

JUNE 6, 2014 – SPECIAL MEETING

The Board of County Commissioners, Walton County, Florida, held a Special Meeting on June 6, 2014 at 9:00 a.m. at the Walton County Courthouse Annex in Santa Rosa Beach, Florida.

The following Board members were present: Commissioner W. N. (Bill) Chapman, Chairman; Commissioner Cindy Meadows, Vice Chairman; Commissioner Sara Comander; and Commissioner Kenneth Pridgen. Mr. Larry Jones, County Administrator; Attorney Mark Davis, County Attorney; Attorney Greg Stewart, Special Counsel; and Ms. Elizabeth Tiedemann, Court Reporter were also present.

Chairman Chapman called the meeting to order. Commissioner Comander led the invocation and the pledge to the American Flag.

Attorney Davis administered the oath to those intending to speak. He asked that Ex Parte communications be submitted. There were none. He also stated that the published schedule would be strictly followed. Attorney Davis reserved the right to advise the Chairman on any objections and asked that the arguments on the objections be kept to a minimum amount of time.

Attorney Dana Matthews, Sandestin Investments, LLC (SDI), discussed the May 22, 2014 memorandum issued by Attorney Davis regarding the procedure for the compliance hearing. He stated that he understood that this procedure would be approved by the Board prior to the hearing. He stated that his clients and county staff have agreed to the stipulation of exhibits presented by both parties. Attorney Matthews stated that he would be submitting two notebooks containing various exhibits. Attorney Davis asked if there were any objections to the County staff exhibits or petitioner exhibits. There were none.

Attorney Gary Vorbeck, Sandestin Owners' Association (SOA), questioned if there were any objections to the exhibits they propose to submit.

Attorney Matthews stated that he had only received a report prepared by Ms. Wendy Grey, AICP, and had placed in writing his objections regarding relevancy. He stated that he was unaware of the exhibits to be presented by Attorney Shawn Heath, Driftwood Estates Home Owners' Association (HOA).

Attorney Shawn Heath, Driftwood Estates HOA, stated that he has a number of exhibits that have been circulated through email and public record. Attorney Davis requested that these exhibits be made available to Attorney Matthews. Attorney Heath stated that he had copies available.

Attorney Vorbeck stated that he had no objections to the exhibits being submitted by SDI as long as his exhibits are stipulated as well.

Attorney Davis stated that staff exhibits, petitioner exhibits, and Attorney Vorbeck's exhibits will be submitted without objection. Attorney Matthews stated that the exhibits are being submitted subject to the written and oral objections that he has made.

Motion by Commissioner Comander, second by Commissioner Meadows, to approve the published hearing procedure. Ayes 4, Nays 0. Chapman Aye, Meadows Aye, Comander Aye, Pridgen Aye.

Attorney Greg Stewart, Nabors, Giblin & Nickerson, representing Staff, briefly discussed the Staff exhibits and stated that an exhibits list and exhibits A - EE have been submitted to all parties. He requested that all other parties also submit exhibit lists. He briefly discussed the reason for the hearing, the process used by staff to analyze the development, the determinations that were made and the basis for that determination. Attorney Stewart discussed the 2011 and 2012 Annual Reports and noted that the format of the reports was different than reports submitted by prior developers. The developer performed a parcel by parcel ground truthing and

submitted charts indicating the areas that were being claimed in the different land use categories. He said that additional submissions were made this year seeking to include more open space categories. Attorney Stewart stated that staff used the Department of Community Affairs (DCA) rejection of the 1984 Sandestin Notice of Proposed Change (NOPC) and the resulting Settlement Agreement between Sandestin and DCA as a basis to determine whether the development was in substantial compliance. The 1984 agreement plus the supplemental material filed in 1985 set the baseline for open space in Sandestin at 1,031.1 acres. Staff sought direction from Ms. Ana Richmond, Department of Economic Opportunity (DEO), and she confirmed that the 1984 agreement and the 1985 supplemental documents were the baseline on which all changes are to be evaluated. Staff has determined that the Sandestin Development of Regional Impact (DRI) is not in substantial compliance with its Development Order (DO) based upon the following: decrease in open space, increase in commercial development, the undocumented and unexplained increase in residential acreage of 128.1 acres beyond what was identified in the 1984 agreement, and an increase in residential acreage, combined with a decrease in commercial acreage that is contrary to section 380.06(19)(e)5.b F.S. which represents a substantial deviation. Attorney Stewart continued discussing the unauthorized changes that the developer has made which are not consistent with the 1984 settlement agreement and the 1985 supplemental documentation. He stated that the non-compliance and deficiencies create significant regional impacts and that compliance can be met by filing a NOPC. **(Exhibit 1-Staff Report; Exhibit 2-Staff Report Exhibit CC; Exhibit 3-Notice of Publication; Exhibit 20-Correction to Staff Exhibit 1; Exhibit 21-Addendum to Staff Report Exhibit B)**

Attorney Gary Vorbeck, Sandestin Owners' Association (SOA), submitted the Sandestin DRI Substantial Compliance Analysis and briefly discussed the findings contained in the report.

He stated that the SOA represents approximately 4,000 homes within the Sandestin DRI and does not want to stop development but rather require that the law be followed. He discussed how the developer has made changes without regard to the law, the Comprehensive Plan, the Land Development Code and the DO. He voiced his gratitude to the county for their attempts to hold the developers accountable and the decision of the Board to require all developments within Sandestin to go through the major development process. The SOA requests that the developer abide by the terms and conditions of the Sandestin DO. Attorney Vorbeck discussed the three types of development categories allowed in Sandestin: Open Space; Non-residential; and Residential. He discussed the issues that affect the individual owners when the developer does not follow the DO. **(Exhibit 4: Sandestin DRI Impact: Substantial Compliance Analysis-Respondent)**

Attorney Matthews objected to any testimony outside of the issues presented by staff. Attorney Vorbeck stated that the five issues that will be discussed have been presented on many occasions during the past 6 months.

Attorney Davis recommended allowing the testimony for consideration recognizing the objections presented by Attorney Matthews. The Board concurred.

Ms. Wendy Grey, AICP, Wendy Grey Land Use Planning, LLC, briefly discussed her experience as a planner. She discussed the following five issues addressed in her analysis: the deficiency in the amount of Open Space; the excess of existing non-residential development; the non-compliance of the 2009, 2011, 2012 and 2013 Annual Reports; unauthorized amusement/entertainment uses in the Village of Baytowne Wharf; and the unauthorized commercial development in the Marina. She urged the Board to find Sandestin DRI not in compliance with the DO.

Attorney Vorbeck requested to be given five minutes at the end of the hearing to rebut any testimony. Attorney Davis stated that a time of rebuttal for parties other than staff has not been scheduled. The Board concurred not to hear rebuttals from parties other than staff.

Attorney Vorbeck encouraged the Board to find Sandestin DRI non-compliant and require the developer to adhere to the DO.

The meeting recessed at 10:15 a.m. and reconvened at 10:30 a.m.

Attorney Shawn Heath, representative of Driftwood Estates HOA, discussed why, where, and how the reduction in Open Space occurred and the affects it has had on Driftwood Estates. He stated that the interior lots of Driftwood Estates have historically been categorized as Open Space within the Sandestin DRI. He discussed the changes made to the area by Intrawest, the former owner of Sandestin, and the methods that were used in order to build-out the interior of Driftwood Estates. He noted that the development of the interior has caused severe flooding issues for the residences on the outer edge of Driftwood Estates.

Mr. Jim Waddell, Civil Engineer, Inovia Consulting Group, briefly discussed his findings regarding the following issues: the storm water facilities do not meet the DRI criteria; the development of the interior floods the exterior; the wetlands work was not constructed per the approved dredge and fill permits; and the as-built storm water system in Driftwood Estates does not meet DEP nor Walton County regulatory criteria. He concluded that the DRI standards are not being met.

Attorney Steve Siebert, Land Use Consultant, Seibert Law Firm, briefly discussed the following issues regarding Driftwood Estates: Driftwood Estates is logically and legally considered a part of the Sandestin DRI; reduction of Open Space; lack of transportation access and sufficient emergency access to and from Driftwood Estates; and reduction of storm water

protection. He stated that in his opinion there has been a substantial deviation without benefit of DO review and the development is in substantial non-compliance on several grounds that should be reviewed.

Attorney Heath briefly reviewed the issues which he felt deemed Sandestin DRI non-compliant.

Attorney Matthews objected to the submission of affidavits and testimonies of people who were not present based on the lack of due process, lateness, and relevancy. Attorney Heath stated that all of the information that he is submitting has been circulated and is contained in public record. **(Exhibit 5-Driftwood Experts-Respondent; Exhibit 6-Driftwood Testimony-Respondent; Exhibit 7-Driftwood Exhibits-Respondent (6 notebooks); Exhibit 14-Questions for Greg Stewart/Renee Bradley-Respondent)**

Attorney Nancy Linnan, Carlton Fields Law Firm, representing the Howard Group reported that her client's development, Grand Boulevard, is in compliance with DRI regulations and voiced concern that there was nothing in writing from staff stating their compliant status. She stated that a May 30, 2014 letter from DEO stated that only the developer found in non-compliance can be shut down.

The meeting recessed at 11:36 a.m. and reconvened at 12:45 p.m.

Attorney Davis administered the oath to Attorney Lisa Minshew.

Attorney Lisa Minshew, representing K&H Development Group, Inc. and Bla-lock Destin Development Group, Inc., submitted a letter voicing the objections and concerns that her clients have regarding the future of their developments should Sandestin be found non-compliant. She briefly discussed K&H and Blalock v. Walton County (09CA837/02CA402) and reported that Judge Green had ruled that her clients had vested development rights under the

Sandestin Development Order. She said that her clients had been working with staff to get permits issued and felt that any compliance ruling should not affect her clients. She voiced objection to a provision in Paragraph 10 of the June 6, 2014 Staff Report which states that “there are 117,115 square feet remaining to be built on parcel 208/308 (the Howard Group Property).” Attorney Minshew stated that her clients’ property is a part of parcel 208/308 and has retained its development rights and objected to their exclusion from the Staff Report. Judge Green quieted the title to the K&H/Bla-Lock Property as against the Howard Group. She requested that the June 6, 2014 Staff Report be corrected and stated that her clients’ development rights are not subject to any adverse compliance hearing findings. **(Exhibit 9-Minshew Letter Regarding K&H/Bla-lock v. Walton County-Respondent)**

Mr. Alan Osborne discussed Open Space and the issues in Driftwood Estates which were caused by the non-compliance of Sandestin. He encouraged the Board to enforce the DO. **(Exhibit 14-Questions for Attorney Greg Stewart and Ms. Renee Bradley-Respondent)**

Mr. Tom Patton briefly discussed the history of Sandestin and the growth that has occurred over the years. He stated that Sandestin provides 22 percent of the economic revenue for the county and is a beautiful family resort. He felt that the 1976 approved DRI for Open Space should be applied to Sandestin. **(Exhibit 10-Tom Patton Resume-Respondent; Exhibit 11-Tom Patton Email-Respondent)**

Ms. Janet Reeves, Footprints Gift Shop owner, felt that Sandestin has over-built and should not be given special consideration because they are the largest development in Walton County. She discussed the traffic and quality of life problems which affect the citizens outside of Sandestin.

Ms. Kitty Whitney, business owner, resident, and Sandestin employee, agrees that all the laws should be followed and stated that Sandestin is making every effort to move forward with worthy goals.

Attorney Dana Matthews, Sandestin Investment, LLC, stated that there would be several individuals who would be speaking and introduced his co-counsel and those intending to speak.

Attorney Ronald L. Weaver, Stearns, Weaver, Miller Law Firm, briefly discussed his qualifications. He discussed the vested rights of the 1976 Sandestin DRI Development Order and the origin of the Open Space baseline. He referenced Comp Plan L 1.1-17 which states that property that is vested from the Comprehensive Plan cannot be subjected to the Comprehensive Plan. He continued discussing the vested rights of the 1976 DRI Order and felt that Sandestin is in compliance.

Mr. Ken Metcalf, Planning Director of Greenberg Traurig PA, gave a brief history of his qualifications and discussed Section 380.06(17) F.S. and the statutory requirement for substantial compliance. He discussed the scope of Sandestin Investment, LLC tenant development actions, options to resolve the disputes, commercial square footage, residential acreage, substantial deviation process, staff confusion regarding statutory process, and substantial deviation review. He stated that it is his opinion that Sandestin is in compliance with the governing standards of 1976 when Sandestin was first developed. He said that the 1984 agreement cannot supersede the vested rights established in 1976.

Commissioner Meadows questioned if the problems were outlined to the buyer prior to purchase and why anyone would purchase a DRI knowing all of the problems that existed. Mr. Metcalf stated that he was not aware of whether the developer knew of the issues. Commissioner Meadows questioned whether he would advise a client purchasing an old DRI to research what

issues were attached to the development. Mr. Metcalf stated that he would advise the client as to the vested rights and that they are enforceable. Discussion ensued on the development applications filed by the owner.

Attorney Davis questioned if it was Mr. Metcalf's opinion that the 1984 agreement does not apply to Sandestin because the developer has changed and the county was not a party to that agreement. Mr. Metcalf stated that those were two of the numerous reasons that the agreement does not apply. Attorney Davis asked Mr. Metcalf if it was his opinion that the agreement does not "run with the land." Mr. Metcalf stated yes.

Attorney Stewart cross-examined Mr. Metcalf on his findings regarding the developer's vested rights and substantial compliance. He questioned whether the developer who signed the 1984 agreement had altered the rights he had by entering into the agreement. Mr. Metcalf did not feel that the vested rights were abandoned. Questioning continued on the interpretation of the 1984 agreement. Attorney Stewart questioned Mr. Metcalf regarding letters and emails stating DEO's opinion on the applicability of the 1984 agreement, ancillary space and land use changes made through the annual report. **(Exhibit 12-Staff Exhibit FF-Richmond Email; Exhibit 13-Staff Exhibit GG-DEO Letter)**

Attorney Matthews objected to the amount of time being used for cross-examination.

Attorney Davis administered the oath to Mr. Peter Bos.

Attorney Matthews requested that a short recess be held.

The meeting recessed at 2:18 p.m. and reconvened at 2:26 p.m.

Mr. Peter Bos, original Sandestin property owner, gave a brief history of the Sandestin development and discussed the importance of vested rights and Open Space.

Mr. Dean Burgiss, Emerald Coast Associates, Inc., discussed the definition of Open Space, the discrepancies with staff's Open Space evaluation, areas considered Open Space, nature preserve area on Parcel 340, determination of area of major road right-of-way methodology, explanation of residential acreage reporting and his rebuttal to the report submitted by Ms. Wendy Grey. He concluded that the development is in compliance and that the residential acreage is below the requirements of the 1974 ADA vested development rights of the DRI.

Commissioner Meadows stated that staff has worked with Sandestin in relation to the definition of Open Space and felt that the Open Space requirements are still not met. Mr. Burgiss stated that the 1976 Open Space criteria have been applied to the development. Commissioner Meadows voiced concern that there is no golf course where the 1976 documents stated one should be. Mr. Burgiss stated that that went through an NOPC process and the current developer was not a part of that minor development process.

Attorney Stewart questioned Mr. Burgiss on how the roadways were characterized in the 1984/1985 agreement and supplemental material. Mr. Burgiss stated that on the map they were referred to as major roadways. Questioning continued on the difference between major collection and major collector roads, the use of the 1984 settlement agreement standards in annual reports, determination of certain roads as open space, road calculations and roads considered a part of the DRI.

The meeting recessed and reconvened after a few moments.

Mr. Keith Dantin, Dantin Consulting, discussed his review of the DRI documents. He stated that the county has approved all past applications and felt that the 1976 DRI Documents are the prevailing documents. He stated that he has worked with county staff to create a parcel by parcel map of the Master Plan to identify and label the different areas of the DRI. He stated that

the intent was to create a NOPC which both the county and the developer could agree upon. He continued discussing the methodologies followed to create a NOPC. Mr. Dantin reviewed the 1974 ADA and stated that the 1974 ADA non-residential designations were in measurements by acres, not by square foot. He discussed ancillary definitions as it relates to residential use and the Walton County/Sandestin SOA “out of compliance” analysis for non-residential. He urged the Board to find the development in compliance.

Attorney Stewart questioned Mr. Dantin whether he felt that the 1976 data is the controlling factor. Mr. Dantin stated that it was only a presentation of acreage in 1976 and in 1984. Questioning and discussion continued on the use of the 1984 agreement as a baseline, ancillary space and ground truthing of the development. **(Exhibit 15-Staff Exhibit HH-Ordinance 1989-9, Exhibit 16-Staff Exhibit II-Letter from Keith Dantin, Exhibit 17-Staff Exhibit JJ-Memo from Dana Matthews)**

Attorney Matthews asked Mr. Dantin to read an excerpt from the 1984 agreement (Covenants 3b(iii)). Attorney Matthews stated that the term open space is not used in the agreement. Attorney Matthews asked Mr. Dantin to read a portion of the findings of fact by the county in regards to the 2002 Development Order. Attorney Matthews stated that the 2002 Development Order does not say anything to ratify the 1984 agreement.

Attorney Stewart submitted the minutes from the Architectural Review Board Meeting held on January 9, 2013. **(Exhibit 18-Staff Exhibit KK-Architectural Review Board January 9, 2013 Minutes)**

Attorney Matthews presented his closing statements and discussed Open Space, and non-residential/commercial square footage. He stated that there has been no evidence presented that shows that SDI is responsible for the non-compliant issues. He said that the county approved the

request submitted by Intrawest to plat 413 single family lots in Driftwood Estates and that SDI should not be held in non-compliance for issues that began prior to their purchase of Sandestin. He said that the 1976 DRI documents should be the baseline for determining development because there have been no NOPC's that change the vested rights. **(Exhibit 20-SDI Exhibits A - I (2 notebooks))**

Mr. Tom Becnel, Sandestin Investment, LLC, discussed his vision for Sandestin.

The meeting recessed 4:12 p.m. and reconvened at 4: 20 p.m.

Attorney Davis stated that staff would be presenting their rebuttal. Attorney Stewart stated that the staff is resting on their prior presented case.

Attorney Davis stated that a motion and second would be required stating whether or not the development is in substantial compliance with the DRI. He said that that motion could be made today and direct staff to prepare the appropriate Findings of Fact and Conclusions of Law to be voted on at the next meeting. Another option would be to not make the determination today and ask the various parties to submit various Findings of Facts and Conclusions of Law. Staff would review the submissions and then present their recommendations at the next meeting. The procedure that was adopted was to make the decision today.

Chairman Chapman stepped down from the Chair position and Commissioner Meadows assumed the position of Chair. He stated that a lot of information had been presented and that he would like the opportunity to review summary briefs submitted by all parties.

Motion by Commissioner Chapman, second by Commissioner Comander, to direct each party to submit a brief summary for review and to address the issue at the June 24, 2014 Regular Meeting.

Attorney Davis stated that Findings of Facts and Conclusions of Law should be submitted rather than summaries. Legal staff would study the submissions and make a recommendation.

Commissioner Meadows stated that this issue has been going on for quite a while and felt that a decision needed to be made at this meeting.

Discussion continued on whether to review the evidence or to make a decision at this meeting.

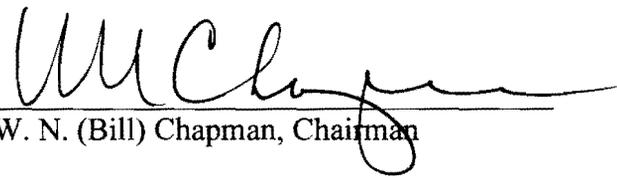
A vote was taken on the motion to direct each party to submit a brief summary for review and to address the issue at the June 24, 2014 Regular Meeting.

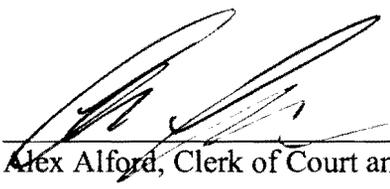
Ayes 1, Nays 3. Chapman Aye, Meadows Nay, Comander Nay, Pridgen Nay. Motion failed.

Commissioner Meadows stepped down as chair and Chairman Chapman resumed the Chair position.

Motion by Commissioner Meadows, second by Commissioner Pridgen, to find that Sandestin DRI is in non-compliance and any further development would require an NOPC. Ayes 4, Nays 0. Chapman Aye, Meadows Aye, Comander Aye, Pridgen Aye.

The meeting adjourned at 4:32 p.m.

Approved: 
W. N. (Bill) Chapman, Chairman

Attest: 
Alex Alford, Clerk of Court and County Comptroller