

**Captiva Community Panel**  
**MINUTES**  
*June 13, 2023*

**Attending:** David Mintz, Margarethe Thye-Miville, Bob Walter, Bruce McDonald, Jay Brown, Linda Laird, Ken Gill, Ann Brady, Sandy Stilwell Youngquist

**Audience:** 133

The meeting convened at 9 a.m. Following introductions and roll, the May 9, 2023, minutes were unanimously approved (Laird/Brady).

**LDC/Plan amendments – Mintz:** Recap of proposed amendments to county Land Development Code and Lee Plan. Changes proposed without consultation with Community Panel, no opportunity to evaluate or provide input. Presented to Lee County commissioners at June 6 meeting to proceed to a public hearing on June 20. District 1 Commissioner Kevin Ruane was not advised of the proposed language until June 1, and his request to defer the item on the June 6 agenda was rejected by the county manager. The changes include raising building heights from 28 feet over base flood elevation (BFE) to 35 feet above BFE. This was an issue the community spent a long time debating when a change was proposed, and 28 feet was agreed to as a way to ensure people could build two stories with high ceilings over BFE. Increasing that to 35 feet is adding an additional floor – a potential increase in intensity of 50%. Having three floors instead of two. The county also proposed allowing property owners in certain areas to add up to an additional four feet to the BFE with a similar up to four-foot increase in overall building height... an idea the panel might have been willing to consider if we'd been asked for the sake of resilience. But increasing building height to 35 feet has nothing to do with resiliency.

Another amendment done without asking for community input was an increase in building density for South Seas only, eliminating the resort from the “3 units per acre” rule for hotel rooms. Elsewhere in the county there’s a different protocol for counting hotel rooms in terms of density, but on Captiva hotel rooms have always been viewed as the same as dwelling units and capped at 3 units per acre. South Seas would be exempt, but the other hotels and motels on the island would still have to abide by that density limit. The county also proposed to exempt South Seas from the height limits in either the Captiva Plan (28 feet above BFE) or the Administrative Interpretation (35 feet above grade or 42 feet above sea level). In a rezoning they could request 45 feet for building heights using the Outlying Suburban zoning, which also would now include a special option to go up to 75 feet if they claimed it would help protect environmentally sensitive land. The amendments don’t give South Seas these new densities and building heights, they just remove any regulations that would prevent them from request and receiving such densities and heights in the future. They could seek to amend or eliminate the Administrative Interpretation and, if successful with these amendments, they would no longer be bound by the existing Captiva Code regulations on density and heights.

At the June 6 hearing, the Deputy County Attorney in essence said south Seas wants to rezone the property and desired changes in our Land Development Code. The resort would no longer be bound by the Administrative Interpretation by initiating a zoning change, and would be exempt from the current LDC provisions covering density and heights on Captiva through these amendments. These changes in density and height would not be available to any other property owner on Captiva. If any private property owner wanted to change our LDC or the Lee Plan, they would have to hold a public information meeting on the island to explain what they were seeking before it went to the county for review and approval. But the county’s position is that these amendments are county initiated, and that you don’t have to hold any public information meeting – just the advisory committee reviews held downtown. And because the

county wants to change the LDC language on building heights, the new language has to be in compliance with the Lee Plan language – so the county is also seeking to remove two mentions of building heights now in the Lee Plan for Captiva at the same time. That’s the transmittal hearing scheduled for June 21 – about which no information meetings were held on island, which we believe violates the Lee Plan requirements in the Captiva section.

*Question:* What’s the difference between hotel and condo units in terms of density? *Mintz:* Condo units would remain at 3 per acre, even if it’s being rented to guests. But if hotel units were removed from that requirement, we don’t know how many they’d want to build. Harborside currently has 109 units but if the equivalency ratio was used as it is elsewhere in the county, they might be allowed to rebuild many more than that. *Question:* What’s the potential impact on overall island density? *Mintz:* We don’t know, no specific plans have been presented to anyone. They’re seeking a blank check from the Captiva Code. Yes, any zoning change or planned development modification would have to go through the public hearing process and be subject to commission approval. But once the restrictions on density and height have been removed from the LDC, then we’d just have to trust the county commissioners not to allow any increase – whereas if the LDC stays as is, any such request is a no-go from the start. *James Evans:* We’ve attended a number of zoning hearings, including the recent one for Eden Oaks near Shell Point. The problem with creating potential increases by amending the LDC and Lee Plan is it makes it harder for the commissioners to oppose such projects due to concerns about infringing on Bert Harris property rights if there’s no regulation preventing whatever increase that’s being requested. We’re at the point where we need commissioners to vote “no” right now or force South Seas to explain their plans before a vote is taken so the public has a chance to weigh in. If the amendments are successful, then the only public input will be at the zoning hearing when a rezoning request and plan is actually submitted. Discussion.

*Mintz:* The way these amendments have been handled is undermining the role of the community panel in this community, disenfranchising the community from having any say on what the future of the island should be. As an unintended consequence, this could undercut the years-long effort to convert septic to sewers on Captiva. We’ve been working with Sanibel on how to expand their treatment system to Captiva, moving forward on the basis of a certain building density on Captiva meaning a certain amount of wastewater Sanibel would have to be able to treat. But if you increase the density at South Seas and increase the intensity of making homes three stories instead of two, our promises that the potential wastewater the city might have to treat because of the strength of our Captiva Code and Captiva Plan seem hollow. *Brown:* It adds tremendous credibility to the argument that having a central sewer system will promote increased density. *Mintz:* I would like to make the following motions (Laird second):

*The Captiva Community Panel requests that the Lee County Board of County Commissioners reject or withdraw from public hearing the proposed ordinance entitled LDC Amendments for Building Height, Resiliency, South Seas which was directed to public hearing on June 20, 2023, and further requests the proposed amendments to Goal 23 and Policy 23.2.3 of the Captiva Plan be tabled and not transmitted to the State on June 21 for the following reasons:*

*1. Without any consultation with the Captiva community, including the Captiva Community Panel, the County is proposing to change the “Height Restrictions for Captiva Island” which were placed in the Land Development Code after substantial public input and debate within the Captiva community. The County is proposing to increase the building heights on Captiva from 28 feet above base flood elevation to 35 feet above base flood elevation which could permit the construction of 3 instead of 2 stories above base flood elevation without any rationale other than consistency with the rest of Lee County.*

*2. Without any consultation with the Captiva community, including the Captiva Community Panel, the County is proposing to amend the Land Development Code to exempt South Seas*

*Island Resort from the Captiva height regulations and the Captiva density regulations for hotels set forth in the Code applicable to Captiva. These exemptions would apply only for South Seas Island Resort and would open the door to future development at South Seas with greater density and higher buildings than currently permitted under the Captiva regulations.*

*3. Without any consultation with the Captiva community, including the Captiva Community Panel, the County is proposing to amend the Land Development Code with respect to Administrative Interpretation, ADD2002-00098 which has governed development at South Seas Island Resort for decades, and does not permit South Seas Island Resort to have great density for hotels or higher buildings than any other property on Captiva. Currently, if South Seas development does not comply with the Administrative Interpretation, it is then governed by the density and height restrictions of the Code applicable to Captiva. The proposed ordinance would not longer limit future development at South Seas to the density and building height regulations of the Code applicable to Captiva.*

*The Panel is also requesting that the Board of County Commissioners not transmit on June 21 the staff proposal to amend the Captiva Chapter of the Lee Plan to remove the current Captiva building heights from Policy 23.2.3 of the Plan as well as the goal of maintaining one and two story building heights from Goal 23 of the Plan.*

*The Panel is also authorizing President Jay Brown to issue public statements, engage in other activities with the Panel's Captiva, Sanibel and Lee County partners, and spend up to \$25,000 consistent with, and in furtherance of, the above motion.*

*Walter:* We practice under the "spirit of Sunshine (Law)," correct? So before this goes to a vote, I want to make it very clear this panel has no ability to approve or disapprove... they just recommend. Correct?

*Mintz:* Yes, this motion is asking the panel only to take a position. *Walter:* I have been retained by the owners of South Seas and, although this is a county initiative, South Seas is obvious a major topic within this. So I will probably end up recusing myself. But in the "spirit of Sunshine" I'm taken aback that many members of this panel had open conversations about this topic and advise each other about this topic numerous times in the last seven days. If I'm recusing myself, I think many members of the panel need to think about the conversations held prior to this vote – which under Sunshine is not allowed. *Mintz:*

Speaking for myself, when this issue arose so suddenly and the commissioner's request to defer to allow more time was denied, I felt I had to spend time trying to understand exactly what was being presented here before I could feel comfortable speaking to the panel about these amendments. I spent time discussing this with county staff, the county commissioners, the attorneys to comprehend the issues, since I'm not a land-use person. I felt it was important as a community that we understand these things, but there's no behind-the-scenes agreements to do anything. I take Sunshine very seriously. *Walter:* I will also tell you that in the spirit of communication not one panel member called me to find out what was going on. *Gooderham:* Actually, they can't. Once it was clear this issue would be coming before the panel for a vote, any direct communication between panel members on the topic would have been a potential violation. I have been talking with some panel members mostly on operational issues to be prepared for today's meeting. *Mintz:* I wanted to call you, but was told not to. I wanted to ask that maybe you didn't know about these changes? That you were not aware of ongoing discussions between South Seas representatives and the county staff and attorneys about proposed changes that would affect our code, to alert us that this was happening. *Walter:* I was not part of any conversations with the county about their plans. *Brown:* A motion is on the floor, and Walter is recusing himself. Any further discussion? Motion approved unanimously. *Laird:* With all the comments about Sunshine, which we're all concerned about, we have to be careful we don't discuss anything in violation of that. If we can only talk to each other at noticed meetings, then perhaps we should schedule more meetings in case we need to have the opportunity to talk things over. *Brown:* Things are moving very quickly, I don't see how we can meet to

have the panel authorize every single things we do. *Mintz*: We may eventually need to discuss Sunshine as it applies to the panel and county funding, there may be some distinctions there. Our first priority is implementing our motion. I know Commissioner Ruane will at the minimum be asking for at least a 90-day continuance, and there may be a move to reject these amendments outright. So we need to see what happens on June 20. After that, we may have a lot of issues to deal with. *Youngquist*: If we notice meetings for once a week, we can always cancel them. *Laird*: Can we wait until the 20<sup>th</sup> to work on contingency plans? *Mintz*: Our job between now and the 20<sup>th</sup> is to educate the community and the commissioners, get our position in front of them, encourage the community to send emails to the commissioners and attend the hearing on June 20 if they're around. *McDonald*: Can we send our letter and information to our email list to encourage them to contact the commissioners? *Mintz*: That's been happening, just not from the panel since we needed to vote on a position first. The CCA has been sending out a lot of information, generated thousands of emails.

**SSIR HOA Council** – *Ken Suarez*: Statements about the letter from Timbers that was sent to the HOA Council after the June 12 CCA workshop, and questions to Walter about South Seas having plans on redevelopment that have not been released. *Mintz*: Not appropriate for you to be questioning a panel member on this. *Suarez*: OK, the property owners inside South Seas are a little upset by this situation. We established this council of HOA presidents to work collaboratively with the owners, and we did not know about any of this that was revealed at the June 6 commission meeting. We are very affected by these proposals and very frustrated that we are not getting communications direct from the resort as stakeholders. We support resilience, and we support buildback. As far as who owns what on the resort, between FGUA, Island Water Association, U.S. Fish & Wildlife, the timeshare owners and condominium associations, in terms of developable land Timbers owns about 20%-25% of the resort's property.

*Question*: Can you share the Timbers letter with the panel and CCA? *Suarez*: Yes. *Question*: What's the spirit of Sunshine? *Gooderham*: That's referring to the Florida Government-in-the-Sunshine laws. *Question*: I've sent emails to the commissioners, what else can I do to help? *Mintz*: Stay informed, watch for emails with more information or things to do, show up on the 20<sup>th</sup> if you can. *Question*: How can we educate the other four commissioners about Captiva? Invite them to tour the island? *Mintz*: Unlikely they will do that in the limited time between now and the June 20 hearing, hard to get them to take a day out of their schedule to do that. *Question*: Where is the City of Sanibel on these proposals? *Evans*: The city council is holding a special meeting at BIG Arts tonight to discuss this, and I believe they've asked the county to provide their position on this. The people I've spoken to hold the same position as Captivans – in general opposed due to concerns about hurricane evacuation, impact on infrastructure, traffic, jeopardizing the sewer project, impact on wildlife and water quality. They have concerns about the aesthetic impact of bigger buildings on the character of the community, about the density and intensity of development. *Question*: If restrictions on density and height are removed, is it true they could never be put back due to the Bert Harris Act? *Mintz*: Yes, once a municipality grants a right, if you try to remove it you could be liable for any financial impact to the property owner associated with the removal of that right. *Question*: Are there meetings with all five commissioners prior to the June 20 hearing? *Mintz*: Yes. *Question*: Can we speak virtually at the public hearing? *Gooderham*: No, but you can watch it live via Lee TV on the county website, and after the fact on YouTube. *Question*: Is the footprint of South Seas being increased with the addition of the properties being added via these LDC amendments? *Mintz*: It appears possible, I have not confirmed whether those parcels were part of the original Administrative Interpretation. *Gooderham*: I was told by someone involved in the original interpretation that those parcels were not included. *Evans* (in chat): You can submit comments to the Sanibel meeting by emailing them to [scotty.kelly@mysanibel.com](mailto:scotty.kelly@mysanibel.com). *Question*: How did those get included if this was a county-initiated change? *Mintz*: There's nothing unlawful about county staff or commissioners meeting with a developer that would provide them with maps or deeds, or being lobbied about that. What the problem is is that would make it a private amendment, which has a procedure it has to follow to ensure there is public input and information and that plans are presented that lay out what's being requested. That was not followed

here. Discussion about commissioners outreach. *Laird*: I want to make a motion to approve expenditure of up to \$25,000 on this effort, at the president's discretion (Mintz second). Passed unanimously. *Laird* (to Youngquist): As a business owner, you may have better access to the commissioners. Is there anything we can encourage you to do? *Youngquist*: I do know them all, but I think if the 140 people on this call contact them with an individualized letter it will be heard. I have to believe the commissioners will stand by this panel's efforts to protect our island. If we treat them with respect and reason, that's how we win out case – not by being insulting, but just factual. *Question*: Where can we find a copy of the Administrative Interpretation? *Gooderham*: It's on the county website, and we can send it out and post it on the panel website if necessary.

Break

**LCSO** – *Lt. Mike Sawicki*: We've had a couple of thefts of small items from boats and docks on Roosevelt Channel, so I want to remind everyone to secure small items of value. I also encourage people to check their cameras... if you don't have one on your dock, consider getting one. It's very important to us in solving and prosecuting these cases to have that video evidence.

**CFD** – *Chief Jeff Pawul*: Finally getting the roof replaced on the fire station, a louder and more cumbersome process than I realized. *Brown*: Is the fire district looking at the potential impact of South Seas development, *Pawul*: We'll discuss that at our meeting tonight. We don't recommend what someone should or should not approve, just assessing what impact it would have on us and the services we need to provide. As to building heights, anything above what we have now would mean purchasing another fire apparatus, a ladder truck. Increasing density is obvious, because more people equals more emergencies and more traffic.

**CEPD** – *Executive Director Daniel Munt*: Aptim will be completing the required annual monitoring of the beach. This will also provide us with an update to our baseline data to determine whether any sand has returned to the dry beach. After the June 1 workshop regarding the Phase 2 proposal for coastal resiliency, Carrie Schuman is beginning to work on the initial Request For Proposals. As that nears completion, we'll schedule another workshop to review and revise the document as necessary. *Brown*: Has the state funding been secured? *Munt*: The legislative appropriations request was approved, but it has to be signed by the governor.

**SCCF** – *Matt DePaolis*: Obviously, SCCF has been very involved in the issues facing Captiva right now, we'll be participating in the Sanibel meeting tomorrow and the hearing next week. Otherwise, we're in a holding pattern waiting for the governor's signature or veto on bills we've targeted, such as the fertilizer ordinance preemption and the phosphogypsum use on roadways. The Lake Okeechobee level is a little high now heading into the rainy season, about a foot higher than we'd like. About 90% of the lake is covered in a massive algae bloom, and we're seeing blooms in the Caloosahatchee and Cape Coral canals as well. It could be a disastrous summer for water quality, particularly if we see an El Nino starting at the end of the summer.

**South Seas** – No report.

**Telecommunications** – *Laird*: Have been talking with friends in the telecommunications business who are well connected in Florida, to see what could be done to improve the telecommunications situation on Captiva and Sanibel. There's broadband deployment from the Biden administration, but we'd need to apply for it and a telecom company has to do it. Our carrier of last resort is CenturyLink, they have to serve us but they're broke and not really motivated to give us better service. The underwater cable serving the islands is broken, there are a lot of vehicles and other debris from the hurricane so laying new cable will be too dangerous for a while. We're not really a priority at the state level because we don't have

enough voters, and the satellite option is not a good one for us either. So in my view we should have someone who's more knowledgeable in this area come in and brief us, educate us a little. They'll probably say it's going to take at least five years to get good service back on the islands. We have lot on our plate right now, let's wait a few months and revisit this. *Brown*: What about cell service? *Laird*: I don't know how the towers are tied in, cable vs. satellite. Might need to ask the carriers how the signal is transmitted.

**Captiva Drive** – Recap of status. Nothing further expected, remove from agenda.

**Wastewater** – *Brown*: Nothing new, still waiting on the results from Sanibel's first consulting study, to develop a plan on what to do with the increased processing and effluent from treating Captiva's wastewater. Supposed to be getting a first draft this week, so I hope we'll hear something soon.

**Stormwater** – *Laird*: Finalized the proposal, turned it in to the county, was told it would be funded.

**Iguanas** – Noted that iguana population is growing, may need to see if Alfredo can come out more often than once a week to bring it back under control.

**Financials** – *Gooderham*: YTD breakdown in packet. No surprises, healthy reserves, funding for Sanibel studies still escrowed. Should look at whether we need to do some fund-raising in the fall, once we see what our upcoming expenses might be.

**Next meeting** – Discussion on availabilities to meet prior to July 11. Agreed to schedule a special meeting on Thursday, June 22, at 9 a.m. to review what happened at the June 20 county commission public hearing.

The meeting adjourned at 11:25 a.m.

-- *Ken Gooderham*

**NOTE**: A special meeting of the Captiva Community Panel was held on June 22 to review the June 20, 2023, public hearing on the LDC amendments. A recording is available on request.

CCA 6/12/2023 workshop video: [https://youtu.be/1HZLD3\\_wWpo](https://youtu.be/1HZLD3_wWpo)

CCP 6/13/2023 video: <https://youtu.be/HoAUPCyDWw8>