

Captiva Community Panel
MINUTES
Oct. 10. 2023

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

Audience: 30

The meeting convened at 9:00 a.m. Following introductions, the Sept. 12 meeting minutes were unanimously approved (Laird/Gill).

LDC – Mintz: I'll try to summarize where we are at this point without repeating what everybody I believe already knows. The Land Development Code amendment which increases the density and building heights on Captiva cannot be enacted without Lee Plan amendments also taking place concerning language in the plan that applies to Captiva. So when these LDC amendments were passed on Sept. 5, the commissioners also had to enact plan amendments to eliminate the goal of wanting one- and two-story homes on Captiva and to eliminate the building heights of 28 feet above base flood elevation. Those plan amendments have to be adopted before the LDC amendments are adopted, because they have to be consistent with each other. The county had to transmit those proposed plan amendments to the state of Florida for various state agencies' comments. The plan amendments were sent to the state on Sept. 7, which is about a month ago. The state has 30 days, actually to Oct. 6 to comment on those proposed plan amendments. Our attorney representing the various Captiva and Sanibel organizations submitted a legal memo to the various state agencies, which incorporated five points. One is that the county failed to accurately describe the proposed amendments in the report it sent to the state, failing to mention that the amendments were made to facilitate changes in the LDC which would permit higher buildings and more hotel rooms than currently allowed on Captiva. Our attorney also advised state agencies that the amendments constitute an up-zoning of development on Captiva, which is not supported by any data and analysis required by the Community Planning Act, analysis to detail the effects of these amendments on the islands' infrastructure, its roads, its hurricane evacuation route routes, its water resources, its septic systems, its sewer project, or any of the environmental resources. The county also failed to recognize that the granting that these amendments granted special benefits to a single property owner, Timber Resorts, which may constitute inappropriate spot zoning, and raises serious constitutional issues of equal protection –where one developer or one property owner on Captiva gets more density in higher buildings than other resorts or other property owners on Captiva. Finally, our attorney made it clear that the amendments have little to do with resiliency, and will only make Captiva less resilient and less safe when facing future hurricanes. Our attorney concludes by asking the state agencies to agree that these amendments aren't an unacceptable response to the devastation worked last year by Hurricane Ian.

We submitted our legal memo to the state, AND the state had until Oct. 6 to comment. Yesterday was a holiday, so as we sit here today, we don't know if the state agencies commented to the county or what their comments were, if they commented. We'll get that out to everybody as soon as we get that information. Once the comments come in, the county will then evaluate the comments. And then they will have to set an adoption hearing to adopt various amendments to the plan – whether they adopt them as they currently stand, whether they change them, whether they negotiate with the state, whether they do anything, we don't know. These are often ministerial amendments that the state really doesn't weigh in on, and over time the state have weighed in less on these than they have in the past with comprehensive plan changes, but we're hoping that the state will have something to say about these. Once the county sets an adoption hearing, our attorney will send a legal letter to the Board of County Commissioners regarding the adoption hearing and ice expect explaining, again, why those amendments should not be adopted.

The county has actually six months to set an adoption hearing once they get comments back from the state. So again, this is an open issue that we can't really resolve in either the timing or what we'll do, until we get more information. If the county adopts the amendments as they currently stand, then we will have to decide whether to litigate that. And with a lawsuit, we basically would claim that it endangers the very quality of life and is inconsistent with the other sections of the LDC and the comprehensive plan. If the amendments are adopted, the next step would be a zoning application from Timbers Resorts, a request for whatever buildings that Timbers wishes to construct. Whether it includes higher buildings or greater density, as they now ask for, remains to be seen. I am confident that the team and community will intervene in that application, which goes before a zoning officer or Hearing Examiner, on the basis that it places Captiva in danger with respect to resiliency, and our building heights and our density that will be thoroughly litigated during that zoning application. So that's where we are today.

Brown: The state agencies are not under an obligation to provide comments? *Mintz:* Correct. *Brown:* If the state makes comments, is the county required to respond to those comments in any way, or is it just advice from the agencies? *Mintz:* Closer to advice than to something the county is compelled to answer. If the state has strong concerns about those amendments, it behooves the county to respond to them. Historically, there's been deference to county lawmakers and localities to devise and amend their comprehensive land use plans. The state will comment critically if they feel there's something seriously missed in these changes. *Brown:* If the county opts to ignore state comments, do we have any remedy available to us? *Mintz:* If the state makes valid comments and the county ignores them, we have two options. The community can challenge the plan amendments as inconsistent with the rest of the plan, or that the LDC amendments are not in conformance with the entire Lee Plan. There are avenues for serious litigation for the community and the committee to consider, and which must be weighed against the potential liability of a challenge – which is a recent state law that allows prevailing parties in such challenges to collect attorneys' fees from the side that loses. So one has to carefully consider what litigation you follow in order not to be susceptible to some serious attorney fee damage awards. *Brown:* Let's take the failure of the county to study any of the potential impacts of these changes on the community – no analysis of impacts on evacuation times, impact on the potential central sewer project, impacts on the fire department's ability to put out fires. *Mintz:* Yes, if we claimed the amendments violated the Community Planning Act. *Brown:* But what you're saying is that if a court somehow found those objections were immaterial, then we would have to pay the county's legal fees as well as our own legal fees. *Mintz:* Depends on how you craft the complaint. I'm not prepared at this point to say, until we see those amendments, those comments, what the county does, and whether or not we would approach that in terms of litigation. But there are some approaches that would allow the prevailing party to collect attorneys' fees, and some that would not require the payment of those fees. The state legislative has made it harder to challenge these kinds of amendments, but they are still challengeable. We have to make a reasonable cost-benefit analysis once we understand the facts we're facing.

Brown: For the entire process to play out, it could take as long as six months? *Mintz:* The county has six months to respond to comments from the state, I'd be surprised if they wait that long, but it really depends on what the comments are. *Brown:* We will get copies of whatever the state agencies provide? *Mintz:* Yes. *Brown:* If none of that succeeds, then the next step is to wait for Timbers to develop a specific plan and seek approval for those plans. *Mintz:* If the county passes the adopted amendments, there will be a determination whether to litigate the LDC amendments based on the existing LDC and Lee Plan. If there's a decision to litigate, that doesn't stop Timbers from submitting a Planned Development application so it could be moving forward simultaneously. The Administrative Interpretation that governs South Seas for building heights, density and other issues, will have to be amended. That would go through a rezoning process, where Timbers would submit a plan and application, it would be reviewed by a Hearing Examiner who would take testimony from the community, from various intervening parties, to see if the proposal is consistent with the comprehensive land use plan, with other portions of the LDC,

and if it's compatible with the surrounding properties. *Brown*: But the objections would not be related to how the county changed the rules governing development at South Seas, but on the impacts and compatibilities of the proposed plan? *Mintz*: It depends on what Timbers proposes. I've always felt that this could have been avoided if Timbers had proposed a plan before the LDC amendments and Lee Plan amendments were put up for a vote, so people would have understood exactly what Timbers was planning to do. That never happened. But once a plan is submitted, then objections could be raised based on the increased density and its impact on evacuation, on wastewater treatment, on the fire department, on drinking water, on how it could affect the environment. Often the issues a Hearing Examiner looks at is whether the infrastructure can support the kind of development that's being proposed. So depending on what Timbers proposes, it may violate the LDC or the Lee Plan, and there may be a challenge with respect to those two things. It's hard to know until you see what is being proposed. The county has put the cart before the horse and given the developer a blank check with respect to hotel density and building heights before they know what was being proposed. And we as a community were fundamentally ignored during this whole process – and I suspect a lot of people wish it hadn't come down this way, but it did. *Question*: Do we know what if anything from a legal perspective the South Seas HOAs are doing? *Mintz*: Virtually all of the association on South Seas are extremely concerned with the potential increase in density with respect to hotel units and possibly even other units, and they are unified in their opposition to the proposed amendments to both the plan and the code. They are working closely with the rest of the community in devising a strategy to make the best of it. *Question*: Are we going to do the studies ourselves, particularly if the new rules would significantly delay evacuation times? *Mintz*: Yes, we would not only look at legal intervention, but we would also look at the studies that are necessary to provide accurate information to the Hearing Examiner about the impacts of the various changes.

South Seas owners – *Suarez*: A few weeks ago, we have our first all-owners Zoom meeting, which was highly successful. Out of 547 owners, we had 220 present for a meeting that was pulled together within 10 days – so there's a lot of interest in what's going on at the resort. Timbers continues to have its own meetings with owners, but they don't like taking many of the questions owners submit. We have an owner at Land's End who happens to be an attorney. He's been going back and forth with one of the county attorneys who has contradicted himself so many times that he's lost credibility with the Land's End owner. Interest is high, and there's a minor percentage of people who say, well they won their case so let's let them do what they want to – but that's a small fraction of people. The associations are interested in our own property rights, particularly since five of them own a good part of the road leading down from the north end. We continue to meet on a weekly or every other week basis, we're getting a lot of interest and support from all the groups – even the timeshare associations. *Brown*: Any specific legal next steps you're thinking of? *Suarez*: Not at this time, I think we're best served in encouraging our owners to participate in funding the legal actions taken by the community. We have our own property rights issues that our association attorneys have brought to light over the past few months.

Governance – *Laird*: The overall objective is we want to maintain the existing Captiva Plan and allow more local control for future land use and development or redevelopment. We've looked at five different options. One is annexation with Sanibel, and another is incorporation. A third, which was proposed by SCCF, was designation as an Area of Critical State Concern; then there were three variations based on maintaining the status quo. And then there were other possible ones offered in the Florida Statutes, which probably are not viable. So today we're going to go is walk through the options, at the end of which will be a discussion to determine what if any next steps we want to do. The document describing the options are in the meeting materials and they go into more detail. This is my view of the history after talking to lots of people. Captiva considered incorporation and annexation in the early 2000s, in an attempt to get more control over our land development. It was very contentious, and I don't think any of us want to go back into the arguments and contention we had at that time. The result ended up with the Legislature not passing the bill to incorporate Captiva, and the formation of a community panel which developed the Captiva Plan, which became part of the Lee Plan, and that gave us more control over our land

development working with the Captiva community. The CCP and the CCA became the de facto voice and leadership of Captiva. Examples of what the panel has done is the coordination of the Ian recovery and community projects such as our sewer studies, work on sea level rise and stormwater, telecom, trying to get bike paths and all of that. The Captiva code, in turn was overturned by Lee County to support the Timbers Resort requests in September, and comments were made that they saw no need for panel or something similar to that.

Mike Mullins: At the time, we basically looked at three options. It was a separate Governance Committee, it was not aligned with the CCA, although the CCA helped us get started. Incorporation was one, annexation was another and do nothing was the third. This SCCF idea was not on the table at the time, through that sounds very intriguing. In any event, what we found is that unless there's people in the state Legislature who are willing to carry the ball forward, back then we couldn't find that those people even though they sponsored us to go before the county, commission to discuss it, but there wasn't a lot of traction for being able to incorporate. And even though there are some requirements around incorporation that looked like they could be obstacles, they've been overcome by other communities. But in the end, there wasn't a lot of support for it in the Legislature. Annexation, at the time we actually met with the city, but there was not a lot of support for the idea from the community. *Brown:* You could not get anyone from the Legislature that was interested in helping us become a city? *Mullins:* That's correct, although I think Senator Bert Saunders at the time felt that this should be a decision that's made by referendum and the people should decide. It didn't get any traction. Also, the county commissioners didn't really jump on board, as well, so there wasn't a lot of support. You also needed support from the neighboring community that they wouldn't be objecting, but Sanibel wasn't particularly supportive, either. They preferred that we look at annexation. Different individuals in the group – myself, Bob Lloyd and Peter Koury – each tried to be the knowledgeable person on that particular plan. I focused on annexation. I met with the mayor of Sanibel, and all the city council members and their attorney, and drew up a document basically laying out the terms of what we wanted. At the time, sewer was a big obstacle on the part of a lot of Captivans who didn't want to have to join the sewer program; things have changed, obviously, but that's the way it was at the time. We wanted to have a 10 year abatement on sewer fees so people could gradually move into that mode, and we would eventually hook up to the Sanibel sewer. So we basically put all this out in a document a memorandum of understanding with Sanibel. We thought we had an understanding, and then suddenly one of the city councilman jumped on a program of saying Captiva wants special privileges, meaning this carve-out for sewer, and it all fell apart even though they had signed the agreement. So that became a reason to reject Sanibel because we were trying to negotiate and understand what the impact would be.

Mullins: At the time, one of the council members said, you know, go and sign on with us first and then we'll sort all that stuff out later. And as a businessman, my perspective was let's know what facts are before we ask people to get on the program. It was like the situation with the iguana control petition, you need more than 50% of the owners of property on Captiva to approve the petition. Now we could also limit the portion of Captiva that would annex with Sanibel, we could stop it outside of the South Seas area so the rest of us would be managed and protected under Sanibel annexation. None of this was ever sorted out because in the end, the decision on the part of the Sanibel city council, based on individual meetings and with their attorney, they did an about-face on us and not appreciating the value, even to the point where at one stage, they were saying they didn't have sufficient sewer capacity to take us on board. So it was really something that they didn't appreciate enough the value of it, I would guarantee that today that's a very different perspective and that you'd probably get a lot of support from Sanibel. But I would still encourage that if we were going to consider annexation we negotiate as much of the any special carve outs that we want or any special provisions that we want, even though we would probably be very supportive of getting on board with a sewer. Now, there may be some other things that could have an impact on us. Do we want separate representation? Do we want a city council member that represents Captiva? Whatever it is, that all needs to be negotiated on the front end, so we have a better handle of

where we will go with that situation. *Jensen*: Was there an event that caused people to want to annex or incorporate? *Mullins*: It was Buck Key, which was up for sale at the time, that got people thinking about home rule and having better control of our land use.

Laird: So the first option is annexation with Sanibel. We'd have to agree to begin an annexation process, and then typically Sanibel would prepare a feasibility study which it would file with the county to show whether it's feasible, it's that it's happening. Then Sanibel would hold two public hearings on this ordinance, and Captiva property owners would vote on the ordinance. It's required that 50% plus of the STRAP property owner plus one are required for approval. *Brown*: Is that a one-time vote or a petition process? *Laird*: It should be a petition process, similar to what was undertaken for the iguana eradication. *Mullins*: Back then, it was definitely by petition, and no response equals a no-vote – so you really need better than 50% affirmative responses. *Gooderham*: Either we could control it or it might be done by the Elections Office, but we'd have to negotiate that with them. *Laird*: As Mike said, we'd have to negotiate various aspects with the City of Sanibel – separate planning rules, the Captiva Code, the library, the fire district, council representation, what the millage rates would be. Then Sanibel would have to approve the annexation, either by the voters or the council. If everyone wanted to do this, we could probably get it done in less than a year. A problem is that it could be appealed by a party that feels it causes material injury to them. Another issue is whether we could keep our existing land use regulations, adopt Sanibel's or be restricted by state laws limiting how some land use issues are regulated if approved after a certain date. *Question*: During the previous discussion on annexation, was there any sense of what the economics looked like for Sanibel? Were we a net or a loser in terms of how much we pay vs. how much we get? *Mullins*: We didn't get as we should have on that, but it's a good point. We talked about things such as to have one policeman on Captiva with one backup, they required five people given vacation and scheduling. We thought we'd pick up some extra taxes on Captiva as a result, but there's a lot of money going to the Unincorporated MSTBU fund for the county that would shift over to Sanibel – a million or two. *Pawul*: The state would not want to have separate fire districts, so incorporation could potentially force the Captiva district to merge with Sanibel. *Discussion*. *Laird*: The first step would be to determine if Sanibel had an interest in annexing Captiva, would this be desirable? A plus could be the ability to control the amount of building on Captiva as it impacts the amount of traffic on Sanibel. *Brown*: Financially, the city would pick up a new base of taxpayers, with the revenue hopefully exceeding the potential expenses. *Mullins*: Another issue could be rental properties. Sanibel has more stringent rental rules... the city has a minimum of a month, while we now have a week's minimum. The two sticking points back then were sewer and rentals... sewers because you could build higher with them in place. Now, it may be less of an issue with all the work Captiva has been doing on the sewer project, but we'd still need things such as this to be negotiated ahead of time. *Question*: Could Sanibel be interested in lowering their rental minimums to match Captiva's? *Question*: If approval is by petition and STRAPs, can a person who has more than one STRAP vote more than once? *Laird*: Yes, but Timbers and the timeshares would not have many STRAPs by which to vote. *Youngquist*: I have one concern as a business owner. I like the holiday lights we have around the Village, but Sanibel has rules about how many days before or after a holiday before lights can go up or have to come down. I'd hope we could get an exception for that, and other ways to preserve or customs on Captiva.

Laird: If we go down the incorporation route, it requires a special act by the Legislature and our local delegation would have to support it. What I'm hearing is that the state is not inclined to add any more cities, they think we have enough – according to a consultant who helped us 20 years ago, and who helped the last city that incorporated through the Legislature. Annexation is all local decisions, but incorporation requires a feasibility study including a financial analysis on viability. We don't have to vote, but there are legislative standards we have to meet... it's compact, contiguous and amenable to separate government. *Gooderham*: The law says a vote is not required, but typically the local delegation wants a show of support from the community before they proceed. *Brown*: We would want to have a way to assure that a majority of property owners were in favor of it. I can't imagine proceeding without that.

Laird: There are some other relevant standards... you'd have to be two miles away from another city, which could be waived; we'd need a proposed municipal charter, which we could do. As a new city, we might not be able to keep our existing land use regulations but would have to adopt whatever restrictions the Legislature has put into place since they were originally approved. Also, do we have enough residents who want to do the work? It takes people to run a municipal government, you need a council and a planning board. The timeline is probably 20 months, due to legislative schedules, and we're too late for this session so we'd have to wait until next year (2025). It costs at least \$70,000 to do a feasibility study, and you'd have to hire lobbyists to keep an eye on getting a bill through session. *Brown:* If we can adopt our existing land use rules, then what would we be accomplishing? *Mintz:* If you incorporated, you'd be able to develop your own land use policies... so technically you could have what we have now. But if the county allowed more development or more density, which is what they are in the process of doing, and then we incorporated and wanted to restore our more restrictive policies from before, you could face the question of that being a taking by removing certain property rights that were newly enacted – you could not go back in time. You could not undo what the county had already passed, but you might be able to prevent any future changes. *Question:* Would we have the same issue with annexation, if we tried to undo rules the county had enacted to either restore our previous Captiva rules or adopt Sanibel's existing regulations? *Question:* If the Legislature is totally against creating new cities, then this is a waste of time. Discussion. *Laird:* At this point, we're presenting the facts and information the panel requested, then we can have a discussion whether any of these are worth pursuing.

Laird: The third option, suggested by Carrie Schumann and SCCF staff who've done some research, is a designation as an Area of Critical State Concern. It came from a land management act the state passed in 1972, to protect resources and public facilities within designated geographic areas from uncontrolled development that would cause substantial deterioration of such resources. A state agency reviews all local development projects in these areas, and they can appeal projects that are inconsistent with state and local plans and regulations. Typically the areas of critical state concern that are relevant to us are environmental or natural resources areas or historical or archaeological districts. To date, there have been five: Big Cypress; Green Swamp; the city of Key West and some of the Keys; Apalachicola Bay; and, in 2023, the Brevard County barrier island area. For that one, its intent was to establish a land use management system that protects the natural environment and promotes the orderly and balanced growth in accordance with the capacity of public facilities and surface services, to protect the Indian River Lagoon ecosystem and ensure safe evacuation. So those seem similar to some of our concerns. This would need legislative action, it would take about 18 months and it would cost for a lot as we would have to pay for lobbyists and consultants to accomplish this. *Question:* Does this have to be a statewide concern? *Gooderham:* It usually needs to be regional. If you look at the ones in the past: Big Cypress was to control development in the swamp. The Green Swamp area was groundwater, they were very concerned with septic pollution intrusion. Key West and the Florida Keys was also groundwater and water quality. Apalachicola Bay, mostly water quality again, and the unique environment such as oysters. Brevard was tied to both the barrier islands, which is evacuation, and then the Indian River Lagoon, which is the Lake Okeechobee outflow. *Question:* Are you in control of your development? *Laird:* You would still have local rules, but there would be review by the state to be in accordance with whatever your bill had stated your concerns were. We could have separate land use policies. We don't know a lot about this option, but it seems to be a possibility of a different way to go where our whole areas is a put it under some protection from a natural environmental point of view – especially since we've got our water issues on Pine Island Sound. *Question:* With annexation, the community could be concerned about being subject to Sanibel's rules. With this choice, we're dealing with state bureaucracy and self-governance could be more limited.

Laird: Let's say that we choose to do nothing, there's three possibilities here: This county does get overruled, and we may get our land use rules restored or modified based upon the state's concerns. Next, the county approval stands but we negotiate with Timbers so we get some compromises on intensity and

density. Or finally, the county approval stands and Timber seeks the maximum density and building heights. All of these have different implications. Finally, these are some other variations, such as special districts defined by the Florida Statutes. One example happens to be CEPD. But they don't allow any control over land use and development, so it's really not relevant for us. There's also Community Development Districts, those are used to develop raw land and allow taxation early in the development process. All property owners must agree and the county has to approve, so that's probably not relevant to us. Then there's the Gasparilla Island Conservation District act of 1980. There was only one of these, it may have happened because the island is under two separate counties. But it controls the development in terms of building heights density, historical structures, land use and zoning. It would require legislation for us to be a conservation district. This is this is a one off as far as we know, that had happened once and no one else has ever done that. *Mintz*: I've received a couple of calls about this already, there are some people on Captiva and some people on Sanibel who actually think this was worth taking a look at this. The conservation district of Boca Grande basically is a four- or five-page document that incorporates density and building heights into a piece of state legislation. One could very easily imagine the key points of our land development code that applies to Captiva being incorporated into a document like this, and then would be a part of state legislation could not be changed by the county or anybody else, unless the state Legislature amended it. You'd have to have the state legislators level approve it, but it's a very simple process if you have the support, because you just draft up our existing codes pretty much incorporated into a five-page document. That would be the guardrails that would guide people's development in the future. I have no idea whether it's possible, or where there may be some other examples of this. But just based on the phone calls I've received, I wouldn't just dismiss it at this point. It might be worth talking to one of our one or two of our state legislators to see if there's any interest in doing something.

Question: It requires legislative action? *Mintz*: Yes. *Question*: Could this undo what's been done? *Mintz*: That raise the same takings issue. I don't know how it's going to play out with the county going forward, or how quickly the amendments get passed, or whether the LDC changes will withstand judicial inquiry. We don't know if and when Timbers is going to start development. The question is, if Timbers doesn't have a plan development approved already, can you then revert back to the old code, because you're not taking anything away from them? These are all legal questions that one would have to take a look at whether you had a conservation district, whether you had an annexation, whether you had incorporation, or even if you've just intervened in the planned development process. But timing is everything. So it would depend on when the rights that a property owner would have under the new code? When would those rights vest? In other words, do they vest only when they get passed or do they vest when you have an application? I just don't know the answer to it, this is something we would have to one would have to examine going forward. Discussion about the Gasparilla Act. *Laird*: So what do we do next? Do we develop some of these in more detail, plan a community meeting with polling to hear peoples' questions and concerns? *Brown*: We have a problem with resources, with who we have that's knowledgeable enough to pursue these things? As far as the status quo, we have legal challenges under way now. Do we continue to monitor this for a few months and see what happens?

Jensen: I like the Gasparilla option, that's worth looking into. Annexation and incorporation, I don't see how those would work. Are we going for something that can be worse than what we have? If we wait and see what's playing out, I don't think it's going to make a big difference. *Gill*: I want to take the opposite view. I think the county has made it clear that they don't see or value a role for the community panel anymore. I don't think we're going to know very much in two months, it's going to drag on longer than that. I think Linda has presented two options we should pursue – the conservation district and a Critical Concern designation. *Brown*: You're saying trying to form a special district to protect development on the island, not annexation or incorporation? *Gill*: I go with John there, we'd jump from one regulation to another regulation we might not like. *Brown*: My problem is we don't know if they are doable, we don't know anything them but we certainly try to figure it out. *McDonald*: I'm all for getting more information

on those other options. But I also think it's worth having a high-level discussion with Sanibel about whether there's any appetite on their part to explore it. If they say no, then that one's dead. *Brown*: I could start a dialogue with Sanibel on what their level of interest is on annexation. *Thye-Miville*: We want protection from Sanibel, but we have all these requests. We like our community plan, it has served everyone well. But it was not firm enough to make it impossible to get amendments implemented we don't want. So annexation sounds like "Sanibel, we need your help to protect ourselves from these amendments, but at the same time we have a lot of different ideas than Sanibel had." I really like the idea of the Gasparilla conservation district, it seems like the Captiva Plan but stronger so it cannot easily be changed. We want our plan, but we need it stronger.

Lapi: From my point of view, since I'm a property owner but don't vote, when we go with different options is it decided by voters or property owners? This whole thing came about because of Timbers and fear of their development plans, and I don't trust them either. If we were to engage Timbers and see if there's a possibility of compromise here in terms of heights, maybe there's some room for negotiation there. Increased density, I'm dead set against that. Sit down with Timbers in a neutral setting and agree on some compromises with the understanding that we're going to lock those down tight. See if there is an area of agreement in heights, but hold the line on density. Discussion. *Mintz*: If this had been done correctly, if we had a plan from the beginning, and then we would see what amendments were needed or variances or deviations, then you could sit down if they were to come to the panel like Blackstone did in the past, we would have had the ability to negotiate. At this point, my understanding is that Timbers wants increased density. And height and density are obviously interrelated because if you want to increase density, you got to go higher. And I know that they've been pretty consistent about increasing density for hotel rooms, and I know that it has not been received favorably by the associations on South Seas for the reasons you said. As we go through this legal process, if we have legitimate legal claims that are going to extend the length of time for this whole thing to play out, and if we intervene if they make a plan development application and we intervene and it takes a long time with all the studies we have to do on evacuation, etc. It is my hope that there may be a way that we can negotiate something that is acceptable. It was always my hope that we could then put in some limits in the plan rather than have it unlimited as it now is, but I just don't know if any of that possible. You have a legitimate concern and questions, and it would be nice if we could all come to an agreement that doesn't seriously violate our code and also protects our fragile barrier island, I just have no way of knowing. And trust is in real short supply right now. Because as bad as the changes in the code and plan have been, what's worse is that the county failed to recognize the special needs of a barrier island. They put development and they put consistency across all of the county – one size fits all – above the needs of Captiva. And that's what was so disappointing. And I've heard that there's very little appreciation of community planning panels in Lee County, and that's my biggest concern.

Question: We're discussing annexation and incorporation... is that solely predicated on the changes to the LDC and Lee Plan, vs. the true benefits to Captiva. Is the tail wagging the dog? *Question*: Is there any indication Sanibel is open to this? *Question*: Is there strength in numbers, annexation seems to benefit more people directly. *Question*: Finally, there is a vote for annexation if we can keep our rules in place – and they nominate Tony to negotiate that since he has hotels on both islands. *Laird*: I want to address the tail wagging the dog. As someone who has tried to get grants and money for Captiva, we continually run into the issue that if you're not a municipality or not the county, you can't get the money if you're not self-governed. We've been successful doing that with CEPD because it's a legal entity, and we've gotten some funding with the help of Commissioner Ruane. With the county not supporting community panels, I don't see we have a sustainable future – we will get what the county wants or what some other entity wants. Even with Ian recovery, with David working with the county and Bob Walter doing a tremendous job – it was all based on personalities and people getting along. What happens next time, and if we're not the priority what happens to us? The conservation district could take care of our biggest immediate problems, but we need something locally and I'm not sure how to get it. *Question*: Another comment

from the audience who says they believe annexation is out if we lose our separate fire district. Another who agrees we should research the two options side by side to evaluate benefits. *Brady*: Is it too soon to consider a straw poll? Before work starts on these different options, should we get a sense of what the community is interested in? *Brown*: My concern with a straw poll is do we know enough about the alternatives for it to be meaningful? Annexation alone might not get a lot of support, but with the right conditions based on Sanibel agreeing to honor the Captiva Plan, it could garner a different level of interest. *Brady*: For some of the most viable options we need to get more information. *Brown*: They need to be developed a little further. For example, the special district option: I don't know how we would even present that to people right now. We don't know enough about that option to evaluate it.

Brown: Looking at next steps, I can certainly try to open a dialogue with Sanibel to gauge their level of interest in annexation, to see if Sanibel is interested before we spend more time on that. We also need to get more meat on the special district option... it sounds very attractive, but how can we learn more about it? *Gooderham*: You'd need to contact members of the local legislative delegation to find out if they'd be interested in even sponsoring this. If they won't take it up to Tallahassee, it won't go anywhere. *Brown*: I could meet with Rep. Botana to see if he'd be interested, but I'm not sure what I'm asking for. *Mintz*: Fundamentally, incorporating our existing LDC and plan into a piece of state legislation that would preclude local governments and the county from making the kind of changes they just made. *Brady*: With something like this, if the county commissioners would be against it would there be lobbying on their part? Or if it were to be approved and the governor vetoed it, could it just be shut down because it's not favored by Lee County? *Gooderham*: Yes. *Mintz*: You would have to get the support of the local delegation, you'd have to retain a lobbyist who would shepherd the bill and make a determination where the governor would stand on this. The governor and Lee County might not see eye to eye on this, so don't assume that. But there would be opponents who would reach out to the delegation, to legislators, to the governor's office. Discussion. Discussion of the county seeking oversight or approval of annexation, which was sparked by annexations being done by the City of Fort Myers of county properties on Treeline Drive. Recap of next steps: Contact State Rep. Botana on conservation district bill, contact Sanibel on annexation interest, see if public safety agencies could be carved out of any potential annexation.

Break

CFD – *Chief Jeff Pawul*: For both the fire district and CEPD, we were awarded money from the state due to lost revenue from the hurricane. We were also able to lower our budget, so more good news. *Lapi*: We're looking at putting pedestrian warning signs in our crosswalks in the middle of the road, similar to Sanibel. Do you have any objections to that? *Pawul*: No, anything that slows traffic down and brings a greater awareness that people are crossing the street, I'm on board with that.

CEPD – *Executive director Daniel Munt*: At yesterday's meeting, we announced our new commission, John Wade. Also, the coastal resiliency RFQ project is out for bid, with a deadline of Oct. 25. We hope to select the winning bid at the November meeting. This will be largely funded by a legislative appropriations grant of \$400,000. The next item is we are moving towards a full island beach renourishment. We have already secure more than \$13 million from Florida DEP, and we have additional funding requests under review with FEMA and Lee County. Yesterday we accept Aptim's proposal for preconstruction services with the target of placing the beach renourishment out to bid by the first week in January and the intent of having construction complete before hurricane season begins next year. I anticipate the project will cost about \$18 million, but that's pending the bids we receive. *Brown*: Do you feel confidence you'll be able to fund this without charging property owners? *Munt*: If we have to, it will be minimal, that largely depends on the bids that come in. As I said we have funding requests with the county and FEMA. *Mintz*: Are you confident work can be completed before hurricane season? *Munt*: Hopefully, as long as the bids move forward and the contractors can meet our schedule. This project will also include a dune repair as well as plantings all in one project. As Chief Pawul mentioned, we received

\$1 million from the state to be allocated to walkovers and beach vehicles, as well as to replace lost revenue from the Hagerup parking lot. We're appreciative of our political sponsors who helped push that through.

SCCF – Matt DePaolis: The Lake Okeechobee height has us on edge. It's past 16 feet this weekend, although the Corps says it's nothing to get excited about and they don't expect any releases as long as we don't get any major rain on the lake. Experts are saying to expect a super El Nino this winter, which can mean a wetter dry season – so at 16 feet that means releases will be when rather than if. The biological opinion that's been holding up LOSOM has been received by the Corps and is under review. They still don't know when the final decision will be made that will allow LOSOM to be enacted,

Wastewater – Brown: The project is still hung up on Sanibel completing the consulting study on handling the additional wastewater Captiva will generate. It was presented to staff, who had a number of questions which are back to the consultant for resolution. Hopefully it will be released soon so we'll know what issues they'll have and how much that's going to increase the cost. The city still seems on board with the project even with the threat of additional development on Captiva.

Stormwater – Mintz: The stormwater proposal from Kimley-Horn has been sent through the channels to be funded by Lee County, so we're waiting for that to be processed.

Iguanas – Jensen: Alfredo started coming out two days a week and setting traps, and his feeling is the traps haven't been doing much good, that there's too much vegetation around. He feels he can get more done if he uses that time to shoot iguanas rather than setting traps. So he'll spend two days a week shooting them. I know the county was supposed to pay for the annual \$25,000, which covers one day a week. Is the panel picking up the other day, or do we think the county would pay for that? **Mintz:** We agreed that regardless of what the county did the panel would pick up the second day. But I think it behooves us to see if we can get the second day reimbursed by the county. **Brown:** I believe we committed to pick it up for six months to see if it was making a significant difference.

Nominating Committee – Brown: As we discussed at the last meeting, Laird will fill the open panel position for a three-year term. The other two appointments were to be made by CPOA, and Rene Miville told me the group will nominate Bruce McDonald for a second three-year term and appoint Ken Suarez to the other opening – so he'll be joining the panel in January.

Development – Brady: We were looking at resuming the Welcome Back cruise, which we haven't held since 2019. Captiva Cruises is willing to donate the boat and a cash bar, and we looked at dates to avoid any conflicts... we were looking at Jan. 8, but they also have Jan. 22 open. Consensus was the later date would work better. **Mintz:** There are a number of people we should consider inviting, I'll develop a list. Discussion.

Financials – Gooderham: Our current financial status is in the packet, still have a lot of money escrowed as we have not been asked to pay those invoices yet. We'll need to look at some fund-raising shortly. Also, we have not gotten any better quotes for the additional D&O insurance coverage, so I'll bind the additional \$1 million in coverage for \$1,500 this year.

The meeting adjourned at 11:50 A.M. The video link for the meeting is <https://youtu.be/pqXSup2tDQg>. --
Ken Gooderham