



PLANNING BOARD AGENDA REGULAR MEETING

TUESDAY

July 29, 2025 – 5:30 PM

COUNCIL CHAMBERS

4300 S. ATLANTIC AVE., PONCE INLET, FL

SUNSHINE LAW NOTICE FOR BOARD MEMBERS – Notice is hereby provided that one or more members of the Town Council or other Town Boards may attend and speak at this meeting.

A complete copy of the materials for this agenda is available at Town Hall.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE.
2. ROLL CALL AND DETERMINATION OF QUORUM.
 - A. Election of Chair. (and Vice-Chair if necessary)
3. ADOPTION OF AGENDA.
4. APPROVAL OF MEETING MINUTES:
 - A. June 24, 2025
 - B. June 24, 2025 Special Planning Board meeting
5. REPORT OF STAFF
6. CORRESPONDENCE & DISCLOSURE OF EX-PARTE COMMUNICATION
7. HEARING OF CASES (Public hearings & Quasi-Judicial matters): A Quasi-Judicial decision entails the application of already-established criteria and public rule or policy to a limited number of specific individuals, interests, properties, or activities. Certain standards of basic fairness must be adhered to afford due process. The parties must receive notice of all hearings and be able to present evidence, to cross-examine witnesses, and be informed of all the facts upon which a Quasi-Judicial board acts. It shall be the responsibility of the APPLICANT to ensure that the proposal meets all the criteria and standards established in the Land Use and Development Code for the development sought. Procedure for Public Hearings:
 1. Reading of the Item for the Record
 2. Staff Testimony, including Noticing Information
 3. Board discussion
 4. Public Discussion, including statement of Applicant(s)
 5. Board Members individually complete Quasi-Judicial worksheets (for variance cases only)
 6. Motion and Second by the Board; followed by Board discussion
 7. Roll-call Vote.
 - A. Application/Type: SPEC 6-2025 Minor Special Exception
Address: 4884 Front Street
Purpose: To allow a minor special exception pursuant to Land Use and Development Code (LUDC) Section 6.6.3 to allow a sightseeing boat base (not to exceed 50 passenger capacity) per Section 3.29
8. BUSINESS ITEMS.

- A. Amending Articles 3 and 10 of the Land Use and Development Code (LUDC) related to rental registrations and inspections.

9. PUBLIC PARTICIPATION.

10. BOARD DISCUSSION.

11. ADJOURNMENT.

*If a person decides to appeal any decision made by the Planning Board with respect to any matter considered at a meeting or hearing, he/she will need a record of the proceedings and that for such purpose, may need to ensure that a verbatim record of the proceedings is made (at their own expense), which includes testimony and evidence upon which the appeal is to be based. People who require an accommodation to attend this meeting should contact the Ponce Inlet Town Hall at 236-2150 **at least 48 hours prior to the meeting** to request such assistance.*



Meeting Date: July 29, 2025

Agenda Item: 4

Report to Planning Board

Topic: Approval of Meeting Minutes

Summary:

Staff has prepared the attached set of Planning Board meeting minutes and submits for the Board's review and approval.

- A. June 24, 2025
- B. June 24, 2025 Special Planning Board meeting

Requested by:

Ms. Stewart, Assistant Deputy Clerk

Reviewed by:

Mr. Lear, Planning & Development Director

Approved by:

Mr. Disher, Town Manager



Town of Ponce Inlet

Planning Board

Regular Meeting Minutes

June 24, 2025

1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,
 2 Vice Chair Carney called the meeting to order at 2:00 p.m. in the Council Chambers, 4300 S.
 3 Atlantic Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance and a moment of
 4 silence in memory of late Board Chair Mike Kaszuba. He offered a few words of respect,
 5 highlighting Mr. Kaszuba's thoughtful leadership of the Board, noting that he was an inspiration
 6 to others.

7
 8 **2. ROLL CALL AND DETERMINATION OF QUORUM:** A quorum was established.

9
 10 Board members present:

11 Mr. Oebbecke, Seat #1
 12 Mr. Young, Seat #2; Chair
 13 Mr. Revak, Seat #3
 14 Mr. Cannon, Seat #4
 15 Mr. Carney, Seat #5; Vice Chair
 16 Ms. Vanderbeek, Alternate #1

17
 18 Staff present:

19 Mr. Lear, Planning & Development Director
 20 Ms. New, Town Attorney
 21 Ms. Rippey, Principal Planner
 22 Ms. Stewart, Assistant Deputy Clerk
 23 Mr. Wheatcraft, Senior Planner
 24

25 **3. ADOPTION OF AGENDA:** Vice Chair Carney explained that, following the passing of
 26 Chair Kaszuba, the Board is required to elect a new Chair. Mr. Oebbecke recommended deferring
 27 the election to the next meeting out of respect for Mr. Kaszuba and noting that the town has not
 28 yet publicly acknowledged the vacancy.

29
 30 Mr. Oebbecke moved to defer the election of a Chair to the next regularly scheduled meeting;
 31 seconded by Mr. Young. The motion PASSED, 5-0, consensus.
 32

33 Mr. Cannon requested the quasi-judicial worksheet be discussed under Item 10: Board Discussion.
 34 Vice Chair Carney reminded members that Item 7-B will be discussed at the 5:30 PM special
 35 Planning Board meeting today.

36
 37 Mr. Young moved to approve the amended agenda by removing Item 7-B and adding a discussion
 38 of the quasi-judicial worksheet to Item 10; seconded by Mr. Cannon. The motion PASSED, 5-0,
 39 consensus.
 40

41 **4. APPROVAL OF MINUTES:** Mr. Revak noted a correction to the address listed under
 42 Item 7-B, stating it should be 4915 S. Atlantic Avenue, not 4951.

43 **A. April 22, 2025**

44
45 Mr. Oebbecke moved to approve the April 22, 2025, meeting minutes as amended; seconded by
46 Mr. Cannon. The motion PASSED, 5-0, consensus.
47

48 **5. REPORT OF STAFF:** Mr. Lear announced that the Marine Science Center reopened to
49 the public today following a \$4.2 million renovation project that began last September.
50 Renovations included enhanced marine exhibits, expanded educational facilities, and upgraded
51 visitor amenities. He also reported that the Town Council awarded a consulting services contract
52 to Brizaga, Inc. for the development of an Adaptation Plan. This plan serves as a follow-up to the
53 previously completed Vulnerability Assessment and Watershed Master Plan and will outline
54 strategies to help the Town build resilience against climate-related hazards. The Adaptation Plan
55 will elaborate on the findings from both the Vulnerability Assessment and the Watershed Master
56 Plan and identify the most vulnerable sites as focus areas.
57

58 Mr. Lear introduced Mr. Larry Wheatcraft, Senior Planner.
59

60 **6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION:** None.
61

62 **7. HEARING OF CASES:**
63

64 **A. Application/Type: VAC 5-2025 Vacating an Easement**
65 **Address: 4915 S. Atlantic Avenue**
66 **Purpose: To allow a vacation of easement per Article IV., Section 70 of the**
67 **Code of Ordinances**
68

69 Ms. Rippey announced the applicant is Jessica Gow of the Cobb Cole law firm, who is present
70 today on behalf of the property owner, White Waves, LLC. Ms. Rippey provided a PowerPoint
71 presentation and explained that the applicant is requesting approval to vacate a drainage, access,
72 and utility easement located on the property at 4915 S. Atlantic Avenue to construct a single-
73 family structure. The area to be vacated measures 15 feet by 876 feet. Ms. Rippey provided
74 background on the subject project, noting that it was originally part of a minor replat that split a
75 larger parcel into three separate parcels; the two north parcels were later re-combined to create one
76 parcel (4915 S. Atlantic Avenue) for the construction of a new single-family home. The property
77 is zoned R-1 and has a corresponding Low-Density Single-Family Residential future land use
78 designation. The easement is situated in the center of the property; the other existing easements
79 shall remain in place along the north and south sides of the property.
80

81 Pursuant to Section 70-112 of the Code of Ordinances, the vacation request application materials
82 were provided to the Public Works Director, Police Chief, Fire Chief/Public Safety Director,
83 Town Engineer, and the City of Port Orange Public Utilities Department for review and comment;
84 the written responses identified no issues or concerns. The applicant submitted letters of no
85 objection from all applicable utility providers. The vacation will not negatively impact existing or
86 future utility infrastructure, access rights, or engineering-related concerns. Vice Chair Carney
87 inquired if the 15-foot easement on the side of the property would still be retained with this
88 vacation of easement in the center; Ms. Rippey confirmed it would be. Vice Chair Carney inquired
89 if the utilities would connect from the north or south easement of the property. Ms. Rippey replied
90 it is unknown at this time.

91 Ms. Jessica Gow of Cobb Cole, the applicant, explained that she previously appeared before the

Board in December 2021 on behalf of a prior owner, when three lots of record were created. She noted that the original plat predated the Town's requirement for a 7.5-foot utility easement. The current property owner has since purchased two of those lots and combined them to construct a single-family home. No utilities have been installed within the 7.5-foot easement, which will be preserved on the remaining sides of the property. Ms. Gow stated that, to her knowledge, existing utilities are located within the adjacent right-of-way and that future utility connections for the property will likely be made from the front of the property. Vice Chair Carney then opened the floor for public comment; no comments were offered.

Mr. Oebbecke recommended that the vacating an easement application (VAC 5-2025) per Article IV, Section 70 of the Code of Ordinances for 4915 S. Atlantic Avenue be forwarded to the Town Council with a recommendation of APPROVAL; seconded by Mr. Cannon. The motion PASSED 5-0, with the following vote: Mr. Oebbecke – yes; Mr. Cannon – yes; Vice Chair Carney – yes; Mr. Young – yes; Mr. Revak – yes.

8. BUSINESS ITEMS/PUBLIC HEARINGS: None.

9. PUBLIC PARTICIPATION: Vice Chair Carney opened public participation – there was none.

10. BOARD DISCUSSION: Mr. Cannon asked Attorney New whether the quasi-judicial worksheet is required by the Code of Ordinances and if similar forms are used by other municipalities for Board members to indicate how and why they voted on each criterion. Attorney New explained that not every municipality uses a worksheet specifically, but they still go through each criteria. She would have to research the Code, but she doubts that it is a requirement to use a specific worksheet; it is more of a best practices function because it is important nothing is missed. Mr. Lear stated he has not witnessed Planning Boards completing these forms previously and noted it was changed to variances only. Attorney New stated she will research the issue and bring back more information. Mr. Oebbecke explained that at one time, the Board voted against the Town staff's recommendation and no justification for that vote was given. The thought was if the Board members were going to vote against the Town staff's recommendation, there should be some explanation behind it; he believes that should still hold. Vice Chair Carney requested copies of the quasi-judicial forms be provided at the 5:30 PM meeting.

Vice Chair Carney referred to previous discussions held both at this meeting and with the Town Council regarding the approval of the farmer's market and that the criteria outlined in the Town's Code does not align with the types of vendors residents wish to see. Mr. Lear assured him those updates, along with several other amendments, are in progress, although it may be a few months before it is finalized.

11. ADJOURNMENT: The meeting was adjourned at 2:32 p.m.

Prepared and submitted by,

Draft

Debbie Stewart

Assistant Deputy Clerk

Attachment(s): None



Town of Ponce Inlet

Planning Board

Special Meeting Minutes

June 24, 2025

1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,
 2 Vice Chair Carney called the meeting to order at 5:30 p.m. in the Council Chambers, 4300 S.
 3 Atlantic Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

4
 5 **2. ROLL CALL AND DETERMINATION OF QUORUM:** A quorum was established.

6
 7 Board members present:

8 Mr. Oebbecke, Seat #1
 9 Mr. Young, Seat #2
 10 Mr. Revak, Seat #3
 11 Mr. Cannon, Seat #4
 12 Mr. Carney, Seat #5; Vice Chair
 13 Ms. Vanderbeek, Alternate #1
 14

15 Staff present:

16 Mr. Lear, Planning & Development Director
 17 Ms. New, Town Attorney
 18 Ms. Rippey, Principal Planner
 19 Ms. Stewart, Assistant Deputy Clerk
 20

21 **3. ADOPTION OF AGENDA:**

22
 23 Mr. Revak moved to approve the agenda as presented; seconded by Mr. Cannon. The motion
 24 PASSED, 5-0, consensus.
 25

26 **4. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION:** None.

27
 28 **5. HEARING OF CASES (Public hearings/Quasi-Judicial matters):**

29
 30 **A. Application/Type: SPEC 6-2025**
 31 **Address: 4884 Front Street**
 32 **Purpose: To approve a minor special exception pursuant to LUDC Section**
 33 **6.6.3 to allow a sightseeing boat base (not to exceed 50-passenger capacity)**
 34 **per Section 3.29**
 35

36 Mr. Lear provided a PowerPoint presentation and explained that the applicant, Vernon Kuftic, of
 37 Daytona Catamarans, LLC, requests approval of a minor special exception for a sightseeing boat
 38 base (not to exceed 50-passenger capacity) at Sea Love Boat Works Marina at 4884 Front Street.
 39 The applicant is seeking to change the location of his existing boat base operation (approved
 40 through a previous special exception) at 4936 S. Peninsula Drive. If approved, the sightseeing boat
 41 would use the existing dock and boat slip facilities at the property, with no new facilities proposed.
 42 Mr. Lear reviewed the special exception review process and provided a property overview. The

subject property is zoned B-2, Riverfront Commercial and lies within the Riverfront Overlay District (ROD). He explained that the B-2 riverfront commercial zoning district is intended to support small-scale, water-oriented commercial activity, in accordance with the Future Land Use element policies of the Comprehensive Plan.

Mr. Lear provided information regarding the vessel to be used, the “Arabella,” a 50’x28’ U.S. Coast Guard certified catamaran that can accommodate up to 48 passengers. The request to relocate from 4936 S. Peninsula Drive to the Sea Love Boat Works Marina is intended to provide access to a mooring site with deeper water, enhancing safety for customer boarding. The proposed use offers daily tours between 10:00 AM and 9:00 PM, with an anticipated average of one trip per day. The sightseeing operation will have one designated wet boat slip; the applicant provided a copy of the lease and designated parking lot location with the application. Mr. Lear explained that the parking lot is located north of Beach Street on the east side of Front Street. He noted that this is a non-conforming lot that may continue in its current condition, provided it is not enlarged or expanded. The lot is also used by Sea Love Boat Works Marina, Sea Spirit Deep Sea Fishing Charters and Waterproof Charters Fishing, leaving 28 spaces available for use by the applicant.

Mr. Lear reviewed the four specific criteria for sightseeing boat base operations outlined in Section 3.29.2 of the Land Use and Development Code (LUDC) and confirmed that the applicant met each one. He also reviewed the general criteria, including consistency with the Comprehensive Plan and the impact on surrounding areas and noted that all applicable criteria were satisfied. Based on the findings outlined in this memorandum, staff recommends approval of the minor special exception for the applicant to operate a sightseeing boat base at 4884 Front Street, subject to six conditions. These include limiting the use to one sightseeing boat base (not to exceed 50 passenger capacity) and requiring the allocation of 19 parking spaces within the Sea Love Boat Works Marina parking lot for the sightseeing operation. Vice Chair Carney asked for clarification regarding the non-conforming status of the parking lot. Mr. Lear explained that while the lot is properly zoned, it has existed in its current condition for decades and does not meet current development standards. that would be required if it was a new site, however the site can remain in its current condition as long as it is not enlarged or expanded. Members continued to discuss the parking lot’s non-conforming status.

Mr. Oebbecke referred to the email received from Mr. Klopfenstein, 4880 Sailfish Drive, regarding the parking lot and asked if it was relevant to this request. Mr. Lear explained that Mr. Klopfenstein lives adjacent to the parking area. Mr. Lear explained that if the parking lot owner was to come in with a new, vacant property, he would have to have a 35-foot buffer from the residential area, however, this was a non-conforming property long before that residential property was built. Mr. Lear explained it is this Board’s prerogative to place a condition on the special exception requiring a buffer. Mr. Revak asked if we could require vehicles to park facing the water; Mr. Lear explained that it would be difficult to enforce as Mr. Kuftic does not have ownership of the parking lot. Discussion ensued about what type of buffer currently exists and what type of buffer would be appropriate. Mr. Oebbecke suggested requiring as one of the conditions to the special exception, a natural buffer be created between the parking lot and that residence to allow for more privacy and noise abatement.

Vice-Chair Carney asked the applicant, Mr. Vernon Kuftic, if he wished to speak on his own behalf. Mr. Kuftic stated that based on recent emails, it appears the concern is related to vehicle lights. Vice Chair Carney confirmed that Mr. Kuftic leases parking spaces and therefore does not

91 control the parking lot. Mr. Kuftic added that he is willing to do what he can to address the issue;
92 he has operated in the Town for 14 years and is relocating a half a mile only due to shallow waters
93 causing the boat to run aground at its present location.

94
95 Vice Chair Carney opened public comment. Mr. Keith Stanton, 4886 Sailfish Drive, reported a
96 noticeable increase in parking activity in recent weeks. He questioned the lot's capacity for 60
97 vehicles, citing a photo showing approximately 40 cars. He suggested using the south side of Beach
98 Street for overflow parking, noting it is typically underutilized. Mr. Stanton also raised concerns
99 about vehicles parking near his property wall, stating that on three nights that week, individuals
100 remained in cars after 10:00 PM with headlights shining into his living room. If relocation is not
101 feasible, he recommended adding a buffer or screen. Ms. Stanton noted that the lot often floods,
102 so any buffer vegetation should be flood tolerant. She recommended installing directional signage
103 at each space to guide parking without reducing capacity. Citing the boat tour's 9:00 PM end time,
104 she observed that guests frequently linger—sometimes for hours, including one incident where a
105 car remained with headlights on until 3:00 AM. She also suggested some parking may be linked
106 to the dredging project.

107
108 Ms. Gretchen Nichols, of Alberta Avenue and owner of the vacant lot located at 4876 Sailfish
109 Drive, stated that if designated parking spaces are implemented, she recommends adding a berm
110 or similar elevation to raise palmettos and create a natural buffer. She inquired whether alcohol is
111 served on the boat. Mr. Kuftic responded that tickets include two drinks, either wine or soda. Ms.
112 Nichols then asked for confirmation that no changes can be made to the parking lot without another
113 meeting. Mr. Lear confirmed that the lot cannot be expanded or altered—only used as it currently
114 exists. Mr. Oebbecke asked whether the Board could restrict parking to 10:00 PM. Mr. Lear stated
115 that it is private property, and enforcement would be an issue. Mr. Lear suggested adding a
116 condition to include a buffer between the parking area and the adjacent neighbors to the east. Vice
117 Chair Carney shared that his concern is that the property owner is not here and the Board has not
118 heard from them. Mr. Cannon stated the application was submitted by the owner of the *Arabella*
119 but noted that the issue appears to be a lack of enforcement or oversight in the parking lot. He
120 recommended tabling the item until the next meeting to allow the parking lot property owner to be
121 present and either commit to policing the area or not. He emphasized that the Board cannot impose
122 requirements such as fencing or landscaping on a property owner who is not represented.
123 Discussion continued regarding what could be imposed on the property owner of the parking lot,
124 and what type of buffer or vegetation could be installed. Vice Chair Carney suggested to Mr.
125 Kuftic that he speak to the owner of the parking lot property and let them know of the issues he is
126 having; he does not think this Board is in a position to direct his customers where to park.

127
128 Mr. Cannon moved to continue the application for a minor special exception to LUDC Section
129 6.6.3 to allow a sightseeing boat base per Section 3.29 to the next regular scheduled meeting.

130
131 Mr. Cannon asked if a special meeting would be needed. Vice Chair Carney asked how long it
132 may take to contact the owner and hold a special meeting. Mr. Lear explained a special meeting
133 requires 48 hours' notice. Mr. Cannon asked if Mr. Kuftic could continue his business now as is;
134 he said he can except when it is low tide. Mr. Oebbecke suggested that in the interest of the business
135 owner (Mr. Kuftic) and the residents, to have a special meeting and invite the property owner of
136 the parking lot. Mr. Lear explained staff would need to check the calendar and then contact Board
137 members to coordinate availability.

Mr. Cannon moved to continue this item to a date to be determined [tabled]; seconded by Mr. Young. The motion PASSED 5-0, with the following vote: Mr. Cannon – yes; Mr. Young – yes; Vice Chair Carney – yes; Mr. Oebbecke – yes Mr. Revak – yes.

8. BUSINESS ITEMS/PUBLIC HEARINGS: None.

9. PUBLIC PARTICIPATION: Vice Chair Carney opened public participation – there was none.

10. BOARD DISCUSSION: None.

11. ADJOURNMENT: The meeting was adjourned at 6:15 p.m.

Prepared and submitted by,

Draft

Debbie Stewart

Assistant Deputy Clerk

Attachment(s): Email – K. Stanton
Email – Klopfenstein

Debbie Stewart

From: Debbie Stewart
Sent: Tuesday, June 24, 2025 12:46 PM
To: Debbie Stewart
Subject: FW: Special Exception Case Inquiry - Response

From: Keith Stanton <keithstanton1@yahoo.com>
Sent: Monday, June 23, 2025 4:14 PM
To: Patty Rippey <prippey@ponce-inlet.org>
Subject: Re: Special Exception Case Inquiry - Response

[EXTERNAL: This email was sent from outside of ponce-inlet.org, confirm this is a trusted sender before opening any links or attachments]

Thanks for the info. I looked at the code a bit and have some more questions, and some input.

It appears that the setback, buffer & screening requirements would apply in this case, so I would appreciate clarity on that.

Setback

From 4.7.5 Table 4-9 = 35'

Does that mean they cannot have an entrance or road within their parking lot within 35' of the shared property line?

Buffer yard

Figure 4-14b and 4.10.3

It appears the requirement is 4 trees and 20 shrubs for every 100 lineal feet and/or 80% coverage?

- Do the existing cabbage palms satisfy the tree requirement?
- Do they need to add shrubs? If so, can we request Saw Palmetto?

What does "one tree per 200sf of required landscaping area mean?

if the buffer yard is 35' x 100' does that mean they need 18 trees in that area?

Screening

Table 4-17 and 4.10.3

We are considering our options if this is an applicable requirement, but would an 8' be and acceptable request, especially considering the difference in height between the 2 properties?

I also wanted to share our own personal experience. Over the past 4 years the lot has been used sparingly and rarely any cars in the evening. The only activity was the Sea Spirit fishing boat charter that would have maybe 10 -15 cars max.

Over the past few weeks, we noticed a significant uptick in traffic. Then we saw the Fun Cat sailing sign so it appears they have started using the lot. I have attached a picture to show that the lot is now

essentially full with much greater traffic than we have ever seen. Also on three different occasions in just the last week, we have had people in the parking lot making noise and shining headlights into our living room past 10pm. (picture attached taken at 10:40pm) Maybe it's just coincidence but it is actually quite disruptive and frustrating.

Can we request they use the lot across the street on the south side of Beach St? (Picture attached) There is typically plenty of parking there, it is actually closer to the docking area and it is not adjacent to any residential properties.

Thanks for you help with this,
Keith







On Jun 18, 2025, at 3:35 PM, Patty Rippey <prippey@ponce-inlet.org> wrote:

Good afternoon,

Please see attachments as discussed by phone earlier and screening requirements below. The screening requirements are for new development but it would be up to the Planning Board to add conditions to the minor special exception, such as buffering of the parking area.

<image001.png>

Please let me know if you have additional questions or need additional information.

Thank you,

Patty Rippey, aicp
Principal Planner
Planning & Development Department
Town of Ponce Inlet
4300 S. Atlantic Avenue
Ponce Inlet, Florida 32127
prippey@ponce-inlet.org
(386) 236-2172

<image002.png>

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

PLEASE NOTE: Florida has very broad public records laws. Most written communication to or from the Town of Ponce Inlet officials and employees regarding public business are public records available to the public and media upon request. Your e-mail communications may be subject to public disclosure. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

<Staff Report - SPEC 006-2025 4894 Front Street Daytona Cat-Final
.pdf><6.6.3__Special_exceptions..pdf>

Debbie Stewart

From: Debbie Stewart
Sent: Tuesday, June 24, 2025 2:57 PM
To: Debbie Stewart
Subject: FW: #spec 6-2025 comment

From: Pete Klopfenstein <peteklop@pm.me>
Sent: Tuesday, June 24, 2025 2:43 PM
To: Patty Rippey <prippey@ponce-inlet.org>
Subject: #spec 6-2025 comment

[EXTERNAL: This email was sent from outside of ponce-inlet.org, confirm this is a trusted sender before opening any links or attachments]

Hi Ms Rippey,

I live at 4880 Sailfish Dr and received notice about a rezoning for the Daytona catamaran's LLC. I came at 2:00 today but the meeting had been rescheduled after I arrived. I have to go to work now. I'm a new owner within the last year and may not know the particulars of zoning exactly. Just going off what the previous owner mentioned to me. So I'm sorry if the info is wrong or old. In any case, please add my comment to the file on this special exception request.

"My concern, as an owner whose property abuts the parking area for the boating businesses, is that there is no setback from my property line to their property line. My understanding is that there should be a 35 foot setback between our lines. However at present, the parking lot is my backyard. I would like this for this to be addressed when this adjustment to the zoning is made, please."

Thanks so much,

Pete Klopfenstein



Meeting Date: July 29, 2025

Agenda Item: 7-A

Report to Planning Board

Topic: Minor Special Exception
SPEC 6-2025
4884 Front Street

Summary:

To allow a minor special exception pursuant to LUDC Section 6.6.3 to allow a sightseeing boat base per Section 3.29.

Suggested motion:

Approval, subject to the conditions in the staff report.

Requested by:

Ms. Rippey, Principal Planner

Reviewed by:

Mr. Lear, Planning & Development Director

Approved by:

Mr. Disher, Town Manager



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 citizens obtain the greatest value for their tax dollar.

To: Planning Board

From: Patty Rippey, Principal Planner

Through: Darren Lear, AICP, Planning & Development Director

Date: July 21, 2025

Subject: Minor Special Exception request for Daytona Catamarans, LLC
Case No. SPEC 006-2025

REQUEST:	To approve a minor special exception to allow a sightseeing boat base, not to exceed 50 passenger capacity, to operate out of Sea Love Boat Works marina.
LOCATION:	4884 Front Street (Sea Love Boat Works marina property)
APPLICANT:	Vernon Kuftic, applicant, owner of Daytona Catamarans, LLC
STAFF RECOMMENDATION:	Approval , based on the findings listed in this memorandum
MEETING DATE:	July 29, 2025

INTRODUCTION

The applicant, Vernon Kuftic, requests approval of a minor special exception for a sightseeing boat base (not to exceed 50 passenger capacity) at Sea Love Boat Works marina. If approved, the applicant intends to operate a sightseeing boat, using the existing dock and boat slip facilities at the property. The subject property is located on the Halifax River, at 4884 Front Street (**Attachment A**), in the “B-2” (Riverfront Commercial) zoning district and “ROD” (Riverfront Overlay District). This is a change of location from a previously approved special exception (SE 08-01) by the same owner for a sightseeing boat base at 4936 S. Peninsula Drive.

SPECIAL EXCEPTION REVIEW PROCESS

The Land Use and Development Code (LUDC) defines special exceptions as uses that would not be appropriate without restriction throughout a particular zoning classification but that would not adversely affect the public health, safety, or general welfare, if controlled in number, area, location, relation to the surrounding area. For those reasons, special exceptions require a comprehensive

review at a public hearing, must meet specific criteria for approval, and may necessitate specific conditions to mitigate any potential adverse impacts to protect the public interest.

The special exception review process is described in Section 6.6.3 of the LUDC. Minor special exceptions can be approved by the Planning Board, while major special exceptions require approval from the Town Council. Following staff review, the minor special exception application is heard by the Planning Board at a duly noticed public hearing. The Board shall approve, deny or approve the application with conditions based on staff analysis of the application, testimony from the applicant, adjacent property owners, and the public.

PROPERTY OVERVIEW

The Sea Love Boat Works marina property, from which the Daytona Catamarans, LLC business is proposed to operate, is approximately 4.3 acres in size. The proposed use of the site, boat slip and dock area for loading is shown on **Attachment B**. It has a future land use designation of *Riverfront Commercial*, is zoned “B-2” (Riverfront Commercial), and lies within the “ROD” (Riverfront Overlay District). The properties to the east and north have “R-1” residential zoning and are developed with single-family residential homes. The Town’s Historical Museum is located east of the subject location and is zoned “P/I” Public Institutional. The properties to south are zoned “MF-2” (High Density Multi-Family Residential) and “B-2” (Riverfront Commercial). The zoning map is provided in **Attachment C** and the Future Land Use Map is provided in **Attachment D**.

The Sea Love Boat Works marina property has 24 wet boat slips and 53 dry boat slips. There are several businesses operating at this site, most of which are water-dependent uses. The marina services include boat maintenance, repair, boat slip rental, dockage, and fueling. Sea Spirit Deep See Fishing Charters and Waterproof Charters Fishing vessels also operate from the marina property. The Down the Hatch restaurant is located on an adjacent parcel and is under the same ownership as the marina.

USE PROPOSAL

According to the applicant’s letter of request (**Attachment E**), the proposed use on the property includes docking and loading for a passenger sightseeing boat, the “ARABELLA.” The Arabella is a 50' x 28' Catamaran. The vessel is US Coast Guard Certified to accommodate up to 48 passengers, Arabella offers an abundance of deck and open mesh “trampoline” area between the hulls. The applicant notes that the request for the change of location from 4936 S. Peninsula Drive to the Sea Love Boat Works marina is to access a mooring site with deeper water, making it safer for customers to board the vessel.



Pictured above: The “Arabella”

Daytona Catamarans, LLC, offers tours daily between the hours of 10 am and 9 pm. It averages about 1 trip per day but occasionally has 2 trips per day. There is one USCG certified captain and one crew member on most trips. For trips exceeding 20 people, one additional crew member is added.

The minor special exception application indicates that the existing facilities at Sea Love Boat Works marina can support the use and that no new development will take place. The sightseeing operation will have one designated wet boat slip. The applicant provided a copy of the lease and designated parking lot location with the application. The large parking area located north of Beach Street on the east side of Front Street (4877 Front Street) consists of approximately 60 parking spaces. Seven of these spaces are required for employees of Sea Love Boat Works marina, with 20 for Sea Spirit Deep Sea Fishing Charters passengers and crew, and 5 for Waterproof Charters Fishing passengers and crew. This leaves 28 parking spaces to be utilized by the applicant. The vessel capacity requires a minimum of 19 parking spaces pursuant to LUDC Section 4.7.8. The available parking is therefore adequate for the proposed minor special exception use.

The “B-2” (Riverfront Commercial) zoning district is intended to support small-scale water-oriented commercial activity, in accordance with the Future Land Use Element policies of the Comprehensive Plan. To that end, the “B-2” district allows a variety of water-dependent and water-enhanced uses. Types of boat uses include, but are not limited to:

- Boat or vessel rental; charter fishing boats
- Boat or vessel sales, service, and construction
- Sightseeing boat base (not to exceed 50-passenger capacity)

The first two categories are permitted uses, while a sightseeing boat base, not to exceed 50 passenger capacity, requires a minor special exception approval in the B-2 zoning district (LUDC Section 2.40 Table of Permitted Uses).

REVIEW OF SPECIAL EXCEPTION CRITERIA

Every special exception must meet criteria specific to its use, along with general criteria applicable to all development applications. These criteria are discussed below.

Specific criteria for sightseeing boat base operations (Section 3.29.2)

- 1. The parcel proposed for development has direct access to water of at least four feet below mean sea level at mean low tide.**

Applicant's Response: The property has direct access to water that is deeper than four feet at low tide. This criterion is met.

Staff's Response: The subject property has direct water access to the Halifax River and meets the water depth requirement of at least four feet at mean low tide according to available tide tables. To verify the water depth, the applicant provided photographs of the vessel's depth gauge at low tide on May 6, 2025. The depth of the water where the boat is to be docked is approximately 17 feet at mean low tide. This criterion is met.

- 99 **2. All outside storage areas are screened from adjacent uses and properties by a solid wall,**
100 **fence or plant material. If said screening is to be comprised of plant material, it shall**
101 **form a screen of at least 75 percent opacity at the time of installation.**
102

103 Applicant's Response: Outside storage areas will not be necessary to operate and no other
104 buildings are to be constructed. This criterion is met.
105

106 Staff's Response: There will be no outside storage areas used. If outside storage areas are not
107 being used or proposed, then screening of such areas is not required. This criterion is met.
108

- 109 **3. The parcel proposed for development shall be separated from any established**
110 **residential use or residentially zoned property by a bufferyard in accordance with**
111 **section 4.10.3 of this code.**
112

113 Applicant's Response: The vessel will be kept in the water at its dock and will not affect the
114 neighborhood which is mainly commercial in nature, nor the value of land and surrounding
115 structures. This criterion is met.
116

117 Staff's Response: There is no new development proposed for the parcel. The boat will be
118 docked at the existing developed Sea Love Boat Works marina and is separated from
119 established residential areas by Down the Hatch Restaurant, parking lots, and existing
120 vegetation. The nearest residential uses are separated from the subject property by other
121 waterfront commercial uses and open water. This criterion is met.
122

- 123 **4. Any building or structure proposed to be constructed that is necessary for the**
124 **sightseeing boat operation (e.g., ticket sales, office, maintenance, etc.) shall be not less**
125 **than 200 square feet and not exceed 2,000 square feet in floor area.**
126

127 Applicant's Response: No other buildings are to be constructed. This criterion is met.
128

129 Staff's Response: No new buildings or structures will be constructed for the Daytona
130 Catamarans, LLC boat tour operation. All tours are booked online through the website
131 (www.funcatsailing.com) and no management, office or ticketing activity will occur on the
132 property. This criterion is met.
133

134 ***General criteria for all development applications (LUDC 6.3.6.F)***

135 The Planning Board shall review all applications for compliance with the following general
136 criteria:
137

- 138 **1. Consistency with comprehensive plan.** The development order shall be consistent with the
139 comprehensive plan and the future land use map. A finding of consistency with all elements
140 of the plan is required.
141

142 Applicant's Response: The proposed Special Exception will enhance the existing water
143 oriented commercial uses currently permitted on the property by adding another dimension
144 to the access to the river and ocean. This criterion is met.
145

146 Staff's Response: As stated in Chapter II, Future Land Use Element of the Comprehensive
147 Plan, the *Riverfront Commercial* future land use category shall include "land and water-

oriented uses and activities that reflect and enhance the unique character of the waterfront, preserve and protect both physical and visual access to the waterfront, and create a water-oriented environment wherein town residents and visitors can mingle in harmony and mutually enjoy the town's unique waterfront heritage.” Recreational and working waterfront uses shall be given preference in this land use category and are defined as "parcels and/or facilities that are open to the public and offer public access by vessels to the waters of the state, or that are support facilities for recreational, commercial, research, or government vessels.” The requested use is also consistent with related policies in Chapter VI, Coastal Management and Conservation Element, which promotes public access to the river and water dependent uses along the shoreline and does not conflict with policies outlined in the other chapters. The addition of the Daytona Catamarans, LLC sightseeing boat base, is anticipated to enhance the existing water-oriented commercial uses currently permitted on the property and provide another opportunity to access the Town’s waterways. Therefore, staff finds the proposed special exception for the Daytona Catamarans, LLC sightseeing boat to be consistent with the Comprehensive Plan. This criterion is met.

- 2. Impact on surrounding area.** The development order shall be consistent with the proposed use(s), intensity, density, scale, mass, bulk, height, lot configurations, architecture and building orientation of the surrounding uses (if applicable) and the intensity, density and scale of surrounding development.

Applicant’s Response: The vessel will be kept in the water at its dock and will not affect the neighborhood, which is mainly commercial in nature. This criterion is met.

Staff’s Response: The sightseeing boat base will be located within the existing marina development. No new construction is needed or proposed to support the use. There is a significant number of other water-dependent businesses operating along the river within the marina along with a waterfront restaurant. Due to the nature of the businesses already operating from this location, staff finds that the addition of this boat will not alter the character of the area and is not expected to adversely affect the surrounding properties. This criterion is met.

- 3. Impact on evacuation times.** Resulting development shall not occur in amounts, types or locations that would cause an increase in the number of travel through-lanes or total evacuation times to exceed those established in the comprehensive plan's Coastal Management Element. The town shall ensure that it maintains out-of-county hurricane evacuation times for a Category 5 storm event as measured on the Saffir-Simpson scale for the total population of the town. These evacuation times shall be no more than 16 hours from the time of first official order to evacuate.

Applicant’s Response: The business has been operating in Ponce Inlet for 14 years and has never caused the local traffic to be adversely affected. This criterion is met.

Staff’s Response: The proposed use is not adding to the residential population that would need to be evacuated in advance of a hurricane. Staff does not anticipate that the proposed tour boat operation will adversely affect evacuation times. This criterion is met.

- 195 4. **Compliance with consistency and concurrency standards.** When required, the
196 development order shall include a finding of consistency with article 5, Consistency and
197 concurrency standards.
198

199 Applicant's Response: The business has been operating in Ponce Inlet for 14 years. There
200 will be no outside storage or any additional buildings to be constructed. This criterion is met.
201

202 Staff's Response: Relocating the business will not change or increase the impact to public
203 facilities or services. This criterion is met.
204

- 205 5. **Consistent with prior approvals.** The development order shall be consistent with the terms
206 and conditions of any prior plan or plat approval, as applicable, including without limitation
207 an approved phasing plan for development and installation of public improvements and
208 amenities.
209

210 Applicant's Response: There will be no outside storage or any additional buildings to be
211 constructed. This criterion is met.
212

213 Staff's Response: The Daytona Catamarans, LLC sightseeing boat, will utilize one existing
214 wet boat slip, the dock area, and up to 19 parking spaces that were originally developed with
215 the Sea Love Boat Works marina. This use will be consistent with all prior plan and permit
216 approvals. This criterion is met.
217

- 218 6. **Compliance with use and development standards.** The development order shall comply
219 with all applicable use standards, site development standards, design standards, subdivision
220 standards, public improvement standards, floodplain management standards, and all other
221 applicable substantive standards stated in this code.
222

223 Applicant's Response: There will be no outside storage or any additional buildings to be
224 constructed. This criterion is met.
225

226 Staff's Response: This use requires no additional development or improvements to the site.
227 This criterion is met.
228

- 229 7. **Compliance with other applicable regulations.** The proposed development shall comply
230 with all other applicable regulations, standards, requirements, or plans of the town, county,
231 federal or state governments and other relevant jurisdictions.
232

233 Applicant's Response: "Fun Cat Sailing" (Daytona Catamarans, LLC) has been operating in
234 the core area for 14 years. This criterion is met.
235

236 Staff's Response: The Daytona Catamarans, LLC sightseeing boat business, will be required
237 to file for a business tax receipt with the Town and maintain all State licensing for operation
238 of the tour boat. This criterion is met.
239

- 240 8. **Minimizes adverse fiscal impacts.** The minor special exception development order shall
241 not result in significant adverse fiscal impacts on the town.
242

Applicant's Response: The vessel will be kept in the at its dock and will not affect the neighborhood, which is mainly commercial in nature, nor the value of land and surrounding structures. This criterion is met.

Staff's Response: The proposed tour boat business is not expected to have adverse fiscal impacts on the Town. This criterion is met.

ADDITIONAL INFORMATION

At the regularly scheduled Planning Board meeting on June 24, 2025, the Board moved to carry the meeting over to a date to be determined [tabled]; 5-0, consensus.

Based on the Board's discussion, staff visited the parking lot on July 3, 2025 at approximately 9:30 a.m. to observe the parking demand. Nineteen cars were parked in the marina parking lot at the time of the staff visit. There were approximately 60 parking spaces total, 34 with concrete wheel stops and several others with continuous tubular wheel stops. No cars were parked on the east side of the lot adjacent to homes on Sailfish Drive. Images are included in **Addendum A**.

While on site, staff communicated with two marina employees who indicated that Gator Dredging (contractor for the County of Volusia dredging/beach renourishment project) began parking in the lot at the start of the dredging project. This is likely to account for the recent increase in vehicles, noise, and lights in the parking lot. The applicant noted that Gator Dredging has been notified not to back into parking spaces and to stop loitering in the parking lot after work.

Staff contacted the property owner, Stephen Petersen, by email to inquire about the following options to address resident's concerns.

Options

1. Addition of a vegetative buffer along east property lines between parking lot and homes abutting the lot.
2. Installation of a fence along east property line between parking lot and homes abutting the lot.
3. Provide an alternative parking site across Beach Street (south side of Beach Street and north side of Front Street).
4. Make no improvements.

Mr. Petersen indicated he will attend the July 29, 2025 meeting.

PUBLIC NOTICE

A letter notifying the surrounding property owners of the special exception public hearing was mailed on July 8, 2025, via certified mail. The property was posted on July 14, 2025, with a notice stating the date and time of the Planning Board meeting. The Planning Board meeting was noticed in the *Daytona Beach News-Journal* on July 21, 2025. These efforts were made to ensure that the surrounding property owners were aware of the application and for them to have an opportunity to voice any concerns and requests.

Staff received correspondence from Sailfish Drive residents Barbara Davis and Keith Stanton, included (**Addendum B**).

CONDITIONS

Pursuant to LUDC Section 6.6.3, the Planning Board may impose additional conditions or safeguards deemed necessary on the granting of any special exception. Violation of any such condition or safeguards is deemed a violation of this code. The Planning Board may revoke the special exception permit upon finding that there have been material violations of any of the Code criteria or conditions of approval, or that the conduct of the owner and any occupant constitutes a public nuisance. The town may institute legal or equitable proceedings to revoke the special exception permit. Applicants who have had their permit revoked may not apply for another special exception permit for two years after the revocation date.

As noted above, special exception uses are acceptable in limited numbers and under certain conditions deemed necessary to protect the public health, safety and welfare. Such conditions should pertain to the size, scope, location and proper safety standards for this type of business necessary to ensure that it does not endanger the public or become a nuisance. Staff's recommendation and conditions are provided below.

RECOMMENDATION

Based on the findings of this memorandum, Staff recommends **approval** of the minor special exception for Sea Love Boat Works marina to operate a sightseeing boat base at 4884 Front Street, subject to the following conditions.

- a. The minor special exception use is limited to one sightseeing boat base (not to exceed 50 passenger capacity).
- b. The mooring site shall have direct access to water of at least four feet below mean sea level at mean low tide.
- c. One wet slip shall be assigned to this use from the total number of wet slips allotted to Sea Love Boat Works marina.
- d. Sea Love Boat Works marina shall allocate 19 parking spaces in its parking lot for the sightseeing boat base use.
- e. Any proposed relocation of this use elsewhere in the Town shall be reviewed as a new special exception application.
- f. The applicant shall maintain all applicable federal, state, and local licenses and a valid business tax receipt with the Town.
- g. The property owner shall improve the parking lot by organizing the parking wheel stops to clearly delineate the 60 parking spaces in the parking lot.
- h. The property owner shall install a buffer, either vegetative or a fence, between the parking lot and residential lots where no existing buffer is present. The vegetative screening shall be salt and flood tolerant. Should a fence be used for screening, the fence must comply with the Land Use and Development Code.

337
338



339
340

July 21, 2025

341 Patty Rippey, Principal Planner

342
343

344 Attachments:

- 345 A. Location map
346 B. Site Plan
347 C. Zoning Map
348 D. Future Land Use Map
349 E. Applicant's letter of request
350

351 Addendums:

- 352 A. Aerial Images/Photographs
353 B. Correspondence



Case No.: SPEC 006-2025

Applicant: Vernon Kufic, owner of Daytona Catamarans, LLC

Property Address/Location: 4884 Front Street

Summary of Request: Approving a special exception to allow a site-seeing boat base, not to exceed 50 passengers, to operate out of Sea Love Boat Works marina.



ATTACHMENT A

LOCATION MAP

TOWN OF PONCE INLET





Case No.: SPEC 006-2025

Applicant: Vernon Kufic, owner of Daytona Catamarans, LLC

Property Address/Location: 4884 Front Street

Summary of Request: Approving a special exception to allow a site-seeing boat base, not to exceed 50 passengers, to operate out of Sea Love Boat Works marina.



ATTACHMENT B

SITE PLAN

TOWN OF PONCE INLET





Case No.: SPEC 006-2025

Applicant: Vernon Kuftic, owner of Daytona Catamarans, LLC

Property Address/Location: 4884 Front Street

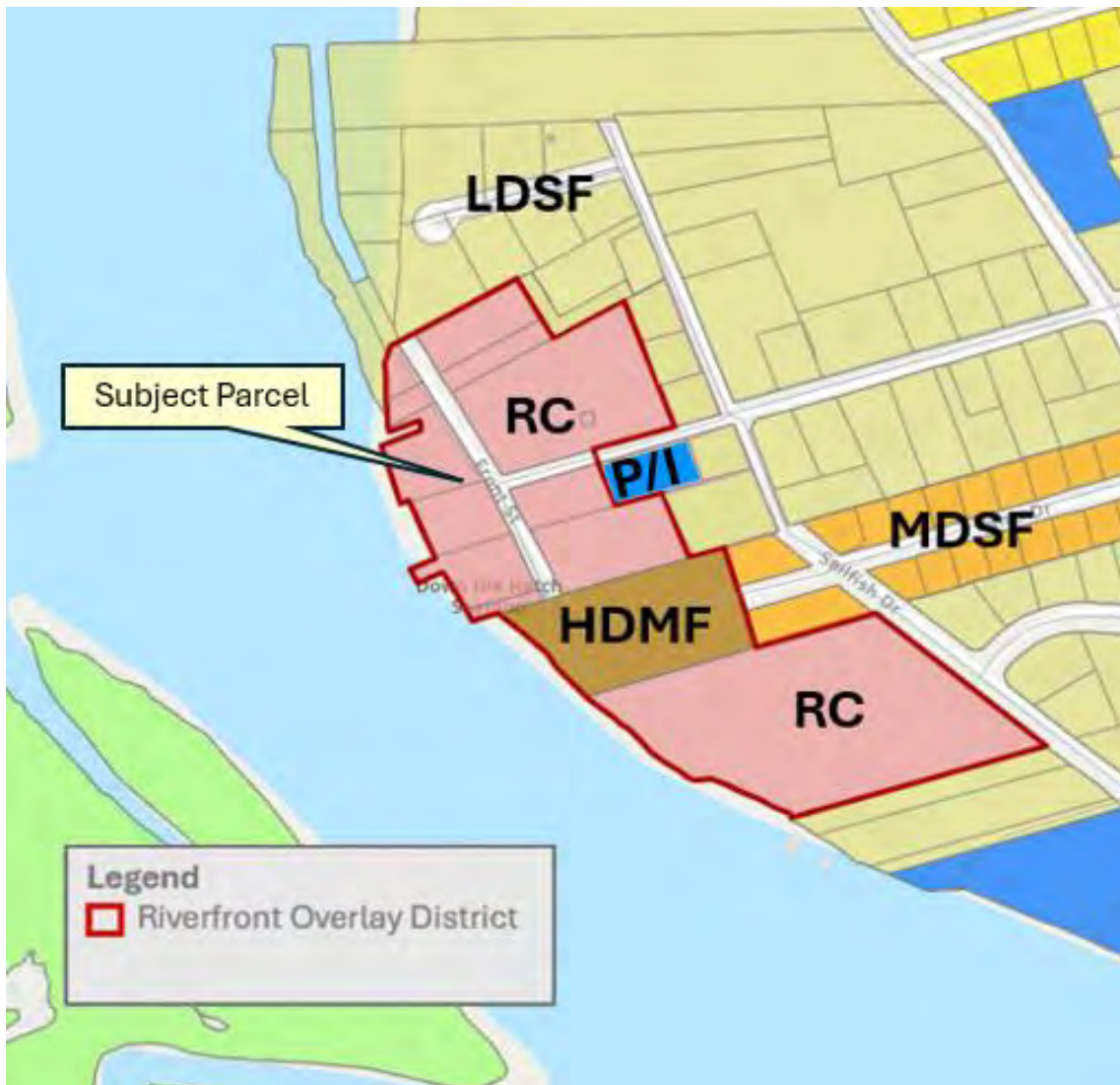
Summary of Request: Approving a special exception to allow a site-seeing boat base, not to exceed 50 passengers, to operate out of Sea Love Boat Works marina.



ATTACHMENT C ZONING MAP

TOWN OF PONCE INLET





Case No.: SPEC 006-2025

Applicant: Vernon Kufic, owner of Daytona Catamarans, LLC

Property Address/Location: 4884 Front Street

Summary of Request: Approving a special exception to allow a site-seeing boat base, not to exceed 50 passengers, to operate out of Sea Love Boat Works marina.



ATTACHMENT D
FUTURE LAND USE MAP
TOWN OF PONCE INLET



ATTACHMENT E

SPECIAL EXCEPTION WRITTEN PETITION 2025

Daytona Catamarans / DBA: Fun Cat Sailing

1. This request is consistent with the purpose and intent because the code does allow by "Special Exception" this type of business. In accordance with LUDC 5:35 section J, the vessel carries less than 50 passengers- The property has direct access to water that is deeper than four feet at low tide, outside storage areas will not be necessary to operate and no other buildings are to be constructed. The proposed Special Exception will enhance the existing water oriented commercial uses currently permitted on the property by adding another dimension to the access to the river and ocean
2. Working waterfronts have been discussed during Comprehensive plan hearings. This is a water activity that enhances both physical and visual access to the waterfront creating a water-oriented environment wherein residents can mingle and enjoy the Town's unique waterfront heritage. The vessel is to be used on the ocean as well as the river.
3. The sailing charter is and activity that allows the general public to safely enjoy the beauty of Ponce inlet from its waterway.
4. This request meets all expressed requirements of the applicable special exception,
5. The vessel has a current U.S.C.G certification and meets all requirements by the federal, state and local governments.
6. The business has been operating in the town of Ponce Inlet for 14 years and has never caused the local traffic to be adversely affected. By moving the business north to a location that is off the main road, traffic will have the tendency to decrease. A bus is available for parties over 10.
7. The main concept of this charter business is to offer the general public a safe, quiet and tranquil way of viewing the landscape of Ponce Inlet. A U.S.C.G. certified captain is required to operate the vessel under coast guard safety rules and regulations at all times while customers are onboard.
8. The vessel will be kept in the water at its dock and will not affect the neighborhood, which is mainly commercial in nature, nor the value of land and surrounding structures.
9. Arabella is a beautiful vessel that enhances the town's scenic beauty. It is quiet, echo-friendly and she uses wind to maneuver the waterways.
10. "Fun Cat Sailing" has been operating professionally in the core area for 14 years. The activity is exactly the type of business you would expect to find in in our little town and it is a wonderful way to showcase the peaceful serenity of Ponce Inlet.

ADDENDUM A
AERIAL IMAGES/ PHOTOGRAPHS



*Figure 1 Aerial image of Sea Love Boat Works Marina
parking lot east of Front Street and north of Beach Street*



*Figure 2 Aerial image closeup of Sea Love Boat Works Marina
east of Front Street and north of Beach Street*



Figure 3 Marina parking lot looking east towards the residential property on the corner of Beach Street and Sailfish Drive



Figure 4 Marina parking lot looking northeast



*Figure 5 East property line of the parking lot
and wall on west property line of residential property*



Figure 6 Existing tree buffer on east side of parking lot along residential wall



Figure 7 Residential fence on east side of marina parking lot



Figure 8 Existing tree buffer along east side of parking lot



Figure 9 Vegetative buffer on east side of parking lot



Figure 10 Vegetative buffer on east side of parking lot



Figure 11 View of parking lot looking south towards museum



Figure 12 View of parking lot looking north



Figure 13 View of parking lot looking north from Beach Street



Figure 14 View of parking lot looking southwest towards Beach Street



Figure 15 View of parking lot looking north



Figure 16 View of parking lot looking northwest

ADDENDUM B CORRESPONDENCE

Patty Rippey

From: Keith Stanton <keithstanton1@yahoo.com>
Sent: Monday, June 23, 2025 4:14 PM
To: Patty Rippey
Subject: Re: Special Exception Case Inquiry - Response

Follow Up Flag: Follow up
Flag Status: Completed

[EXTERNAL: This email was sent from outside of ponce-inlet.org, confirm this is a trusted sender before opening any links or attachments]

Thanks for the info. I looked at the code a bit and have some more questions, and some input.

It appears that the setback, buffer & screening requirements would apply in this case, so I would appreciate clarity on that.

Setback

From 4.7.5 Table 4-9 = 35'

Does that mean they cannot have an entrance or road within their parking lot within 35' of the shared property line?

Buffer yard

Figure 4-14b and 4.10.3

It appears the requirement is 4 trees and 20 shrubs for every 100 lineal feet and/or 80% coverage?

- Do the existing cabbage palms satisfy the tree requirement?
- Do they need to add shrubs? If so, can we request Saw Palmetto?

What does "one tree per 200sf of required landscaping area mean?
if the buffer yard is 35' x 100' does that mean they need 18 trees in that area?

Screening

Table 4-17 and 4.10.3

We are considering our options if this is an applicable requirement, but would an 8' be and acceptable request, especially considering the difference in height between the 2 properties?

I also wanted to share our own personal experience. Over the past 4 years the lot has been used sparingly and rarely any cars in the evening. The only activity was the Sea Spirit fishing boat charter that would have maybe 10 -15 cars max.

Over the past few weeks, we noticed a significant uptick in traffic. Then we saw the Fun Cat sailing sign so it appears they have started using the lot. I have attached a picture to show that the lot is now essentially full with much greater traffic than we have ever seen. Also on three different occasions in just the last week, we have had people in the parking lot making noise and shining headlights into our living room past 10pm. (picture attached taken at 10:40pm) Maybe it's just coincidence but it is actually quite disruptive and frustrating.

Can we request they use the lot across the street on the south side of Beach St? (Picture attached) There is typically plenty of parking there, it is actually closer to the docking area and it is not adjacent to any residential properties.

Thanks for you help with this,
Keith

Patty Rippey

From: Keith Stanton <keithstanton1@yahoo.com>
Sent: Wednesday, July 2, 2025 9:01 AM
To: Patty Rippey
Subject: Re: Special Exception Case Inquiry - Response

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL: This email was sent from outside of ponce-inlet.org, confirm this is a trusted sender before opening any links or attachments]

Hi Patty,

I just wanted to follow up with you on the number of parking spots in the lot next door. On the application they claimed 60 available spots. I counted the spots using 8.5-9' width and there are *technically* 51 spot (including 4 Handicap). However due to the nature of the lot (roads, trees and no lines) there are *functionally* 42 spots. On several occasions I counted the cars in the lot when it was full and it has not exceeded 40. So realistically there are more like 40 spots in the lot, not the 60 they are claiming.

I do think that is factor in approving this variance since they are supposedly allocating parking spots that don't exist. When the lot gets full is when people start getting creative.

Thanks,
Keith

Patty Rippey

From: Barbara Davis <barbaracdavis@gmail.com>
Sent: Tuesday, July 1, 2025 11:37 AM
To: Darren Lear; Patty Rippey
Subject: 4884 Front Street

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL: This email was sent from outside of ponce-inlet.org, confirm this is a trusted sender before opening any links or attachments]

At the June 24 5:30 p.m. special meeting about the special exception at 4884 Front Street, Darren said this was a nonconforming lot which would not be enlarged or expanded.

There was an issue about the bufferyard and section 4.10.3

Question:

-on Archived Permits there are is nothing under "F" for Front Street so no history of any permits for 4884 Front Street. How was this lot designated non-conforming and where are the permits for the prior buildings that are/were there and for the parking lot?

-there used to be a large buffer between the parking lot and the residences on west Sailfish. This was removed and Ed Parda at 4880 Sailfish filed several complaints.

-If a 35' buffer is required between B-2 and R-1, how could this parking lot have been permitted and if the buffer is removed, how can it now be considered "non-conforming" and not require a buffer?

-This parking lot floods even at King tides. Lack of bufferyard exposes Sailfish and the residential area to flooding.

Thank you.

Barb Davis
4871 Sailfish Drive



Meeting Date: July 29, 2025

Agenda Item: 8-A

Report to Planning Board

Topic: Amending Articles 3 and 10 of the Land Use and Development Code (LUDC)

Summary:

To amend Articles 3 and 10 of the Land Use and Development Code (LUDC) related to rental registrations and inspections.

Suggested motion: Approval

Requested by:

Mr. Lear, Planning & Development Director

Reviewed by:

Mr. Lear, Planning & Development Director

Approved by:

Mr. Disher, Town Manager



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 residents obtain the greatest value for their tax dollar.

To: Planning Board

From: Darren Lear, AICP, Planning & Development Director

Date: July 14, 2025

Subject: Amending Articles 3 and 10 of the Land Use and Development Code (LUDC) related to rental registrations and inspections.

MEETING DATE: July 29, 2025

1 INTRODUCTION

2 On April 5, 2024, a code enforcement case was initiated against the owners of a single-family
 3 residential property for operating a rental dwelling without the required permit. During the “Public
 4 Participation” segment of the regular Town Council meeting held on April 18, 2024, one of the
 5 owners expressed his concerns regarding the Town’s rental policies, specifically addressing the
 6 fee structure for long-term versus short-term rentals.

7
 8 On May 31, 2024, the owners were issued a code enforcement Notice of Violation (NOV) with a
 9 compliance deadline of June 14, 2024. Prior to the scheduled Code Enforcement Board meeting
 10 on July 22, 2024, written objections and legal arguments challenging the NOV were submitted by
 11 the property owners, citing potential preemption in Chapter 83, Part II of the Florida Statutes which
 12 relates to the landlord-tenant relationship and residential tenancies. After reviewing the materials,
 13 the Town’s Code Enforcement Attorney determined that the issues raised merited further legal
 14 clarification. As a result, he recommended seeking an opinion from the Florida Attorney General,
 15 and the Town elected to withdraw the code case at that time. The Town subsequently suspended
 16 its Rental Permit Program (RPP) for long-term rentals pending the identification of a suitable
 17 resolution.

18
 19 On August 22, 2024, the Town Council authorized the Town Attorney to request a legal opinion
 20 from the Florida Attorney General regarding the issue. The formal request (**Attachment 1**) was
 21 submitted to the Attorney General’s Office in October 2024.

22
 23 In January 2025, the Town received a response from the Attorney General (**Attachment 2**)
 24 declining to provide a formal opinion on this matter. Town Council directed the Town Attorney to

move forward with suggested code amendments pursuant to Attorney Smith’s memo (**Attachment 3**) at the regularly scheduled meeting on May 15, 2025.

DISCUSSION

In accordance with Town Council’s direction, the proposed amendments to the LUDC (**Attachment 4**) have been drafted by the Town Attorney to more precisely articulate the procedures, requirements and regulatory framework applicable to rental properties. These amendments are intended to remove the parts of the regulations that could potentially be found in conflict with Florida Statutes while preserving the portions relevant to the Town’s RPP.

Because amendments are proposed for both the Code of Ordinances and the LUDC, two separate ordinances will be presented to Town Council for consideration. However, in accordance with the Town's procedures, the proposed LUDC amendments must first be reviewed by the Planning Board, which will provide a recommendation to Town Council.

Articles 3 and 10 amendments are related to the following:

- Removal of Section 3.18.4 “General regulations”;
- Revising the description of how the rental permit and inspection fees are calculated, and adding a requirement that a permit be filed before rentals commence in Section 3.18.5 “Fees and application schedule”;
- Removal of Section 3.18.7 “Annual reporting requirements”;
- Revising information required for applications in Section 10.1.10. “Rental permit applications”.

BACKGROUND

In September 2003, the Town of Ponce Inlet took a significant step toward enhancing public safety, preserving neighborhood integrity and improving the quality of rental housing by adopting a Rental Permit Program (RPP). The initiative was developed in response to growing concerns regarding the condition and oversight of rental properties within the community. These concerns included issues related to property maintenance, overcrowding and a lack of clear accountability for rental units.

The RPP grew out of the Ponce Inlet community-wide visioning process in 2002 that was aimed at shaping the Town’s long-term development goals. As part of that effort, a questionnaire was distributed to residents to identify the values and priorities most important to the community. One such value is identified below:

“Update and consistently apply all code enforcement policies. Specific policies must be developed and enforced that ensure that Ponce Inlet will not become a rental community characterized by a high turnover in residential areas.”

The RPP established a framework requiring all residential rental properties to obtain an annual permit from the Town. As part of the permitting process, property owners were required to submit basic information about their rental units and for short-term rental units, agree to periodic inspections to ensure compliance with minimum housing and safety standards. The goal was to

67 create a proactive approach to code enforcement, one that emphasized education, accountability,
68 and the long-term preservation of both the housing stock and community character.

69
70 Since its implementation, the RPP has served as an important tool for promoting safe and well-
71 maintained rental housing, while reinforcing the Town's commitment to high standards of
72 community living.

73
74
75 **Recommendation**

76 Staff recommends approval of the amendments to Articles 3 and 10 of the LUDC as drafted by the
77 Town Attorney related to rental registrations and inspections.

78
79
80 Attachments:

- 81 1. Request from Town Attorney to Attorney General
82 2. Attorney General response
83 3. Town Attorney memo with suggested amendments
84 4. Proposed Articles 3 and 10 amendments

Attachment 1

October 8, 2024

Hon. Ashley Moody
Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, FL 32399-1050

***RE: Application of Preemption of Local Government Regulations Set Forth in
§ 83.425, Florida Statutes***

Dear Ms. Moody:

The Town of Ponce Inlet has authorized our office to seek a formal opinion as to the following questions:

- 1) Whether the preemption language in § 83.425, *Florida Statutes*, applies to the Town's rental property registration, permitting, and inspection program broadly?**
- 2) Whether said preemption language applies to specific requirements contained within the broader rental registration, permitting, and inspection program?**
- 3) Does the preemption language apply to both long-term rentals and short-term rentals?**

FACTS

The Town of Ponce Inlet, like several other Florida municipalities, has found that rental properties are more frequently deficient in property maintenance than owner-occupied properties. In January 2022, the Town Council adopted Ordinance 2022-03 (attached as Exhibit "A"), which created Chapter 18, Article VIII, of the Code of Ordinances to establish a Rental Property Maintenance Program. As stated in the Ordinance's "Intent" section, "[the program] is intended to provide for the regular and systematic inspection of rental properties to ensure that they meet minimum standards for the public, health, safety, and welfare."¹ Neither this Ordinance nor the broader Code of Ordinances create any special maintenance requirements that are unique or particular to rental properties. The "minimum standards" discussed refer to the basic property maintenance provisions adopted and incorporated by the Town that are applicable to all properties.

Article VIII of the Code of Ordinances operates in tandem with sec. 3.18 of the Town's Land Use and Development Code (attached as Exhibit "B"), which prohibits the rental of a dwelling unless "the owner of a rented dwelling holds a rental permit and fully satisfies all other requirements of [the] code."² The Town utilizes the permitting program to work with rental property owners to conduct periodic inspections of rental properties for the purpose of ensuring

¹ Town of Ponce Inlet, Fla., Code of Ordinances sec. 18-212. The program applies to all rentals regardless of whether long-term or short-term.

² Town of Ponce Inlet, Fla., Land Use and Development Code sec. 3.18.2.

compliance with minimum property maintenance and safety standards and addressing deficiencies before they get worse.³

In 2023, the Florida Legislature voted to approve CS/HB 1417. As set forth in the Final Bill Analysis of CS/HB 1417, “Part II of Chapter 83, F.S., known as the ‘Florida Residential Landlord and Tenant Act’ governs residential tenancies and the landlord-tenant relationship.” § 83.425, *Florida Statutes*, now provides:

The regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered under this part are preempted to the state. This section supersedes any local government regulations on matters covered under this part, including, but not limited to, the screening process used by a landlord in approving in approving tenancies; security deposits; rental agreement applications and fees associated with such applications; terms and conditions of rental agreements; the rights and responsibilities of the landlord and tenant; disclosures concerning the premise, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant; fees charged by the landlord; or notice requirements.

In a recent case before the Town’s Code Enforcement Board, a respondent⁴ asserted that the Town of Ponce Inlet’s rental registration and inspection program has been preempted by § 83.425, *Florida Statutes*. As a result, the Town withdrew its prosecution of the respondent’s pending code enforcement case and has temporarily paused further enforcement of its rental registration, permitting, and inspection program while it investigates the arguments raised regarding preemption. While portions of § 83.425, *Florida Statutes*, are very precise and clear, other portions leave substantial room for interpretation. Given the significance of the question to the Town and other Florida local governments that have adopted similar ordinances and considering the Legislature’s active efforts to discourage local governments from testing the bounds of preemption, the Town Council requests guidance from the Attorney General on these questions.

ANALYSIS

Question 1. Whether the preemption language in § 83.425, *Florida Statutes*, applies to the Town’s rental property registration, permitting, and inspection program broadly?

§ 83.425, *Florida Statutes*, specifically states that it supersedes local government regulations related to: tenant screening, security deposits, rental agreement applications and application fees, terms and conditions of rental agreements, the rights and responsibilities of the landlord and tenant, disclosures to the tenant, fees charged by the landlord, and notice

³ Sec. 3.18, LUDC, also contains provisions beyond the obtaining of a permit. As reflected in the questions asked, it is possible individual requirements may be individually preempted even if the broad registration, permitting, inspection program is not.

⁴ While the respondent appeared in his private capacity before the Code Enforcement Board, the respondent is a sitting member of the judiciary in his public and professional capacity.

requirements. While none of these items touch on rental unit registration, permitting, or inspection, the language of the statute suggests that the list of preempted actions is non-exhaustive.⁵ This makes the reading of the first sentence of the statute critical to the analysis: “The regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered under this part are preempted to the state.”

Regulation of Residential Tenancies

Here, neither the permitting requirements of sec. 3.18 of the LUDC nor the inspection program created by Chapter 18, Article VIII of the Town Code of Ordinances regulate the relationship between landlord and tenant.⁶ The first question thus becomes whether the Town’s rental unit registration, permitting, and inspection programs regulate “residential tenancies” in violation of the preemptive language set forth in § 83.425, *Florida Statutes*.

Chapter 83 provides no definition for “residential tenancies”, but Black’s Law Dictionary defines “tenancy” as: (1) the possession or occupancy of land by right or title, esp. under a lease; leasehold interest in real estate; or (2) the period of such possession or occupancy. Given this definition, the Legislature’s use of the term “residential tenancies” in this context appears to mean regulation of the rights created between landlord and tenant by the rental agreement. Broadening the interpretation of “the regulation of residential tenancies” to mean all matters related to a property that happens to be held out for rent would create an argument that local governments are effectively preempted from regulating residential rental properties in any capacity. Indeed, this expanded interpretation would imply that the mere existence of a residential tenancy would serve as a complete defense against any local code enforcement case related to the property. For example, even in cases where code violations are unrelated to the rental status—such as failure to mow the grass—a respondent could argue that such local regulations do not apply because that property is subject to a residential tenancy. This was not the intent of the Legislature and, while the language perhaps could have been more clear, it is not the language the Legislature used.

Based on the preceding logic, until there is a tenant occupying a residential unit pursuant to a rental agreement, the preemption language within Part II of Chapter 83 is not yet triggered. Accordingly, ordinances that subject rental properties to inspection and require property owners to obtain a permit *prior* to being rented would not fall under the preemption.

All Other Matters Covered Under Ch. 83, Part II

Even when residential rental properties are occupied by a tenant pursuant to a rental agreement between a landlord and tenant, the Town’s rental unit registration, permitting, and inspection requirements are not preempted because, pursuant to § 83.51(1), *Florida Statutes*, landlords must “[c]omply with the requirements of applicable building, housing, and health codes” at all times throughout the tenancy. Part II of Chapter 83 defines “building, housing, and health codes” to mean “any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.”⁷ As previously noted, the Town’s inspection program is specifically intended to ensure that rental properties meet minimum safety and maintenance standards for the public, health, safety, and welfare, and the permitting requirement is the vehicle

⁵ § 83.425, F.S., states that the actions preempted “includ[e], but are not limited to,” those actions specifically named.

⁶ The permitting requirements runs only to the relationship between property owner and Town.

⁷ § 83.43(3), F.S.

the Town uses to gather information so inspections can be conducted. Since the Legislature has expressly granted local governments the authority to regulate matters related to health, safety, sanitation, and the fitness for habitation of rental properties, and the Town's rental unit registration, permitting, and inspection requirements do not conflict with any other subject matter specifically legislated in Chapter 83, Part II, *Florida Statutes*,⁸ such requirements are a permissive use of the Town's authority.

In sum, requiring a property owner to register and obtain a permit from the Town prior to renting the property to a tenant does not impact the relationship between the landlord and the tenant or touch upon the rights of the landlord and tenant between each other, nor does it touch upon any subject matter specifically regulated in Chapter 83, *Florida Statutes*. Similarly, the inspection of properties to ensure compliance with those minimum maintenance standards that are generally applicable to all properties does not touch upon the relationship of landlord and tenant, the rights created between landlord and tenant, or anything specifically regulated in Chapter 83, *Florida Statutes*. Accordingly, it is our opinion that the preemption language of § 83.425, *Florida Statutes*, does not prohibit the Town from enforcing its permitting and registration requirement for rentals or its rental inspection program.

Question 2. Does said preemption language apply to specific requirements contained within the broader rental registration, permitting, and inspection program?

The Town recognizes that some specific portions of sec. 3.18, LUDC, other than the registration requirement itself, may be closer to the preemption intent. For example, sec. 3.18.4, provides:

3.18.4 - General regulations.

The following regulations shall pertain to the rental of dwellings:

- A. A contact person must be available 24 hours per day, seven days per week to respond to complaints regarding the conduct of the occupants of the subject dwelling.
- B. Occupancy of individual units shall conform to the occupancy limits of all applicable building codes.
- C. The owner or manager shall maintain a tenant and vehicle registration that includes the name and address of each unit's tenant and the make, year and tag number of the tenant's vehicle.
- D. There shall be a written lease between the owner and tenant and that includes an explicit statement that the tenant agrees to follow these regulations.
- E. Violation of these provisions may result in revocation of the rental permit for cause, upon notice and opportunity to be heard by the town council and subject to prosecution before the code

⁸ Chapter 83, Part II, does not speak to registration, permitting, or maintenance inspections.

enforcement board, and any other penalties, as provided for in section 3.18.6 below.

- F. The rental permit application shall be filed with the town prior to rental of the subject property.

Subsections B and F, above, appear unrelated to the preemption categories and likely remain enforceable.⁹ Subsections A and C, however, may be fairly argued to modify the rights and responsibilities of landlord and tenant. While, from the Town's perspective, these requirements are really about the relationship between the property owner and the Town,¹⁰ as currently worded, the Town recognizes these two subsections may come close to preempted conduct. Enforcement of Subsection D, which requires a written lease and specific term within the lease, appears to be preempted by § 83.425, *Florida Statutes*. Finally, Subsection E is not on its face preempted but, of course, would be to the extent any revocation was sought as a result of failure to comply with any other provision that is preempted. Thus, while three subsections of sec. 3.18.4, LUDC, may be construed as preempted by § 83.425, *Florida Statutes*, there are portions of the permitting, registration, and inspection program that remain enforceable.

Question 3. Does the preemption language apply to both long-term rentals and short-term rentals?

Notably, when the respondent presented his arguments as to preemption to the Town's Code Enforcement Board, he distinguished long-term rentals from short-term rentals with regard to the effect of preemption. At the time of the hearing, Senate Bill 280, which specifically confirmed local governments' rights to require registration of short-term rentals, had not yet been vetoed. While our office is not aware of anything excepting short-term rentals from Chapter 83, Part II,¹¹ if local regulations that apply exclusively to short-term rentals are outside the scope of the preemption language within § 83.425, *Florida Statutes*, the Town could tailor its rental registration, permitting, and inspection program to address the specific issue intended for regulation—namely, the secondary impacts of short-term rentals—while explicitly excluding its application to long-term rentals. In our opinion, though, without express language in the preemption statute distinguishing long-term rentals from short-term rentals, the preemption applies to both.

CONCLUSION

Based on the plain language of § 83.425, *Florida Statutes*, the Town's rental registration, permitting, and inspection program contained in sec. 3.18, LUDC, and Chapter 18, Article VIII, Town Code of Ordinances, does not appear to be wholly preempted. Some requirements of sec. 3.18.4, LUDC, may be preempted pursuant to § 83.425, *Florida Statutes*, and should either be

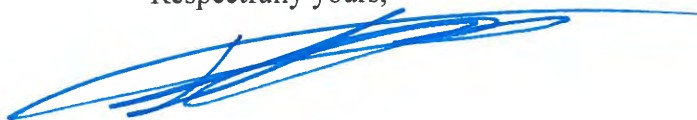
⁹ Subsection B is just a reiteration of the general occupancy requirements that would apply regardless of rental status. Subsection F goes to the property owner's rental permit application with the Town and is unrelated to the relationship between the landlord and tenant.

¹⁰ While the Maintenance Inspection Program applies to both long-term and short-term tenancies, these regulatory items are used more often for the short-term rentals in order to attempt to address the specific secondary impacts of short-term rentals.

¹¹ Short-term rentals are still residential tenancies.

removed or modified so as to not regulate within an area covered by the statutory preemption. Finally, while short-term rentals often generate much more legislative discussion, for purposes of Chapter 83, Part II, and its preemption language, short-term rentals are still residential tenancies subject to the same preemption as long-term rentals.

Respectfully yours,



D. Andrew Smith, III
Assistant Town Attorney

DAS/



ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
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January 9, 2025

Cliff Shepard
Town Attorney
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Pkwy, Suite 100
Maitland, Florida 32751

D. Andrew Smith, III
Assistant Town Attorney
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Pkwy, Suite 100
Maitland, Florida 32751

Dear Mr. Shepard and Mr. Smith,

On behalf of the Town of Ponce Inlet (the "Town"), you asked for an Attorney General opinion addressing certain questions relating to section 83.425, Florida Statutes, which provides as follows:

The regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered under this part are preempted to the state. This section supersedes any local government regulations on matters covered under this part, including, but not limited to, the screening process used by a landlord in approving tenancies; security deposits; rental agreement applications and fees associated with such applications; terms and conditions of rental agreements; the rights and responsibilities of the landlord and tenant; disclosures concerning the premises, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant; fees charged by the landlord; or notice requirements.¹

In reference to this statute, you asked substantially the following questions:

1. Is the Town's rental property registration, permitting, and inspection program broadly superseded by state statute pursuant to the preemption provision contained in section 83.425?
2. Are specific provisions contained in the Town's rental property registration, permitting, and inspection program superseded by state statute pursuant to the preemption provision contained in section 83.425?

¹ § 83.425, Fla. Stat. (2024).

3. Does the preemption language in section 83.425 apply to both long-term rentals and short-term rentals?

Regarding your first two questions, this office declines to comment on your request that the office compare the Town's rental property ordinance requirements (generally and specifically) to the statutory provisions referenced in section 83.425 to determine which ordinance requirements, if any, may be superseded by statute. Alleged potential conflicts between state statutes and existing ordinances are best resolved, where necessary, through judicial determination.²

As to your third question, please submit a supplement to your memorandum of law defining what the Town intends in referring to a "short-term rental."

We will not act upon your request until you submit the requested information within 30 days of the date of this letter. If we do not receive the requested information by that date, we may consider the request withdrawn and close the file. This office typically responds to requests for opinions in the order in which we receive them. We endeavor to issue opinions as soon as possible. However, it is common for a response to be issued within three to six months. Please also be advised that there are many circumstances under which the Attorney General may exercise discretion to decline to issue an opinion. Should you have any questions about this office's policies concerning opinion requests, you may contact me at (850) 728-4662.

Sincerely,



Teresa L. Mussetto
Senior Assistant Attorney General


TLM/ tcc

² See, e.g., Ops. Att'y Gen. Fla. 2015-07 (2015) ("The Florida Attorney General's Office . . . does not comment on local legislation . . ."); 2008-58 (2008) ("[T]his office will not comment on . . . local codes or ordinances which may deal with these subjects."); 2007-50 (2007) ("No comment is expressed herein regarding the validity of the City of Clearwater's ordinance."); 93-16 (1993) ("This office . . . will not comment on local codes or ordinances."); 85-22 (1985) ("No comment is expressed herein regarding any municipal or county ordinance . . ."); 80-189 (1980) (reflecting that the power to declare an existing ordinance to be impliedly modified or repealed in whole or part is "exclusively a judicial prerogative").

Attachment 3

MEMORANDUM

TO: Town Council, Mayor, and Manager
FROM: Drew Smith, Assistant Town Attorney
DATE: May 12, 2025
RE: **RENTAL REGISTRATION AND MAINTENANCE PROGRAM**



OVERVIEW OF TOWN CODE

In January 2022, the Town Council adopted Ordinance 2022-03 which created Chapter 18, Article VIII, of the Code of Ordinances to establish a rental property maintenance program. The program provides for the periodic inspection of rental properties to ensure that they meet minimum standards for the public, health, safety, and welfare. The rental inspection program includes both short-term and long-term rental properties and it does not regulate rental durations. The program is also applicable to both commercial and residential properties.¹ The Rental Property Maintenance Program does not impose any specific or additional maintenance requirements on rental property that would not be equally applicable to non-rental property; it simply creates a program for the regular inspection of rental properties to ensure their compliance with standard maintenance and safety codes. Chapter 18, Article VIII operates in conjunction with Section 3.18 of the Land Use and Development Code which requires a property owner to obtain a rental permit prior to renting a property. Section 3.18 contains provisions related to rental of dwellings originally adopted in Ordinance 2003-03. Much of that language predates the registration and inspection program as well as the State preemption language at issue, as described in the “Overview of the Issue” section, below. In the “Suggested Amendments” section, below, most of the deletions recommended are actually in Section 3.18 rather than the language of Section 18, Article VIII.

OVERVIEW OF THE ISSUE

In 2023, the Florida Legislature amended Chapter 83, Florida Statutes, to include preemption language related to residential tenancies:

The regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered under this part are preempted to the state. This section supersedes any local government regulations on matters covered under this part, including, but not limited to, the screening process used by a landlord in approving in approving tenancies; security deposits; rental agreement applications and fees associated with such applications; terms and conditions of rental agreements; the rights and responsibilities of the landlord and tenant; disclosures

¹ The Code exempts properties that are required to have annual State inspections from the annual Town inspection. Many commercial properties qualify for this exemption but they are only exempted in order to avoid duplication of inspection.

concerning the premise, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant; fees charged by the landlord; or notice requirements.

In 2024, the respondent in a code enforcement case raised the argument that the 2023 State preemption language prohibits enforcement of rental registration ordinances such as the Town's to the extent they apply to long term residential leases. In order to give due regard to the arguments raised, the Town paused enforcement portions of the program while it sought an attorney general opinion on the question. Unfortunately, the Attorney General declined to issue an opinion and stated that the issue was one the courts were better suited to address. While the Attorney General demurred on the question, it is worthwhile to note she did not opine that the Town could not enforce its program. A "No Opinion" cuts both ways. The result is questions still linger regarding the application of the State's preemption language to rental registration and inspection programs.

During the legislative session, the Town's lobbyist explored the possibility of a legislative fix to the problematic portion of the State legislation, specifically, removal of the catch-all "including, but not limited to" language which invites arguments for preemption that we believe exceed the intent of the Statute. No traction was available this session for such work, though.

Now that the Town has explored and exhausted other options for obtaining greater clarity on the interaction of rental registration programs and the express preemption to the State of landlord-tenant relationship matters, the Town Council has requested this memo to provide a path forward in enforcing its rental property maintenance program in a manner that mitigates the potential for a successful preemption argument defense against enforcement.

ANALYSIS

It is worth noting, that the Town is by far not the only jurisdiction in the State with a Rental Registration Program. Many jurisdictions have adopted them in some form. Some jurisdictions focus just on vacation rentals while others, like the Town, include all property. Some focus on residential dwellings while others, like the Town, include all rental properties. I do not believe the legislature, when adopting the preemption language, had any thought about inspection registration programs. The legislature was reacting to local governments that had adopted rent control and similar regulations that imposed mandates on how landlords conducted their rentals. To this point, Section 83.425, Florida Statutes, specifically states that it supersedes local government regulations related to: *tenant screening, security deposits, rental agreement applications and application fees, terms and conditions of rental agreements, the rights and responsibilities of the landlord and tenant, disclosures to the tenant, fees charged by the landlord, and notice requirements*. All of these specific items are landlord-tenant relationship issues. None of the specifically named items have anything to do with property maintenance or inspection.

The problem and key issue is that the Legislature did not just rely on the list of specific items. They also added an "included but not limited to" catch-all. The Town's argument has been, however, and remains that the first sentence of the Statute which reads, "The regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered under this part are preempted to the state," is still the controlling language which sets the context within which all of the statute must be interpreted. So, while there is the "including but not limited to" language,

it cannot extend beyond that initial boundary of “residential tenancies, the landlord-tenant relationship, and all other matters covered under this part [Chapter 83, Part II].”²

Property maintenance inspection rules have nothing to do with the relationship between landlord and tenant. Property maintenance inspection rules do not require landlords to put any terms in their leases nor do they restrict their ability to rent their property in any lawful manner they deem appropriate. Property maintenance inspection rules simply provide the mechanisms to conduct regular inspections to ensure the safety of welfare of tenants, guests, and surrounding property owners.

With this in mind, and given the Attorney General’s opinion that the courts are better positioned to answer this question, I suggest the Town resume enforcement after first making some modifications to its Code to ensure that there is much space as possible between the Town’s regulations and the preempted subject matter.

SUGGESTED AMENDMENTS

The first recommendations are to add to the scope and intent statements as follows to make clear that the Town is aware of and honoring the limits of its authority as established by that State preemption:

Sec. 18-211. Scope and applicability. This article creates a registration and inspection program for~~The provisions of this article shall apply to~~ all existing and newly constructed residential and nonresidential structures and premises that are held out or offered for rent or lease regardless of whether such property has a current tenant~~being leased or rented or offered for lease or rent within the town;~~ all owners and occupants of such structures and premises and all property managers and rental agents for such structures and premises shall be subject to this article. The purpose of the registration and inspection program is to ensure properties that are held out for rent to tenants comply with applicable codes and standards adopted by the Town regarding property maintenance that apply broadly to properties and structure regardless of rental status. While through this article the town does provide for inspections of property held out for rent or lease to be inspected on a regular basis, the Town has not adopted and does not enforce maintenance standards that are specific to rental properties, and all maintenance codes applied are general in nature and applicable equally to owner-occupied structures. The Town recognizes that the State has expressly preempted local governments in the regulation of “residential tenancies, the landlord tenant relationship, and all other matters regulated by [Chapter 83, Part II, Florida Statutes].” The Town also recognizes that Chapter 83, Part II, Florida Statutes, does not regulate or create standards for the maintenance or inspection of rental properties.

² Chapter 83, Part II does not deal with property maintenance; it only deals with the landlord tenant relationship.

Sec. 18-212. - Intent. This article is intended to provide for the regular and systematic inspection of rental properties to ensure that they meet minimum standards for the public health, safety, and welfare. This article pertains only to the registration and inspection of properties and does not nor is it intended to regulate residential tenancies or the landlord-tenant relationship.

I also recommend that Section 18-216 be amended as follows:

Sec. 18-216. – Fees. Inspection fees related to the requirements of this article shall be as established by resolution of the council. The fee shall be calculated based on the expected cost to the Town of conducting the inspection program and may include the cost of Town staff and resources assigned to the inspection program.

The purpose of this amended language is to ensure the Town can show its math for how the fees for inspections are specifically calculated should it ever be challenged. Section 3.18 of the Land Use and Development Code, though, currently contains language that expressly provides the Rental Dwelling permit fees may fund a position for enforcement. Because of that language the Town, in the past, has placed more of the staff time and labor portion of costs in the calculation of the permit fee rather than the inspection fee. The result of this was that the permit fee was greater than the inspection fee. Given that the inspection program is the more labor intense program, it makes more sense for the inspection fee to be the greater fee.³ This change moves the heftier fee to the portion of enforcement that carries the heavier cost to the Town.

Moving on to Section 3.18, “Dwelling Rentals,” of the Land Use and Development Code, all of my suggested revisions to involve deletions from the Code. I recommend these portions for deletion because 1) they deal with topics beyond maintenance and could create at least a toe hold for someone to attempt to argue the legislation strays into the realm of the tenancy or landlord-tenant relationship and 2) the merits of their enforcement likely do not outweigh the potential confusion they create within the preemption conversation. Below, I have set out those recommended deletions and provided brief explanation as to my reasoning in the parentheticals.

~~3.18.4 – General regulations:~~

~~The following regulations shall pertain to the rental of dwellings:~~

~~A. A contact person must be available 24 hours per day, seven days per week to respond to complaints regarding the conduct of the occupants of the subject dwelling. (The application form already requires contact information for the owner and the Town can use that if we need to contact ownership. This provision, while~~

³ One may ask why a permit fee and inspection fee are both charged. Remember, the Town has exempted some properties that receive annual inspections pursuant to State law requirements. By maintaining two fees, the Town is able to fairly apportion the costs to the tasks involved.

helpful when neighbors have complaints, could be construed as regulating an aspect of the tenancy).

- ~~B. Occupancy of individual units shall conform to the occupancy limits of all applicable building codes. (Occupancy limits are a function of building codes; this does not actually create the limitation, it really just reminds everyone that occupancy loads have to be followed; to avoid someone arguing this somehow creates a regulation on the tenancy, though, I recommend deletion)~~
- ~~C. The owner or manager shall maintain a tenant and vehicle registration that includes the name and address of each unit's tenant and the make, year and tag number of the tenant's vehicle.).~~
- ~~D. There shall be a written lease between the owner and tenant and that includes an explicit statement that the tenant agrees to follow these regulations. (One could argue this is moving into the realm of regulating the landlord-tenant relationship).~~
- ~~E. Violation of these provisions may result in revocation of the rental permit for cause, upon notice and opportunity to be heard by the town council and subject to prosecution before the special magistrate, and any other penalties, as provided for in section 3.18.6 below. (There is really nothing problematic about this language, I recommend its deletion because I recommended all the provisions it relates to be deleted).~~
- F. The rental permit application shall be filed with the town prior to rental of the subject property. **(I recommend this be moved to 3.18.5).**

3.18.5 - Fees and application schedule.

- A. A person or entity who is applying for or holds a rental permit shall pay an annual rental permit fee in an amount as established from time to time by resolution of the town council upon the filing of the rental permit application.
- ~~B. Fee revenues raised under this section shall fund a position in the code enforcement department of the town, and provide enforcement and processing personnel as needed and investigative services. The officer holding this position shall enforce this section. (Replaced with similar language added to 18-216)~~
- C. All holders of a rental permit who continue to rent the subject dwelling shall submit a renewal application containing all the information required for the original rental permit application and pay the required rental permit fee by no later than October 1 of each year, or shall be subject to a late fee to be established by the resolution of the town council.

As to 3.18, I also recommend removal of 3.18.7 because again it could be construed as veering into the realm of regulating the tenancy by imposing specific duties on landlords to report

on the operations of the rental. While there is definite merit to the information the Town receives pursuant to this Section, that merit may not offset the risks to enforceability of the inspection program it creates:

~~3.18.7 Annual reporting requirements.~~

~~A. Annual summary report.~~

- ~~1. An annual summary report must be filed by:~~
- ~~2. All licensed real estate agents, brokers, agents or other parties who represent an owner of a property rented at any time during a calendar year; and~~
- ~~3. All owners of dwellings rented at any time during a calendar year.~~
- ~~4. The summary report is due by February 1 of each year.~~
- ~~5. The report shall reflect the rental activities of all subject dwellings within the town for the previous calendar year. This report shall include, at a minimum, the address of subject property and length of rental period per tenant.~~
- ~~6. The town shall maintain a third party rental summary report form and make it available to the public upon request.~~
- ~~7. Violation of this requirement subjects violators to prosecution before the special magistrate and other penalties in section 3.18.6.~~

~~B. Record keeping.~~

- ~~1. Annual record keeping is required for any of the entities listed in subsection 3.18.7.A above.~~
- ~~2. These entities shall maintain records indicating:~~
 - ~~a. The name and address of each tenant during this period;~~
 - ~~b. Each tenant's vehicle registration, which shall include the make, year and tag number of the tenant's vehicle; and~~
 - ~~c. The written lease between the owner and tenant for inspection by the code enforcement officer upon request.~~

Finally, I believe the following changes to Section 10.1.10 of the Code related to basic application submittal requirements would also be helpful in distancing the registration and inspection program from arguments that the Town is somehow trying to regulate tenancies or, otherwise mandating actions covered in the State preemption. I have recommended some items for deletion here simply because the Town can easily obtain the information from public records; in essence, why invite an argument if it's just as easy to get the information elsewhere?

10.1.10. - Rental permit applications.

A rental permit application must include the following information:

- A. The complete street address ~~and parcel number of the property;~~

- B. ~~Proof of ownership, including~~ The name, mailing address, e-mail address, and telephone number of each person or entity with an ownership interest in the property;
- C. The gross square footage of the dwelling, including the number of rooms, bedrooms, kitchens, and on-site parking spaces attributable to the rental;
- D. ~~A valid and current federal employer tax identification number or Social Security number for the property owner(s);~~
- E. The name, mailing address, e-mail address, and ~~24-hour~~ phone number of the rental property manager, if applicable;
- F. The signatures of ~~a~~ an owner, or authorized agents ~~or authorized property managers~~;
- G. For short-term rentals (renting less than four consecutive weeks), a current, approved inspection report from the fire marshal in accordance with Chapter 69A-43 of the Uniform Fire Safety Standards for Transient Public Lodging Establishments, Timeshares and Timeshare Unit Facilities; and
- H. For short-term rentals and long-term rentals of six months or less, a valid and current Florida Department of Revenue sales tax identification number under F.S. ch. 212, and a valid and current license under F.S. ch. 509.

In conclusion, that imprecise “including but not limited to” language in the State’s preemption clause certainly confuses an issue that should not have been confusing. I remain of the opinion, though, that it was not the legislature’s intent to impede local governments from enforcing codes focused on maintenance of rental properties. All of the changes recommended herein are designed to try to make it as clear as possible in the Town’s Code that the sole focus of the inspection and registration program is proper maintenance and safety. I think these changes along with some well-crafted “Whereas” clauses can tell that story. Ultimately, though, unless the language is eventually refined by the legislature or until there is a judicial determination as to the extent of the preemption this remains unsettled legal territory.

Attachment 4

3.18.1 Applicability.

A. *Definitions.*

Dwelling, rental. A residential building leased by its owner to one or more tenants for their use and occupancy on a temporary basis.

Rental, rent, rented, or renting. Includes the arranging of, contracting or advertising for, or the making available of the use of a dwelling unit for a finite period of time for any legal consideration. A rental arrangement is evidenced by the existence of a financial, business, barter, or employee/employer relationship between the legal or equitable owner of a dwelling unit and temporary occupant(s). Rental does not include the use of a dwelling unit by family members, friends or house-sitters, unless legal consideration is provided to the owner or usual occupant.

B. *How permitted.* See section 2.40, Table 2-5 (Table of Permitted Uses).

3.18.2 Applicability.

Rental of a dwelling is prohibited unless the owner of a rented dwelling holds a rental permit and fully satisfies all other requirements of this code. A rental permit allows the rental of a dwelling consistent with the requirements of this section.

3.18.3 Rental permit application process.

A. A rental permit application is filed with the director, and must include the information required by article 10.

B. Within five business days, the director shall:

1. Issue the rental permit if it complies with this section, or
2. Return the application as incomplete if it does not include the required information, or
3. Deny the application if it does not comply with this section.

~~3.18.4 General regulations.~~ **RESERVED**

~~The following regulations shall pertain to the rental of dwellings:~~

~~A. A contact person must be available 24 hours per day, seven days per week to respond to complaints regarding the conduct of the occupants of the subject dwelling.~~

~~B. Occupancy of individual units shall conform to the occupancy limits of all applicable building codes.~~

~~C. The owner or manager shall maintain a tenant and vehicle registration that includes the name and address of each unit's tenant and the make, year and tag number of the tenant's vehicle.~~

~~D. There shall be a written lease between the owner and tenant and that includes an explicit statement that the tenant agrees to follow these regulations.~~

E. ~~Violation of these provisions may result in revocation of the rental permit for cause, upon notice and opportunity to be heard by the town council and subject to prosecution before the special magistrate, and any other penalties, as provided for in section 3.18.6 below.~~

F. ~~The rental permit application shall be filed with the town prior to rental of the subject property.~~

3.18.5 Fees and application schedule.

A. A person or entity who is applying for or holds a rental permit shall pay an annual rental permit fee in an amount as established from time to time by resolution of the town council upon the filing of the rental permit application.

~~B. Fee revenues raised under this section shall fund a position in the code enforcement department of the town, and provide enforcement and processing personnel as needed and investigative services. The officer holding this position shall enforce this section.~~

The fee shall be calculated based on the expected cost to the town of conducting the rental permit program and may include the cost of town staff and resources assigned to the rental permit program.

C. All holders of a rental permit who continue to rent the subject dwelling shall submit a renewal application containing all the information required for the original rental permit application and pay the required rental permit fee by no later than October 1 of each year or shall be subject to a late fee to be established by the resolution of the town council.

D. The rental permit application shall be filed with the town prior to rental of the subject property

3.18.6 Enforcement and penalties.

A. A violation of this section is punishable by a fine per day, per unit and per violation in accordance with Florida law commensurate with F.S. ch. 162.

B. The town council may revoke any rental permit for cause, upon notice and opportunity to be heard by the town council.

~~3.18.7 Annual reporting requirements.~~ **RESERVED**

~~A. Annual summary report.~~

~~1. An annual summary report must be filed by:~~

~~2. All licensed real estate agents, brokers, agents or other parties who represent an owner of a property rented at any time during a calendar year; and~~

~~3. All owners of dwellings rented at any time during a calendar year.~~

~~4. The summary report is due by February 1 of each year.~~

~~5. The report shall reflect the rental activities of all subject dwellings within the town for the previous calendar year. This report shall include, at a minimum, the address of subject property and length of rental period per tenant.~~

6. ~~The town shall maintain a third-party rental summary report form and make it available to the public upon request.~~

7. ~~Violation of this requirement subjects violators to prosecution before the special magistrate and other penalties in section 3.18.6.~~

~~B. Record keeping.~~

1. ~~Annual record keeping is required for any of the entities listed in subsection 3.18.7.A above.~~

2. ~~These entities shall maintain records indicating:~~

a. ~~The name and address of each tenant during this period;~~

b. ~~Each tenant's vehicle registration, which shall include the make, year and tag number of the tenant's vehicle; and~~

c. ~~The written lease between the owner and tenant for inspection by the code enforcement officer upon request.~~

* * *

10.1.10. - Rental permit applications.

A rental permit application must include the following information:

A. The complete street address ~~and parcel number~~ of the property;

B. ~~Proof of ownership, including t~~The name, mailing address, e-mail address, and telephone number of each person or entity with an ownership interest in the property;

C. The gross square footage of the dwelling, including the number of rooms, bedrooms, kitchens, and on-site parking spaces attributable to the rental;

~~D. A valid and current federal employer tax identification number or Social Security number for the property owner(s);~~

~~ED~~ The name, mailing address, e-mail address and ~~24-hour~~ phone number of the rental property manager, if applicable;

~~FE~~ The signatures of all ~~an~~ owners ~~s~~ or authorized agents ~~or authorized property managers~~;

~~GF~~ For short-term rentals (renting less than four consecutive weeks), a current, approved inspection report from the fire marshal in accordance with Chapter 69A-43 of the Uniform Fire Safety Standards for Transient Public Lodging Establishments, Timeshares and Timeshare Unit Facilities; and

~~HG~~ For short-term rentals and long-term rentals of six months or less, a valid and current Florida Department of Revenue sales tax identification number under F.S. ch. 212, and a valid and current license under F.S. ch. 509.