
Coalition letter opposes land use changes

From: Captiva Community Panel <captivacommunitypanel@gmail.com>

To: kengooderham@gmail.com

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Island coalition opposes proposed land use changes

The following email and letter was transmitted to the Lee County Commissioners and key staff yesterday:

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Via email to all Lee County Commissioners:

June 14, 2023

Commissioner Kevin Ruane

Commissioner Cecil L. Pendergrass

Commissioner Ray Sandelli

Commissioner Brian Hamman

Commissioner Mike Greenwell

Lee County Board of County Commissioners

2120 Main Street

**Re: Public Hearing LDC Amendments for Building Height,
Resiliency, South Seas**

Dear Commissioners:

I am writing on behalf of the Captiva Community Panel, the Sanibel-Captiva Conservation Foundation (SCCF), the Captiva Civic Association, the Ding Darling Wildlife Society and 12 Condominium and Homeowner Associations located within the South Seas Island Resort.

We believe that holding a public hearing on June 20, 2023 to consider approval of LDC Amendments for Building Height, Resiliency, South Seas would violate Policy 23.4.1 of the Lee Plan. That policy, regarding the Captiva Community Plan, requires that “the owner or agent applying for an amendment to Captiva community-specific provisions in the Lee Plan or Land Development Code must conduct one public informational meeting.” Failing to first require public input during a noticed public informational meeting held in the community plan boundary of Captiva, where the property owner or agent provides a general overview of the amendment for interested citizens, would violate Policy 23.4.1.

We strongly disagree with the notion that a public informational meeting is not required because the amendments relating to the South Seas Island Resort (SSIR) are county-initiated, and not initiated by SSIR. The public record of the June 6 BOCC meeting demonstrates that the proposed amendments relating to SSIR were initiated by a private party, SSIR, and that the County is initiating the amendments at the request of SSIR.

During the June 6 BOCC meeting, Deputy County Attorney Jacob advised the BOCC that (i) SSIR owners want to rezone the property and desire changes in the LDC to do this, (ii) that SSIR desires to no longer be bound by the Administrative Interpretation and now seeks to initiate a zoning change, (iii) that SSIR wants to be excepted from the density limitations of the code and request a higher density allowance, (iv) that SSIR seeks an exemption from certain regulations, and (v) that SSIR seeks a density exception that is unavailable to other Captiva landowners. The statements of SSIR engineer Carl Barraco and SSIR counsel Neale Montgomery during the June 6 meeting provide additional evidence that the amendments were SSIR-initiated.

We believe it is a violation of Policy 23.4.1 for the County to allow any

landowner or applicant to circumvent the public informational meeting requirement by asking the County to propose a code change on behalf of that private party. The reality is that this is a privately pursued change that would single out an individual owner for a beneficial regulatory change (and we might add, a potential burden to the public). It violates Policy 23.4.1 and would set a horrible precedent to allow those who seek these important changes to the rules to avoid this necessary public forum requirement simply by asking the County to re-label the application as its own. Legal doctrine holds that it is the nature of a governmental action, not its label, that matters. This is not some County wide change the Commission or staff has identified as a county need. It is a private applicant - driven proposal for which Policy 23.4.1 requires a prior public informational meeting.

This violation is not simply a technical one. A failure to comply with the requirements of Policy 23.4.1 would prevent the Captiva community the public participation and input to which it is entitled under the Lee Plan. It also prevents SSIR and the County from getting the public input needed from the community to develop an acceptable proposal before it was finalized and presented for public hearing. Sidestepping the requirement for this public meeting would prevent the proposed amendments from getting the public scrutiny intended by the Lee Plan. As a result, the amendments presented on June 6 and scheduled for public hearing on June 20 were confusing, incomplete and highly controversial.

Furthermore, a public informational meeting would have early on revealed the troubling fact that the proposed amendments create exceptions from the Captiva Code and provides a path to greater building heights and density for a single resort on Captiva. Currently, the Captiva Code places the same density and building height limitations on SSIR as every other residential property and resort on Captiva. The proposed amendments grant a special exception to one property owner, raising serious questions of fairness and equity. Moreover, the amendments that will now permit changes in density and building height regulations on SSIR cannot be fairly understood or evaluated while SSIR's new planned development is still hidden from public view. This distorted process has rightly generated a great deal of controversy, community anxiety and unnecessary difficulty for the BOCC.

Beyond the procedural irregularity, on their merit, the notion of increased building height and density on Captiva, while this community continues to recover from the tragedy of Hurricane Ian, is, in our view, troubling and

reckless.

Finally, the County staff guidance provided to the BOCC to amend Chapter 33 of the Captiva Code and Chapter 23 of the Lee Plan appears to be incorrect. The staff report for the CPA2023-00004 Transmittal Hearing states that the increase to building heights on Captiva is needed to accommodate increases of minimum flood elevations over time. This mistaken staff conclusion may have resulted from the error in Section 33-1627(a)(2) - Height restrictions on Captiva Island - that was provided to the BOCC in the draft amendment and is the document subject to the public hearing on June 20, 2023. The key provision provided to the BOCC starts with “Twenty-eight feet above grade” when the actual provision of the Code provides “Twenty-eight feet above the lowest horizontal member at or below the lawful base flood elevation” The mistaken insertion of the word “grade” arguably changes the meaning of the provision and suggests to the BOCC (and to staff drafting the report) that the current Captiva building height regulations do not accommodate for increases of minimum flood elevations. The mistake in this provision is not a small one; it is at the heart of the issue.

Compliance with Policy 23.4.1 of the Lee Plan requires that the June 20 public hearing be cancelled and that SSIR be directed to comply with if it wishes to amend the Captiva-specific provisions of the Land Development Code. Such an action will avoid a fundamental procedural flaw and lead to an end result that is better for all stakeholders involved.

Respectfully submitted,

Richard Grosso

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More about the proposed changes:

Since there has been a lot of activity in the past few days, below are links and calendar items concerning the proposed changes to the county Land Development Code and Lee Plan affecting Captiva:

- June 12 CCA workshop video link: https://youtu.be/1HZLD3_wWpo
- June 13 Community Panel meeting video link: <https://youtu.be/HoAUPCyDWw8>
- The [motion](#) from the June 13 Community Meeting
- Timbers Resort [letter](#) to HOA President Council

- 2002 South Seas Administrative [Interpretation](#)
- A public hearing on proposed land use changes to the Land Development Code will be held Tuesday, June 20, beginning at 9:30 a.m. You can download the agenda and backup materials at <https://www.leegov.com/bocc/meetings/agendas>

Speak up: Send an email and make a call to oppose these building height and density changes:

- **District 1:** Kevin Ruane – dist1@leegov.com or (239) 533-2224
- **District 2:** Cecil Pendergrass – dist2@leegov.com or (239) 533-2227
- **District 3:** Ray Sandelli – dist3@leegov.com or (239) 533-2223
- **District 4:** Brian Hamman, Chairman – dist4@leegov.com or (239) 533-2226
- **District 5:** Mike Greenwell, Vice Chairman – dist5@leegov.com or (239) 533-2225

Community Panel sets special meeting June 22

The Captiva Community Panel has scheduled a special meeting on Thursday, June 22, beginning at 9 a.m. to discuss the decisions made at the June 20 public hearing and June 21 plan transmittal hearing. Details below.

When: Jun 22, 2023 09:00 AM Eastern Time (and Canada)

Topic: Special Captiva Community Panel meeting

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/87565096970?pwd=TnJxc3FIZlRSU1FWLzRRNU1QNUJ5Zz09>

Passcode: 459197

Telephone: 305 224 1968 or 301 715 8592 (Washington DC) or 309 205 3325 or 312 626 6799 (Chicago) or 646 931 3860 or 929 205 6099 (New York) or 253 215 8782 (Tacoma) or 346 248 7799 (Houston) or 360 209 5623 or 386 347 5053 US

Webinar ID: 875 6509 6970 / Passcode: 459197



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