



City Council affirms Planning Commission decision on low speed vehicles

At a hearing on February 7, the Sanibel City Council voted unanimously to affirm the Planning Commission's earlier denial of a permit to A Plus Carts to open a rental agency on Periwinkle Way for low speed golf cart-like vehicles.

As we have mentioned in previous messages these vehicles are by preemptive state and federal law "street legal" on Sanibel. However, whether or not to issue a permit to open a rental agency on Sanibel is a matter of local law. The Planning Commission simply decided not to allow the rental facility because it found that there was not sufficient customer parking at the site.



The Council's action does not mean the case is over. A Plus may appeal to the Florida Circuit Court in Fort Myers. If it does so, a judge would decide whether the Planning Commission's denial of the permit was proper using the same standards as the City Council used.

In the alternative A Plus could apply to the Planning Commission for another conditional use permit based on a different business plan.

The role of public comment in quasi-judicial hearings

At the appellate hearing the Sanibel City Attorney, who acted as a sort of referee,

advised that comments by members of the public at the Planning Commission hearing were not considered "competent, substantial evidence" and therefore could not be relied on by the commissioners in their decision making. If we heard correctly members of the public may speak at these hearings but unless they are recognized as experts their comments would have no evidentiary value.

As we have pointed out in the past, quasi-judicial hearings are very different from meetings before the Planning Commission or City Council at which policies issues are up for discussion. Where policies are being debated, public opinion is given considerable weight. However, evidence, not public opinion, is all that may be considered in the decision making process in quasi-judicial hearings.

What the City Attorney told us

Since our members sometimes speak during the time for public comment at quasi-judicial hearings, we wanted to know when opinion testimony by members of the public might be considered "competent, substantial evidence," so we asked the Sanibel City Attorney for some guidance. This is what he told us:

"A reviewing court will look to whether the speaker has special expertise in the subject matter being reviewed. For example, if the issue is compliance with a drainage or water retention regulation, an engineer will often be the "expert witness" to provide that type of testimony. However, if a lay person had some particular expertise in the area of drainage based on their study or experience, then a court might agree that such testimony was within the realm of "expert" testimony, that is to say, information and testimony above and beyond that of the general public that would assist the decision maker in evaluating and deciding the drainage or water retention compliance requirement."

We then asked what a member of the public with expertise could do to increase the likelihood that their comments would be considered sufficiently "expert" to demonstrate knowledge and experience beyond that of the general public. This is what the City Attorney suggested:

"A person could testify that they are formally qualified (they have a formal degree or certification in the area at issue) or they have in some other way gained special expertise in the subject area through experience, informal training or a unique association with the issues above and beyond that of a member of the general public."

Comments by the public are always welcome at quasi-judicial hearings and may influence the hearing, but for those comments to influence the outcome on appeal, the speaker would have to demonstrate expertise in the field under consideration – personal opinions alone would not be sufficient. The City Attorney was not able to say in advance exactly what level of knowledge will be sufficient to qualify as "competent, substantial evidence." He simply explained the general rule he uses and which is generally applicable. We found it helpful and thought it worth sharing with our members.



Larry Schopp
Chair, COTI Land Use Planning Committee

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