

Captiva Community Panel

MINUTES

Feb. 13, 2024

Attending: Ken Gill, Jay Brown, John Jensen, Linda Laird, Margarethe Thye-Miville, David Mintz, Tony Lapi, Sandy Stillwell Youngquist, Ken Suarez, Ann Brady

Audience: 31

The meeting convened at 9:02 am. Following introductions, the Dec. 12, 2023 minutes (Gill/Jensen) and Jan. 9, 2024 minutes (Jensen/Suarez) were unanimously approved.

LCSSO – Sgt. Rich Zeltman: Large teenage crowd on the beach between CCA and Mucky Duck last two Saturdays, about 200 one day. Coming in by boat, getting dropped off by Uber, gets on social media and gets out of hand. We've monitored both to ensure they are safe and nothing gets out of hand and to be sure they clean up afterwards. Since the buoys (marking the no-boat area) have not been replaced after the storm, we were worried about someone getting hurt. Watched out for underage drinking, but there were adults on the beach with drinks. *Mintz:* We have a code that there's no open containers on the beach. *Zeltman:* Have had a couple of single-car accidents on the S curves, more distracted driving than an issue with speed. Discussion on how parties were getting to the beach, where were they parking, etc. Are they using local restrooms? Was there an issue with music on the beach?

CFD – Chief Jeff Pawul: To follow up on single-vehicle accidents, it's usually distraction, medical emergency or under the influence. We also noticed the large crowds on the beach, but not a big issue for us. I mentioned the issue with generators and electrical explosions, we posted articles on that on the district website. The districts have also been watching some bills in the Legislature that were unfavorable to special districts, and we have a group going up to Tallahassee tomorrow to testify on those. Finally, thanks again for inviting me on the cruise, good to see everyone.

CEPD – Deputy Director John Riegert: The board accepted Aptim's contract at yesterday's meeting. We echo the chief's concerns about the pending bills, good that some of the verbiage causing concern was removed. The board will select a bond counsel by the next meeting for the loan attached to the upcoming special referendum on May 21. We encourage everyone to get out and vote yes on the next beach nourishment project. *Mintz:* It's important the Captiva community understands what the referendum is, what they're voting and why it's important they come out. Also, what's the timetable for the project? *Riegert:* We have to select a bond counsel before we get the loan, which is necessary because we have to front the funding for any project. We have grants lined up -- \$13.2 million from Florida DEP plus others in the works – but they are reimbursement grants so we have to pay the initial cost. After the bond attorney, we will put the project out for bid on March 1 with a 40-day window to respond. So the bid response evaluation will happen on April 11, which will solidify the cost and timetable so we can hold a special meeting for bid selection right after the May 21 referendum. The vote is on a \$25 million bond obligation for the upfront costs. *Mintz:* But the project won't necessarily cost \$25 million, and people won't be voting to tax themselves that amount. *Riegert:* No, our goal is to minimize the cost to property owners to the maximum extent. We have the grant I mentioned, we'll be meeting with the county on its cost-share, the board is looking at funds already in its accounts. *Mintz:* So when will the project take place? *Riegert:* That is dependent on the bid. We have three windows in the project specifications: fall 2024, January 2025 and spring 2025. Contractors will bid based on those construction options, which will impact the total cost if they can tie in to another project nearby. *Mintz:* We had hoped the renourishment could take place before this hurricane season, but it's evident that's not going to happen for whatever reasons. But it's absolutely vital that the project take place before the following hurricane season. *Lapi:*

Will the construction windows affect the monetary bids? *Riegert*: Yes, that's why we gave them three options to see if we can save anything by constructing at one time vs. another. *Mintz*: It's important that people understand what exactly the funding mechanism is for the project, the actual cost vs. the indebtedness the district has to take on up front. It's a complicated concept, and people need to understand what that number means when they see it on the ballot. The district needs to plan some efforts to educate voters prior to the May 21 referendum.

SCCF – Environmental Policy Director Matt DePaolis: Lake Okeechobee is at 16.38 feet and rising and, with the Corps of Engineers hinting at a major announcement later this week, we expect releases to begin. That will cause damage to the salinity gradient in the estuary, harming oysters and tape grass. On top of that with a very wet El Nino year, there's a lot of basin runoff being added to the river. *Question*: Is there a potential for an early red tide? *DePaolis*: Nothing showing up in our surveys, but we are seeing some seabirds being treated for rabid toxicosis, which comes from red tide – so there's some out there blooming. *Question*: What about the reservoir? *DePaolis*: The announcements you may have seen are about ribbon-cuttings for smaller components for treatment options – not for either the EAA reservoir or the C-43 reservoir. The C-43 might be done by the end of next year, and the EAA will be operational in 2030. Discussion of possible relationship between El Nino years and hurricanes.

South Seas: No report.

County/SSIR – Mintz: And as people may be aware, after the very shortly after the code amendments were passed, and the plan amendments were passed by the county which exempted South Seas from the building heights and the hotel density limitations that everybody else on Captiva is governed by, Timbers Resorts and their partners (who own 120 acres of South Seas) made an application for 707 units. They had the right to build 247 units – 140 employee housing units and 107 hotel units – but now they're requesting 272 condominium units and 435 Hotel units, which are to be located in two separate hotels at the north and south ends. So Protect Captiva moving to the legal stage of this process and, for those who want to see more detail, the panel, SCCF and the Captiva Civic Association just put out a legal update, the same legal update on all three organizations websites, which lay out exactly where we are, there are three documents attached. There could be three to six different legal options that can be undertaken and will be undertaken at various times during this process. But the first legal matter is the Protect Captiva coalition filed a petition contending that the code amendments (which exempts South Seas from the height and density limitations and also raised the heights on the rest of Captiva from two habitable floors to three habitable floors) violates our comprehensive plan, the Lee Plan. The code amendments open the door for sow seeds to increase the density significantly, which is not in consistent with the historic development pattern on Captiva.

In 1973, the then-owners of South Seas down-zoned its property from 3,900 units to 912 units, including hotel rooms; that cap of 912 unit has been in effect for 50 years, through three owners of South Seas, Mariner, Meristar and Blackstone. They've all understood that the cap of units on South Seas was 912, and each time they asked for an amendment to the plan to move units around within South Seas, it was always keeping within 912 units. For the first time now that new owners of South Seas are seeking to exceed that cap significantly. When the Captiva Plan says you have to maintain the historical development pattern on Captiva, nothing is clearer than the 912 units as the historical development pattern. So the claim that we're making is that the code amendments, which allow for this increase, violates that historical development pattern and is unlawful. That petition was filed with the county, we have to do that as a courtesy so the county has the opportunity to say “Oh, thank you for giving us that good advice. We're going to retract all those code amendments that violate the plan. And we'll just go back to square one.” But the county didn't do that. The county basically said that we don't have standing to contest this, which our lawyer says is absolutely nonsense. So we are about to file the petition with the Department of Commerce, which is the next step of the petitioning process, and the Department of

Commerce will issue a decision on that within 60 days. Remember, the Department of Commerce is the agency that said that the county was flying a false flag of resilience, but they really want increased hotel density. From there you go to administrative law judge will then issue a decision along the way. So that's the petitioning process, and that's going along the state route.

At the same time South Seas has submitted a plan application to the county for the 272 condos and the 435 hotel units. They want to rezone the property away from the Administrative Interpretation that set the cap at 912 units, so they can build the 707 units. The process is the county reviews that for sufficiency to make sure all the Is are dotted, the Ts are crossed and the application is complete with all the information they have to provide. Once that is found sufficient, then it goes to a hearing examiner who conducts a trial where she takes witness testimony and makes a decision as to whether or not to approve this rezoning application. Once the hearing examiner makes that decision, it goes to the Board of County Commissioners to review and either to agree with it or in some way to amend it. The county sent Timbers Resorts a letter on dated January 18, basically advising that the rezoning application was insufficient. That nine-page letter had to do with their properties, what's covered, when easements are there, how do you deal with parking, the impact statement or parking may not be sufficient, the buffering situation is not being sufficient, they have problems with the deviations they asked for. But there are a whole list of things that they asked the South Seas to amend their application.

But the one thing that struck all of us was the county's response to South Seas' statements that there are 272 condo units vested under the Administrative Interpretation that currently exists. Remember the Administrative Interpretation guarantees are no more than 912 units and sets the standard for South Seas for the last few years. So they are saying there are 272 units vested under the existing Administrative Interpretation which they want to eliminate and replace. But then they're saying we also want 435 hotel units, which are prohibited by the Administrative Interpretation. So basically, they want it both ways, and the county is saying, "How can you say you have vested units, when you're basically saying it's vested under a document, which you're telling us you don't want it to apply to South Seas any more." That's one of many issues that South Seas will have to deal with before their application is deemed sufficient.

Our attorney for Protect Captiva has also submitted a letter to the county regarding the sufficiency issues, explaining to the county as best we can that there is a historical limitation, a cap of 912 units on South Seas and it cannot be exceeded. That cap was put in place in in 1973, when the owners of South Seas requested the downzoning to 912 units in exchange for the ability to cluster the developments to create pockets of development and pockets of open space, like in a planned development or PUD. And that was an exchange agreement between the county and the developer to do that, to give them that flexibility to put things where they want to put them in exchange for the 912 cap. We also raise a whole bunch of other issues that people can read, it's worth reading the letter from attorney Richard Grosso to the county staff dated February 6.

Once the application is found sufficient, Protect Captiva AND our community will intervene in that hearing application process and we will want people on the stand that Protect Captiva has retained. Attorney Richard Grosso is one of the foremost attorneys on land use in the state of Florida. And we've also contracted with the law firm of Hahn Loeser with some very esteemed attorneys in land use. Last week, there was a meeting of the parties who are part of the Protect Captiva coalition, and we had 10 lawyers in the room. Protect Captiva had about five lawyers, three from Hahn Loeser, and then Richard Grosso was there and there was one other lawyer there. Then we had attorneys from RLR, and the attorneys from the city of Sanibel. We had attorneys from the associations of South Seas, and also the timeshares of South Seas. Everybody will continue to work together to figure out the best way to keep the Captiva Code and the Captiva Plan in place as it was before these amendments. We had some great legal minds there, and there's a real commitment to make this happen and to protect our barrier island. We have a winnable case here, and people are very confident and feeling very good about it.

To fund this legal effort from Protect Captiva, we are raising funds -- and some of the other organizations are funding their own attorneys, even though we're working together so that that offset some of the costs for us. But we have close to 400 contributors to our legal fund in response to our requests for donations. We have raised well over \$300,000 already, and we expect to have close to \$750,000 shortly. People are very committed to this issue, and we probably will be able to raise even a million dollars, which hopefully we won't need. But we would probably even be able to raise a million dollars of legal funds if and when we need to do that. Because people on Sanibel and Captiva are really committed to protecting this barrier island.

So that's my report. I think we're feeling good about what we've done so far. I think we're feeling optimistic about our ability to influence that county staff and the hearing examiner that our cases is right. And that to increase building heights and densities significantly, on a barrier island after we've experienced this hurricane is very foolish policy. And I think as a policy matter, we feel confident we'll be able to convince or will do our best to convince the county teams of that, then finally, hopefully, the county commissioners. But we have to first convince the human examiner and county staff. And then we also have the state courts to determine whether or not the code amendments are consistent with the plan that requires the code to be consistent with the historical development patterns on Captiva, and with the previous codes. All I can say is our communities. Sanibel and Captiva, have been incredibly united and supportive in the effort to protect this island.

Governance – Brown: The panel authorized me to look at alternative forms of governance for Captiva, which included creating a special Conservation District, perhaps incorporating Captiva or annexing Sanibel with Captiva. All of these governance issues would be designed so that we would regain control over our land use policy and not be subject to the whims of the Board of County Commissioners in the future. The Captiva conservation district did not get very far with the Southwest Florida legislative delegation; we got State Rep. Adam Botana to sponsor a resolution, but it did not get a lot of support because the delegates felt that that we would have problems with this being such a precedent setting move. In terms of incorporation, we do not have enough population to incorporate although there might be ways around that. But when you think of everything that's involved in corporation and we're such a small town, it doesn't seem like we can efficiently provide all these city services with such a small population base. That leaves possible annexation with Sanibel. I met with Sanibel City Council at their meeting last week and asked if they would be interested in putting together a group to study the various issues that might be involved in annexation to see if we could work through what all the issues might be. The city council authorized Dana Sousa, the city attorney, and other city attorneys to work with us as necessary to do a complete evaluation. We would have our land use policy being run primarily by Sanibel, who has similar values to us about development versus having our land use policy run by the county which seems to be development-oriented. So I wanted a discussion this morning on how much appetite panel members have for pursuing annexation.

Suarez: Being on Captiva for so long, I fear Captiva would lose its identity. Nothing against Sanibel, there are great people who run the government there, but I think it would harm our identity. I see major complications, Captiva has always been a pretty tight-knit community. A lot of owners have mixed feelings about annexation with Sanibel. *Gill:* People I have surveyed concur with that, losing identity. I'm not totally against pursuing it, I don't think Lee County has treated us very well. A lot to overcome. *Jensen:* I agree. Sanibel has a lot of rules we don't have. Captivans want more freedom. I guess we could follow through to see what's involved. *Youngquist:* I agree about the character and charm of Captiva, that's why I have chosen to invest in Captiva. Just all those rules, don't know if we could have a separate set of rules for Captiva. *Mintz:* I don't think we need to second-guess Sanibel's rules or regulations, I think we're faced with a choice: The possibility of incorporation or annexation, especially if the Conservation District is off the table, versus continued increased development like we're experiencing on

South Seas. We don't know what will happen with the litigation, we may be able to stop it and then maybe the county learns a lesson here and we don't have to worry about it anymore. Or maybe we can't stop it, and it sets a precedent for increased development outside of South Seas – we just don't know. But in terms of our identity and our codes and our plan, from my perspective, if there was any efforts to annex I think we would have to maintain our own plan, to maintain our own code, and have positions on the city council that are elected by us. So I would support Jay's efforts at this point to continue to investigate what's possible and what's not possible so that we can make a reasoned decision. I think that people have a lot of different views of what annexation, and before we can reasonably ask people to decide this issue, we'd have to know exactly what it would mean with respect to our codes and plan, what our rights are. Also, people who are very upset about what's going on and with the county did are telling us to take a look at incorporation again. I find that a very difficult process. We don't necessarily have the people power to make to create a government, and we have issues about numbers of population and all that kind of stuff. But that may be something we want to take a look at because I know there's certain waivers you can get. And there are people in Tallahassee and people who we wouldn't know normally think about who you're asking us to maybe take a look at that again.

Laird: I think that I'd rather be part of Sanibel than have South Seas and all the traffic going back and forth. Other people may feel differently. What we're talking about here with the regulations, and everything would be too much for us on Captiva. If you look at Sanibel, what the Sanibel Plan came out of was an existential threat due to overdevelopment. So they made the plan that required two-thirds of the island to be refuge and to create the sanctuary island. I'm working with the San-Cap Resilient Task Force, and we face another existential threat, which is climate change. Sanibel's key themes of overdevelopment and climate change are the same issues we have. So there's tons of stuff like linking the islands. Sanibel took, I believe, a unique position when they did the Sanibel Plan. They brought in outside experts and tried to figure out something that would work for Sanibel. It may be with Sanibel and Captiva, if we did go forward, we could get some kind of unique plan where we basically do have our own self-governance annexed to Sanibel, we're very similar and we are allowed to stay the same. When I've looked at incorporation, the difficulties of incorporation are huge. Maybe there's some simple way to do it, but consider that we have some 300 voters, and how many positions do we need to have people participate in government, we need planning commission, we need a city council, we need a mayor, we needed this, we needed that – and it becomes very difficult. Hopefully David's work is going to be very successful and we're able to establish something – but if not, we need a contingency plan that we can look at and decide as a group, is this what we want or is this what we don't want.

Brown: Another negative that hasn't come up is this would probably increase our property taxes. Not to mention that if you do not get a separate set of codes, the ones on Sanibel are much more restrictive which could also affect property values. *Mintz:* Looking at some of the comments on the Q&A, people need to understand we're not deciding on annexation. All we're doing is what the panel always does, to try to think ahead and do the planning and get all questions answered in advance before the issues even have to be considered. If the worst thing happens, if we find out next week that the county is going to change our code again, or we're going to have increased development going forward, or we're going to turn into Marco Island or we can't defeat the South Seas proposal, then we have to know what our options are to best protect Captiva. We are not going to do anything that's going to create a civil war on this island. We are just getting the information necessary so that people can have a rational discourse over what's possible and what's not. No decisions are being made or even close to being made at this point. If we can mitigate or defeat this overdevelopment plan that's coming from South Seas, and we can convince the county or a state judge or someone that this was a mistake, and it gets reversed and we can have officials representing us at the county level that respects this community once again, then I think everybody would agree that we stick with the status quo. But we want to be prepared to be well prepared if things don't go well for us. *Laird:* We need to get to the point where we can never be this vulnerable again. *Mintz:* Because we have open discussions on the panel, and therefore it looks like we're doing

things that when we're just discussing, I think that's what's valuable about the panel. We have these kinds of discussions, but they're basically discussions there where we get a chance to think; because we're governed by sunshine at this point, this is the only place we can really do it. But the other thing that's vitally important for people understand is that the City of Sanibel has been incredibly supportive of everything we've been doing in trying to maintain our barrier island. I have never seen an incorporated community ever stand up with a sister island and give it support the way that Sanibel community has done this – not just financially but with resolutions and with letters, with speaking before the county commissioners, meeting with the county commissioners, talking to state representatives up in Tallahassee. They have been watching on our backs, and helping us every step along the way because it's in their interest because to protect Captiva because cars that are come here are going to go through Sanibel. No matter how we feel about annexation, we have to understand that the city council of Sanibel and the people in Sanibel have been with us every step of the way in opposing this expansion and I just want people to understand that we could not be more grateful.

Brown: I'm hearing a lot of predisposition against annexation. My thought is, could we work on some of those things we see as disadvantages and see if we could develop a working relationship with Sanibel that could overcome those differences in philosophy. It's worth my time to meet with Sanibel and see if we can come up with ways that Sanibel could keep us under our plan rather than the Sanibel Plan.

Gooderham: You also need to consider some legal issues before you even start the process as to what is allowed. Typically, with annexation you adopt the annexing entity's rules... can you come up with a legally defensible reason to maintain a unique set of rules for Captiva, let alone if Sanibel will allow that to happen. There may be some legal barriers we would be exploring with an attorney. That particularly comes into play with special districts, as Chief Pawul mentioned a few meetings ago. What about the fire district? What about police protection? The CEPD? You should find out the legal options before you even sit down with the City of Sanibel. *Pawul:* I can check with our attorney to verify what issues might come up. *Laird:* There's also the library issue. And it's also a decision for Sanibel voters, not just Captiva. *Mintz:* There's also the wastewater treatment issue with FGUA. Discussion on other issues. *Brown:* I'll go forward with a few initial steps to focus primarily on can they manage us under our existing plan. Thanks to everyone for this discussion.

Vegetation – *Mintz:* The county DOT sent out an investigation team two weeks ago to see what kind of equipment they need to clear to clear the shoulders along Captiva Drive of all the vegetation that's overgrown that to make it safe for pedestrians and bicyclists, whether it's heavy equipment or not so heavy equipment. They're going to be coming down Captiva Drive very shortly and clear all the vegetation off the shoulder as the codes require. If there's a big tree or some major vegetation, or rocks that don't belong on the shoulder or right off the shoulder, they will contact the homeowners there before they actually remove a big tree. But they're going to be clearing that shoulder so that people can then traverse it safely. I'll need to check on what timetable they are looking at. *Gill:* I've noticed an increase in signs around the island. What's the policy on this? *Mintz:* The code is very clear, you can have a rental sign or a "For Sale" sign on your property, but none of these other signs for contractors if the property has a Certificate of Occupancy or Certificate of Compliance. The county is in charge of enforcing that. We have made some calls and done some informal enforcement by reaching out to contractors, and we've been a little lax in enforcement due to the hurricane. But we can call the county to send out a code enforcement person to look into them. *Brown:* We could put out a notice to the public beforehand, an email blast. *Gooderham:* Unfortunately most of the people putting out the signs aren't on our email list, but we could remind the owners of the rules. We've asked nicely, so now may be time to be a little more aggressive. *Mintz:* Properties are limited to no more than two signs, so we can't have everyone who is working on a project put their signs up.

Meeting format – *Brown:* Since the pandemic, we've been doing Zoom meeting, It's easier for everyone to attend when they are out of town, and we're getting a much larger audience than we do at in-person

meetings. So my thought is to continue with Zoom meetings, even though you lose that face-to-face contact. Laird: I miss the in-person contact a lot. Maybe we could have hybrids, which are always difficult to hear anyone who's not in the room. There's just a lot to be said for being with people. *Mintz*: Maybe we could continue with Zoom meetings, but schedule an informal get-together a couple of times a season to see people and interact with the public. Laird: There are plenty of opportunities for informal get-togethers, we need something where we talk ore directly about panel business and island business. *Mintz*: The Zoom meetings have been very effective, plus it makes it easier for people from CEPD and SCCF to participate. We should stay with Zoom and revisit the idea in the fall. *Lapi*: The idea of informal meetings open to everyone could be very informational – have them focused on some issue, such as the upcoming beach bond referendum.

Wastewater – *Brown*: One of the studies Sanibel needed is complete, what to do with the increase in effluent from taking on our wastewater. The recommendation is they would need to do a deep-injection well near the Donax plant at a cost of approximately \$25 million. That's a huge number we were never expecting. In a prior study, the city was told it had to spend \$20 million for new transmission lines to pipe our wastewater to Donax – so that's a total of about \$45 million. There's a third study to be done, an economic analysis to determine how much Captiva users should pay to access the fixed investment that's been made in the Donax plant... to pay back some of that Sanibel has had to invest in that facility. I don't have a timetable for when that study will be done, but once it is we will have all the costs so we can review the project to see if it still makes economic sense. *Laird*: Any idea of the estimated overall cost? *Brown*: \$100 million. Discussion of costs and high-performance systems. *Mintz*: With sea level rise, there's a question whether high-performance systems will still be able to drain. And they don't filter out nutrients that can seep into groundwater and nearshore waters. Plus, once we know the estimated costs, we'd have to find out what public funding might be available. Let's get all the studies done, look at the dollars and see what makes sense in terms of costs and benefits.

Stormwater – *Laird/Mintz*: *Mintz* has worked with the county to develop a submission to fund a stormwater plan for up to \$225,000. Discussion about drainage project by Jensens' Marina. *Youngquist*: After I gave the county the easement to put in a pipe to help drain the area between by house and the Green Flash, in that big king tide we recently had it proved absolutely useless. Discussion.

Iguanas – *Jensen*: Alfredo is still coming out twice a week, sometimes the days are separated due to the seasonal traffic. *Mintz*: We need to follow up with a reimbursement request with the county.

Development – *Brady*: Cruise went very well, we had about 77 people attending. Thanks to Sandy and Tony and the Green Flash and the Mucky Duck.

Financials – *Gooderham*: We've sent the fund-raising request out a couple of times, and go a good response. Also did well on the cruise. Overall we're in good shape.

The meeting adjourned at 11:15 a.m. Video link: <https://youtu.be/SNW7IDqaoiQ> -- *Ken Gooderham*