8-A-2

MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet obtain the greatest value for their tax dollar.

To:	Jeaneen Witt, Town Manager
From:	Michael E. Disher, AICP, Senior Planner MD
Through:	Aref Joulani, Director, Planning & Development Dept.
Date:	May 4, 2016
Subject:	First Amendment to Inlet Harbor Residential Development Agreement

Request:	To approve the proposed development agreement amendment, extending the completion deadlines for constructing required infrastructure by six months
Location:	North of Inlet Harbor Road, west of S. Peninsula Drive
Applicant:	James S. Morris on behalf of Inlet Harbor, Inc., property owner
Recommendation:	***Approval***, as recommended by the Planning Board

MEETING DATE: May 19, 2016

INTRODUCTION

At its April 16, 2015 meeting, the Town Council approved the Comprehensive Plan Amendment ordinance (no. 2015-01), Rezoning ordinance (no. 2015-02), and Development Agreement for Inlet Harbor, Inc. The Development Agreement spells out the specific parameters, conditions, and requirements for a future 10-lot single-family residential subdivision. The Agreement requires the property and the Town to construct certain infrastructure improvements to support the future subdivision and neighboring properties, and establishes a completion deadline of June 15, 2016. The proposed amendment, if approved, would extend this deadline by six months.

AUTHORITY AND PROCESS

Section 6.6.13(H) of the Land Use and Development Code (LUDC) addresses amendment of a development agreement as follows:

H. A development agreement may be canceled by the town or amended, subject to the procedural and public hearing requirements, and under one or more of the following conditions:
   1. Where there is mutual consent of the parties to the agreement, or by their successors in interest.
   2. Where state or federal laws have been enacted which preclude one or more parties of the agreement from complying with the terms of the agreement.
   3. Where the town council has found that there is substantial noncompliance with the terms of the agreement.

The "procedural and public hearing requirements" referenced in paragraph H are those under the Florida Local Government Development Agreement Act, F.S. §§ 163.3220—163.3243. Specifically, F.S. 163.3225 requires two public hearings, one of which may be held by the local planning agency. This statutory requirement is also incorporated into Section 15(B) of the Development Agreement itself, which states:

> Before amending this Agreement, the Town shall conduct one or more public hearings. At the Town's option, one of the public hearings may be held by the Town Planning Board.

The Planning Board reviewed and recommended approval of the Amendment at a public hearing held on April 26, 2016.

DISCUSSION

The Inlet Harbor Residential Development agreement requires the developer to construct a new 6'-wide bikepath along Inlet Harbor Road; a replacement of the existing 6'-wide bikepath on S. Peninsula Drive with a new 8'-wide bikepath; a drainage swale to relieve ponding at the west terminus of Inlet Harbor Road; and a landscape buffer between the existing boat storage stacks and the closest future residential lot. The construction plans for the required infrastructure were reviewed by the Planning Board on March 29, 2016 and are scheduled for Town Council review on May 19, 2016.

The required infrastructure improvements have been planned to coincide with the Town's utility upgrades, repaving, and intersection improvements for this segment of Inlet Harbor Road west of S. Peninsula Dr. Pursuant to Paragraph 9A, 9C, and 9D of the Agreement, the Town must finish its work no later than 365 days after the Agreement's effective date. This date, which is June 15, 2016, is also the deadline by which the developer must complete the required bikepath, drainage, and landscaping improvements. However, according to the applicant, these improvements cannot commence until the final grade of the repaved road has been established. The Town's utility contractor, Weber Construction, expects to complete the Inlet Harbor Road portion of the water and sewer project in mid-June, leaving no time for the developer's portion of the work before the deadline. Therefore, the applicant believes additional time is necessary to construct the required improvements once the Town's utility work is finished. Staff agrees with this assessment. The proposed extension would apply to the developer and the Town, providing sufficient time to ensure the work is completed properly.

RECOMMENDATION

Based on the findings of this report, Staff recommends ***approval*** of the First Amendment to the Inlet Harbor Residential Development Agreement.

Aref Joulani, Director, Planning & Development Dept.	May 4, 2016 Date
Michael E. Disher, AICP, Senior Planner	May 4, 2016 Date

Attachments:
Amendment Procedures
First Amendment to Inlet Harbor Development Agmt.

Inlet Harbor Residential Development Agreement
Amendment Procedures

15. AMENDMENTS:

A. Amendments to this Agreement, other than minor modifications to the CDP shall not be effective unless in writing and signed by all record title property owners of the land for which the amendment is to be applied, and the Town.

B. Before amending this Agreement, the Town shall conduct one or more public hearings. At the Town's option, one of the public hearings may be held by the Town Planning Board.

C. Notice of intent to consider an amendment to this Agreement shall be published by the Town, at the Owner's cost, in a newspaper of general circulation and readership in Volusia County, Florida.

1. If applicable, notice of intent to consider an amendment shall comply with the requirements of Section 166.041(3)(c), Florida Statutes (2004), as amended from time to time.
2. The day, time and place at which the second public hearing will be held shall be announced at the first public hearing.
3. The notices required above shall specify the location of the Property, the location of that portion of the Property subject to the proposed amendment, the nature of the proposed amendment, and the following information to the extent applicable:
   a. Changes in permitted, conditional, and/or prohibited uses proposed;
   b. Changes in building intensities and/or height proposed.
   c. All notices shall specify a place where a copy of the proposed amendment can be obtained.

Return To:
Town of Ponce Inlet
4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

FIRST AMENDMENT TO
INLET HARBOR RESIDENTIAL DEVELOPMENT AGREEMENT

This First Amendment to the Inlet Harbor Residential Development Agreement (the "First Amendment") is entered into by and between Inlet Harbor, Inc., a Florida corporation, (hereinafter the "Developer") and the Town of Ponce Inlet, a Florida municipal corporation (hereinafter the "Town"), (collectively the "Parties"), who hereby covenant and agree and bind their successors and assigns as follows:

WHEREAS, the Parties previously entered into the Inlet Harbor Residential Development Agreement, having an effective date of June 15, 2015 and recorded in Book 7127, Pages 4905-4929, in the Official Records of Volusia County, Florida (the "Agreement"); and

WHEREAS, the Agreement establishes deadlines for the Parties to complete certain tasks and infrastructure improvements (the "Improvements"); and

WHEREAS, the Parties believe additional time is necessary to complete the Improvements;

WHEREAS, both Parties desire to amend the Agreement to extend the deadline for completion of the Improvements by an additional six months;

NOW THEREFORE, the Parties hereby consent and agree as follows:

1. The premises set forth above are true and correct, form a material part of this Amendment, and are incorporated herein by reference.

2. Paragraph 3 of the Agreement, "Development Plan" is hereby amended to revise the last sentence of subparagraph B as follows:

> The Developer shall, within eighteen (18) months ~~one (1) year~~ of the effective date of this Agreement, dedicate to the Town the right of way depicted on Exhibit C to allow modification of the northwest corner of the intersection of South Peninsula Drive and Inlet Harbor Road.

3. Paragraph 3 of the Agreement, "Development Plan" is hereby amended to revise the first sentence of subparagraph E as follows:

Within eighteen (18) months ~~one (1) year~~ from the effective date of this Agreement, Inlet Harbor, Inc. shall install the plants and irrigation system to create a forty (40') foot wide buffer adjacent to the Inlet Harbor easternmost "stack house" boat storage building located on Inlet Harbor's commercial property.

4. Paragraph 8 of the Agreement, "Coastal High Hazard Area – Mitigation" is hereby amended to revise the first sentence of subparagraph (b) as follows:

Within eighteen (18) months ~~one (1) year~~ after the effective date of this Agreement, to design and construct a stormwater collector in the public right of way at the western edge of Inlet Harbor Road to an offsite swale on land owned by Developer to legally transport and manage stormwater which currently ponds at the western end of Inlet Harbor Road.

5. Paragraph 9 of the Agreement, "Infrastructure," is hereby amended to revise the third sentence of subparagraph A, "Coordination and Design," as follows:

The Town agrees that its work on water and sewer lines in the Inlet Harbor right of way shall be completed within eighteen (18) months ~~three hundred sixty-five (365) days~~ of the effective date of this Agreement.

6. Paragraph 9 of the Agreement, "Infrastructure," is hereby amended to revise the last sentence as of subparagraph C, "Sanitary Sewer," follows:

Construction of the sewer line shall be completed within eighteen (18) months ~~three hundred sixty-five (365) days~~ after the effective date of this Agreement.

7. Paragraph 9 of the Agreement, "Potable Water" is hereby amended to revise the last sentence of subparagraph D, "Potable Water," as follows:

Construction of the water line shall be completed within eighteen (18) months ~~three hundred sixty-five (365) days~~ of the effective date of this Agreement.

8. This First Amendment shall be effective upon recording in the public records of Volusia County, Florida.

9. All provisions of the Agreement not in conflict herewith shall remain in full force and effect and shall be supplemented for the matters specifically amended herein by this First Amendment. The Agreement shall survive the execution of this First Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto attach their hand and seals on the dates set forth below:

WITNESSES:

DEVELOPER:
INLET HARBOR, INC.
a Florida corporation

_____

By:_____

Printed Name:_____

Ben Griscom, President

_____

Printed Name:_____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Ben Griscom, as President of Inlet Harbor, Inc., a Florida corporation. He is personally known to me or has produced _____ as identification.

NOTARY PUBLIC:

_____

Notary Public, State of Florida at Large
Commission Number_____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESSES:

TOWN:
TOWN OF PONCE INLET, a Florida municipal corporation

_____ By:_____

Printed Name:_____ Mayor

_____

Printed Name:_____

_____ Attest:_____

Printed Name:_____ Town Clerk

_____ Date:_____

Printed Name:_____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Mayor _____ and Town Clerk _____ of the Town of Ponce Inlet, a Florida municipality, on behalf of the Town. They are personally known to me or have produced _____ as identification.

NOTARY PUBLIC:

_____
Notary Public, State of Florida at Large
Commission Number_____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]