



AGENDA MEMORANDUM

City Council Meeting Date: April 21, 2026

To: City Council
From: John Agnew, City Attorney
Date: April 13, 2026

SUBJECT: Direction and recommended hearing procedures for the appeal of Planning Commission Resolution No. 26-10.

BACKGROUND:

At the April 21, 2026 City Council meeting, the City Council is scheduled to hear an appeal of the Planning Commission's approval of a revision to Subdivision Plat Application No. SPLT-2022-000074. The application, filed by Brian Smith, Ensite, Inc., on behalf of Buckingham 225 Development, Inc. (the "Appellee"), seeks approval to allow revision of an approved preliminary plat, to amend allocated impermeable coverage for lots 1 through 6 at a unified residential housing (cluster housing) development known as "Coastal Creek" subdivision. The Planning Commission approved the application by a 7-0 vote. Gayle Denniger, a participant in the Planning Commission hearing below, timely filed his appeal through attorney Ralf Brookes, a copy of which is included in your agenda package. The purpose of this memorandum is to provide direction relevant to the appeal process, as well as a recommended procedure for the appeal hearing.

STANDARD OF REVIEW:

Section 82-98(d) of the Land Development Code sets forth the standard of review for the City Council in this type of appeal and provides as follows:

The City Council's consideration on appeal shall be limited to whether the Planning Commission has properly interpreted and applied the provisions of this Land Development Code, based upon the application and evidence presented to the Planning Commission.

Thus, the City Council's appellate review of a Planning Commission decision is not a new hearing, in the sense that the City Council will not take new testimony or evidence regarding the application. Rather, the City Council will base its decision on the appellate record (the record established before the Planning Commission) and arguments of the parties to the

Sanibel is and shall remain a barrier island sanctuary

appeal regarding that appellate record. The City Council is not prohibited from independently weighing, interpreting, and applying that record evidence as it sees fit, without deference to the Planning Commission's weight, interpretation, and application of the evidence; however, only "competent, substantial evidence" should be relied upon in making a decision. Competent, substantial evidence is evidence that is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. In summary, the City Council is charged with determining whether the Planning Commission has properly interpreted and applied the provisions of the Land Development Code based upon the application submitted and the competent, substantial evidence presented to the Planning Commission.

HEARING PROCEDURE:

In terms of the appellate procedure at the City Council meeting, I recommend the following:

1. Since no new witnesses or new evidence can be entered into the record, there is no need for an oath to be administered to anyone, nor is it necessary or appropriate for speaker introductions for the respective parties to state information beyond their name and who they represent.
2. Each Councilmember will make *ex parte* disclosures, if any, in accordance with City Council Resolution 23-012 (attached).
3. I will provide an overview of this memo, so that all participants in the proceeding and those listening are informed on the record of the procedure.
4. Regarding appellate arguments, the Appellant will proceed first and present his appellate arguments.
5. Next, planning staff will have an opportunity to make an argument to the City Council in support of the Planning Commission approving the application, followed by the Appellee.
6. Thereafter, the Appellant will be provided an opportunity to briefly summarize his position and make any rebuttal arguments.
7. City staff and the Appellee then will be provided an opportunity to briefly respond to the rebuttal.
8. The City Council will then deliberate and consider the arguments that have been made by the parties, the original application and the record established by the Planning Commission, and the City Council will render its decision on the appeal. No party will be permitted to make further argument to the City Council unless it is in response to a question asked by a City Council member.

I suggest that the City Council establish maximum speaking times for each party, with the Appellant being allotted a total of 30 minutes, and City Staff and the Appellee being allotted a combined total of 30 minutes to be allocated between them how they see fit. Thus, the order of speakers would be as follows:

1. Appellant argument
2. Staff argument
3. Appellee argument
4. *Summary/rebuttal by Appellant
5. *Staff summary/response to rebuttal
6. *Appellee response to rebuttal

*Time allotments for 4, 5, and 6 above are only to the extent, if any, that some of the 30 minutes allotted per side has not been fully used.

If the Councilmembers question the parties during their arguments and significant time is spent answering those questions, the City Council should use its discretion in determining how much additional time, if any, will be provided to a party. Alternatively, City Council could elect to hold questions until the conclusion of all arguments.

FINAL DECISION:

Regarding the City Council's final decision on the appeal, Section 82-98(e) of the Land Development Code provides as follows:

On any appeal, the City Council shall have authority to uphold, reverse or modify the Planning Commission's decision; or to remand the application to the Planning Commission for re-hearing, a new hearing, or for the consideration of additional evidence. In reversing or modifying the decision of the Planning Commission and approving an application, the City Council shall have the same authority as the Planning Commission to place conditions on such approval.

At the conclusion of the hearing, a motion will be in order to approve one of these options—upholding, reversing, modifying, or remanding. Because the decision of Council is limited to what is already in the record, the typical opportunity for public comment received between a motion and vote would not be proper in this instance. Once a deciding motion carries, the decision of City Council will be memorialized by Resolution passed at either the current meeting or a subsequent meeting.

If you have any questions on these considerations or proposed procedures, I am available to discuss at your convenience.

**CITY OF SANIBEL
RESOLUTION 23-012**

RESOLUTION 23-012 OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA, RELATED TO QUASI-JUDICIAL PROCEEDINGS ON LOCAL LAND USE MATTERS; FORMALIZING A METHOD TO REMOVE THE PRESUMPTION OF PREJUDICE FROM EX PARTE COMMUNICATIONS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Sanibel, the Sanibel Planning Commission, and certain of the City's other boards and commissions have the authority to conduct quasi-judicial proceedings on local land use matters; and

WHEREAS, ex parte communications (i.e., communications involving board members about a matter coming before the board which occur outside the noticed public hearing on the matter) are highly discouraged, because the quasi-judicial decision before the board should be based solely upon evidence in the record, known to all interested parties; and

WHEREAS, ex parte communications create a presumption of prejudice to the quasi-judicial proceeding; however, Section 286.0115, Florida Statutes, provides an avenue to formalize a method to remove the presumption of prejudice from ex parte communications related to local land use matters; and

WHEREAS, the City Council desires to formalize such method, consistent with its current, informal practices.

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

SECTION 1. The recitals above are true and correct and made a part hereof.

SECTION 2. Consistent with Section 286.0115, Florida Statutes, the following procedures are hereby adopted for all quasi-judicial proceedings on local land use matters:

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to Part III of Chapter 112, Florida Statutes, for not complying with this paragraph.

SECTION 3. This Resolution shall be effective immediately upon adoption.

PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA THIS 7TH DAY OF FEBRUARY 2023.

Attest:



Scotty Lynn Kelly, City Clerk



Holly D. Smith, Mayor

Approved as to form and legality:



John D. Agnew, City Attorney

Date filed with City Clerk: February 7, 2023

Vote of Council Members:

Smith	<u>Yea</u>
Johnson	<u>Yea</u>
Crater	<u>Yea</u>
Henshaw	<u>Yea</u>
Miller	<u>Yea</u>

CITY OF SANIBEL

REPORT OF EX-PARTE COMMUNICATION,
SITE VISIT, INVESTIGATION OR EXPERT OPINIONS

This form is to be filled out, signed and delivered to the recording secretary of the Council, board, commission or committee for disclosure on the record at the quasi-judicial hearing to which it applies.

Date of Communication: _____

Person or Group: _____

Quasi-judicial Action: _____

Type of Communication: Oral _____ Written _____ Site Visit _____

Investigation _____ Expert Opinion _____

Substance of communication (If written, attach copy; otherwise describe):

Signature of Public Official: _____

Date: _____

Note: The completed form should be attached to the meeting minutes and filed in the record file.