of dwelling units; whether and/or the extent to which it is to be left in a natural condition; maximum square footage of commercial or office space; location of known archaeological sites; and number of marina slips, if any;

Additionally, the 1984 Agreement also identified that future substantial deviation shall be considered in relation to the 1984 Master Plan as supplemented with the materials made by the developer pursuant to sections 3.b.(iii), 3.b.(iv), 3.C., 4., and 5.a of the 1984 Agreement. (Exhibit B).

Since the 1984 Agreement and supplemental material was filed, there has been numerous Notice of Proposed Changes (NOPC) filed. All of these changes were found not to be substantial deviations pursuant to section 380.06(19), Florida Statutes. In 2002, Ordinance 2002-18, was approved, and as part of this approval, Sandestin was required to start submitting annual reports. In 2003, Sandestin submitted acreage reconciliation, within its annual report, that changed the specific land uses on at least 2 parcels. These changes consisted of a portion of Parcel 113 which had been classified as "Beach Club" but was now changed to commercial (aka the Finz Restaurant), and a portion of Parcel 121 which had been classified as Residential (aka West Winds) was changed Club. At the time of the submittal of this annual report, there was no comment made by the County in acceptance of these changes nor was there any NOPC processed to approve these changes.

In 2004, Ordinance 2004-28 was approved as a non-substantial deviation. This change added 10 acres of residential property, west of Mack Bayou, and 69 residential units, to Sandestin. The applicant used the tables from the 2003 acreage reconciliation, (changing acreages and uses) as an exhibit to the ordinance and Master Plan Map. The 2002 application for the NOPC did not reference these changes.

In 2004, a code complaint was filed about development on parcel 113 that still remained classified as Club under the 2004 Ordinance. As part of the processing of this complaint, staff analyzed the history of Parcel 113 and found the change in use that had been included in the annual report. Additionally, there was also a Zoning Board of Adjustment Hearing (ZBOA) about the Director allowing an application for the development as minor vs. a major application. The ZBOA determined that a NOPC was required prior to the acceptance of any development application for parcel 113. This decision was subsequently upheld (Exhibit C).

In 2005, Sandestin applied for an additional NOPC that would transfer density into the Vested Area of Sandestin. Staff determined that this was a substantial deviation because the units being transferred were into an area that had not undergone DRI review, which did not meet the 1984 Agreement. The application was withdrawn.

In 2007, the developer supplied the County with an annual report. Staff did a preliminary review, and sent the developer a draft analysis based on just the summary tables that showed substantial changes (Exhibit D).

Due to the amount of discrepancies in the 2006/07 report, submitted in 2007, staff was directed in 2008, to audit Sandestin. Staff completed the audit in 2009, and with the benefit of the audit information, reviewed the 2009/2010 submitted annual report. The review was done in comparison of the 2002-18 Ordinance due to the above described issues with the 2004-28 Ordinance (Exhibit E). As a result of this review, staff provided the developer with a parcel by

parcel analysis with a list of each parcels discrepancies. This analysis did not provide the totals for Club, Community Service and Commercial and only reported Non-Residential Acreage. Based upon this review, staff determined that there had been changes in land uses, decreases in open space acreage (39.7 acres), increases in residential acreage (60 acres), and decreases in commercial acreage (28.9). None of which were approved by the County through the filing of an NOPC. The developer was notified through the staff review that such changes required a NOPC.

In 2012, staff received the 2011 Annual Report. As with the previous annual reports, the format for reporting the open space had changed. The 1984 Agreement and supplemental material, had defined how all land uses, including open space would be reported, but the methodology utilized in the 2011 Annual Report to report open space, did not meet this requirement and was not accepted by staff.

The 1984 Agreement required that open space parcels be labeled as stand-alone parcels and that large tracts of open space could be counted toward preservation, green space and recreational spaces. However, the developer's proposed 2011 reporting method changes this approach and now includes as open space not only the stand alone parcels and large tracts that had been included under the 1984 Agreement but small areas drawn from residential and commercial parcels. It is staff's opinion that this was not intended by the 1984 Agreement.

Additionally, the 2011 report modified the classification of non-residential uses and treated all of such property as commercial, regardless of the specific use that the property had been classified in the past. As a result, in the 2011 annual report, all Club, Community Services, and Administration parcels were now all classified as commercial on the Master Plan Map, as well as in the allocation tables. In response, staff again, provided a letter to the developer indicating that this would require a NOPC to make the changes (Exhibit F & G).

In 2013, Sandestin submitted the 2012 Annual Report. After months of review, Staff was nearly complete with the analysis of this submittal when the Developer substantially revised that report in October 2013 and submitted it to the County. This revised report significantly modified the previously submitted 2012 Annual Report. This October 2013 Annual Report changed the Club and Community Services on the Master Plan Map and allocation tables back to their prospective use; however, the report did not reduce the square footage for buildings that had been constructed in those categories, but relabeled them as ancillary. The report also made many additional changes, including, but not limited to, a change in the methodology used for calculating open space for areas such as roads; and modifying the definitions for open space and ancillary use. Additionally, existing Land Uses were modified by placing all Club, Community Services into an ancillary use, and then converted 49,750 square feet of club/community services to commercial. The report did not identify what club/community service parcels the transfer were made from, nor provided any remaining allocation left in either of these categories. The 2012 Annual Report Map provided areas of Club Resort and Community Services but did not provide any totals of acreage or allocations for the parcels. Rather they were only listed as a non-residential category in the summary of development and the Club and Community Service parcels were listed as ancillary use with unlimited development.

Using the numbers provided in the 2012 report, staff compared the residential, non-residential and open space acreages to the 1984 Benchmark for substantial compliance. As you can see below there is an unaccountable 128.1 residential acre increase.

	1984	2012	Change
Total Acres	2004.6	2062.88	58.28
Open Space Acres	1031.1	1080.24	49.14
Residential Acres	825.1	1009.5	184.40
Non-residential Acres	147.5	122.06	(25.44)
Residential Units	9768	7731	(2,037.00)
Non-Residential Intensity	870,995	972,145	127,045.00
In 1989, Bayou Estates was added to the DRI:			46.2
<u>In 2004, Mack Bayou Estates was added to the DRI:</u>			<u>10.1</u>
Total Residential Property added to the DRI:			56.30
Change of Residential Property Acreage since 84':			<u>184.40</u>
Unexplainable increase in residential property:			128.1

Staff also compared the 2002-18 Ordinance allocation tables to the 2012 report, for compliance with the Development Order. This showed that the residential acreage increased 165.5 acres.

	2002	2012	Change
Total Acres	2,063.3	2062.88	(0.42)
Open Space Acres	1,056.7	1,080.24	23.54
Residential Acres	843.5	1009.5	165.5
Non-residential Acres	157.3	122.06	(35.24)
Residential Units	7662	7731	69.00 per 2004 NOPC
Non-Residential Intensity	1,021,895	972,145	49,750

Note: Non-residential includes Club, Community Services and Commercial

2002 Evaluation

In 1989, Bayou Estates was added to the DRI:	46.2
<u>In 2004, Mack Bayou Estates was added to the DRI:</u>	<u>10.1</u>
Total Residential Property added to the DRI:	56.30
Change of Residential Property Acreage since 2002:	<u>165.5</u>
Unexplainable increase in residential property:	109.2

Earlier this year, the developer provided the 2013 Annual Report. This report was similar to the October 2013 submittal. On April 24th, 2014, new material was received from Emerald Coast Associates and Dana Mathews that claimed additional open space from residential developed parcels. This new material claimed an additional 65.1 acres of open space as golf course buffers (Exhibit H). Staff also had to request a revised summary table that incorporated these additional changes. That revised summary table was received on April 30, 2014 (Exhibit I). The submittal contained the following explanation for the additional open space.

Emerald Coast Associates, Inc. (ECA) is pleased to provide the following information outlining our methodology for calculating open space within golf course and lake buffers and setbacks. Rear lot areas within platted subdivisions that abut golf courses and lakes contain setbacks that are functionally a part of the golf course or lake and are either specified in the plat or outlined in recorded Restrictive Covenants for the subdivisions. These areas are enforceable by the County and the Architectural Review Board within Sandestin and will remain as vegetated open space. The parcel maps prepared by Jacobs Engineering did not account for these buffers in previous annual reports submitted from 2010 through 2013.

ECA conducted a review of each subdivision plat and Restrictive Covenants and noted where setbacks were established abutting the golf courses and lakes within Sandestin. The applicable setbacks were added to the Parcel Maps, digitized and quantified in acreage, which is tabulated on each of the Parcel Maps. The increase in open space acreage was offset by a reduction in residential acreage. Table 1 summarizes the change in open space and corresponding reduction in residential acreage. The individual parcel maps that were affected by this analysis are included in Appendix A of this report. The results show a net increase in open space by 65.1 acres within the DRI.

Staff reviewed these areas by pulling all the plats and affected condo plans related to the new material and found that the “golf course buffers” are in reality setbacks not buffers. Staff visited the Sandestin website and found the review procedures used by the Sandestin Architectural Review Board that states that the Sandestin Architectural Review Board and the developer can allow variances into these setbacks (Exhibit L). Based on that statement, staff proceeded to pull all the aerials for the parcels, requesting the additional open space, and found that there were numerous encroachments into the setbacks. Additionally, staff also found an area that was claimed to be preservation that had single family dwelling on the parcels (Exhibit K).

Based on the review of the plats and open space in general, staff created a spreadsheet to show what staff believed to be the true open space within the development based on the methodology of the 1984 Agreement. The developer has sought to modify the calculation of open space by modifying the 1984 Agreement methodology for the inclusion open space in the following manner:

1. Adding additional roads other than those approved by the supplemental documents submitted to DCA in conjunction with the 1984 Agreement, most of which are not in the same nature or character as included in the 1984 Agreement.
2. Proclaiming green areas within platted residential areas, commercial areas, and condominium plats, and road medians as green space¹.

¹Staff has allowed any conservation areas that were recorded on a residential plat to be considered open space.

In the 1984 Agreement, certain major roadways/major collectors were allowed to be included as open space, pursuant to the agreement between the developer and DCA. Staff has reviewed the major roads located on the 1984 Master Plan Map, and included in the submittal documents for the 1984 Agreement as open space. In looking at the roads, sought to be included as open space by the developer, those roadways which were agreed to by DCA to be counted as open space were accepted by staff. Additionally, staff has done an extensive review to determine if additional roads should be included as open space. Knowing that all the roads included in the 1984 Agreement were not actually built, staff analyzed the existing roadway system to see what road were actually built and whether those roadways provide the served the same function and to the same degree as roads which had been included in the 1984 Agreement. Staff did 3 individual on site reviews of the roads, as well extensive research on what could be considered a major road.

The 2013 Annual Report submittal counted 148.92 acres of roads as open space. However, in 1985, the submitted documents to DCA included only 74.4 acres of roads. Staff's review of the roads allowed 86.66 acres of roads to be accounted as open space on the basis that they either were included within the 1984 Agreement or they consisted of other roads which would serve the same function and to the same degree as the prior included roads. As such, the County would agree that allowing an additional 12.26 acres of roads as open space based on the analysis conducted by the County Engineer, Staff Planner, and 1984 Master Plan Map (Exhibit Tim Whaler /Greg Stewart Report). Even with this additional analysis by staff, the inclusion of these additional roadways has never been approved by an NOPC and could not be formally considered without that approval. However, this analysis demonstrates that even with the inclusion of additional roads that staff could agree with, there is still a substantial reduction in open space. The conclusion based on the roads and green space calculations are as follows:

Total Open Space			SDI Calculations		Walton County Staff Interpretation
Lakes			186.7		186.7
Golf Course			378.5		378.5
Green Space			220.14		109.9
Archeological			13.1		13.1
Nature Preserve			143.5		136.4
Beach			16.8		16.8
Dune Preserve			6.9		6.9
Tennis			8.86		8.86
Major Road R/W			148.92		86.66
Power Line Easement			15.7		15.7
SDI 2013 Totals			1139.12	County Totals	959.52
1984 Approved Open Space			-1031.1		-1031.1
Totals for Open Space			108.02		-71.58
Lakes			186.7	-186.7	0
Golf Course			378.5	-378.5	0
Green Space			220.14	-109.9	110.24
Archeological			13.1	-13.1	0
Nature Preserve			143.5	-136.4	7.1
Beach			16.8	-16.8	0
Dune Preserve			6.9	-6.9	0
Tennis			8.86	-8.86	0
Major Road R/W			148.92	-86.66	62.26
Power Line Easement			15.7	-15.7	0
SDI 2013 AR Totals			1139.12		179.6
			-1031.1		-71.58
			108.02		108.02

It is staff's conclusion that there is 959.52 acres of open space, a decrease of at least 71.58 acres from the approved 1031.1 acres per the 1984 Agreement and required submittal documents and that is arrived at only by accepting those additional roads that staff could accept as open space. This amount is also without considering the additional unaccountable increase in residential acreage of 128.1 acres.

Staff has also reviewed the Commercial Development and proposed ancillary space definitions provided by the developer in the 2013 Annual Report. Staff has not agreed to the proposed definition nor does staff agree that there is just one pool of non-residential entitlements. The 1984 Agreement documents allocated separate uses for non-residential development.

The developer has proposed that he has 972,145 square feet of non-residential entitlements with no separation for Commercial, Club, Community Services. The developer has also proposed that there is 22,024 square feet of commercial ancillary space that does not require being counted toward the built commercial development. The developer also transferred club and community space to commercial. With much difficulty staff evaluated the changes proposed by the developer (Exhibit L).

Parcel 221B increased commercial development by 30,000; changed 17,000 of administration on Parcel 116 to commercial, changed 30,000 of club on Parcel 113 to commercial and added an additional 12,184 to Parcel 113 and did not draw down the 22,024 square feet of claimed commercial space. In 2002, the total commercial entitlements were 885,895 square feet and the report claims 972,145; a difference of 86,250 square feet. Add in the ancillary space that was not drawn down from the development of 22,024 for a total of 108,274 square feet above what was included in 2002.

The conclusion of the commercial review is that the developer has increased his commercial entitlements by 108,274 square feet. Staff's review also included a review of what was built and remaining in all categories of non-residential, Commercial, Club and Community Services. Again, no totals were given for the Club and Community Services in the 2013 Annual Report.

According to staff's calculations there are 117,115 square feet remaining to be built on parcel 208/308 (the Howard Group Property), and 151,791 of remaining commercial to be built by the developer not 221,718 square feet. There is also a decrease of 35.24 square feet of commercial acreage from the 2002-18 Ordinance and the 2013 Annual Report. Finally, there is a discrepancy of -9416 square feet of Club built, and 24,761 square feet remaining to be built on Community Services/ Administration.

Staff finds that the Sandestin DRI is not in substantial compliance with the 1984 Agreement. Staff also finds that based upon the 2013 annual report, that there is a substantial deviation as to the Sandestin DRI pursuant to section 380.06 (19), Florida Statute.