



## AGENDA MEMORANDUM

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**City Council Meeting Date: December 2, 2025**

**To:** City Council  
**From:** John Agnew, City Attorney  
**Date:** November 26, 2025

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**SUBJECT:** Direction and recommended hearing procedures for the appeal alleging an error in the decision or determination made by the Building Director (Chief Building Official) in the administration and enforcement of Sanibel Land Development Code (LDC) Chapter 14 – Buildings and Building Regulations.

### **BACKGROUND:**

Whitecaps South Condominium Association, Inc. (the “Association” or “Appellant”) owns property located at 2907 West Gulf Drive (the “Subject Property”). There were nine individually owned condominium units at the Subject Property immediately prior to Hurricane Ian, and all were substantially damaged by Hurricane Ian, and subsequently demolished. The respective owners, through the Association, seek to reconstruct those units (four duplexes and one single-family unit) under the City’s buildback provisions. Nothing remains of the former structures, so the proposed development will be new construction. Appellant’s covenants and restrictions allow 7-day rentals, and such short-term rentals were typical for pre-Ian units and are expected with the proposed new units.

BLDR-2024-017219, BLDR-2024-017228, BLDR-2024-017232, and BLDR-2024-017233 (collectively the “Building Permits”) were issued earlier this year for the four duplexes, providing approval for construction of the new units. The Building Permits included certain handicapped accessibility requirements, as well as certain fire sprinkler requirements. In October 2025, the Association submitted proposed revisions to the Building Permits (the “Proposed Permit Revisions”), seeking to eliminate the accessibility requirements and the fire sprinkler requirements. Craig Mole’, Chief Building Official rejected the Proposed Permit Revisions to eliminate the accessibility requirements, while the Fire Marshall (through the Chief Building Official) rejected the Proposed Permit Revisions to eliminate the fire sprinkler requirements.

Prior to the Association submitting the Proposed Permit Revisions, legal counsel for the Association, attorney Mark Ebelini and I exchanged communications concerning the Chief Building Official’s position concerning handicapped accessibility to the units at the Subject

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Property. The letters between Mr. Ebelini and I are included in the agenda packet for this item.

This appeal, filed by attorney Mark Ebelini on behalf of the Association/Appellant, follows from the rejection of the Proposed Permit Revisions. Mr. Ebelini's appeal is included in the agenda packet for this item.

The purpose of this memorandum is to provide direction relevant to the appeal process, as well as a recommended procedure for the appeal hearing.

### **SCOPE AND STANDARD OF REVIEW:**

At the December 2, 2025, City Council meeting, the City Council, acting as the "city construction board of adjustment and appeals," in accordance with Sanibel Code Sec. 14-51, is scheduled to hear an appeal made under Sanibel Code 14-53, which provides as follows:

#### **Sec. 14-53. – Appeals.**

- (a) Appeals of building official decisions. The owner of a building, structure, or service system, or a duly authorized agent, may appeal a decision of the building official when any of the following conditions are claimed to exist:
  - (1) The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure, or service system;
  - (2) The provisions of this chapter do not apply to the specific case;
  - (3) An equally good or more desirable form of installation can be employed in the specific case; or
  - (4) The intent and meaning of this chapter or any of the regulations of this chapter have been misconstrued or incorrectly interpreted.

...

Pursuant to Sanibel Code Sec. 14-52, the construction board of adjustment has the authority to hear and decide the appeal on its own or to refer such appeal to a qualified hearing officer to conduct a hearing and issue a recommended order, which would then come back to the construction board of adjustment for final decision.

There is no specific guidance within Chapter 14 as to the standard of review for such an appeal or what comprises the appellate record to be reviewed; however, my recommendation is to conduct a traditional hearing of limited duration, which allows the City Council (acting as the construction board of adjustment) to hear testimony and argument, and receive any relevant evidence, related to the rejected changes to the Building Permit. The City Council will then base its decision on such testimony, arguments, and evidence. As with all quasi-

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judicial hearings, 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 as adequate to support the conclusion reached. In summary, the City Council (acting as the construction board of adjustment) is charged with determining whether the Chief Building Official erred in his interpretation of application of the Florida Building Code, pertaining to the rejection of the Proposed Permit Revisions.

### **HEARING PROCEDURE:**

In terms of the appellate procedure at the City Construction Board of Adjustment and Appeals meeting, I recommend the following procedure:

1. Oaths should be administered to anyone wishing to provide testimony.
2. Each Councilmember shall make disclosures pertaining to any site visit, *ex parte* communications, or voting conflicts. *Ex parte* communications, if any, shall be disclosed in accordance with City Council Resolution 23-012 (attached). Voting conflicts, if any, shall be disclosed in accordance with Form 8B (attached).
3. Attorney Mark Ebelini, as Appellant’s representative, will proceed first and present arguments, testimony, and evidence in support of their position.
4. Next, City staff will have an opportunity to provide argument, testimony, and evidence in support of its position.
5. Thereafter, the Appellant will be provided an opportunity to briefly summarize its position and make any rebuttal arguments.
6. The City Council will then deliberate and consider the testimony, evidence, and arguments presented, and either render its decision on the appeal or refer it to a qualified hearing officer for further consideration. No party will be permitted to make further argument to the City Council unless it is in response to a question asked by Councilmember.

I suggest City Council establish maximum speaking times for each party, with the Appellant being allotted a total of 15 minutes and City Staff being allotted a total of 15, with the order of speakers would be as follows:

1. Appellant argument by Mr. Ebelini (15 minutes)
2. Staff argument (15 minutes)
3. \*Summary/rebuttal by Mr. Ebelini (to the extent, if any, that some of the 15 minutes allotted has not been fully used).

If the City Councilmembers question the parties during their arguments, the City Council will have to use its discretion in determining how much additional time, if any, will be provided to a party in the event that a significant amount of time is spent answering questions.

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Alternatively, the City Council could elect to hold questions until the conclusion of all arguments.

**FINAL DECISION:**

Regarding the City Council's final decision on a Chapter 14 appeal, the City Council may uphold, reverse, or modify the Chief Building Official's alleged erroneous decision or determination or may otherwise remand the matter back to the Chief Building Official for further consideration. City Council may take this action immediately at the conclusion of the hearing; or, in the alternative, City Council may refer the matter to a qualified hearing officer for hearing and a recommended order, after which City Council may adopt the recommended order with or without further hearing, or, after further hearing, may reverse or modify the recommended order.