

Captiva Community Panel

BRIEFING

April 24, 2018

Attending: David Mintz, Mike Mullins, Mike Boris, Jay Brown, Tom Rathbone, Mike Kelly, Mike Lanigan

Audience: 10

Meeting convened at 9 a.m. *Mintz:* Introductions and explanation, Morris-Depew Associates had four tasks for panel: briefing on density and intensity and examples of possible development. *Brown:* Also look at from long-term wastewater strategy for Captiva.

Depew: Opening comments. Captiva has a long-term need for central sewer. You can fight density, but you can't repair water quality once it's damaged. Presentation... Florida Statutes Chapter 163 governs planning. Concurrency... no development without services, once adopted development went to rural lands. Examples of consequences of your planning decisions and statutes. Land development regulations must be consistent with comprehensive land use plan. Going to court is hugely expensive and outcomes are not satisfactory to anyone. Future Land Use Map (FLUM) grown over time. More added and nothing taken away. Few land use districts on Captiva, outlying suburban mostly. Captiva Plan Policy 13.2.5 example of straightforward language. Policy 13.1.6, open to more interpretation. River Hall example of overly broad interpretation. Judges would not overrule local+ interpretation. Write it specifically to avoid too much leeway. Plan amendment process graphics. Rezoning flow charts from county. Need to know this process to have influence on land use and zoning decisions on Captiva. Hearing Examiner (HEX), staff, county commissioners. Private sector clients often have unrealistic expectations as to what can be developed. Planned Unit Development (PUD) and conventional rezoning receive approval from Board of Commissioners, variance or special exception does not go to county commissioners, only HEX and (if necessary) court. Earlier is better if you want to influence the process.

Zoning categories: Explained. Village area of greatest concern, most odd zoning districts. RSC-2 can have up to three units on each lot, most do not. *Lanigan:* Footprint? *Depew:* 25% coverage allowed. *Brown:* Definition of accessory unit? *Depew:* Yes, not based on structure size, not based upon rental units. They are considered accessory to the main house. *Mintz:* Cannot subdivide into less than RSC-2 requirements. *Depew:* TFC-2 mostly in Village. Not for new development, only for existing property. *Mintz:* Most homes are one family, old plats. With all the layers of zoning, how do you think about that? *Depew:* Worst case, duplex; best case single-family home on each lot. Each case may have unique circumstances to it. Restricted by lot width (variance) or told no because they don't have enough land for the density they are requesting. Look at each lot separately. Discussion of nonconforming uses. Would require a hearing, you could marshal forces and object to the proposed change. RS-1 is single family only. C-1 zoning, holdover from old regulations. Mixed use zoning, old is new again. You can do anything in that district you want. *Mintz:* Andy Rosse Lane, both commercial and residential. To protect uses on Andy Rosse Lane, could you confront taking. *Depew:* Depends on individual circumstances, but possible. CS-1: office, low demand commercial. CT: allows certain kinds of housing uses, tourist focused activity. CP: commercial parking. CM: commercial marine. RPD and CPD: planned development, residential or commercial. CFPD: community facilities.

Examples: Looked at three properties to discuss: Rauschenberg land, McCarthy's Marina and Jensen.
Rauschenberg: Mix of TFC, RS-1 and C-1. Acreage breakdown shown. Could see that all those lots could be developed, via a minimum use provision. If under single ownership, overall density applies. 40 lots platted, over allowed density. File minimum use determination, demonstrate this is an old plat sold as individual platted lots. Would have to litigate to get the permits. RS-1 gives you 3.56 units per acre if in perfect dimensions; if irregularly shaped, cannot get all those lots and include necessary infrastructure, stormwater retention, etc. Go to RPD, not create lots but individual units and common area. Someone will want to come in and pull value of these properties. C-1 area would allow more units, although not more than 3 per acre. TFC-2 hard to work with. *Mintz:* Foundation has committed not going to sell property for at least 30 years. This process is edifying, lot of complicating factors. RPD would have to rezone, come to community to discuss. *Depew:* Reasonable economic use of property. To justify changes in zoning. Hard to demonstrate that with this kind of zoning. Old plat then RS zoning, is that a reasonable outcome? You have zoning, just have to stiffen spine of commissioners to allow them to develop to existing zoning rather than rezone. Always wiggle room, never 100% certainty, but that language is very strong. *Mullins:* How much value in property, \$40-\$50 million? *Depew:* All on the come, a lot of upfront costs to make changes. *Mullins:* Hope and pray. *Mintz:* Or buy it. *Depew:* No one in their right mind wants to come and rezone anything on Captiva. Work with the existing zoning if you possibly can.

Jensen: Twins Palms is currently way over density. Nonconforming use kicks in, no more than 50% of value in improvements. *Brown:* To maintain density, all they can do it rehab units. If you scrape the whole thing down, you get three units.

South Seas: *Depew:* Client of mine, nothing going on that's confidential. U.S. Army Corps of Engineers now owns Harbour Pointe. Units go to Corps, not going to sell. *Mintz:* Cannot place them somewhere else? *Depew:* Units are gone. Did not go back to South Seas or Plantation Development Ltd. Maybe 12 units belong to the Corps now. Discussion. *Depew:* Original zoning enacted in 1978, no legal basis for what commissioners did in a PUD zoning. 2002 Administrative Interpretation allows 912 residential units and up to five acres of commercial, can shift units around administratively. 2014 Administrative Amendment: Existing employee housing on south end, 140 units total, now can be 96 units north and 44 units south as long as employee housing is preserved. It can be scattered throughout resort. not separate area of employee housing. *Mintz:* Change of size of units allowed? Any way to control intensity of use, not just density? *Depew:* Nothing in current code that deals with that, would have to come up with a new process to define number of bedrooms per unit, expect a lot of screams about that. Say, anything over six bedrooms becomes a new unit. Make the upper limit fairly relaxed. Parking, wastewater, heights, setbacks, elevation also control intensity to some degree. *Depew:* I think South Seas would love to shut down that wastewater treatment plant, would be supporters if central sewer came in here. *Brown:* Some support it, recognizing long-term threats to plant from sea level rise and storms. Discussion. *Depew:* Very complicated issue, North Fort Myers WWTP takeover by county took decades to resolve. *Mintz:* Height provisions: South Seas 2002 AI has old language, was that changed? *Depew:* Not sure, may be the old rules in place still. Variance and deviations have specific criteria only for Captiva. Good base to oppose activity if someone needs to seek variance. *Depew:* Language in code and plan makes it impossible to get a variance from code.

Mullins: RSC-2 allows three structures, does that make it automatically multifamily? CEPD assessment tied to state Dept. Of Revenue, more than one unit on lot. *Depew:* Two different creatures, property

appraiser, vs. taxing units. Taxing purposes vs. land use purposes.(1) *Mintz*: Definition of TFC-2, could duplexes be redeveloped on those lots? *Depew*: Potentially if you have the proper lot size to allow duplex development. *Mintz*: Not available for new development, but that does not prohibit new development in existing TFC-2 lots. Can't put districts somewhere else. *Boris*: Issue of interpretation... is it precedential, or the next property owner can come to different conclusion. *Depew*: Unique facts of case, hard to generalize. *Boris*: Can't rely on the last decision for the next plan. *Mintz*: Last plan update, pressure from county to make language as general as possible. Had to compromise on some language to get approval, behooves us to put more specifics back into code. *Mullins*: More specificity each level you go down-- goal, objective, policy, code. *Depew*: Want to preserve your lifestyle, but do you want to straightjacket your life to that degree? Leave a little pressure valve.

Kelly: We tried in the past to distinguish barrier islands from other parts of the county. Code needs to be more specific, but county is always looking for flexibility – not our business at this point. *Depew*: County has to administer this code. They want to work from the same set of rules. *Kelly*: How can we protect ourselves in the code process? *Depew*: Constant vigilance. Keep pushing and get your own code for Captiva. *Mintz*: Number of provisions scattered throughout LDC. Also make sure the county does that. *Depew*: Have them move things around. *Kelly*: Challenge for Captiva to have viable commercial parcels of land. How can we help that? Mixed use was finally allowed, is that a good thing? *Depew*: Mixed use a good choice, look at how to make it work better for Captiva. Economic development zones? Can't do Community Redevelopment Agencies (CRAs) anymore. Tax breaks or other incentives for businesses could help. Microloans. Harder to do via the code process, would have to start back with the comp plan and then look at something on economic incentives. Need basis in plan to make that next step possible. *Lanigan*: Can you do an inventory of zoning types? *Mintz*: Could get rough estimate of how many properties are in each category. *Mullins*: Could you preclude movement from commercial to residential, isn't that a taking? *Depew*: Provide incentives to make them want to stay commercial. *Boris*: More about how sewer does not trigger increase in density. *Depew*: Use code to control what people have, not to take it away. Sewer or not, you have some time bombs to deal with out here. *Mullins*: Key is vigilance. *Depew*: You all have done great at it.

Meeting adjourned approx. 11 a.m.

Ken Gooderham, administrator

1) *Depew Comment*: At some point, I thought around here, but may have been at earlier edit on RSC-2, we had a discussion about rentals. I did want to clarify that I was not indicating that rentals of guest houses were impermissible, but rather that the language was not precise on that issue. Not suggesting it needs to be amended, as that may be quite controversial, but rather that it is one area that can be anticipated for additional discussion, and potential controversy, in the future. Panel may want to look at wording at some point, or decide to let it remain the way it is for now based upon the current practices. Not certain that we need to add, but did want to mention to you.