

Captiva Community Panel
MINUTES
March 12, 2024

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

Audience: 43

Meeting convened at 9:01 a.m. with introductions and roll call. The Feb. 13, 2024, minutes were unanimously approved (Laird/Youngquist).

LCSD – *Sgt. Rich Zeltman:* Following up on the discussion last month about teenage parties on the beach, last month we only had two Saturdays where we had large teenage crowds on the beach – but with fewer people than before, and we broke up the crowd quickly and told them there would not be any underage drinking or littering tolerated out there. We’re still in March so it’s busy, and next week is our local spring break so we’ll be watching. If anyone sees large teenage crowds on the beach, just let us know. Discussion. *Zeltman:* Also had a hit and run involving a pedestrian on Andy Rosse Lane a few weeks ago. A good time to remind everyone that roads are busy right now and we all really need to pay attention when driving... especially on Tuesday when the farmer’s market is open and there are a lot of walkers. Discussion. *McDonald:* Noticed in front of my house and other places that some of the vegetation has been cleared up, and there’s a lot of people stopping on the side of the road along the Tween Waters stretch. People seem to be taking advantage of the two-foot clearance rule along the road. *Brown:* People stopping to watch the sunset, which pushes the bikers and walkers out into the roadway. That’s never been permitted, but it takes enforcement to ensure people understand it’s not allowed. Question: What about signage to tell them not to stop? *Brown:* There are “No Parking” signs all along there, and people will pull over right next to the signs. However, some of the signs may have been lost in the hurricane, and might need to be replaced. With more people returning and visiting, they’ll try to park anywhere they can – so we need to keep the “No Parking” signage up to date. Discussion.

CFD – *Chief Jeff Pawul:* Appreciate the discussion you all just had, saved me from bringing it up since we had a bicyclist and a pedestrian both get hit by cars in the last couple of weeks. Same thing about the parking... we get calls, but we don’t have the authority to tell people to move unless they’re blocking the roads or in a fire lane. Finally, a reminder to those who haven’t paid their property taxes yet, they are due this month.

CEPD – *Commissioner Laird:* We’re focusing on the upcoming referendum on May 21 for the bond to allow us to proceed with the next renourishment. We will be coming up with a communications packet for registered voters, and the election will be held on Sanibel in conjunction with a city election. Also, we’ve kicked off the engineering study for the bayside, and we forming a stakeholders’ team that will be meeting soon. Discussion. *Question:* Do we know how much property owners will have to pay for the renourishment? *Laird:* No, we have some funding lined up but we won’t know costs until the construction bids are opened. Discussion. *Mintz:* While the bond referendum is for \$25 million, it’s important that people understand that’s not going to be the cost property owners will be asked to pay, that they’re voting on something significantly less. *Laird:* Absolutely right, that will be in the communications package. The district needs to get the \$25 million approved so we can pay our vendors when the work is done... it’s a cash flow issue. Then we can use whatever grant money we have secured against those expenses to reduce the amount the taxpayers actually have to pay. Discussion of public access and perpetual easements necessary to receive funding from the U.S. Army Corps of Engineers. *Mintz:* People need to understand we’re not getting the Corps funding due to lack of access alone. It’s the methodology the

Corps is using to determine access, and the issue of granting perpetual easements to allow them to construct the project. It's not just parking. *Laird*: We're also looking at whether Captiva could ever get Corps funding, or whether it's hopeless and we stop trying. The Corps held us up for more than a year from pursuing other funding because we had to wait for them to say "no." Discussion about access issue and planning a community discussion on how to handle Corps requirements for funding.

SCCF – *Environmental Policy Director Matt DePaolis*: It's the end of the legislative session, and we'll be working on some bills we hope to see the governor veto – so check your IN boxes. We're also watching Lake Okeechobee, they're in the intermediate phase for releases and the lake level has started coming down – so we're hoping there won't be a major increase in releases soon.

SSIR – *Suarez*: Timbers is continuing to hold monthly webinars focusing on their resort operations and hiring. There are some outstanding building permits, including one at the north end for a three-story above parking golf cart rental, maintenance and operations facility. There's another to replace the owners' relations building, at the site of the old executive offices. *Brown*: Is this part of the master plan the resort is supposed to be developing? *Suarez*: It's not clear if these are allowed under the current zoning, but they must have gotten some kind of clearance to replace buildings while the larger zoning application is under consideration. They are also continuing to demolish hotel rooms... the 1800 building is gone and they're working on the 1700 buildings now. Discussion of rentals and events. *Suarez*: The provisions store is supposed to open sometime in April. The golf course, they're saying mid-April to early May... with the weather they've had some challenges with the grass.

County redevelopment – *Mintz*: The three owners intend to rezone the property. As we sit here today, South Seas is governed by the administrative interpretation, which limits height on the resort to 35 feet above grade or 42 feet above sea level, which is lower. So if they're seeking permits can greater than 35 feet above grade or 42 feet above sea level, they're probably not going to get it until they get a rezoning. But they did submit an extensive plan application to the county for an increase in density from their existing 247 units, which was the 107 marina hotel units and 140 employee housing units, which had been demolished. What they're now asking for in their application is 707 units – 272 condominiums and 435 hotel units for two hotels, one at the north end, one at the south end. The county sent a letter back, saying the application is insufficient, that there's not enough information being provided by South Seas about the development and their plans to have the county review it. The way this works is once that plan application is sufficient and sufficient by the county, the county staff will then issue a recommendation – whether they support it or don't support it, or support it with modifications – that then will then be assigned to a hearing examiner. A hearing examiner will then hold hearings on the on the application with public input, the community will have representation during that process. The hearing examiner then will make a recommendation about the zoning application that then goes to the Board of County Commissioners in a public hearing where people will also have the right to speak. Then the county commissioners will finally decide if they will rezone that property and if they rezone it with limitations on density and height in that process. Our understanding from the county at this point is it could be between 60 or probably closer to 90 days before they will have an application resubmitted to the county. So that process has been slowed down significantly, because the initial plan application was insufficient. The Captiva community is gearing up to be full participants in that hearing examiner process, if that plan if and when that plan application is deemed sufficient. So that's a big part of our legal strategy will be to examine all the facts that are stated in their application, for example, what they say about the sewer capacity, what they say about capacity of roads to handle, increased traffic, and so forth. We will be challenging all those with our own expert witnesses.

There'll be issues about potable water, about the efficiency and adequacy of the wastewater treatment plant to handle increased density and height. There'll be issues with our fire department, whether they have the equipment to fight fires in taller buildings. There'll be issue with environmental issues in terms

of how you deal with treated effluent, does it get dumped into deep injection well or into the bay? There'll be issues of traffic and the state evacuation, timing requirements. So there's a whole series of issues that will be brought before the hearing examiner with respect to this planning application. The most serious issue we'll have to deal with is that it's the community's position that development on South Seas is capped at 912 units and it's been capped at 912 units since the property was down-zoned in 1973 to three units per acre. The county has maintained and enforced that 912-unit cap since 1973 until this past year. It is our belief that that 912 units was approved in exchange to have small-scale clustering, and to have flexibility in how they developed the resort. They obviously got the benefit of that bargain over the years, selling a property developing Bayside Villas, developing homes and developing various properties. And 12 units was always the condition upon that flexibility that they have in terms of development. That 912 units was enforced by the county through the present day, and that that 912 units was agreed upon as a condition of developing the property the way it's developed, and that people relied on that open space in that low-density development when they purchased it at South Seas. The county is going to have to deal with the fact that there's been a long-standing zoning of 912 units that people have relied on when they purchased.

A second aspect of the legal strategy is that the Captiva community has filed a petition with the county, and it will be filed with the state Department of Commerce, that the proposal to allow increased density and to allow increased heights but particularly increased density to go to from 247 units to 707 units on South Seas is inconsistent with the comprehensive plan, that the proposed amendments that the county passed which exempted South Seas only. No one else was exempted from the three units per acre for hotel rooms and exempted from the building heights that apply to everybody else on Captiva. We're saying that that violates the comprehensive plan, and we filed a petition with the county and we'll file it with the state basically saying that the code amendments that permit this are inconsistent with the plan. The plan says the county must enforce development standards that maintain the historic low-density residential development of Captiva. The plan also says that the county must continue long-term protection and enhancement of community facilities and to continue the existing land use patterns – the county must limit development to that which is in keeping with the historic development pattern on Captiva. We have 50 years of 912 units on South Seas, and that is the historic development pattern. There is no greater evidence of that historic development pattern than the than the administrative interpretation that's in force. So that is the second legal challenge that we're making, which is that the proposed increase in density and height is inconsistent with the plan. Now we file that petition with the Department of Commerce who in the past basically said the county was flying in a false flag of resiliency when they really wanted increased hotel density. So this is the same agency that's now going to be reviewing this challenge, and it will issue a recommended decision in about 60 days. They will meet with both sides, and then whichever side loses in that decision will have the opportunity to file with an administrative law judge, and there will be a full-blown evidentiary trial over this issue.

The third area of the strategy is very interesting. In 2003, the CCA filed a lawsuit against the county and against the developer Mariner Properties because they were proposing to increase density above 912 units. The judges assigned it to a mediator, the mediator met with the parties and the parties came up with a mediation agreement that was submitted back to the court. And the court approved the mediation agreement will be enforceable, they will retain jurisdiction will be enforceable. All parties signed the mediation agreement -- Mariner Group, the CCA and the county – and the county before it signed the agreement had to bring it to the Board of County Commissioners who voted unanimously to support it. The mediation agreement in paragraph three says the total number of dwelling units on South Seas Resort were 912 units and that no building permits may be issued by the county that will cause that number to be exceeded at any time. The mediation agreement is 20 years old, how that gets enforced, and what court that gets enforced in and how that happens is now being reviewed by our attorneys. We're going to figure out the best way to enforce that mediation agreement, because we think it's evidence of what it just reflects everything that's been going on for the last 50 years is 912 units.

We've created a legal fund as everybody knows. This, the most amazing thing I think about this whole process, almost even more so than the hundreds people that came after the public hearings is that more than 600 people have contributed to the legal fund – and we haven't really made a big, big, big push. But more than 600 people on Sanibel and Captiva has been contributed to the legal fund people even outside in other parts of the county; we've raised well over \$400,000 already. And we're looking a more realistic number as we go forward with this litigation, we may have three trials, and we will continue to do the fund-raising. If people on this call would like to contribute, go to the CCA or Protect Captiva. I think I repeated this a couple of times, it's sort of hard to get your arms around because it's complicated, but I hope everybody's got a pretty good sense of what we've tried to do, which is very simple. We're trying to keep Captiva the way it's been for 50 years in terms of density and height. Finally, a lot of it is a political process. The questions that arise is how long did these agreements stay in effect on the county change? Its plan cannot change its code. I mean, these are complicated issues. I think they're going to get resolved. I mean, you would have a general court system that defers to the legislative rights of any Commission's and state legislators. You have. You have a Florida, which is generally pro-development. And you're dealing with complicated issues with standards of proof, which are not the strongest. All things being said and done, I would rather be on our side than the other side on this, I think we have the better argument. Discussion of the lawyers involved.

Mintz: Once the application is sufficient, there'll be property rights issues that are very specific difficulties, such as if you want to develop on South Seas, are the appropriate easements to develop that is the appropriate stormwater system set up properly, is there enough open space buffers etc, etc. On South Seas, those issues will probably be handled more specifically by attorneys representing the associations at South Seas, because that's more in their wheelhouse than the issues of density and height that we as a whole representing all Captiva. The best way to talk about it, in terms of this plane application process, different lawyers will have different areas of responsibility as we go forward.

Stormwater – *Mintz:* We had Kimley-Horn doing the storm water engineering study for the Village to deal with all the flooding that took place. It was an up to \$200,000 study that we were told many, many months ago that the county manager approved this funding, and that we would get the funding for K-H to do the study, the firm spent a lot of time preparing the study, working with the community to develop the scope of the study. The county manager then retired last summer, and it seems that information about approving the study didn't get communicated to the appropriate people. In any case, we've brought it back to the attention of the county and the Board of County Commissioners agreed the study could be funded from CDBG-DR funds – Community Development Block Grant disaster recovery funding, and so that they have to get some of that CDBG money for this study. The county took the actual application forms for the CDBG money, and the scope that we had prepared with K-H, and incorporated that scope into the into the pilot. That proposal has been submitted to a committee, which reviews all the planning applications. My understanding is that there's enough planning funding with this application. But what I found out last week, for the first time, was that when you apply for CDBG funding, the parties, the engineers, the consultants that develop the scope, can't apply and can't get can't put in a bid to get the funding. So the K-H team who worked with us to develop the scope of the project is not eligible to after the contract once it's funded – obviously on its face seems very unfair and wrong. I am going to be meeting with people in the county next week because I want to see if there's another way we can get \$200,000 to do this study other than CDBG money because I don't think it's fair that K-H is not able to do this project if they spent so much time with us developing a scope that met the needs of the Captiva Village. So that's where we are on stormwater management. I'm confident that we're going to get funded

Captiva Drive vegetation – *Mintz:* I spoke to the county Department of Transportation, they sent out a landscape expert to assess the vegetation that's growing, and do some cutting back on some of the shrubbery. But I spoke to them yesterday and said, there's still a lot of vegetation that's growing over the

shoulder forcing bicyclists and pedestrians into the street. They have notified a number of property owners that they're going to come and cut back vegetation on their property if they don't do it themselves, but I also said there was a two-foot right of way that has to be cleared. They told me as of yesterday that they were sending somebody out to assess exactly how to do that, and then we'll do that quickly as possible.

Sunset Captiva crosswalk – *Laird*: We'd like to see if we could get a crosswalk between Sunset Captiva Bayside condos and the Gulf side homes. You know, we have there's 10 condos on the bay side with our Marina and then 59 homes on the Gulf side. So people are going back and forth using the marina, the bayside folks are coming over to go to the beach. And it also seems like if people are walking that stretch, if they want to cross the road, they'd have to go up to the stop sign. I don't think there's a crosswalk, like between the green flash and the stop sign. So I don't know what's involved... what's the criteria to get a crosswalk? *Mintz*: I am happy to call DOT and ask them to if they can place a crosswalk there. This issue has come up before it came up in the context of the Rauschenberg property, who wanted a coursework to connect their property goes on the Gulf and the bay side. The one issue that arises is there has to be enough space between crosswalks or enough space between a crosswalk and a stop sign so that cars can stop at the crosswalk, then go through the crosswalk and have enough space to basically drive the vehicle safely from the end of the crosswalk to the stop sign. And there has to be enough room for enough cars for that to happen. I don't know what the spacing requirements are. The Bubble Room wanted a crosswalk between their coffee little coffee shop and the store across the way, but it was too close to Andy Rosse to put a crosswalk there because there wasn't enough room for a car to accelerate. I think there's more room between Sunset Captiva and Andy Rosse, but I don't know what the footage is and what the requirement is. So I'll place a call into the Department of Transportation and ascertain exactly what the process is and see whether or not this is feasible, and I'll keep John in the loop.

Wastewater – *Brown*: I'm still pretty much at the same place when I reported on wastewater at our last meeting. To refresh all of you, Sanibel had to complete three consulting projects before, we would have an understanding of the total costs for the Donax WWTP to process all Captiva's wastewater outside of South Seas. They first had to do a study to verify that the existing pipes running the breadth of Sanibel Island were large enough to carry all of Captiva's effluent to Donax. That study was completed, and the conclusion was that the existing pipes weren't large enough, and that they're going to have to run parallel pipes along with the existing pipes, which was an unexpected cost of about \$20 million. To have Donax process our wastewater, the next study was to determine the ability of, of Sanibel to dispose of the increased processed wastewater. Was it going to require some additional investment on the part of Sanibel to get rid of our wastewater once processed? That consulting study determined that Sanibel would have to create a new deep injection well, at a cost of about \$25 million to get rid of the increased processed wastewater. On the surface, that seems pretty outlandish to me that we would be talking about increasing their process, wastewater maybe 10%, it's kind of hard for me to understand why adding 10% would trigger the need for a new \$25 million deep injection well, but at any rate, that's where that stands. And then the third study is the economic study, which is to determine how much of all the existing investment that Sanibel has made in creating the Donax facility, whether some of that investment be borne by Captivans to utilize that facility. I have not been able to determine if that study has even commenced as yet. The problem we're going to have is when that last study is completed, and we understand all the costs, we're going to be looking at costs dramatically higher than what we thought when we put together the first plan. Where it goes next is going to depend a lot upon what the findings are about the FGUA plant being able to handle the proposed increase in development at South Seas, and there is going to be a lot of other variables come into play here that is going to have an impact on us determining what's the best route to go forward. Discussion on final costs and options.

Iguanas – *Jensen*: The females are getting ready to lay their eggs, so Alfredo is trying to get the big ones – and he’s still getting quite a few. It doesn’t seem we’re seeing as many as in the past. Request to follow up with Commissioner Ruane on potential reimbursement.

Development – *Brady*: Very successful “Welcome Back” cruise. We don’t have anything else planned for the new future, unless you want something. *Brown*: Do we have enough for the rest of the year? Will we be sending out any more letters? *Gooderham*: We should have enough funding based on the expenses we know are ahead. I was not planning to send another letter, we’ve gotten the response were going to get and I did not want to conflict with Protect Captiva’s fund-raising. Discussion of status of payments to Sanibel. *Brown*: Can we get a sense of what we need to operate on an annual basis? *Brady*: I’ll set up a meeting and have a report for the next meeting.

Questions – none.

The meeting adjourned at 10:45 a.m. (Jensen/Lapi). Video link is at <https://youtu.be/5ngzbCiMS80>.

DRAFT