



City of Sanibel
Office of the City Manager
800 Dunlop Rd., Sanibel, FL 33957

March 5, 2025

Ms. Arlene Dillon
1371 Jamaica Drive
Sanibel, FL 33957

Subject: Chapter 94 Appeal Submission Regarding Building Permit for 1305 Seaspray Lane

Dear Ms. Dillon,

This letter is in follow up to our telephone conversation this morning and formally acknowledges receipt of the letter dated March 3, 2025, sent to the City Attorney and me on March 4, 2025 (the "appeal letter"). The appeal letter is accepted as a formal appeal to the Sanibel Planning Commission, concerning the building permit issued by the City of Sanibel for the construction of a single-family home at 1305 Seaspray Lane (the "subject property"). The appeal letter requests an appeal based on the following:

1. An alleged misinterpretation of the "Open Body of Water" boundaries on the subject property.
2. A request that the City require the property owner of the subject property to develop an Environmental Assessment Report (EAR) to evaluate soil composition, hydrology, and vegetation to determine whether the subject property qualifies as a protected "wetland" and/or regulated "open body of water" under the Sanibel Code of Ordinances as defined under Section 78-1, Rules of Construction and definitions; and Chapter 126, Interior Wetlands Conservation District, Section 126-553.

Further, the appeal letter requests the City issue a "stop work order" to halt construction activities at the subject property presumably until the appeal is heard by the Sanibel Planning Commission. Finally, the appeal letter makes a public records request for all plans, surveys, reports or permit changes pertaining to the development of the subject property.

For the purposes of the requested appeal to the Sanibel Planning Commission, the City will communicate directly with you on behalf of all the signers of the appeal letter. Likewise, any

communications the group wishes to send to City concerning this appeal should be sent directly to me with a copy to Vicki Smith at vicki.smith@mysanibel.com, if sent by email.

As indicated in the appeal letter, the appeal is premised on alleged obligations within the Land Development Code (LDC), Chapter 94, FLOODS, Division 3, Duties and Powers of the Floodplain Administrator. As stated in Section 94-1 of the LDC, the regulations provided in Chapter 94 Floods are known as the Floodplain Management Ordinance (FMO). Section 94-124 of the LDC defines an "appeal" to the FMO regulations as "A request for a review of the floodplain administrator's interpretation of any provisions of this chapter" (Chapter 94). In accordance with Section 94-92, appeals allowed under Chapter 94 are to be heard by the Planning Commission "when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this chapter." In accordance with Section 94-31, the city manager is designated as the floodplain administrator, who may delegate the performance of certain duties to other staff members. For clarity, during the relevant period of this appeal (and long before), I delegated the administration of the FMO to the Building Director or the Director's staff and consultant, who maintain credentials as a Certified Floodplain Manager through the Association of State Floodplain Managers.

As a threshold matter, there are limitations to the scope of an appeal under Chapter 94. The appeal letter relies on the language in Section 94-33 (5) of the LDC, which provides that the floodplain administrator shall: "Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation." The "flood hazard area boundaries" are established by FEMA and are available for public inspection through the FEMA Special Flood Hazard Map for Sanibel. As shown on the FEMA Special Flood Hazard Map for Sanibel, the subject property lies wholly within a flood hazard area—specifically, within an AE flood zone with a base flood elevation (BFE) of 9 feet NAVD. So, although the appeal letter seeks to review the floodplain administrator's determination of a flood hazard area, as a practical matter, the flood hazard area designation is made through FEMA, so there was no need for the floodplain administrator to interpret the flood hazard area boundaries for the development of the subject property. Additionally, the appeal letter requests an interpretation of the boundaries of the open body of water that is identified on the subject property's site survey; however, the delineation of an open body of water is not related to the interpretation of the flood hazard area boundaries for the subject property or otherwise within the Floodplain Manager's purview, and therefore it is our opinion this issue is not subject to an appeal. As a footnote, the appeal letter states that the subject property is within the Interior Wetland Conservation District, however, it is within the Upland Wetlands (D2). Finally, the request that the City require an Environmental Assessment Report is not a requirement of Chapter 94, and therefore it is our opinion this issue is not subject to an appeal.

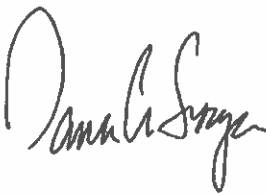
In conclusion, based on the review of the appeal letter, the City Attorney and I hold an initial opinion that the stated basis of the appeal does not correlate to the subject matter appropriate for an appeal as provided for in Chapter 94. However, Section 94-91 requires the Planning Commission to hear and decide on appeals related to the strict application of Chapter 94 and, therefore, it will be scheduled for the earliest Planning Commission meeting available for which we can timely provide notice of what would be a quasi-judicial hearing unless you provide me with written notification that the appeal letter is being withdrawn.

As the appeal hearing will be a quasi-judicial hearing, no signer of the appeal letter should speak with any Planning Commissioner concerning this pending appeal. As you know, Section 94-92 provides for any person aggrieved by the result of the Planning Commission's decision to appeal that decision to the Sanibel City Council. Therefore, no signer of the appeal letter should speak with any City Councilmember concerning this pending appeal.

Concerning the request for the City to issue a stop work order for all construction related activities at the subject property, the City will advise the contractor that the Building and Development permit is on hold until the appeal has been resolved, and work at the subject property should stop. However, should the contractor choose to continue working at the subject property, he will be advised that he is doing so at his own risk pending the results of any decisions concerning the filed appeal. Concerning your public records request, the request is noted and is being processed.

If you have any questions on this analysis or otherwise wish to discuss process-related issues pertaining to the appeal, the City Attorney and I would be glad to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana A. Souza". The signature is fluid and cursive, with the first name "Dana" being the most prominent part.

Dana A. Souza
City Manager

C: Ken Colter