

**Captiva Community Panel**  
**MINUTES**  
*Nov. 14, 2023*

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

**Audience:** 24

The meeting convened at 9:02 am. Following introductions and roll call, the Nov. 14, 2023, meeting minutes were unanimously approved (Youngquist/Gill).

**LCSSO** — *Deputy Chris Lusk:* No recorded crime in the past two months, just some minor parking lot crashes. The beach access improvements are holding up well. No major thefts reported – we had someone report a stolen bicycle, but it turned up after a contractor working at one building used it to ride to another. The recent Coastal Cleanup went well. Lapi: I reached out to Lee DOT about those “Stop for pedestrians” signs you put in the crosswalk, hoping to make the crosswalk more visible to drivers. I also asked them to pick up the broken speed-limit sign out there that’s been not working for more than a year now. *Lusk:* Yes, we’ve been asking them to repair it or remove it. The crosswalk signs, I think they’re a great idea... when Sanibel put them up, those were not DOT-approved signs – but that could all change. They seem to be working on Sanibel, it’s a great idea so let’s adopt it. They recently reinstalled the 25-MPH signs, so we’ve been running radar at different points through the day. Not many violators, so must be effective. Mintz: It’s been more than a year since the hurricane and there’s been a proliferation of landscaping signs popping up all over the island. We should contact the two major landscaping companies that are the major violators and ask them to remove their signs. Discussion, agreement to follow up with the companies to remove the signs.

**CEPD** – *John Riegert:* On schedule to put our upcoming beach nourishment to bid in January. The bayside adaptation conversation was tabled to the December meeting for a decision, and the 2024 board meeting dates have been passed and posted to the website. If you’re interested in finding out any information about the bayside adaptation, all the videos from the workshop and yesterday’s board meeting have been posted to the website. *Laird:* The decision on who to hire for the bayside adaptation probably will be one of the most important decisions CEPD makes over the next five years, so we’re taking our time and doing our due diligence. Another thing to note is that Carrie Schuman is leaving SCCF to take another position, good career advancement and better for her personally, so we wish her the very best and thank her for all the work she has done for CEPD and the islands. *Schuman:* I’m leaving Nov. 27 and starting a new job on Dec. 4 with the Conservancy of Southwest Florida. *Question:* If the bid for the next nourishment are going out in January, what’s the expectation in terms of timing to do the actual nourishment? *Riegert:* Our expectation with the bids is they would get the work done before the next hurricane season, but it really depends on the contractors’ response to the bid request and what their availability and schedule is. *Laird:* We are fully committed to getting it done before hurricane season, somewhere between March and June. We have some flexible times to perhaps save some money, and we have to worry about the turtles always. But part of the criteria is their ability to start, assuming we can get our sand and all that. We had not put the bid out before this because we had to get the funding and now we’re doing the engineering study to understand where we need the sand and what the profile should be. If may need a little more on the north end, and we’re also going to try to put the dunes up a little higher. *Riegert:* You may have noticed the surveyors about two weeks collecting data, now they’re still sorting through that. *Question:* When can the plantings be installed? *Laird:* We have to wait until construction is complete, because we’ll be adding sand to the dunes. We also found out at the FSBPA conference we might be able to get a reimbursement on some of the plantings if we allow the company to come and

harvest the seeds to replant. Discussion about plants and consultants. *Question:* Are we still anticipating the nourishment will be done without assessments to the private property owners? *Laird:* Hoping so, and if it comes to that the assessment will be minimal because we have accessed quite a bit of emergency funds.

**CFD** – *Chief Jeff Pawul:* We have met with the Rauschenberg Foundation and have found a way to reinstate a landing zone on their property. Hopefully that will be in place by the first quarter of next year, by the time they move through the landscaping process. So a big thank you to the foundation for making that happen. *McDonald:* With the causeway lane restrictions on the weekends, do you have a contingency plan to get someone off the island? *Pawul:* Actually, that's happened twice on Sanibel, we haven't had a major instance yet. We have contacts with FDOT and the causeway construction team where they can shut down traffic on the causeway islands if we need to get an ambulance through. It will still take time, but we to have processes in place.

**SCCF** – *Matt DePaolis:* Sorry to see Carrie go, happy she's moving on to good things and staying in the area. Lake is slowly coming down, hoping to get it below 16 feet. We have the capacity to take more flows from the lake if necessary.

**County update:** – *Mintz:* We've been trying to keep the community updated as transparently as possible via the panel, CCA and SCCF. A brief summary: The state responded to the proposed Lee Plan amendment, saying that what was being done under the guise of resiliency was actually a false flag for increased density. The county responded almost immediately, which created quite a stir over the last couple of weeks and that may have caused the change in the adoption hearing from Nov. 8 to Dec. 6. The plan amendments have to be adopted to allow the LDC amendments approved Sept. 5 to be in compliance with the plan, which is the overriding document. *Brown:* Presumably, the purpose of this Dec. 6 hearing is to make public the state's comments and perhaps rethink what they want to do based on what the state comments were. *Mintz:* That's one possibility. The other possibility is that they just ignore the state comments and pass the plan amendments as proposed on Sept. 6, or anywhere in between those two options. So the point is that the county has another opportunity to revisit this issue to take into consideration comments from the community of Sanibel and the community of Captiva, and maybe rethink what they had intended to do. In the county response to the state, they claimed the state had no legislative authority to issue that letter; that they should not have considered citizen input (which they did); that the state should have consulted the county before issuing any negative comments; and finally, that the state had no business reviewing the issue with density. What was most interesting is that at no point in that letter, did they contest the state's primary concern, which is that there was going to be an increase of density on Captiva after a hurricane.

In response to the county's letter, our attorney for the Protect Captiva coalition issued a letter reminding the county that, at the hearings where these code and plan amendments were adopted back in September, Commissioner Ruane stated he had asked for resiliency options and ended up getting increased height and increased density options from the county staff and that he quote found that offensive so for the county to be saying that there's no increase in density and building heights when the commissioner basically said he was offended by what came back was obviously an issue that had to be considered by the county. Our attorney also was mentioned to the county that in their transmittal letter to the state they should have attached all the comments from Captiva and Sanibel residents including the resolutions from the Sanibel City Council, which were not sent to the state. Our attorney made it clear that it's a state responsibility to make sure that people can evacuate that islands in the state of Florida in a safe manner, so this action was definitely a major concern for them. The county issued a five-sentence email to the state and to our attorney basically saying that there is no changes in the Captiva hotel or residential regulations, period, and that the amendments does not change that at all. It's patently false, because when you exempt a single property owner from the density limitations and height limitations, you're obviously changing the

regulations, and it was obviously false. Our attorney noted to the county that Timbers Resorts has already advised other owners on South Seas that they intend to redevelop in a way that will increase building heights and increased density based on the changes in the code. And the other thing that our attorney reminded the county of is that the deputy county attorney at the June 6 meeting when this issue first arose, said that and I quote, South Seas would like to be exempted from the density limitation and go through the public hearing process to request density in accordance with the future land use category. The Captiva code has a hotel density of three units per acre. The future land use category they want has no limitation for planned developments on the number of hotel rooms. Finally, the attorney for Protect Captiva placed a public records request to the county asking for all communications between the county and agents of South Seas, Timbers, Wheelock 3 Capital and the Ronto Group regarding any changes in the building codes.

So the first thing we have to try to do is get our county commissioners to listen to the concerns of the residents of Captiva and basically do not pass these plan amendments on Dec. 6. If the plan amendments are passed, then we move more into the litigation mode, and there are a number of litigation possibilities we're contemplating at this point. One is an equal protection violation under federal law because, as everybody is aware, they code amendments and plan amendments provide a special benefit for one single property owner on Captiva. They grant that single property or greater building heights potentially up to 75 feet above base flood elevation, and unlimited amount of hotel density since South Seas is no longer limited to three units per acre. That exemption doesn't apply to Tween Waters or Jensen's or any other resorts on Captiva, it doesn't apply to the other private property or homes on the rest of Captiva. And so there is an equal protection claim there, and that is being seriously reviewed. In addition, there are also elements of our comprehensive plan and the code which contradict these amendments. And so there may be a violation of the code, other elements of the code in the plan that are in contradiction with the planning code amendments that are now being proposed. So there is room for further litigation. And then finally, if and when Timbers submits a planned development application, which will include increased density and increased building heights, the Protect Captiva coalition will intervene in that process, which is a basically a rezoning process. We as a community can intervene in that process, we can contest the ability to increase density and heights based on our wastewater infrastructure based on our drinking water infrastructure based on our evacuation routes, based on all the elements that will need to be met in order to do any redevelopment on South Seas. That process can go before a hearing officer, and that can take place over a fairly long period of time. It includes witness testimony, studies, et cetera.

*Mintz:* With us today is Michael Bell, the attorney who represents the timeshare owners on South Seas. I wasn't aware that there were thousands of timeshare owners on South Seas who also have been following these developments very closely, and have also been very supportive of the coalition opposing any increases in heights and density. *Bell:* There's about 6,500 fee-simple title owners – actually, it's the largest group of title owners on South Seas. We have been in active negotiations to try to work out an amenity situation with the resort owners. It's been a very daunting process. I was interested to hear that there's a potential for outside usage of the waterpark, obviously adding to the traffic flow going through the village. We are extremely interested in the community panel and are very supportive of everything you guys are doing. So we're going to continue to stay involved as much as possible. *Jensen:* Has Greg Spencer from Timbers ever been invited by a panel member to talk through their plans? *Mintz:* No, nor have we been asked for that opportunity. We've been receiving update from Bob Walter as a panel member, and there's been an opportunity to convey their plans at any meeting. I think they've made it clear they are not going to reveal any plans until the county adopted these plan and code changes. I think that's been a problem all along. If South Seas or Timbers had put in a planned development where we all knew what they were doing, and if they would ask for variances or deviations to the extent they needed them, then we would have known what we're dealing with. But what the county did is put the cart before the horse and did it backwards, and basically exempted them from all height and density limitations, or significant density and height limitations without knowing what it is they wanted to build. On one

occasion, I had a direct conversation with a principal of Timbers and there was no interest at that point until the county finalized what it was doing in sitting down and discussing. I've actually had a conversation in passing with the planner, engineer for South Seas and asked him if there was any room for negotiation, any room for compromise, and he did not believe there was at this point. I know there's been a lot of discussion, but Jay and I did have a meeting with one of the principals back when way before the hurricane with South Seas, and with Timbers and with their other owners. And it was clear to us at that point, that they were looking for increased density and increased heights even back then. Early on, there was a meeting set up because Commissioner Ruane wanted to incorporate South Seas into the sewer project so we could close down the FGUA plant. At that meeting, basically what we were told by the CEO of the Ronto Group, who was at that meeting, that they would consider joining the sewer project in exchange for the panel agreeing to increase density and increase heights for South Seas. At that point, Jay said, there's nothing to discuss here. We have a code and we have a plan that's been in effect on Captiva, it's worth in terms of density and building heights, and we're not about to trade that for their involvement in the sewer project. The meeting ended fairly abruptly at that point.

*Mintz:* Commissioner Ruane in January asked county staff to look at anything in the Comprehensive Plan, which is a multi-hundred-page plan for all of the county, to identify anything that would prevent people from building back safely after a hurricane and meeting new base flood elevations, etc. The only two changes that the staff found in the whole Lee County comprehensive plan were two changes in the Captiva section of the plan, which limits heights to one- and two-story buildings on Captiva, and limits the height to 28 feet above base flood elevation. Those are the two amendments to the plan that have been proposed by the county to make the county more resilient, and those two changes of what the county sent provoked the “false flag” comment. Those are basically changes that are removed the building height limitations for Captiva from the plan; once those two amendments have passed, there is nothing in the plan that limits specifically building heights on Captiva. Then you go to the code, because there's no overriding limitation, and the code allows for exemption per se, to the 28 feet above base flood elevation that could allow them to go up to 75 feet and eliminates the three units per acre for hotel rooms. You can't increase density and building heights in the code on Captiva, unless you eliminate the building heights, because how do you increase density if you can't go higher? *Question:* Could the commissioners put any restrictions on building heights now? For example, building heights cannot exceed those that have been grandfathered in on the resort? *Mintz:* Yes. Commissioners could put in different building heights for South Seas than the rest of Captiva, or they could eliminate heights from the plan and, when a planned development is submitted, they could set any heights they feel is compatible with the surrounding area. The problem is under the current amendments they could go at least 45 feet above base flood elevation. Under the current Administrative Interpretation, South Seas is limited to 35 feet above grade or 42 feet above sea level. We've been telling them all along they should amend that to be the same as the rest of Captiva, which would be 28 feet above base flood elevation. On the north end, if as they claim the base flood elevation is 18.5 feet, under the Captiva Code they would have 28 feet above that (to the roof median), or more than 46.5 feet – which is almost the height of Lands End.

*Question:* Who has the ultimate authority here in this back-and-forth? *Mintz:* The county makes the final decision. But the state's comments could come into consideration if the county chooses to ignore those comments, as evidence in potential litigation. *Question:* It appeared to surprise one of the commissioners when the new regulations came out... could that be a Sunshine violation, in terms of the other commissioners were warned what was going to be proposed? *Mintz:* There was no evidence of that. Staff is allowed to brief commissioners and Timers or their agents and lawyers have a right to meet with county commissioners and staff. The problem was that the Community Panel, which instituted the Code and Plan language, was not made aware of any of that until he became public on June 1. There was no question in my mind speaking personally, that there was a lot of discussion between representatives of Timbers and the county staff, county attorney's office and the county commissioners prior to us being aware of it, but I don't think that's illegal. It's just wrong. We are the organization that was asked by the county to prepare

these amendments and to review them on a regular basis, and they developed these changes without any consultation with us. *Question:* Is there any way to be clearer that the community would consider supporting changes in the height language if a clear resiliency benefit could be shown? *Mintz:* I don't know how to be any clearer that we support being able to build back what you had before as long as you meet FEMA base flood elevations. We made it clear to the county that any ambiguity in the buildback provision should be cleared up. We been clear that the buildback issue is a red herring. The real issue is how many new hotel units you can build, how many rooms and how high do you need to go to get them. And we're cashing ghosts, because we really don't know what South Seas would like to do. This is not personal. What this comes down to is a vision of Captiva. Do we want to keep Captiva where the trees are higher than the buildings, or do we want the buildings to be able to go higher than the trees? Do we want to keep Captiva the way it is, or do we want it changed? It's a difference of policy and a difference of opinion. And it's a difference of a developer coming in and wanting to maximize its development. This whole thing tends to focus on building heights, but I think people have to keep in mind that one of the important changes here is in our current density regulations. Now, hotel rooms count as density, and if Lee County passes the changes, they want, hotel rooms would no longer be counted in terms of density. Discussion of units and possible room counts.

*Question:* This kind of disagreement between the state and a county, is this ongoing or is this unusual? *Mintz:* I think it's happening. In Lee County, there was a proposed development, which was I believe Commissioner Greenwell's development project, and it was originally approved by the hearing examiner to build up to 65 feet. I think the Board of County Commissioners reduced it to 45 feet based on community opposition. In Siesta Key, there was a hotel being built, or proposed to be built, that the local commissioners agreed to be much higher. That was challenged by a single woman who lived in that neighborhood and it was defeated. The courts basically said you can't build that high, it violated the plan. I think this this takes place all over the state and other states. What's unusual in our situation, is that we live on a barrier island that was destroyed by a hurricane, and the changes were made without any discussion with anybody who live lives on the island. *Question:* I know that if developers feel they're hurt by county actions, they file lawsuits to get what they want, then the community has to pay. We're going to spend a lot of money on this. Is there any assumption we're going to win? Can we get any of our funds expended back either from the county or from Timbers? *Mintz:* If we litigate, and we sue the county, when we intervene in the planned development process, we will pay our attorneys to represent us as we would in any lawsuit. We will raise legal funds from the community, and this community has been extremely generous with contributions to the legal fund. I don't think there'll be any reasonable limitation on the legal fund that we will be able to have donated for this cause from our community. *Question:* Can you ask for damages? *Mintz:* No if we win and we keep our building heights and our density as they have been for decades, then we will have a victory and we will protect Captiva. I don't think damages will be important, I think what will be important, what we did for the community.

**Governance** – *Brown:* We had a lengthy discussion of this at our last panel meeting. The basic problem being that we don't have our own city government, so our land use policies are subject to the Lee County Board of County Commissioners. Is there any way to get around that so that we could gain more control over our land use policies and not just be so dependent upon the county commissioners? In that discussion, the panel felt that there were two possible areas that may warrant further discussion – a possible annexation with Sanibel, or creating Florida legislation that would designate Captiva as a special Conservation District. This latter approach was done by Gasparilla Island back in 1980, where they were able to get a state law passed that makes Gasparilla a special conservation district and as part of that establishes maximum building density and maximum building height on Gasparilla Island in order to ensure that Gasparilla Island remains ecologically sound over the long term. I volunteered at that meeting to try to open up dialogue with various people on those two options. I've had some initial discussions with folks both related to Sanibel annexation, and also related to the possibility of passing Florida legislation that would designate Captiva as a special Conservation District. These discussions are at a very early

exploratory stage and I'm not really at Liberty, and nor do I think it would be wise to make any comments about them right now. I think they're both probably long shots, but I think there's enough potential there to at least warrant trying to develop those alternatives further.

**Verizon – Brown:** I did get an update from Kerry Burrows, who is the chief person at Verizon that is working on the project to improve our cell phone signal strength on Captiva Island. The current status of the project is the two of the small cell towers have been erected to date – one near the southern part of Captiva Drive just before you reach Tween Waters, and then there's another that's not too far after, you know, you just cross onto the island over Blind Pass. I drive by them, I don't even see him. I think they, you know, blend in very well, with the landscape. I've had heard no complaints about them. Kerry tells me he expects that the project will be completed by the end of the first quarter next year. So that would be March 2024, about five months from now. So I think, you know, this has been a long process, but you know, Verizon has listened to us. They put a lot of effort into this. And based on my conversation a week ago with Carrie Burrows, I think this is going to happen and it's going to happen early in next year that we will have at least one reliable cell carrier that will be available to people on Captiva. *Question:* Was it eventually five towers? *Brown:* Right, three on Captiva Drive, one by Tween Waters and one adjacent to the community center. *Question:* Do these towers assist other carriers' reception? *Brown:* No, only Verizon. Discussion about Comcast service.

**Wastewater --- Brown:** The project is in the hands of Sanibel to complete two consulting studies. One study is to determine how much increased process wastewater would be created by Sanibel processing our wastewater and what would need to be done to handle that increased processed wastewater. The second study is an economic analysis of what costs would be added to the Donax plant processing by servicing us and what would be the appropriate rates for them to be charging Captiva customers. We're able to get Lee County to pay for both those projects. I'm told by the City of Sanibel that the study dealing with what to do with the increased wastewater has been completed; I have a copy of it but they're asking that that the study not yet be made public because Sanibel has not yet had a chance to review it. I will tell you that in the study it is a very large cost to deal with the increased wastewater. The total cost of the Sanibel partnership to handle Captiva's wastewater is becoming very, very expensive, and when we get the final costs we're going to have to work with Commissioner Ruane and see what kind of public funding assistance will be available to do this. I don't think there's any way Captiva property owners on their own will be able to bear the cost of this. *Question:* In a perfect world, what's a timetable to make decisions on this? *Brown:* It will take Sanibel a few more months to get these reports completed, particularly since the city is still recovering from Ian. After that, best case it would be at least three years to have a system in place if everything worked out, funding came through, etc.

**Stormwater – Mintz:** We have a proposal from Kimley-Horn for about \$200,000 to do a comprehensive engineering study for stormwater management in the Village. I understand it has been submitted to county staff for funding, and Commissioner Ruane has committed to having it funded. Hopefully we can get that confirmed in the next couple of months. Laird: As CEPD is working on a plan for the bayside, we will need to integrate the planning and engineering of that with Kimley-Horn's work.

**Iguanas – Jensen:** Alfredo is still coming out twice a week, concentrating on the areas where iguanas are being sighted most often. He said it's harder to capture them as the weather gets cooler, and he may cut back to once a week for a while.

**Development – Brady:** Getting set for a "Welcome Back" cruise on Jan. 22, we've sent out a save-the-date notice and will be sending more information as we get things lined up. We'll probably start selling tickets after the holidays. Discussion about dignitaries to invite on the cruise. *Brady:* We're also working on a draft of a fund-raising letter to send out before the end of the year.

**Financials** – *Gooderham*: Breakdown is in the packet, no surprises in revenue or expenses. Running a deficit for the year, but we have reserves to cover that. Still waiting to get billed by the City of Sanibel for the studies now under way.

**Questions:** None

The meeting adjourned at 10:40 a.m. (Lapi/Brady).

Video link: <https://youtu.be/3oinTSZS5DM>

-- *Ken Gooderham*

DRAFT