

**CITY OF SANIBEL
RESOLUTION 23-049**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA, UPHOLDING IN ALL RESPECTS THE PLANNING COMMISSION'S DECISION DETAILED IN SANIBEL PLANNING COMMISSION RESOLUTION 23-024 EXCEPT TO MODIFY CONDITION 22, REGARDING DEVELOPMENT PERMIT APPLICATION NO. DP-2021-001803 AND MAJOR SUBDIVISION APPLICATION NO. SPLT 2022-000074 DATED JULY 25, 2023, FOR THE PROJECT KNOWN AS COASTAL CREEK SUBDIVISION AND LOCATED AT 5301-5325 SANIBEL CAPTIVA ROAD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 25, 2023, the Sanibel Planning Commission conducted a quasi-judicial hearing for consideration of Development Permit Application No. DP-2021-001803 and Major Subdivision Application No. SPLT 2022-00007 (the "Applications"); and

WHEREAS, the Applications, filed by Brian Smith with Ensite, Inc. on behalf of owner Buckingham 225 Development, Inc. (the "Applicant"), seek approval to allow for a unified residential housing (cluster housing) development including six parcels for single-family residential use and associated improvements, known as "Coastal Creek" subdivision, located at 5301-5325 Sanibel Captiva Road, Sanibel; and

WHEREAS, Land Development Code Sections 82-421(8) and 82-422 detail the application and notice requirements for development permit consideration by the Planning Commission; and Land Development Code Section 114-106 provides the requirements and procedures for preliminary plats; and

WHEREAS, at the conclusion of its July 25, 2023 hearing, the Planning Commission, by a 4-1 vote, approved the Applications together with 24 conditions; and

WHEREAS, a Notice of Appeal of Planning Commission Resolution 23-024 was timely filed on August 8, 2023, by Ralph Brookes, Esq., on behalf of the Heron's Landing Homeowners Association of Sanibel, Inc. and six Sanibel residents (the "Appellants"), opposing the approval of the applications with the 24 conditions, as approved; and

WHEREAS, pursuant to Land Development Code Section 82-98(d), the City Council's consideration on appeal is limited to whether the Planning Commission properly interpreted and applied the provisions of the Land Development Code, based upon the Applications and evidence presented to the Planning Commission; and

WHEREAS, on appeal, the Appellants argue, among other things, that the Coastal Creek site should have certain additional testing and site remediation performed before the site is developed, as approved; and

WHEREAS, the City Council conducted a duly noticed hearing on appeal on September 11, 2023, for which the City Council reviewed and considered the record before the Planning Commission, Planning Commission Resolution 23-024, minutes of the Planning Commission, and the written and oral arguments presented by or on behalf of the Appellants, the Applicant, and Planning Staff; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA:

SECTION 1. The above "whereas" recitals are hereby found to be correct and are incorporated herein as part of this Resolution.

SECTION 2. The City Council makes the following findings:

- (a) The Appellants have standing to appeal and timely filed their appeal to City Council; and
- (b) All parties had notice and opportunity to be heard in the appeal; and
- (c) No objections were raised to form or procedure of the appeal; and
- (d) In approving the Applications, the Planning Commission properly interpreted and applied the provisions of the Land Development Code, based upon the Applications and evidence presented to the Planning Commission; and
- (e) Condition 22 of Planning Commission Resolution 23-024 should be modified to clarify the definition of "excavated soil."

SECTION 3. Planning Commission Resolution 23-024 is hereby **UPHELD** in all respects, except Condition 22 is **MODIFIED** to read as follows:

22. All excavated soil from the site shall be disposed of properly at an off-island location. For this project, "excavated soil" shall include all soil dug up or scraped from predevelopment grade, other than *de minimus* removal of soil for the planting of vegetation or other, similar minor soil disturbances.

SECTION 4. This resolution shall take effect immediately upon adoption.

PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA THIS 3RD DAY OF OCTOBER 2023.

Attest:


Scotty Lynn Kelly, City Clerk


Richard Johnson, Mayor

Approved as to form and legality:


John D. Agnew, City Attorney

Date filed with City Clerk: October 3, 2023

Vote of Council Members:

Johnson	<u>Aye</u>
Miller	<u>Aye</u>
Crater	<u>Nay</u>
Henshaw	<u>Aye</u>
Smith	<u>Aye</u>