

SANIBEL CITY COUNCIL  
Gayle Dendinger Administrative Appeal

**ADMINISTRATIVE APPEAL OF  
PLANNING COMMISSION RESOLUTION 26-10**

Pursuant to Section 82-98 of the Sanibel Land Development Code (LDC), the Appellant Gayle Dendinger hereby appeals to the Sanibel City Council the March 24, 2026 decision of the Sanibel Planning Commission approving Resolution 26-10.

Resolution 26-10 proposes **full-lot coverage** of **5,000 sq** (the entirety lot of Lots 1 and 2) and increases lot coverage by an additional **600 sq** of impervious surfaces on the additional four (4) lots (from ±3,200 to ±3,800 sq) in the Coastal Creek development.

The appellant Gayle Dendinger resides upon or own property within Sanibel on Heron's Lake, which is owned jointly by the City of Sanibel and nine homeowners living on Osprey Court in Heron's Landing (the "Lake Homeowners"). The appellant Gayle Dendinger participated by written comment or by appearance at the Planning Commission hearing and has legal standing under the LDC to file this appeal<sup>1</sup>. This appeal is timely filed with the City Manager, City Clerk and City Attorney<sup>2</sup> within 15 days of the hearing on Resolution 26-10 with an appeal fee of \$1,245.20 paid to the City Clerk.

This appeal and appeal appendix incorporate includes all evidence and testimony given in opposition to City of Sanibel Resolution 26-10 and includes references to the following documents that are provided in separate Appendix Volumes 1-5 with an Index Table of Contents:

- City of Sanibel Resolution 26-10
- City of Sanibel Resolution 25-058 (Plat Approval Authority)
- Application file and record for Development Permit (Application No. DP-2021-001803)
- Minor Subdivision (Application SPLT-2022-000074)
- City of Sanibel Resolution 23-049
- City of Sanibel Resolution 23-24

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<sup>1</sup> 82-98 (b) Any "person residing upon, or owning property within the city, or owning or operating a business within the city, *who participated by written comment before or at the planning commission hearing or who participated in person* or through an authorized agent at the planning commission hearing."

<sup>2</sup> 82-98 (b) "The appeal shall be filed within 15 days after the date that the planning commission decision *was filed.*"

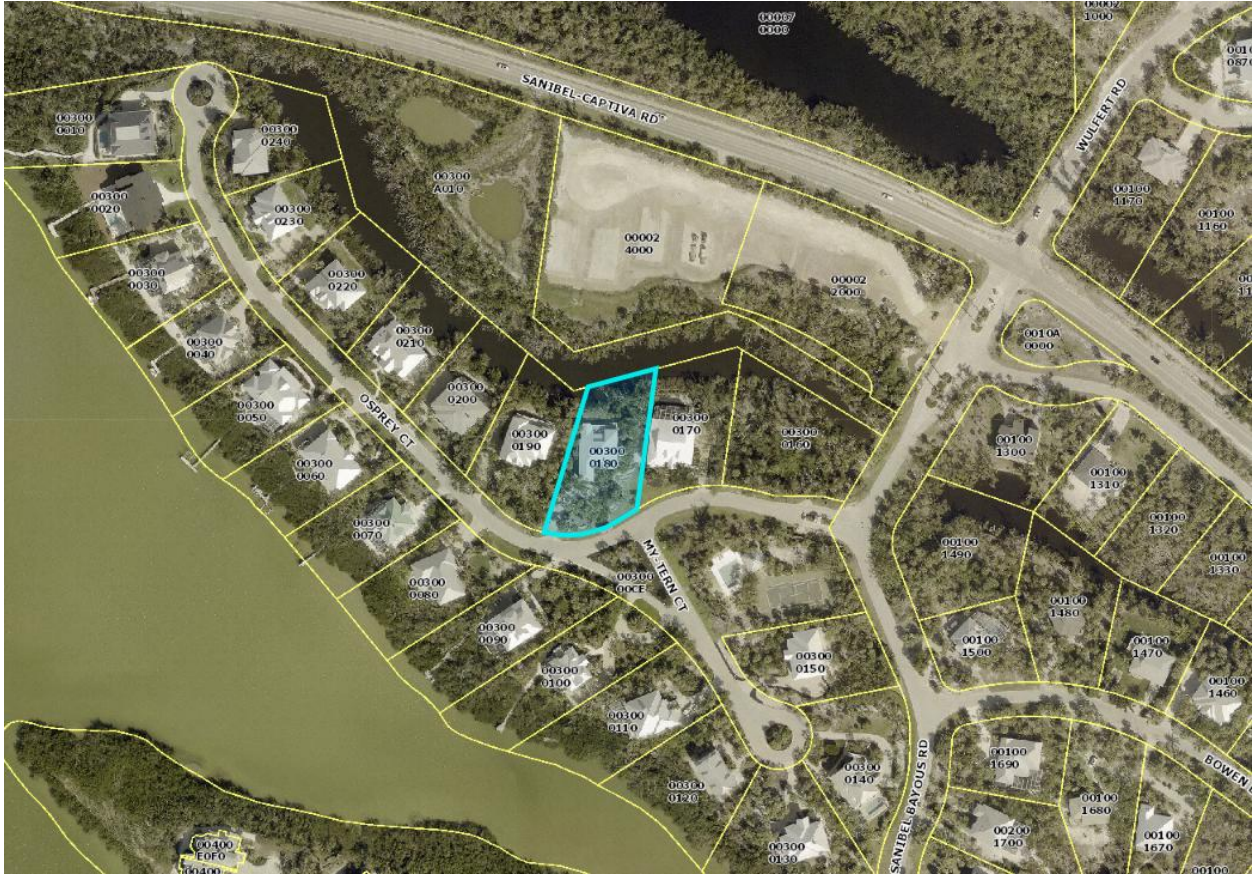
Appellant/Petitioner GAYLE DENDINGER of 5406 Osprey Court, Sanibel, FL 33957 appeals the March 24, 2026, quasi-judicial Planning Commission hearing and decision approving the “**REVISION OF AN APPROVED PRELIMINARY PLAT**” by City of Sanibel Planning Commission Resolution 26-10 for six (6) lots in the Coastal Creek subdivision development.

GAYLE DENDINGER appeared at the hearings on this development plat and invoked previous hearing testimony given in opposition to the subdivision development. GAYLE DENDINGER appeals this decision by City of Sanibel Planning Commission Resolution 26-10 approving six (6) lots in the Coastal Creek subdivision development with conditions and respectfully requests the appeal be heard by the Sanibel City Council.

Resolution 26-10 proposes **full-lot coverage** of **5,000 sq** (the entirety lot of Lots 1 and 2) and increases lot coverage by an additional **600 sq** of impervious surfaces on the additional four (4) lots (from  $\pm 3,200$  to  $\pm 3,800$  sq).

The six (6) lots subject to “**REVISION OF AN APPROVED PRELIMINARY PLAT**” have not been fully remediated and should be fully remediated or restored to prior natural background conditions prior to any further development. GAYLE DENDINGER respectfully alleges that the subdivision approval grants a development footprint exceeding what has previously been contested and approved and:

- Is inconsistent with the Sanibel Comprehensive Plan
- Is not in compliance with Land Development Code (“LDC”), and
- Fails to address the known “public nuisance” on the subject property site.



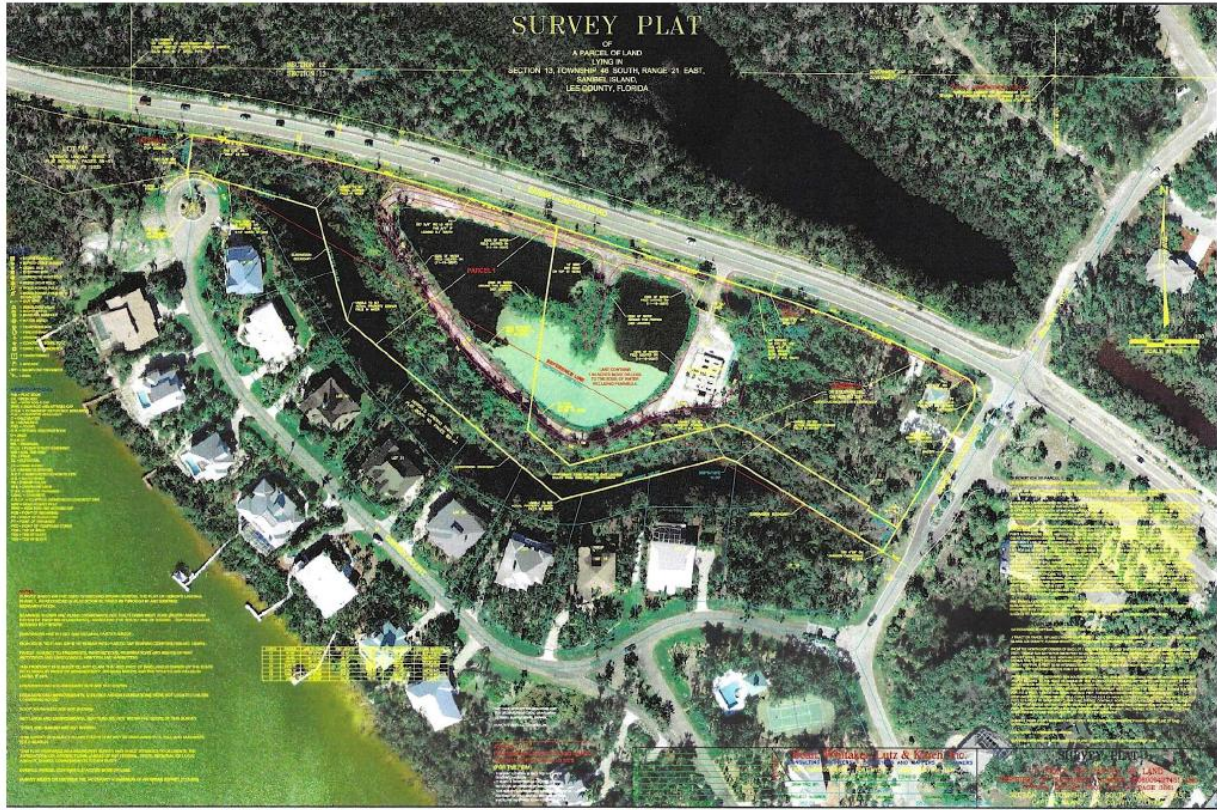
Aerial Map of Location of GAYLE DENDINGER's residence 5406 Osprey Court across the Heron's Lake from the cleared areas of "Coastal Creek" Subdivision Parcels

**STATEMENT OF FACTS & HISTORICAL BACKGROUND**

The site is adjacent to Heron's Lake, one of Sanibel's Top 5 polluted lakes that is actually jointly owned by the City of Sanibel and nine homeowners living on Osprey Court in Heron's Landing (the "Lake Homeowners") including GAYLE DENDINGER of 5406 Osprey Court, shown in aerial above.

The Applicant proposes to build six homes with pools on top of land that contained a decommissioned private wastewater plant.

The City of Sanibel decommissioned the private Sanibel Bayous plant in 2008 after sewage leaching from the plant forced the closure of Bowman's Beach in 2007.



Sanibel Bayous Private Wastewater Plant (decommissioned 2008)

All six (6) of the homes are located on the former Sanibel Bayous Private Wastewater Plant parcels and four (4) of the new Coastal Creek lots upon which homes will be built are located on a former settlement pond of Sanibel Bayous Private Wastewater Plant.

Resolution 26-10 proposes **full-lot coverage** of **5,000 sq** (the entirety lot of Lots 1 and 2) and increases lot coverage by an additional **600 sq** of impervious surfaces on the additional four (4) lots (from  $\pm 3,200$  to  $\pm 3,800$  sq).

## WHAT IS PROPOSED?

Resolution 26-10 purports to approve an application to:

**“AMEND ALLOCATED IMPERMEABLE COVERAGE FOR LOTS 1 THROUGH 6 AT A UNIFIED RESIDENTIAL HOUSING (CLUSTER HOUSING) DEVELOPMENT KNOWN AS “COASTAL CREEK” SUBDIVISION, ON PROPERTY OWNED BY BUCKINGHAM 225 DEVELOPMENT, INC. (DANIEL W. DODRILL), AND LOCATED AT 5325 AND 5301 SANIBEL CAPTIVA ROAD, PARCEL NOS. 13-46-21-T2-00002.4000 AND 13-46-21-T2-00002.2000”.**

Resolution 26-10 goes seeks, at the behest of the Applicant per his application narrative to **maximize** increases to the amount of impervious surface lot coverage *beyond* what was approved by the Sanibel City Council during highly contested public hearings.

However, the Sanibel Plan and LDC emphasize natural, pervious design standards, not full-lot coverage by impervious surfaces (as associated with commercial parking lots) particularly in a residential setting on an already polluted lake, Heron’s Lake.

Resolution 26-10 proposes **full-lot coverage** of **5,000 sq** (the entirety lot of Lots 1 and 2) and increases lot coverage by an additional **600 sq** of impervious surfaces on the additional four (4) lots (from ±3,200 to ±3,800 sq).

The increase in impervious surface will generate additional stormwater contaminants, including legacy wastewater plant contaminants present on the site. Petitioner DENDINGER lives across Heron’s Landing Lake from the Coastal Creek Project and is close to Lots 1 and 2 for which Resolution 26-10 proposes **full-lot coverage** of **5,000 sq** (the entirety lot of Lots 1 and 2).

Granting full-lot impervious surface coverage on Lots 1 and 2 in this section of the “Coastal Creek” development not only impacts the restoration and replacement of natural vegetation in the proposed Coastal Creek development, but diminishes natural capacity to absorb stormwater run-off, storm surge and precipitation. This increase in impervious surfaces reasonably amplifies concerns for flooding, with increasing risks not fully captured in stormwater engineering particularly in Tropical Storms and Hurricane events. Full lot coverage by impervious surfaces denies Petitioner DENDINGER the approved capacity of natural function at this flood-prone site, and he and his neighbor’s opportunity to be heard on the matter.

Appellant DENDINGER as an existing Sanibel resident has already experienced loss from the impacts of repetitive hurricanes, tropical storms and extreme precipitation events on his property at Osprey Cour. Appellant DENDINGER relies upon Heron’s Lake and has reasonable concern for the Coastal Creek diminishing natural stormwater function impacts:

- that arise from concentrating impervious surfaces by increasing the impervious surface ratio to **full-lot coverage of 5,000 sq on lots 1 and 2 and increase in 600 sf on** the additional four (4) lots (i.e., from ±3,200 to ±3,800 sq).
- *further* alter the natural floodplain that was previously altered by 26,000 cubic yards brought onto the wastewater plant site to “encapsulate” legacy contaminants,
- increase run-off near potential “hot spots” of contaminants,
- ultimately outfall into ecologically failing and vulnerable Heron’s Landing Lake,

- were proven to be interconnected by the contamination of Bowman's Beach (2007) leading to the decommission<sup>3</sup> of the sewage plant.

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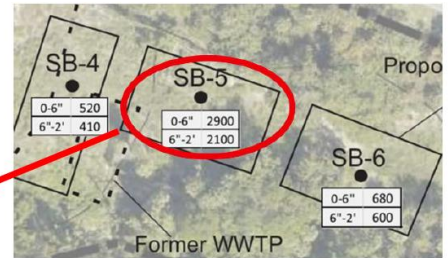
<sup>3</sup> The City of Sanibel decommissioned the plant in 2008 after sewage leaching from the plant forced the closure of Bowman's Beach in 2007. See, Testimony of Chandler, Staff Report.

## ADDITIONAL TESTING OF HERON'S LANDING LAKE

Recent 2024 testing of Heron's Landing Lake in 2024 revealed PFAS<sup>4</sup> commonly known a pollutant "forever chemical" levels in the water and cored sediment samples. This is indicative of the migration of persistent contaminants from the site of former sewage package plant, Sanibel Bayous, on which the Coastal Creek subdivision is located.



PFAS Sampling (July 17, 2024), EPA 1633 – Aqueous & Solid (units ng/l)



"Startling" Phosphorus 2900-2100 mg/kg (June 15, 2023)



Photograph Heron's Landing Lake (June 28, 2023)

<sup>4</sup> Scientific studies have shown that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals:

<https://www.epa.gov/pfas/pfas-explained>

<https://www.atsdr.cdc.gov/pfas/index.html>



**PFAS Sampling (July 17, 2024), EPA 1633- Aqueous & Solid (units ng/l)**

The presence of PFAS raise new concerns for *additional* adverse impacts on the Heron’s Landing lake health from the sewage package plant’s legacy contaminants and call for excavation of the identified legacy contaminants “hot spots” in the locations of the former wastewater plant and the east of the former wastewater plant on proposed lots where contaminated soils were not previously excavated and removed, see Soil Boring Five (SB-5) below:

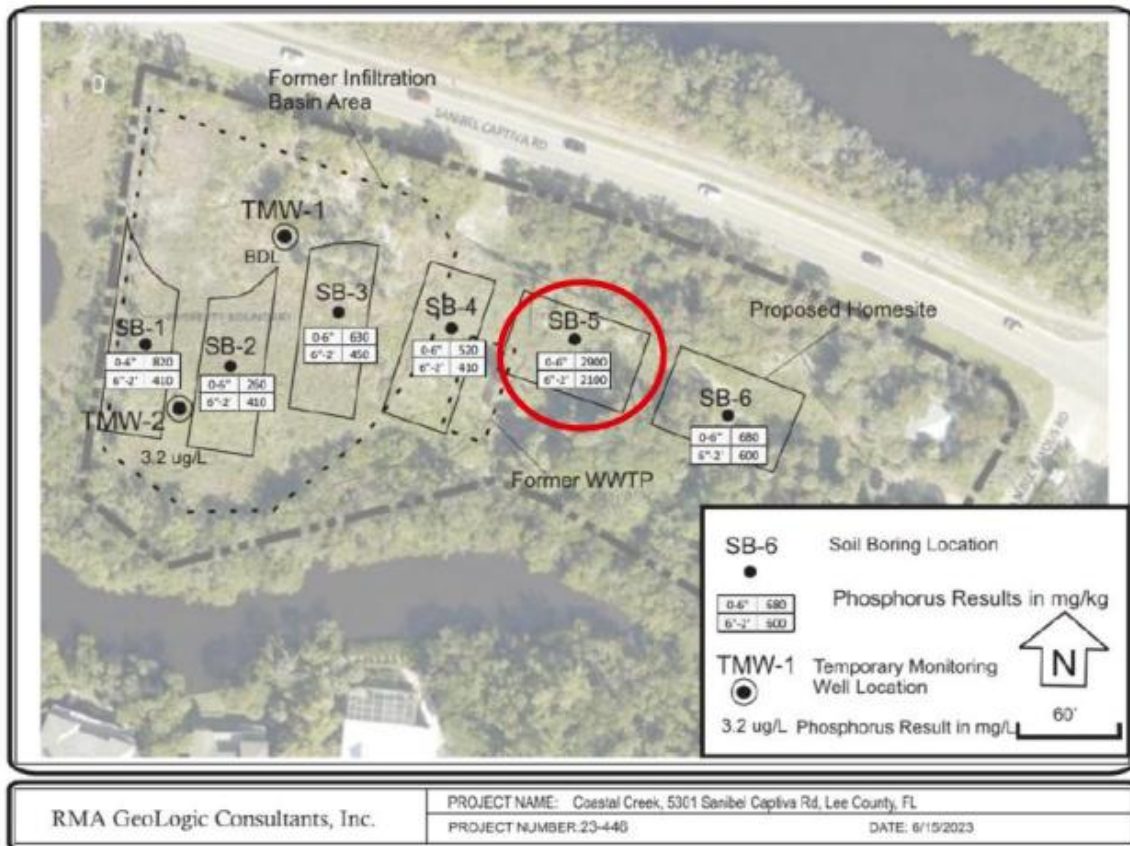


FIGURE 1 - Site Map Showing Former WWTP & Infiltration Basin, Soil and Groundwater Sample Locations, and Phosphorus Results

Previously, the City of Sanibel Resolution 23-049 approved a development permit and subdivision plat for six clustered homes with in-ground pools (“Coastal Creek”) on the site a decommissioned former private wastewater treatment plant. WWTP operations is a commonly verified source of PFAS contamination.

This site also continues to leach nutrients (i.e., phosphorous and nitrogen) and other suspected contaminants through the groundwater from the subject site into Heron’s Landing Lake. The failing lake health and resulting nuisance algae blooms, including harmful cyanobacteria (“Harmful Algae Blooms” or “HAB”) are responsible for an array of nuisances including odors, and toxins that, along with PFAS have real adverse impacts to human and environmental health.

The **known** nuisances are easily viewed and smelled and constitute not only environmental but public health, safety and welfare “nuisances”. These known nuisances are *further* exacerbated by the less visible but environmentally catastrophic magnitude of hazards and impacts from *other* sewage-related contaminants. PFAS that are correlated with sewage-related nutrient pollution have been found to

- easily migrate,
- persist indefinitely (lasting in the environment for 100 to 1,000 years),
- bioaccumulate across species,
- have been found in wastewater plant effluent and biosolids.

In this location PFAS has been sampled at 40-45 ng/l. <sup>5</sup>

Heron’s Lake is owned jointly by the City of Sanibel and nine homeowners living on Osprey Court in the Heron’s Landing community (the “Lake Homeowners”). Heron’s Lake is the subject of a “Lake Agreement” to which the City and the Lake Homeowners (including the Petitioner) is a committed signatory. The Lake Agreement’s purpose to achieve on-going nutrient reduction is handicapped by the “Coastal Creek” Project, despite overtures for collaboration, and **hampered** (emphasis added) by the continued migration of nutrients and contaminants from the Coastal Creek property into the ecologically degraded and vulnerable lake.

The presence of PFAS in the soils and lake necessitate further actions to actually reduce stormwater runoff and actions to remediate PFAS in Heron’s Lake protect

- the estuary function of the lake,

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<sup>5</sup> The PFAS levels at Heron’s Lake are 10-15 times ABOVE reported levels in survey of PFAS in nearby surface waters at 4 ng/l. See Bowden Lab, [Statewide surveillance and mapping of PFAS in Florida surface water](#)

- wildlife utilizing the lake as habitat and food source,
- the community’s human health, including food eaten as retained catch.

The Planning Commission has failed to properly interpret and apply Land Development Code (LDC) Sections and Comprehensive Plan policies set forth in the Sanibel Plan that:

- prohibit pollution;
- protect Sanibel Freshwater Lakes, including Heron’s Lake and
- protect residents from hazardous conditions, including PFAS and Nutrient pollutants that are detrimental to the public health, welfare, and safety; and
- protect the peaceful use and enjoyment of adjoining lands.

#### **THE SANIBEL PLAN, COMPREHENSIVE PLAN**

Specifically, the Planning Commission has failed to properly interpret and apply the provisions of LDC and Comprehensive Plan that require the following:

**Conservation Goals, Objective 4**, the Planning Commission must “protect and conserve water resources and prevent impairment of the quality and quantity of surface and groundwater resources.”

**Section 3.2.2. 4** of The Sanibel Plan states that it is “imperative” to protect “lakes and wetlands from any sewage pollution” and recommends studies and taking “appropriate remedial action.”

The Sanibel Plan, Future Land Use Element requires the City to ensure that all new development will “promote the protection of natural, [and] environmental resources,” and “promote the maintenance or enhancement of water quality.”

**Policy B2.1** further requires the City to “protect national resources by application of best management practices.”

### **LAND DEVELOPMENT CODE**

Sanibel Land Development Code **Section 86-40** requires the Planning Commission to consider how to minimize environmental damage caused by this development. Section 86-40(b) requires that:

“The design, location and construction and the maintenance of all development shall be in a manner that minimizes environmental damage.”

Sanibel Land Development Code **Section 14-244** defines land as “hazardous” when conditions on the land are:

“dangerous to the health, welfare or safety of the public, the occupants of surrounding properties, or the occupants of such land;” or when “noxious odors” or “harmful particulates” emanate from the land.

Sanibel Land Development Code **Section 14-247** requires the landowner to assess, remediate the hazardous conditions, and restore the land

“by the means .. least detrimental to the owner's property and to the public environment.”

Sanibel Land Development Code **Section 78-15** addresses public nuisances,

“The provisions of this Land Development Code are deemed to be necessary for the protection of the public health, safety and welfare and for the protection of the peaceful use and enjoyment of any lands by the owners thereof, and any violation of this Land Development Code is hereby declared by the city council to constitute a public nuisance.”

## **LAWFUL DISCLOSURE OF DEFECTS AND CONDITIONS**

The City Commission should require a condition that the Applicants disclose to prospective purchasers that the site is a decommissioned wastewater plant, test results recorded in public record including PFAS test results in the lake and soils, and actions taken to remediate the site (or the lack thereof).

Applicable Florida law requires the full disclosure of the history and environmental problems of this site. The Florida Supreme Court's held in *Johnson v. Davis, 480 So.2d 625 (Fla. 1986)*, that a seller of residential real property has a common law duty to disclose any latent defects if he or she has knowledge of conditions materially affecting the value of the property that are not readily observable or known to the buyer.

There is increasing scrutiny of sewage associated contaminants applicable to this site and the negative impacts of PFAS on biological life, including human health and persistent environmental degradation.

The concerns for legacy contamination from the wastewater site on the subject property have escalated and will not abate without remediation. Disclosure of these unabated defects, including assuming their liability through property ownership, is lawfully required.

## REQUEST FOR RELIEF

Appellant GAYLE DENDINGER respectfully appeals the Planning Commission's approval of Resolution 26-10 and requests the Applicant remediate PFAS contamination on the site and Heron's Lake.

By granting maximum impervious coverage on a site known to harbor persistent chemical contaminants, the City is not simply adjusting numbers; it is actively diminishing the island's natural capacity to mitigate flood risk and contain legacy pollution. The evidence of PFAS "forever chemicals" and nutrient leaching into Heron's Landing Lake proves that the subject property remains a functional public nuisance that has yet to be properly remediated.

To allow **full-lot coverage** of **5,000** sf on these sensitive lots ignores the strict scrutiny required by the Sanibel Plan and the Land Development Code. Such a departure from established density and design standards creates an irreversible "parking lot aesthetic" that is incompatible with the surrounding neighborhood and ecologically dangerous to the shared waters of the Heron's Landing community.

Petitioner DENDINGER requests that the City Council:

1. **Deny** the requested revision of the preliminary plat under Resolution 26-10;
2. **Mandate** comprehensive environmental delineation and remediation of the legacy PFAS contaminants prior to any further development activity on the Coastal Creek site.
3. **Consider** purchasing and restoring the site to natural conditions.

/s/ Gayle Dendinger

/s/ Ralf Brookes Attorney

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