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**Captiva Community Panel**  
**MINUTES**  
**Tuesday, Oct. 13, 2015 @ 9:00 AM**  
**Cone Room • South Seas Resort**

**Members:**

**Mike Kelly (MK), President**  
**Jerry McClure (JM)**  
**Jay Brown (JB)**  
**Bob Walter (BW)**  
**Mike Boris (MB)**  
**Sandy Stilwell (SS)**  
**David Rohn (DR)**  
**Dave Jensen (DJ)**  
**David Mintz (DM)**

**Max Forgey\* (MF), note taker**

**Julia B. Davis, AICP; Forgey Planning Services**

**Sharon Jenkins-Owen, AICP (SJO);** Principal Planner, Lee County Department of Community Development; [SJenkins-Owen@leegov.com](mailto:SJenkins-Owen@leegov.com)

**Marissa Fewell, Lee County Department of Community Development**

**Sgt. Mike Sawicki (MS), LCSO**

**Chris Lusk (CL), LCSO**

**Kathy Rooker (KR), CEPD**

**Doris Holzheimer (DH)**

**Chief Rich Dickerson, Captiva Fire District (RD)**

**Mike Mullins (MM)**

**Rene Miville (RM)**

Meeting convened at 9:03 AM by Mike Kelly, President, who announced the presence of a quorum.

[Approval of minutes of September 8, 2015.]

**KR:** We have a lot of turtles still nesting. We haven't lost any so far due to beach renourishment. Two sand studies have been or will be started soon: (1) the Redfish Pass study sponsored by CEPD is under way. (2) The Blind Pass study by the Board of Commissioners awaits a vote on contract. The same engineering firm (CB&I) is doing both studies. This will give us a broader view of both. Next CEPD meeting tomorrow Oct. 14 at Wakefield Room 2:00 PM.

**RD:** Winter residents are coming back. Thanks David Rohn for writing a history of fire department. Self-contained breathing apparatus is approaching 15 year life expectancy and need to begin looking for replacements. Cost \$60K; new rules since 2013. Alarm

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alerts firefighters when they are down to 33% oxygen. 30-minute bottles last 10-15 minutes. We're looking at 45- and 60-minute bottles and will see what manufacturers have available.

**MS:** Ed Waite is retiring from service. We'll miss him a lot. We'll be scheduling a going away party for him and will post time and place on the Coconut Telegraph. Tentative date is Tuesday the 20<sup>th</sup>. Thursday will be his last day. His replacement is Chris Lusk, a 14<sup>th</sup> generation Lee County resident. He has a background as school resource officer and canine unit. He and his family looking forward to be on island. He likes to get out and walk the community and talk with residents.

**CL:** I'm looking forward to working on Captiva. If you see me on the street, in the vehicle or on foot, please feel free to stop me and talk about your concerns.

**DH:** No hurricanes this season, but we still need to keep lookout and be prepared. Hurricanes don't watch the calendar.

**MK:** Planning issues are next on the agenda. Propose that we merge this item with Max Forgey's discussion of Lee County Staff comments on Community Plan later in meeting. [Consensus agreement.]

Now, concerning November 10<sup>th</sup> meeting time. There is a scheduling conflict if we want to meet with FGUA because their regular meetings are always on Tuesday mornings. Could we meet with them and we have our regular meeting in PM? We asked FGUA to give options on feasibility of sewer system on Captiva.

**JB:** I can give some context. FGUA has taken over a lot of [Florida's] independent water and sewer facilities. Started out with four counties and has grown. We wanted to hear from them from two points of view: (1) What is status of current South Seas treatment facility; and (2) our long-term project evaluating sewer feasibility and whether what they are doing at SSR would impact it. Might it become a part of our sewer system, or might South Seas could be base for handling part of our sewer system? It's my understanding that they have a standing meeting on Tuesday mornings, so we have the option of scheduling a special meeting. We could schedule our November meeting to start in the afternoon to accommodate them.

**SS:** Doug Meurer [Lee County Assistant County Manager] has been out of town. I could email or text Doug to check on dates. We'd also like for Pam Keyes to attend. I could text him and ask what day he is available. Would he be available on the 10<sup>th</sup>?

**MF:** I thought he said he would be coming back today.

**JB:** Max, I understand someone else is working on this. I'd like to hear from all of them so Dave and I aren't working on it without knowing what they are doing.

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**MF:** Two months ago during this Panel meeting I stepped out and called Kevin Grace, my former boss, at Government Services Group in Orlando. His firm is the manager for FGUA and I asked how a study of this type [sewer feasibility] could be done. Kevin indicated that a study of this nature was already being done but would not be ready for another month. He indicated he would be happy to meet with us provided he had approval from Doug and Pam, because they were the clients. Last week I called Pam and haven't heard back. When I know, I will call Ken.

**SS:** How about 11<sup>th</sup>?

**MK:** Let us defer this discussion and reschedule our meeting when Ken. G is back.

**JB:** Don't know whether Doug will be available.

**MF:** I could communicate with Ken G that you could agree to meet Wed AM, depending on whether Doug M will speak and Kevin is available.

**RM:** I'd like to hear from Doug. He's very visionary; one of Lee County's brightest people. It's a privilege working with him.

**JB:** He did a terrific job a few months ago at one of our meetings.

**MM:** Can we settle to 2<sup>nd</sup> Wednesday in the morning? [It was determined that Nov. 11 was Veterans' Day and Lee County employees would not be available.]

**MK:** Our next meeting is Tuesday, Nov. 10.

**JB:** Ken needs two weeks' notice per by-laws.

**MK:** Fund-raising. We have Welcome Back Cruise on Monday, Nov 2 at McCarthy's Marina, Lady Chadwick Dock from 4:30 to 6:30 with food and beverages. You can send your checks to:

Captiva Community Panel (CCP)  
P.O. Box 72  
Captiva FL 33924

**JB:** How has the response been to the invitations?

**JM:** It just went out last Friday.

**JB:** It was prepared 3 weeks ago.

**MK:** Check with Ken.

**JB:** The annual August appeal was more successful than expected.

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**MK:** Cash position is pretty good at a little less than \$24,000.

**JM:** In the note about \$19,000.  
Nominating Committee report:

Captiva Civic Association (CCA) appointed Peter Lawrence Koury. According to his biography he was born in Atlantic City 1944; graduated Colgate and Penn Law and first visited Captiva in 1990. He is a lawyer who sold his cell phone business (American Cellular) to Comcast in 1988. CPOA appointed Rene Miville. Nominating Committee spoke with at least 18 candidates and nominated Mike Mullins. [One page biography presented by MM.] This was a unanimous nomination by the committee. Their first official meeting for these members will be in January 2016. Between now and November, anyone can submit their names for consideration. The Mullins appointment needs to be voted on in December. You don't have to choose the person nominated by the Nominating Committee.

**JB:** Jerry, should Ken send an email explaining that two new members have been appointed and that there is an opportunity for persons to nominate a candidate for the third position? [Consensus agreement.]

**MK:** Names of the appointees from CPOA and CCA must be in today.

**JM?:** I'd like a clarification. Under the old by laws, when there was a vacancy, there was a two month wait before a new member could be seated. How is that handled now?

**MK:** Depends on whether it is appointed or at large.

**JM:** [Reading from by-laws]. In event of a vacancy in an existing CCA or CPOA position, which has not been filled within 30 days by the respective organization. If they don't do so, we [Panel] fill it.

**MK:** Jerry, thank you again for your great work. One other item. There was a note from Ken that Lee County Zoning on August 19 approved the proposed South Seas amendment.

**JB:** They still have to get the building permit.

**MK:** There is a PDF on that decision.

**DM:** [On phone.] Is that for 140 units plus 5000 square foot spa on both sides of road. I remember this in 2008 amendment. Could someone clarify whether the spa is in fact included?

**BW:** I can answer that. I was surprised to find that in there myself. It's not in our plan.

**DM:** Thanks.

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**MM:** I'd like to return to the fund raiser. On Oct 7 I contacted Ken and saw proof that it was going to be on Nov. 2 but I didn't get a mass mailing. I'm wondering how many people got one.

**JM:** I got it as a portion of Ken's memo.

**MM:** I'm sure the date is correct, and wonder about mailer. Ken said to MM on Oct. 7 that he forgotten that he was on the email chain for proofs.

**MK:** Regarding LCEC, the issue with Cape Coral has been resolved and construction of new line will begin. Other issues remain between Cape Coral and LCEC, but this issue is resolved.

Max will now make his presentation about the Community Plan draft and the voluminous comments that we have received from Lee County staff.

**JM:** This document is from Ken?

**MF:** Yes. My own view is pretty close to his.

**JB:** It's Ken's summary of what the County said.

**MK:** You have 10 pages.

**MF:** I have copies for the audience.

**MK:** Does Panel need more time? I'd like to hear from Max.

**MF:** I'm Max Forgey, planner for the Captiva Community Panel. I'd also like to introduce Sharon Jenkins-Owen, principal planner with Lee County and also her colleague Marissa Fewell who is making her first appearance. Welcome, Marissa. We hope this isn't your last visit. [Laughter.] It's always a pleasure to come to Captiva, especially on a day like this. Also I wish to introduce Julia Davis, my associate, with whom I am also married. There are two documents and I made extra copies. The first is today's agenda with contains Ken's comments at page 7 or 8. "Captiva Plan Update Response." His thoughts are, as I said, pretty close to mine. The second document is the one that MK referred to as the 'ten pager,' which is mostly what the Panel wrote and what is already in the existing comp plan, but it also has Lee County staff's voluminous comments.

Going back awhile, over the last three or four years, this Panel has been looking at the portion of the Lee Plan that relates to Captiva. That is Goal 13 and its subordinate objectives policies. They have been in the comp plan since 2003 and they have been amended a couple of times already. Two sets of amendments have been incorporated already. One of them, if you will recall, started about three years ago when the Panel took upon itself to create its own vision statement based upon what they thought the Island

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should be and these have been incorporated into Goal 13. The rest of it is the result of workshops and public comments which we have incorporated into a strikethrough and underline version. When you look at this document, if there is no strikethrough and no underline that is what was already in the document to begin with. If it's underlined, we are proposing to add it; if it's stricken through, this Panel is proposing to delete it. Sometimes we propose to put policies in other places. If you see boldface in blue in Ken's version or black boldface in my version you see Lee County staff comments.

Who are Lee County staff? Sharon is the one we know best, but it's also a lot of other people. People like the Utilities Department, Public Safety, and—this is really important—the County Attorney's office. Attorneys and planners sometimes see things differently. We're being planners here. We're thinking expansively, trying to define the ideal. Attorneys, who work for local governments, sometimes have a tendency to put the brakes on things—they are supposed to be conservative, supposed to be a little suspicious of change. I think there's a little bit of that in here. The Panel did a great job. What you sent to the County was very visionary and I applaud that.

I want to talk about Goal 13 first...

- JB:** Before you go further, I have a question about how our language gets adopted. We propose language. Lee County staff evaluates, and we evaluate what they say. Then it goes to County Commission for adoption, correct?
- MF:** Not quite. Sharon and Marissa and I had a talk about this yesterday. I'm alerting Sharon to jump in here if she has comments.
- SJO:** The bottom line is after everyone [i.e. Panel and Staff] comes to an agreement the proposed amendment will be scheduled for committee meetings, followed by the Local Planning Agency, and then to Board of County Commissioners. It is then sent to the State for review. It comes back to the Board of County Commissioners for final adoption.
- JB:** On a few items can we just agree to disagree and move forward at our own peril?
- SJO:** The Board of County Commissioners makes the final decision.
- MF:** Absolutely.
- DM:** Request clarification.
- MF:** The Panel evaluates staff's comments. We may propose some changes; we may recede on some points. On some, we may choose to stand pat. We send it back to staff and we will hope to receive an expeditious response. At a certain point, this Panel will decide that this is our product and then it goes through the County's formal review process, which I have been through in the past for this Panel. It means going through the LDCAC (Land Development Code Advisory Committee), a mostly lay committee, then to the EROC (Executive Regulatory Oversight Committee), then to the Local Planning Agency, a lay

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body, which will make a recommendation, and to the BoCC.<sup>1</sup> They may propose their own changes. The BoCC will have access to both versions—what we sent and what the LPA proposes. We will then have the usual opportunity to lobby the commissioners individually. If there are any points of disagreement, as we hope there are none at this point, we can address them at hearing. It is a tedious, but familiar process. I'm ready and I know Ken is. Even when we disagree, we always work cordially with staff and with commissioners. Did that answer your question, David?

**DM:** It did and I appreciate that.

**MF:** A planning director has to learn how to count to three. When I work on projects like this, I am thinking like a planning director. I disagree with staff about the goal statement—I think it is a great place to express neighborhood vision at some length. I don't get a vote in this, but I recommend that we keep the vision statement as you have worked on it in the past. This is particularly important because Lee County was working on the EAR—the Evaluation and Appraisal Report—which is supposed to be the place where vision statements and big thinking are supposed to appear, and that process has been stalled for the last couple of years. Since Lee County has not afforded us an opportunity to insert this language into the EAR, it is incumbent upon this body to send this as our draft to the BCC as its catalogue of lifestyle and sense of island community as we know it. I think it's a great statement.

**JB:** I agree, Max, and I'd like to ask Sharon—what's the problem with us having this in here? Is it too lengthy? Does it do any harm?

**MM:** This Panel and the community spent considerable time to develop our vision. It's very substantial. I think we should continue to lead in our vision. I would not be in favor of amending.

**JB:** This was the heart of what we were writing.

**SJO:** When staff applies fresh eyes to the document, they ask questions, such as whether the policies are accomplishing the Goal and Objectives that you are trying to achieve. They notice that the Captiva Vision is much longer than any other community's and questioned if the additional language needed to be there. Our Lee Plan is large and the County is working to streamline it. Staff -- about thirty staff reviewers—are asking whether this level of detail is necessary.

**JB:** Sharon, in your view, would this be an issue with staff if we kept it in or would it be more of a minor irritant if we kept it?

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<sup>1</sup> NOTE: This is actually the process for Land Development Code approval. Plan amendments go through staff review, to the LPA and then the BoCC.—KG

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**SJO:** The longer Vision Statement does not forward the County's effort to streamline the Lee Plan.

**BW?:** I remember Max eight or nine months ago said that when we write the vision we want it to be clear, and not to not state our vision in great detail, because that can come back to haunt us in the future. That's what I would toss out [for discussion]. If we have great detail, we risk having to interpret things.

**SJO:** Some of this could go into your Community Plan, which is a separate document used to support the Lee Plan amendments.

**MF:** You're talking about Data & Analysis?

**SJO:** Yes, it is due to the County by end of month (Oct. 31, 2015).

**MK:** We have historically gotten short shrift from the County. Barrier islands are very different from the rest of the County. If was an effort to create something different for barrier islands. I want to be sure that they are looking at Captiva as a different cat. I don't care if part of this is an appendix, but I remember how much time we spent working on this and just taking it out defeats our purpose.

**MF:** The goal, which is longer than most planning directors like to see in a goal, is not regulatory, it is a vision statement. It doesn't say "35 feet above sea level;" that is regulatory. It does reflect what the community wants to see in its plan. You can argue whether the 35 feet belongs in the comp plan or the LDC (Land Development Code).

This Panel got involved more than two years ago because Lee County in the EAR had declared three types of overall development patterns: Urban, Suburban, and Rural and Captiva is none of these. We'll never be urban; we're not the suburb of anything; and we can't be rural. We are coastal. You can divide Lee County into four basic units. We and the barrier islands and Pine Island are just different. As that process has gotten stalled there isn't a way to proceed [through the EAR process].

**MK:** I can agree that the text is lengthy. Our text could appear as an addendum.

**SJO:** Captiva is different; I understand that

**SS:** When staff says low density isn't a lifestyle, can we agree to call it a "low density development pattern?" Can we tweak it some?

**MF:** They raised a good point there; they did raise some good points. I propose that we go through the text, see what stands out and schedule a workshop in November.

**JB:** I think the prevailing opinion on this first major point is that we want to keep the essence. [SS agrees.]

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**DR:** It should say “wildlife and flora are.”

**MF:** It should. We’ll fix that.

**DM:** We can accommodate some of the criticism by staff.

**MF:** I’m more than willing to work with you and all Panel members.

**DM:** These vision statements reflect a lot of hard work on the part of Panel and Captiva residents. We don’t want to browbeat staff, but we have invested a lot of time and thought. This is how democracy is supposed to work.

**MF:** Thank you; I agree.

**BW?:** I think we should conduct the Workshop and see that everybody has an opportunity to participate.

**SS:** The 12<sup>th</sup> is available at 9:00 AM. We could have a workshop that day. It’s the day after Veterans’ Day. [Agreed] If you could meet ahead of that date, like on the 10<sup>th</sup>?

**MF:** I’m already scheduled for the 10<sup>th</sup>. If anybody would like to have a workshop I can be here. I don’t know if you need a quorum.

**MK:** We can run through these quickly.

**JB:** Let’s run through one pass today. [Agreed] Somebody needs to communicate to Ken to get that public notice released. [SS agreed to do so.]

☞ [1 hr. 16 mins. 41 sec. into meeting]

**MK:** 9:00 November 12<sup>th</sup> is next Panel meeting.

**MF:** Policy 13.1.1—*Subdivision of existing RSC-2 parcels*. Comment from staff that this provision is confusing. This has been a part of the Lee Plan since 2003, so the comment should be prefaced by a statement that we know this is already in the Plan, but we are having doubts about it.

**SJO:** The Policy is not clear and may not be saying what you want it to say even though it is in the plan already. The lot split issue came up recently. This is a good time to clarify this policy. How will this Policy apply if it the subject property was no longer RSC-2, but were zoned RPD (Residential Planned Development)?

**JB:** What is difference between RSC-2 and RPD?

**SJO:** A Residential Planned Development (RPD) is a zoning category that would allow site conditions to be placed on the approval. The density is based on the Future Land Use

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Map. In this case the maximum number of units would be limited to 3 dwelling units an acre. A property owner may request to rezone land to RPD.

**MK:** We don't allow that.

**MM:** It says you can't do that.

**JB:** That wasn't our intent, was it?

**MM:** It may well have been. When this was put in place, my neighbor to the north, Mobed, it wasn't considered a subdivision or a lot split. His attorney learned that you can't have a lot divided by a road. When they created his lot, my lot, and other adjacent lots, they put together the one acre to make RSC-2 parcels. This is the case between Rene [Miville's] and [John] Madden's properties. They were all created before Jan. 1, 2002. They are exceptions which do not technically comply with RSC-2. So when he [Mobed] put through the administrative change to build on the bayside parcel, the County accepted it. I had a similar concern and I put through the same administrative change. It turns out that the changes to RSC-2 that required setback and other things were adopted about 15 years after these parcels were subdivided. My main house couldn't be 50 feet from the road. There are the exceptions that I have referred to, and there may be more on that stretch. We dealt with it in the original policy by saying that if the Coastal Construction Line subdivides a parcel, as it does in my case, in those cases, the Lee County authority—not the Hearing Examiner—who is responsible will make the decision as to whether the setbacks can be adjusted.

**MF:** Mike, do you believe it is working the way it is now? Is it a good policy?

**MM:** The interpretations here are a little different than the way I read this policy. As far as I am concerned, yes it does work, but please don't misinterpret the interpretation. People are generalizing, based on what they think is in RSC-2.

**MF:** I think we can clarify that. There's a kind of inertia because it's already in the Plan, and I don't see it as likely to go out.

**MM:** I agree, but want to point out that my house, Madden's house, and Sheets' house would be out of compliance with RSC-2 rules, but are grandfathered because they have been there since 1974, in the case of my main house and beach house.

**MF:** We will need to explain this to staff in the way that you have just explained it to us.

**JB:** OK, we do not want any lot adjustments that would result in a lot that is not consistent with our zoning.

**MM:** As long as it was after Jan. 1, 2002, I would agree with you.

**JM:** If a [subdivider] applies for an RPD after 2002?

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**JB:** This is a topic for a workshop.

**MM:** That's a different point—that no rezoning may occur in RSC-2. That's Jay's point, but it's not the way the Code is written today.

**SJO:** Ok, maybe you need to be very clear about what you want.

**RM:** Bill Riley's—he can divide into five lots as long as it still meets zoning. Are you saying that it's now just one lot because he bought it as one lot 20 years ago?

**BW?:** We're saying that if they are one acre lots, you can't go any further.

**JB:** He can subdivide his parcels as long as the resulting parcels meet the requirements.

**MM:** There's a process we go through. Now we're adding an interpretation that is not what this says. We have to go through a new process—publishing it and vetting it to the whole community. If Bill Riley were to choose to do an RPD, we might oppose it as a community and the County might reject it, but this language doesn't say anything about it. If we want to put it in, it's a whole other process.

**SJO:** Then your response should be to clarify that this is what you are trying to do, so we're all on the same page and the proper changes can be made, if needed.

**MF:** Yes, and to explain that this applies to a very small area of Captiva, only a few lots.

**DM:** It applies to all RSC-2.

**JB:** There is something in the Code—this should be workshopped.

**MF:** Can we go to Policy 13.1.2, *Building Height*? Ken and I talked, we can add a map; we can get a description of what is the Village, what is the Gold Coast? We'll just do it—it's not going to be tough. It says [in staff comments] that this provision is internally inconsistent. I don't understand why. We added language that *if* the Village, etc. want to establish building heights, they can propose them.

**JB:** As I interpret staff comments, they didn't understand that a majority of people in an area, the only way to change a building height was to make it less [lower] than what is in the current plan.

**MF:** I thought we were clear, but we can work with them.

**MM:** My interpretation—the last paragraph says we don't care about minimum heights only maximum. By taking out the language that they propose, they are saying no minimum, only maximum. I don't think it takes anything away and having our language in doesn't do anything. You don't have to say that.

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**MF:** As I recall, this was in there to give people in the Village the opportunity to propose more restrictive standards if they are interested, but it left it to them to take the initiative. I thought that was a good policy.

**SS:** Nathalie [Pyle] spearheaded that because there were some very tall houses that were casting shadows and becoming obtrusive and wanted language and wanted to propose changes and get a majority vote. There were other people in the Village who thought that might be a good idea. Is that the way you remember it?

**MF:** That's exactly the way I remember it.

**DM:** It is about process. They would then come to the Panel. Would have to be supported by majority vote.

**MF:** David, I'm seeing nods of approval.

**MM:** With all respect to the people in agreement, it is moot and the county is correct

**DM:** Cites Code. One acre minimum.

**JB:** If we can't resolve issues in 30 seconds, they should become workshop items.

**MF:** Certainly. [SS agrees.]

**RM:** For those who don't know, I worked for ten years to change building heights to allow [more creative] roof architecture. What is not being spoken is that people in the Village are the ones who had to build at the current floodplain levels, so their living area starts five feet higher. It's not a bigger house; it's just being built higher because of floodplain [regulations.] Either they need to build taller houses themselves or help their neighbors build lower ones.

**MM:** Jay's point is valid. We need to move more quickly. 30 seconds or move on.

**MF:** Let's roll through it. We'll decide what needs to be workshopped. I'm going back to being a planning director again. There are places, such as Policy 13.1.3 where we strike it out and leave it blank and do not then assign a policy number to the next policy. I do that so that there is no confusion as to which 13.1.3 we are talking about.

**JB:** Can you work it out with staff?

**MF:** I can. They want us to delete Policy 13.1.5, *Quality of adjacent waters*. We added the words "regulation of septic systems." Otherwise the policy they are asking us to delete is the same one that has been in the Plan since 2003. [Agreed to workshop.]

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Policy 13.1.7, *Public informational session for land use changes*, we asked for two weeks' notice. This is an old bone of contention between the Panel and the County, particularly one commissioner had a problem with the Panel being considered the only body which could conduct these sessions. I think Ken's comments are spot-on. Someone didn't read this correctly. We are not saying that the Panel must conduct the meetings, but if they are, the Panel needs 14 days' notice. I think that's fair.

**MM:** Then we should settle this in our by-laws and not in the comp plan.

**MF:** If we do that, I am hoping the County will respect it.

**SS:** I think that's why it's in there. We had one case where it wasn't convenient for them and they managed to get it passed without anyone on Captiva having an opportunity to express their thoughts on the matter.

**MF:** I think it does no harm and it might do some good.

**SJO:** The goal is to keep the Public Information Session requirements the same for all the communities with this requirement. Not all groups are as active as this Panel.

**MF:** Policy 13.1.10. Again, I agree with Ken. Ten acres in the Village is something I don't foresee. Specter of the Bert Harris cause of action is a bit silly. Proposed revision was a good one.

**MM:** Their language made sense. Anything else muddies the waters. Take Rauschenberg property for example. Maybe they are ten acres.

**MF:** [Explaining to DM] He agrees with the County's interpretation because he thinks the second sentence adds nothing that wasn't covered by the first.

**DM:** Workshop this, including discussion of lot splits and densities.

**MM:** What is the density rule? Is it three units per acre?

\*\*\*\*\* [1. 43.31]

**DM:** It's premature to change this, based upon the Rauschenberg property.

**MF:** Let's workshop that.

**JB:** As long as the end result is consistent with zoning.

**MF:** Yes.

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- DM:** Suppose there were two neighboring 75 foot lots and somebody buys both. They knock down the houses and build three homes each on a 50 foot lot. You now have an increase in density. [Consensus that this goes to workshop.]
- MF:** Policy 13.1.11, *Criteria for variance approval*. Staff asks whether these apply to deviations. Not to my knowledge. They ask that we consider deleting this provision in its entirety or refer to the requirements of LDC 34-145.
- SJO:** Staff is saying that this belongs in the LDC and not in the Lee Plan, like the height restrictions discussed earlier. Typically the variance provisions would go into the LDCs.
- MF:** It would. I think we should be open to deleting this if it is exactly the same language.
- SJO:** One further clarification—if you have conventional zoning such as RSC-2, and you need some relief from setbacks, that’s when you need a variance. If you have a PD, such as the RPD we spoke of earlier, you get deviation. It’s a different level of scrutiny. You might want to think about the deviation and whether it should apply. If it doesn’t apply to deviations, you might want to say so.
- MM:** These bullet points where we try to define the hardships—did we invent that?
- MF:** Policy 13.3.15, *Dark skies*. [Staff comments referred to Upper Captiva]. We struggled a long time on this one. They have some proposed amendments. Do you want to workshop this one?
- MK:** What *are* the Upper Captiva requirements?
- MF:** We will bring them to the workshop.<sup>2</sup>
- MK:** I think the less descriptive—the less code-like—the better.
- MF:** I don’t like the “if these efforts prove ineffective” language. It’s like we’re predicting failure. Policy 13.1.16, *Estuarine and wetland resources*. Staff commented about the preservation of upland vegetation and wildlife habitat on single family lots. I don’t know.
- SJO:** We’ll work on that one.
- MF:** Policy 13.1.17, *Blind Pass*. [Lee County staff proposes an alternate version.] They want us to delete the second sentence.
- MK:** Kathy, what does CEPD think about what Lee County is suggesting—does it follow what you are trying to do?

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<sup>2</sup> See LDC 33- 33-1731 et seq.

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**KR:** We received a call about this. I'm not sure what the County means when they say "efforts toward Blind Pass maintenance," but we do support the County's policy of keeping the pass open. The Panel's proposed policy isn't really clear as to who is keeping it open, or what Blind Pass encompasses. I think that the County's proposed policy indicates that they intend to keep the pass open and they will do what needs to be done. I'm comfortable with it. [Consensus]

**DJ:** Policy 13.1.6, *County information clearinghouse*, is that something we will be workshopping?

**SS:** I think we resolved that.

**BW:** I think we passed over that one in about 45 seconds.

**MF:** Policy 13.1.18, *Underground utilities*, they don't recommend it. As I recall, this is marker language to say that we will consider it, which I think they are doing anyway.

**DM:** Let's workshop this. [Consensus]

**MF:** Objective 13.2, *Mixed Use Development* and Policy 13.2.1 [no need identified for workshopping.]  
Objective 13.3, *Transportation*, the Panel's version referred to "the need to reduce automobile dependence on Captiva island." I think we agree that this one should stay in. [Consensus in agreement.]  
Policy 13.3.1, *Alternate transportation*. We propose language that *Lee County* will "encourage new development to incorporate pedestrian- and bicycle-friendly development." Staff says the first sentence is confusing and needs to be revised, etc.

**DM?:** I think we were trying to reduce island traffic in the long haul.

**MF:** Their language looks pretty good. [Consensus to workshop.] Objective 13.4, *Tourism*. They want to drop everything after the word "visitors."

**MM:** I think they gave you great language.

**DM:** We should workshop this. [Consensus in favor.]

**MF:** Policy 13.4.1, *Short-term rental*. We're not going to resolve this today and we note that the Legislature is considering the seven-day rental even as we speak and Sharon and I had a conversation about this yesterday.

**JM:** I don't like deleting it because of the inability to enforce.

**MF:** I don't like deleting it either, but we're going to have to workshop it.

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**DM:** Earlier we were told it was the law in Lee County anyway, and that was why we proposed it.

**MF:** We have to workshop this one, David. I'm going to send you a copy of Susan Trevarthen's PowerPoint on this issue. She is working with Florida League of Cities. The Legislature pre-empted the County's authority to set minimum stay times on short-term rentals and the Legislature is being approached aggressively on both sides of this issue. We need to talk about this in a workshop. [Consensus in favor.] This is a hot issue.

**SS:** Is it because the DRBOs and Air B&B?

**MF:** I think that's a part of it. This is an issue in coastal communities all over Florida. At last month's meeting I handed out copies of Susan Trevarthen's power point on this topic. [DM, SS, and MK requested copies.]

**DM:** Max, are you saying that our codes are pre-empted?

**MF:** I'm saying that there are attorneys who would say that it's pre-empted. I'll get you that information. There is a belief statewide that the Legislature needs to act affirmatively to impose a statewide standard. Objective 13.5, *Native Vegetation and tree canopy* and Policy 13.5.1, *Trees along Captiva Drive*. I think they are looking for more clarity and they want it in the Land Development Code.

**MM:** I think they're right.

**MF:** Is this a Code matter or a Plan matter? I don't think it does any harm; it's a policy statement. A Code statement would be more detailed. [Consensus to workshop.] I continue to think it's a good policy. [Support expressed by two members.] Policy 13.5.2. They propose replacing the short title with *Indigenous or native trees* striking out all language after "required plantings and buffers." County staff requested deletion of reference to the "Exotic Pest Council of Florida," on grounds that there is a state statute prohibiting enforcement of their list. I'm going to ask for a copy of that citation.

**SJO:** No problem. We'll resend it to you. [See footnote below.]<sup>3</sup>

**MF:** Policy 13.5.3, *Heritage trees*. Staff said that this should be deleted because it belongs in the LDC.

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<sup>3</sup> Email from SJO to MF October 13, 2015.  
See F.S. 581.185 (12)

(12) REGULATED PLANT INDEX.—The Regulated Plant Index is to be used solely to restrict unlawful harvesting of native flora without the authorization of the landowner. The Regulated Plant Index is not to be used to regulate construction or other land alteration activities on any property.

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**JM:** How long does it take to get it into the LDC?

**MF:** Every bit as long as it takes to amend the Plan nowadays. Same committees.

**BW?:** Are we sure it's not in the LDC?

**MF:** We'll ask. Policy 13.5.4, *New development*. [Staff proposes an alternate version.]

**MM:** Their version is pretty much what we have now. You can't compel people not to plant non-native vegetation, so their version is basically correct.

**MF:** I don't see a desire to fight on this one. [Consensus in agreement.] Policy 13.5.5, *Mangroves*. Is there still a strong consensus on this body that you want mangrove language in the Plan? [MK, DR yes.] I think the setback language proposed by staff is weak. It gets tinier and tinier. [Consensus—keep as is; no workshop.]

**JB:** Even now, we're not sure what that "greatest extent possible" means. [General agreement.]

**DJ:** Keep it in.

**MF:** I heard SS say that we want to say something positive about mangroves.

**MK:** It's a state problem.

**BW?:** There's a policy regarding wetlands that you can't change or alter. Mariner project example.

**MM:** Rae Ann Wessel left, and I don't want to put words in her mouth, but she says that the state's wetlands and mangrove policy is the death of a thousand cuts. We need to go to workshop. [Agreed.]

**MF:** Please provide some guidance. We need to set aside two hours and I need to turn this document into workshop items and stipulated items. We'll have a consent agenda. You need them in advance. When?

**JM:** The next Tuesday that we were going to meet. [10<sup>th</sup>]

**MF:** Can we have it here on Nov. 10 and can we have it at 9:30? [Agreed]

**JB:** Next Panel meeting will be the Nov. 12<sup>th</sup>. Doug is supposed to be here on 12<sup>th</sup>.<sup>4</sup>

**MF:** Just us for the 10<sup>th</sup> and Sharon is invited.

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<sup>4</sup> Meurer/Keyes/Grace subsequently rescheduled to December Panel meeting.

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**JB:** If SJO can't be here, maybe we should reschedule.

**MF:** If she can't, I think Marissa or Tony would be helpful.

**DM:** Could you reiterate? [MF restated.]

**MF:** It's a Panel meeting open to the public. The meeting on the 12<sup>th</sup> will be at 9:00 AM. You will get utilities presentations. The only business on Tuesday at 9:30 will be the Captiva Community Plan workshop.

**Man in audience:** Sign ordinance. Most real estate companies complied for a short time. Now our signs are back where they used to be and are up to the asphalt. Vacation rental signs are everywhere. Last winter I spoke to someone in Code Enforcement. Is there no enforcement?

**MM:** We could draft a letter to County.

**SS:** Thanks for calling this to our attention.

**MB?:** Does it make sense to reach out to DEP for guidance about mangroves? Or is it better left unsaid?

**MF:** Better left unsaid in my opinion.

**DJ:** I agree with Rae Ann Wessel about the death of a thousand cuts. I think we need to talk to DEP.

**MK:** Adjourn. [11:27 AM]