

Captiva Community Panel
MINUTES
Sept. 12, 2023

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

Audience: 100

Meeting convened 9 a.m. Following introductions, the Aug. 8, 2023 minutes were unanimously approved (Jensen/Laird).

LDC – Mintz: Summarizing the actions of the county commission Sept. 5-6, in terms of changes of the Land Development Code and Lee Plan. These were done without any consultation with the community, and in the face of widespread opposition from island groups and residents – some 13,600 people signed a petition opposing the changes, commissioners received 2,500 emails as well, Sanibel City Council and the Chamber opposed them. But a majority of the county commissioners voted to approve the changes anyway, with Commission Kevin Ruane the only “no” vote.

What changed? Building heights for the entire island are now 35 feet above base flood elevation (BFE), up from the 28 feet the community approved in 2012, with some concerns at the time about the impact on the Village and its small lots. This will mean people can potentially build three stories above base flood elevation, rather than the two floors possible under 28 feet. For South Seas, it is now exempt from the building height regulations covering the rest of the island, once they amend the Administrative Interpretation which kept the resort under the old 35-foot/42-foot heights rules in place at that time. The resort will now be governed by its Outlying Suburban zoning, which permits them to go between 45 feet above BFE and possibly up to 75 feet over BFE if they can demonstrate an effort to preserve environmentally sensitive land, native vegetation and wildlife habitat, and historical or archaeological resources. With a variance, they could go even higher than that. If you look at where Timbers Resorts is thinking about building ore hotel rooms, the new BFE is 18.5 feet. Add in the additional four feet now allowed in certain flood zones, and you’re at 22.5 feet BFE, on top of which you can build a 45-foot building – for a total of 67.5 feet total building height. Take that up to the allowable 75 feet, and you’re just under 100 feet in height. We don’t know what Timbers intends to ask for, but that’s what they could get.

The LDC changes also exempts South Seas from the current density limitation of 3 units per acre for hotel rooms – which applies to all other dwelling units and hotel rooms on the island outside South Seas. Again, we don’t know what Timbers is planning to ask for, but under a Planned Development application hotel rooms numbers can be unlimited if they meet certain criteria. Question: When they tore down employee housing, those 140 units were approved as condominium units. With the 107 hotel rooms already approved, could they request those to be converted to condos as well and then ask for more hotel rooms on top of that? *Mintz:* It’s very uncertain at this point, under these new rules that is possible. It would be governed by open space and available land they actually own, and subject to decisions by the Hearing Examiner and county commission. The point is they have been removed from the rules that applies to Tween Waters, Jensens and other island hotels.

The next change is that the resort no longer has to comply with the Captiva Code if it no longer complies with the Administrative Interpretation, which had more restrictive height rules than the code. The final change was a revised definition of South Seas Island Resort, which now includes approx. 3 acres that were not covered by the Administrative Interpretation – land south of Captiva Drive. Since these parcels

are not in the Interpretation and are now not covered by the old code, they probably are in the Outlying Suburban zoning – which is a de facto rezoning, but without any notification of the adjacent property owners as is required by law. In all, the changes to the code were not really thought through or understood for their potential impact – and all done without consultation with the community.

On Sept. 6, county commissioners voted to amend the Lee Plan to change two provisions in Policy 23, the one that covers Captiva. The first change was to eliminate the mention of “one- and two-story homes on Captiva,” with the excuse that it did not make it clear whether that was over CFE – even though we amended our code language in 2012 to spell that out. Removing that phrase makes it possible to permit 3-story buildings or higher on the island. They also removed the specific reference to the existing building heights (28 feet over BFE), which we included in a belt-and-suspenders approach to protect that requirement. This also allowed the county to remove that rule in the LDC while staying in compliance with the Lee Plan, which the code has to do. *Brown:* Throughout this process, everyone was in favor of flexibility in dealing with BFE. Why did staff just ignore that? *Mintz:* With the county’s buildback provisions, people who had buildings damaged greater than 50% of value would be able to build back what they had – incorporating any new BFE regulations. The 28-foot language was for new construction, not structures being built back. The county said we didn’t have that flexibility, and we said we did using the buildback language.

The commissioners who supported these changes had certain priorities, which were not always stated but became clear as the discussion went forward. First was to make Captiva consistent with building heights rules in the rest of the county, which are 35 feet over BFE if BFE is required there. They would not accept the argument that, as a barrier island, Captiva needed to be treated a little differently than mainland properties. Commissioners also felt Timbers Resorts should have the same rights as other developers of Outlying Suburban properties. Timbers will still need to apply for a new Planned Development rezoning, which will be subject to public hearings and staff review. But by changing the LDC, Timbers will be able to apply for taller buildings and greater density than would have been possible under the previous LDC. Without those old rules, there are fewer limits on what Timbers can apply for and what commissioners can approve. The other thing we heard repeatedly is that one size should fit all, that there’s not a very positive view of community panels – which is seen in the commissioners bypassing the panel in this process. Commissioners seem to believe that, given all the people moving to this areas, we need to accommodate them with more and more development – and there’s not a view to protect barrier islands the way they need to be protected.

To be clear, these changes do not take effect immediately. The LDC was amended the minute the commissioners voted to approve those changes, but the Lee Plan amendments have to undergo state review and come back to the commission for final adoption before the LDC changes can be acted upon. *Question:* But people can start developing plans incorporating the new higher building rules? *Mintz:* Yes, the old 28 feet above BFE doesn’t exist anymore. *Question:* For reference, how tall are the existing buildings in South Seas, such as Lands End? *Mintz:* I think the tallest building now is about 48 feet above grade – so now they can go much higher than that. *Question:* When is the effective date? *Mintz:* That depends on the state review and adoption by the commission. *Question:* Does this open the door for other resorts on Captiva to apply for those same exemptions? *Mintz:* It establishes a precedent, which can create pressure on other resorts to pursue the same exemptions to building height and density to remain competitive. It also increases the pressure on the county to allow those exemptions to other properties to be fair under the law. *Question:* If three units per acre is no longer in effect, what will the density be? *Mintz:* Under Outlying Suburban zoning, it stays at three units per acre for residential dwelling units. But, under a Planned Development application, hotel rooms will not be held to that standard – so it could be whatever they ask for, can justify under the plan they present and can get approved by the commissioners. *Question:* Could Timbers acquire more property not included in the Administrative Interpretation which

would be exempt from the current rules? *Mintz*: That's actually the history of the resort. They did not buy all the property at the same time, but grew it over time by acquiring different properties. Discussion.

Mintz: The Captiva Civic Association (CCA) has created a Land Use Committee which consists of representatives from the various organizations that came together to oppose these changes, and are the client for attorneys working on responding to these amendments. The panel contributed \$10,000 toward that effort, as did many other groups and individuals, to retain attorneys as necessary for this. The overview of the likely legal strategy is to review the legal options once the amendments were approved. Since they have to undergo state review, the attorneys have submitted comments raising concerns about those amendments to the various state agencies reviewing them before the deadline for state comments comes up – which I think is 30 days after the transmittal hearing on Sept. 6. These agencies don't have to approve the amendments, but they can recommend changes or that the amendments be rejected for legitimate reasons. Once the county gets those comments, staff can change the amendments based on those comments, reject the amendments outright or decide to move forward as is without addressing state concerns. Then the county commissioners have to hold an adoption hearing for final approval. So right now we're looking at things to submit to the state agencies, as will other entities I expect. If commissioners opt to approve notwithstanding any state comments, then there's the option of an administrative challenge to the amendments in court. There's an extensive period for the county to decide how to proceed to an adoption hearing. There's also the option of challenging the LDC amendments as being in violation of the plan or other code provisions, where you petition a court to review that. Discussion. *Mintz*: After all that, if the amendments stand, Timbers will need to file a Planned Development application laying out what specifically it is requesting to redevelop the units and properties it controls. That will mean hearings before the county Hearing Examiner, where the community is able to comment and oppose the PD details. After that, it can go to the county commission for final approval, which is another public hearing where the public can be heard.

The attorneys will do what they reasonably can to reverse the LDC and plan amendments the county approved. There is general deference given to county commissioners in making these decisions, so the burden of proof is on the objectors... the county doesn't have to prove what it did was right, the objectors have to prove what they did was wrong. And in these kinds of actions, the losing party pays for the winning party's legal fees, so you have to consider how strong a case you have before you take certain steps. There's a bias toward the legislative authority of county commissioners and other elected officials, and there's a bias toward development from the Florida Legislature. *Brown*: Thanks for an incredibly thorough review. This community owes you a real debt for what you've done on this. *Mintz*: I have never seen a community respond to what they felt were threats to their quality of life the way Captiva and Sanibel did. I did some work, but there were people responding to this, people never involved in these things before. We're talking thousands who spontaneously united and rallied together... our community deserves an immense amount of credit for coming out and defending their islands. *Thye-Miville*: I believe if the commissioners had not had to cancel their workshop (before the public hearings), they might have had a different way of listening to everything. At the public hearings, they heard from Timbers all about jobs and tax base, which the commissioners were sensitive to post-storm. They also heard about property rights, but did not consider the rights of people living next to the resort. *Mintz*: County staff did have an opportunity to speak prior to the vote, to comment on what they heard at the community meetings. What was surprising was that staff listened to all the community input and still made no changes to the proposed amendments. I forgot to mention those community meetings, held on Captiva, Sanibel and downtown. They were to provide input to the commissioners, and the Aug. 29 workshop was to allow staff to brief commissioners on that input and for commissioners to be able to talk among themselves about this information. That workshop was cancelled because of the hurricane, and it should have been rescheduled. What was presented by staff at the public hearing, relating the objections from the Captiva and Sanibel communities, was pretty skimpy. They didn't explain the objections and why they were important. So it was unfortunate the workshop was not held but, having met with commissioners on these

issues, I'm not sure whether it would have made a difference. I think a majority of the commissioners were committed to approving these amendments, and I didn't get a sense there was a lot of movement for change when we met with them.

Brown: The panel has supported the CCA Land Use Committee, with a donation and with our backing to oppose these amendments. I'm assuming everyone on the panel wants to go forward with a vigorous legal effort to do what we can to modify the impact of the county commission votes last week. Having said that, if someone wants to speak against it, I'll give you the floor... if you think we should just accept this and move on or has some other ideas on how we should respond. Discussion. *Question:* It seems we've been outsmarted by Timbers, and going through these legal challenges may be pointless if the county is going to approve them anyway. Going forward, this opens the door for other people to ask for exemptions, which the county seems ready to give. Is it worth considering either becoming part of Sanibel or separating from Lee County? *Brown:* My plan was to bring this up at a future panel meeting, the legal aspects and options to prevent these kinds of things from happening again. *Question:* I think it's important to do it at the same time because we'd obviously need to raise money to do an analysis, and it sends a pretty clear message to Timbers that there's another option that could be devastating to them. *Question:* We obviously can incorporate, and while I don't know what it takes to annex, it's a possibility. It takes time, so we would need to get moving as fast as we can. Yes, there will be some things that come with annexation we probably won't like, but there are a lot of things we would like.

Brown: I think as a community we would have a difficult getting a majority to approve annexing to Sanibel. You'd have a lot of meetings with Sanibel, to make sure you have representation on the City Council, get a set of principles that protected Captiva from the things it may not like about getting things done on Sanibel. *McDonald:* I'm not saying I'm in favor of it, but it's worth consideration. If whatever happens at South Seas means we're in for a massive increase in the density vs. taking on some of the shortfalls you laid out about Sanibel, annexation might still be the lesser of two evils vs. the status quo. Discussion. *Brown:* Rather than looking at a bunch of opinions, it's worth us engaging someone to research the options we have – what the process looks like, what are the pluses and minuses. It's going to be a close decision, so it's worth getting that in front of us. *Mintz:* When this came up more than 20 years ago, it was a relatively close vote – but we didn't have the South Seas threat coming at us. So I think there's a decent possibility that people on the island would want it. So I think we need to move forward with due speed, engage the community, and see if this is possible. Discussion about the previous incorporation/annexation discussion. *Question:* There's a comment in the Q&A with someone saying the county's Carter Review Commission is discussing changing the charter tonight so that any annexations would have to be approved by the county commission. *Mintz:* I heard about that, that this was proposed to the charter group in June after we objected to what the county was doing with the land use amendments. I find it hard to believe this proposal was a result of that community objection, but it seems like quite a coincidence. We'll have to find out more about what's motivating this proposal.

Jensen: Captiva has always liked its freedom, and we always worked with Lee County. Because of what happened, we could look at a change – but I'd be against annexation because it seems there'd be a lot more restrictions. I know there's a lot more to it, but I always felt Captivans like their freedom, that there's a different feel on Captiva compared to Sanibel. *Brown:* I've heard that many times in discussions with people over the years. In my opinion it's a route – either incorporation or annexation – that needs to be revisited. I don't know what steps we would have to take, I haven't thought about it enough yet. *Laird:* There could be a separate set of people working on this approach, so we wouldn't be drawing on the same group. One set of people working the legal route and one set looking into annexation or incorporation. *Brown:* Let's consider creating a committee to explore this with Sanibel. If there is agreement this could be a workable solution, then we can take it to our community. Based on what we've seen from Lee County, they support more development and less panel involvement – so we may need to take a step to avoid becoming like Marco Island in the future. We have a lot of money invested in this beautiful island.

Lapi: We need to consider why we are doing this, and what's the timing of an issue like this. Would we be able to stop Timbers from doing what they want, and once you do this you can't go back. You have Timbers heading to the county with their development plans, while we're looking at Sanibel to head that off... which one is going to get to the finish line first? *Mintz:* I'm sure Timbers is working behind the scenes on their plans. I think we're being outflanked by them and we ought to get moving on this outlining our options so we're at least playing a bit of offense here. *Brown:* Mintz is thoroughly consumed by the legal issues, so we can't ask him to head up this effort. Looking at my schedule, I can't devote a significant amount of time in the next month or so. So someone else is going to have to take leadership in getting this started. *Laird:* We can look back at what was done in 2000-2002, and there are people who we could ask to provide a summary of what the laws are and what issues to consider if you want to go this route or that route – a short, fairly expedited study. Discussion.

Gooderham: We could certainly develop a report outlining what the laws are and what your options are, in time for the next panel meeting. After that, if you're still interested in pursuing any of that you'd want to get a lawyer or an expert involved. *Laird:* I'm happy working with people who have background in this or are interested in this, to come up with a plan of what we can do by the next meeting. *Gooderham:* There are a couple of questions you'd want to have an attorney involved in answering, such as the question about timing. What is the point where property rights are considered vested, since you may not be able to undo that once it's established. It might not be until they submit a PD application, or until that application is approved by the county, or when the state OK's it. That's a legal interpretation that's best for a lawyer to make. *Mintz:* I think it makes sense for Gooderham and whomever he needs to work with to develop an outline about the laws, the timetables, who gets involved, what the approval processes are, so we understand the basics better. That's for the next meeting. Then, at the meeting after that, if the panel wants to pursue it we can bring in someone to explain the various parts, answer questions, etc. There are a lot of moving parts here – not knowing what Timbers will propose, how much they want to fight for that plan, whether there's a compromise that will preserve the island. But the more we do and the more options we look at, the more arrows we have in our quiver that can help us come to a solution. Discussion. *Brown:* It seems that a majority of the panel is supportive of moving forward to explore our options, which was the reason I wanted to give people a chance to speak. What about funding? *Mintz:* The legal fund raised sufficient funds to carry out the next steps, thanks to the groups and the community. *Brown:* Does the panel support a motion to support the legal and options efforts discussed here? (Laird/Jensen). Approval by majority, Walter opposed.

Laird: Do owners in South Seas have any rights that are being abrogated by what Timbers chooses to do? *Mintz:* Ken Suarez couldn't be on the call today, but the Council of Association he heads opposed these changes. They made it clear they are the majority owners of the acreage and units, and they don't support the changes being made. There are a lot of complicated issues concerning development inside South Seas. The road itself, Plantation Road, is not owned by Timbers but by various associations in the resort. The gate itself may not be on land Timbers owns. The associations understand this is a complicated process that could take years, and they want to be part of that process in a way that's professional and truthful. They've been supportive of what the coalition is doing, they're part of the legal work that's going on, they're hiring their own attorneys. This will be a moving target over time, and we have to be up to date and up to snuff. About what's going on. *Laird:* In politics, it's often useful as a sign of support to have a large war chest to discourage people from running against them. I know we have been successful at fund-raising, should we try to raise more money? *Mintz:* There have been discussion about creating a political war chest for a super-PAC, to support elected officials who recognize the needs of barrier islands... how to organize one, what type of structure it needed to be, etc. The panel is a 501(c)(3) so it's not in a position to do that, but there can be a community-wide organization put together with a separate board. Discussion. *Mintz:* I don't think we'll have a problem raising funds, I think people are waiting to contribute. *Comment:* With the Sanibel Charter, City Council cannot change limitations on heights or density without approval by the voters. *Question:* When will Holland & Knight get back to the Land Use

Committee on its proposed strategy going forward? *Mintz*: Their attorneys will be meeting with the CCA committee in the next week, and there will be a further report at the next meeting. *Comment*: The request for the county Charter Review Committee to look at annexation was made by Commissioner Pendergrass, and all five city attorneys will be there to speak against the proposed change tonight. *Comment*: Timeshare owners should be looked at to contribute to this fund, there are a lot of them and they have a deep love for Captiva. *Question*: From someone on Boca Grande... while we are protected on building heights and density by the 1980 Gasparilla Island Act, which supersedes Lee County, is there anything we should be looking at? *Mintz*: The act creates a conservation district which does not allow the county to change building heights like they can on Captiva. That was done many years ago, and the general sense we got is that the current Florida Legislature would not have an appetite for creating a conservation district for Captiva. That may still be something to look at in the report. *Gooderham*: I looked at the legislation years ago, and if I remember correctly one of the justification for it was that Gasparilla Island is split between Charlotte and Lee counties. An overlay was created to prevent any conflicts between the rules of each county. *Question* about correcting media misinformation. *Question*: Since the LDC is meant to implement the Lee Plan, shouldn't there have been extensive public outreach before they changed the plan? *Mintz*: That's a question we raised in the past, that they didn't follow the procedure we put in place. The county attorney was telling their clients (the commissioners) that this was a county-initiated change so they could do what they wanted. I don't happen to agree with that. *Question* from a Fox News reporter seeking someone to interview about clearing up any misinformation.

South Seas – *Walter*: Making progress on two major projects. The golf course is scheduled for a mid-November reopening, and our north pool deck is still scheduled to be ready in mid-December.

Walter and Brady left the meeting approx. 11 a.m.

Wastewater – *Brown*: Sanibel has completed its wastewater study on how to deal with Captiva's wastewater, but it has to be reviewed by Sanibel staff – so we're still on hold there. Of course, there's also the impact of the county commission decision on South Seas, as Sanibel may be hesitant to move forward with a wastewater project if it is seen as potentially allowing an increase in density at South Seas. We also need to follow up on the prospects for funding such a project from other sources so the full cost doesn't fall on the property owners.

Nominating Committee – *Brown*: We have one panel appointee whose term is expiring, Linda Laird, who is eligible for another three-year term. I don't see that if we formed a Nominating Committee and solicited applications from the public that the panel would choose to nominate a newcomer over asking Laird to serve another term. So my recommendation is this year to forego forming a Nominating Committee, and to approve Laird for another term in December. Any comments? *Mintz*: Is she willing to serve? *Brown*: Yes, she indicated she is. Do I need a vote on that? If so, I'll step down from the chair to make a motion that the panel not form a Nominating Committee and that in December the panel will vote on whether or not Linda Laird should have another three-year term (Brown/Jensen). Unanimous approval. *Brown*: I have asked CPOA to let us know who its nominees will be for the October meeting, as both Bob Walter and Bruce McDonald are up and eligible for another term.

Brown left 11:05 a.m. Mintz chaired the meeting henceforth.

LCSO – *Lt. Mike Sawicki*: Over the holiday weekend we observed a trend that's been on our radar for a while with the closure of the Causeway Islands Park. There's been additional pressure on Captiva for parking at the county parks for access to the beach, with people becoming very creative about where they're parking to include construction sites and private residences around the island. We repaired chains that were taken down and added a few "Construction trespassing" signs, but I would encourage people to take a look at their property or those of absentee neighbors who haven't moved back in after the storm. If

you observe problems with trespassing or people there who don't belong, let us know. We also received reports about environmental issues related to some boars that were dragged out of position during the storm. We're working with Florida Fish & Wildlife Commission and the Coast Guard to get those corrected. *Question:* With the county forgiving causeway tolls on Sunday, have you experienced any additional traffic problems? *Sawicki:* More with the islands being closed than with the toll holiday, we're seeing some additional traffic but it's within our ability to manage it.

CEPD – *John Riegert/Carrie Schuman:* At its meeting yesterday, the board approved next year's budget with a rollback rate of 0.3511, which will bring the annual budget down roughly \$75,000. We also have a vacancy on the board, as Vice Chair John Silvia will be moving to Tampa effective Sept. 30. *Laird:* To balance the budget, we were going to raise the millage a little to compensate for the drop in taxable property values. But it was suggested we use some of our reserves to get it at the same level. And if anyone is interested in becoming a CEPD commissioner, you just need to be a registered voter on the island. *Mintz:* Hopefully we will get through this hurricane season without the dunes being built up on the beach. Do we have some level of confidence that, by next hurricane season, the beach will be renourished with the dunes and dune plantings back in? *Laird:* We are investigating some hot-spot renewal for one property. I would think we'll be renourished by next year, based on us having the funding. *Riegert:* We are still waiting for the funding source. We been verbally denied by the Army Corps of Engineers, but we still need the official letter of denial from them before we seek funds from FEMA. *Mintz:* Is there any way we can expedite this, to make sure the dunes are replenished, we have the dune plantings, we have walkovers where possible? After the last hurricane, everyone said that but for the dunes and the beach nourishment we would have been much worse off than we were. *Riegert:* We had a good meeting with DEP and, as soon as we get that letter from the Corps, they're ready to get a grant agreement over to us. Getting the denial from the Corps was our last big hurdle. Discussion. *Schuman:* We're continuing with the next phase of adaptation work. We finally got a funding agreement from DEP, a work plan and agreement. As you recall, we were able to get \$400,000 from the recent legislative session, and we finally got our paperwork from DEP to be signed. We have a scope of work and all the pieces for our Request for Proposals, and we'll get that out to contractors who would help us complete this work.

SCCF – *Matt DePaolis:* Watching water quality post-Idalia, the beaches still have some swimming concerns with advisories set all over. However, after the storm we're not seeing any meaningful increases in Lake Okeechobee – it's sitting at 15.4 feet, which is more or less where it was. The Corps has announced they don't anticipate any extra releases because of the storm. It's projected to take about a week from the storm before we start seeing those impacts, but it shouldn't be enough to spur extra damaging outputs at this time. *Mintz:* Let me say that SCCF has been deeply involved and working very closely with us in terms of the petition and as part of the community coalition. They've been there for us.

Stormwater – *Laird:* The \$200,000 grant that's needed to fund the stormwater management study for the Village has been submitted to the county.

Iguanas – *Jensen:* At the last meeting we voted to have Alfredo come out an additional day every week to set traps. He hasn't been able to come out yet, but he will start next week and will be here every Tuesday and Wednesday. He'll bring traps and set and bait them Tuesday morning, probably between 10 and 20 traps. He'll do his usual thing and check the traps during the day, then he'll bait them again before he leaves and check them on Wednesday when he goes through the same routine. So we'll see if that increases the catches.

Financials – *Gooderham:* The latest information is in the packet, no major changes. We'll need to talk about fund-raising in a few months, but coordinate it with other activities so we're not stepping on each other's work. As far as the D&O insurance, the policy has been renewed at the lower price we discussed last month. The agency has been looking for additional coverage as you all requested, and we've gotten

one quote for an additional \$1 million in coverage for \$1,500 a year. A number of carriers declined, which seems to be a new theme for insurance carriers this year. DO you want to proceed with that coverage, or keep looking to see if there are any other options? Discussion. Mintz: Keep looking to see if we can get anything higher in coverage, and we can decide if it's worth spending the money.

The meeting adjourned at 11:25 a.m.

-- *Ken Gooderham*

Video link: <https://youtu.be/WsRrkEpT8bs>

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