

Captiva Community Panel
MINUTES
April 9, 2024

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

Audience: 28

Meeting convened at 9 a.m. The March 12, 2024 minutes were adopted unanimously (Jensen/Laird).

LCSSO – *Sgt. Rich Zeltman:* Busy time of year. Had a burglary at Yolo where they stole a golf cart. Wound up apprehending them thanks to security video... a good reminder to businesses and homeowners to install video cameras and make sure your batteries are up to date. Also had a number of cast nets stolen from a captain's board at McCarthy's Marina around March 15 – so if anyone on the call was around the docks early that morning, let us know if you saw anything. Following up on the teenagers on the beach we seen in the past month, we haven't seen them lately... guess they got the message that we weren't tolerating that on Captiva. Also would like to remind everyone about the county rules about open alcohol containers on the beach – doesn't apply just to spring breakers. Finally, the hit-and-run accident I spoke about last month was resolved.

CFD – *Chief Jeff Pawul:* Hurricane season is right around the corner, so time to start thinking about it if you haven't already. Predictions are for 23 names storms this year, with five expected to be major hurricanes. If you need information to help prepare, you can go to captivafire.com and click on the "Emergency Management" link. If you still have questions, reach out to me or stop by the station. As an island, Captiva did a good job of being prepared for the last storm... so keep that up. Second, if you're out on the beach, be careful... some spring breakers thought it would be a good idea to dig giant holes on the beach – the size you can drive a car into, in some cases. We did fill in some of them, and roped off the bigger ones. Those are the real safety concern, not little holes for making sandcastles. Discussion.

Question: Will anything be done prior to hurricane season to make sure we have better cell phone service or some sort of temporary infrastructure? *Pawul:* Still having discussions through emergency management. Generally, that's done when the storms actually hit since they have a limited number of them. The fire district is trying to secure its own Starlink, so there's one permanently at the station. They don't have enough bandwidth to operate the entire department, but at least we'd have some basic service. Discussion. *Question:* I read the evacuation study associated with Protect Captiva and the time required to get people off the island. Is there anything we should be doing to update our evacuation times? *Pawul:* I always recommend evacuation before the county calls for mandatory evacuation, because the county is looking at the entire zone, not just Captiva or the other islands. We're on a barrier island and it doesn't take a major hurricane to cause problems. It would behoove most homeowners that if there's a major hurricane even coming close to Captiva, you should definitely consider evacuating. It takes a long time to get off this island even without a hurricane, so err on the side of caution. If you wait to leave until you see our fire truck driving off the island, you definitely waited too long.

CEPD – No one present. *Laird:* I wasn't able to stay for the whole meeting, so I would not be able to give a full report. *Mintz:* Do we know if any communication is coming from CEPD prior to the May 21 referendum which will make it clear the district is not seeking \$25 million in taxpayer funds with this vote, but that a lot of the expected project cost has already been funded? *Laird:* I have been told that will happen. *Brown:* I have not seen anything that would lead me to believe we're not asking for \$25 million. *Laird:* We're still waiting for the bids to come in, and there are three different construction windows. Based on how the bids stack up, we'll make a determination – but nothing is going to happen before the

fall. Discussion. *Thye-Miville*: It's important to encourage people to vote on this, and if they're already up north to request a ballot in time to be part of the vote. *Mintz*: The vote is May 21, and it takes time to get a mailing out. It's a small number of registered voters, but if the message doesn't get out and this is voted down, that's very serious for the island. The referendum passes with a majority of the people voting, and they've done very well in the past, but overconfidence is a bad thing.

SCCF – *Environmental Policy Director Matt DePaolis*: Glad to hear about the beach holes being spotlighted, they can be a big impediment for turtles at the beginning of their nesting season. Lake Okeechobee releases have started again, and the 14-day pauses are giving the estuaries time to restore their salinity and recover from the damaging flows. The Corps noted there was some blue-green algae in the river, so they started releasing enough water to tamp down the algae blooms. *Brown*: Any forecast as to what water quality is going to be over the next few months? *DePaolis*: It depends on when El Nino makes the shift and when the rainy season starts. If we get heavy rain right at the beginning of the season, the lake level will shoot back up and we're going to see more releases again.

SSIR – N/A/

County redevelopment – *Mintz*: If people haven't seen the video that Protect Captiva put out which lays out why the community is concerned about the increase in density and height on Captiva, I really encourage you to see it. It's available to watch, it's only six and a half minutes available to watch on the Protect Captiva website and it's also on YouTube. Three of our panel members were on that video and they were great – Ken Suarez, Jay Brown and Tony Lapi. I'll just go through a quick update of what's happening. As everybody knows, we filed a petition with the state that the code amendments that allow for increased density and height on Captiva violate the Lee Plan, and we had a hearing before the Department of Commerce on April 4 where we presented our attorneys and our expert witnesses presented their case. Then for a half an hour the county responded, and the Department of Commerce will issue its recommended decision sometime around May 7. At that point, then either the county or the Protect coalition will file a petition with the administrative law judge, and there'll be a full-blown trial. Eventually after the administrative law judge issues a decision, then it'll go to the governor's cabinet to determine how to enforce the decision.

Then we submitted papers to the Department of Commerce basically explaining why the code amendments were inconsistent with the plan. It's important to remember that the plan requires the county to do certain things: It requires Lee County to enforce the development standards that maintain that historic low density residential development pattern of Captiva, to continue existing land use patterns; and it requires the county to limit development in keeping with the historic development pattern on Captiva. So the changes in the code, in our view, clearly violate or are inconsistent with those plan amendments or those plan provisions. The existing land use pattern on Captiva really can't be disputed, it's been in effect for 20 to 50 years, three units per acre for hotel and dwelling units, including South Seas. Building heights are 35 feet above grade or 42 feet above sea level, that's still what it is on South Seas. Even in the rest of Captiva it's 28 feet above -- I'm sorry, 35 feet above grade or 42 feet above sea level, the county just increased that to 35 feet above base flood elevation. And we believe that's inconsistent with the plan. Also, right now, I mean, talk about inconsistent. South Seas is now exempted from even the higher 35 feet above grade building heights on the rest of the Captiva. Under the zoning that they're requesting, they're asking to go 45 feet above base flood to 75 feet above base flood – and the code amendments exempt them totally from the three hotel units per acre that apply to everybody else on Captiva, and gives them with a planned development, the potential for unlimited number of hotel rooms. Outside the gate on Captiva, we go from two stories to three stories, which is not consistent with the historic development pattern on Captiva. So we feel on its face these code amendments violate our plan.

The other thing that we discovered and we'd reported to the Department of Commerce is that evacuation times are going to increase significantly from the island with this new development proposal. And so, so we made that presentation. The Department of Commerce didn't have a lot of questions, and we're we will await their decision. But in any case, either the county or we will file with the administrative law judge probably. And so we're just going to keep this process moving. *Brown*: If the Department of Commerce finds in our favor and the county agrees to accept that, then this doesn't have to go to an administrative law judge, correct? *Mintz*: Correct. The county can go back and amend the code to make it consistent with the plan. They could do that – whether they do that remains to be seen. The other thing we did last week is the Protect Captiva coalition filed a complaint in circuit court seeking to enforce the 2003 mediation settlement agreement that prohibits Lee County from issuing building permits for units within South Seas Resort that would exceed 912 units. There was an agreement back in 2003 between the county, the owner of South Seas and the CCA that limited all development and building permits on South Seas to 912 units. The attorneys for Protect Captiva are seeking to enforce that agreement and get a declaratory judgment from a judge letting the county know that they can't issue building permits beyond 912 units. There are currently 640 units on South Seas that are owned by the other associations and property owners. Out of the 912 Timbers was then allocated 247 units on top of the 640, and there were 25 unbuilt units that equals 912 units. They had 140 employee housing units (which they knocked down), 107 hotel units (which they knocked down), and there were 25 unbuilt. So South Seas is now seeking 707 units – the 247 they knocked out, the 25 unbuilt, and 435 hotel units. This would take the total number of units on South Seas well above the 912, toll take the total units up to 1,347 units. That's why we're seeking to enforce that 912 cap.

Back in 2002, when they did the administrative interpretation, it wasn't evident with the cap whether or not a lockout units were going to be counted as additional units. In other words, Bayside Villas had an ability to break their condos into two units, so what was 102 units would have been 204 units which would then take them well over the 912 cap. So the county and the developer, everybody agreed that the lockout units would be eliminated, and that would limit the cap at 912 units as was originally intended. That was the concern for the CCA, and at that point, everybody was on board. The county commission voted 5-0, the owner of South Seas agreed and CCA agreed that the limit is understood to be 912 and the county would never issue building permits for more than 912 units at any time. They settled the lawsuit where they were basically alleged to have been violating their zoning agreement; that was publicly noticed and accepted and voted upon, and had been in existence since 1973. That's the 2003 mediation settlement; whether or not a court is going to say it's 25 years in the past, it's a long time, we just don't know what this point what the county defenses are going to be. The county has 20 days to file an answer. And so once that issue is joined, as they say in legal terminology, then whether the court will just by summary judgment or motion on the pleadings will determine that this is an enforceable agreement, or whether they're going to want to have discovery and a trial to get more evidence before the judge before there is a final decision. We just don't know at this point, we'll find out after the answer is filed and see what the county's defenses are to the fact that we're claiming that it's a violation here. The county might also say that it's premature, they haven't agreed to increase it over the 912. But our position is obviously when you when you exempt South Seas from the density and height limitations and South Seas recognizes this and then comes in for an application that's well above the 912, there is an issue that should be resolved now rather than after the fact when you go through nine months of hearings at the county, and you can't do it. So from judicial efficiency, it makes sense to get this issue resolved that way.

Number three is that South Seas did make their application to the County, the county said their application was insufficient. South Seas just responded with a 300-page answer to the county's insufficiency letter, we're in the process of reviewing it. As soon as our Protect Captiva attorneys review it, and issue comments that will go to the county, we'll make that publicly available to everybody. But it takes a little bit of time to go through a 300-page document. But the fundamental problem with the South Seas application is that they're claiming they have 272 units that are vested under the administrative

interpretation that's been in effect for decades. And then they're saying, but we also want 435 hotel units that negate the administrative interpretation. So they want they want to take the best stuff out of the administrative interpretation, and then say it doesn't apply to the rest. So they want it both ways. I think the county recognizes that, and I think South Seas is in a bind about that issue is they really can't have it both ways. It's an inconsistent argument, and that will have to get resolved.

The last thing is, we made a public information request to figure out how this happened, what communications took place between the county commissioners, county staff and South Seas even before we even were aware of any of this. It turns out that there are 26,488 documents that are within the subject matter of South Seas and, with the county staff and the Board of County Commissioners equaling 104,000 pages. This is from 2020, January 2021, to a month ago. It includes everything, all the emails and all the email exchanges and texts relating to South Seas that the county commissioners got, and our community sent themselves these commissioners thousands of emails opposing this proposed project. So some of those 26,000 documents will be from our community who sent emails to the county commissioners. So we will have to take those out and see what else going on. But we know for a fact that there were communications going on between representatives of South Seas and the county attorney's office and the county staff back in January 2023 – well, before we even knew any of this was going on. They were discussing changes to our code without any of us knowing anything. *Brown*: As the Timbers sale was going through, could we have asked to see any documents between the county and Timbers at that point in time? How are they going to make money off of this? What's going on with this sale? What has the county agreed to as the sale was taking place? Could we have asked to see any relevant documents? *Mintz*: We're going to see them now. We will see all email exchanges between South Seas and county commissioners and county staff. It's not a Sunshine issue, we can meet with county staff and we can meet with the county commissioners. What Sunshine does is prohibits conversations between the county commissioners about a subject. But it doesn't prohibit South Seas from meeting with a county commissioner or with the county staff about this. I'm not suggesting there's anything illegal, but it will give us better insight into how this took place without the community knowing about it. There is what's called daisy chaining, which is you can have someone walk between the commissioner's offices for the purpose of rather than them talking among themselves, this agent goes between them and passes a message. I'm not suggesting that happened. This is just a way for us to understand how our Captiva Code and our Captiva Plan were changed without the community being involved in any of it. We heard about it on June 1, when it appeared on the agenda of the Board of County Commissioners. So that's what's going to give us some insight, maybe there'll be some problems that we're not aware of if there are legal problems that arise, we will definitely be willing to address them and do whatever is necessary.

The last thing I want to say is that Protect Captiva's legal fund has reached about \$480,000 that we've already collected, we have more than 600 contributors, and our immediate goal is going to be about \$750,000. We're going to need that to pursue the legal actions that we anticipate, and we're asking everyone to continue to donate if they can afford to do that. You just go to the Protect Captiva website, hit the donate button, and all the donations are tax-deductible. Our accountant has approved that. One last thing is we just received notice that South Seas is holding what they call an open house on April 25. They are calling it a voluntary open house, they put out a notice in the *News-Press* and they've sent the notice to the Captiva Community Panel. They are calling it a "voluntary open house" to have it both ways. They don't want to say that they're required to have a formal public information meeting, they think they're exempt from that. But on the other hand, they want to make sure they have it just to make sure their application is sufficient. So they basically have it but they're saying it's voluntary, but they're noticing it. So we will we'll do an evaluation of that. And we will as a community service send out the information. If anybody has any questions, they can ask them about the about the development application. That's very different than holding a public meeting where people can voice their concerns, and minutes have to be taken, and those minutes are then provided to the county so the county understands what the community's concerns are. So it's a little unclear to me at this point exactly what

South Seas sees as the purpose of this meeting, but whatever they see, we will we will get it out because that's our job. That's my report on what's going on is a lot going on. The planned development application is still in flux, but we will make sure we coordinate with everybody that's impacted by this application on South Seas, and to intervene in this process as it develops.

Question: About this open house, it seems kind of weird. Should we go? Should we not? *Mintz:* I don't know what the purpose of it is. I haven't discussed it with anybody yet, because I just found out about it. We've always been very respectful in the approach we've taken, we've always taken the high road, and we've been consistent in our messaging, accurate and correct. I don't recommend people crash somebody else's party, but they did publish a public notice, so they obviously feel they have to take that step. Whether they're doing it's to create goodwill, or whether they feel they're required to do it by the code. I don't know the answer to that. I think between now and the 25th, Protect Captiva will put out of his position on this and ask people to come or not. I know that the South Seas homeowners will have very strong thoughts about how one should participate in that meeting. So I just don't have a direct answer to you. If people are interested in what they're proposing, it'll show the 707 units where the two hotels are going to be, where their condos will be, which should be three stories, where their water parks are going to be. *Question:* Don't they have a requirement to have a public meeting and get public comment? *Mintz:* They are taking the position that they're not required to do that, because this was a county-initiated set of amendments and not their set of amendments. On the other hand, in my view our Captiva Code does require them to have a meeting because they're not exempt from the public information requirements tied to a rezoning. I don't think they want to concede that they're not exempt, but I think they want to make sure that if they aren't exempt that they have this meeting. So, again, they want it both ways. *Suarez:* I think it would be advantageous for everybody to understand what the policy that they're thinking they're under -- Policy 23.4.1. It says notice a public information meeting. I agree 100% that we're not there to crash a meeting or cause a problem. But if you have some legitimate concerns on what's important about this meeting, if you are going to attend you have to specifically point out items in the zoning application that you're concerned about. Because if they if they are going to fulfill this policy, then they have to take those concerns and give them to Lee County, and they have to have respond to those concerns. So, you know, it's something that our committee will be talking about further. We have two weeks to prepare for it, and certainly there's going to be owners that are inside the resort that are going to raise issues. We have to guide the community and also the owners within South Seas on how to conduct themselves if they are going to go to this meeting. *Brown:* I've always understood this kind of a meeting is to solicit public input to what they're proposing. And if we don't go to that meeting, and we don't get many input, then that sends a signal that the community doesn't have an issue with what they're doing. *Mintz:* I think the county knows the community has issues with what they're doing, and I think we'll review it with the attorneys. The Protect Captiva coalition – through the CCA, through this panel, through SCCF, through the homeowners associations on South Seas – will issue a statement about how this should be handled. These meetings, we've had them at the panel before every time there was an amendment to the administrative interpretation. Blackstone came before the panel, and they asked for our input and public input, and they took minutes and they submitted it to the county as the minutes of the panel. That's obviously not what not what's happening here. So we will issue a statement about how respectful we deal with this issue.

NFIP – *Mintz:* Everybody knows the National Flood Insurance Program, basically subsidizes flood insurance on in Lee County, and FEMA administers that process. FEMA requires the county to enforce resiliency options and building codes through things such as the 50% rule, which everybody's familiar with. If you live in a flood zone and your home is damaged to 50% or more of its value, you have to build up so that the federal government and taxpayers don't continue to subsidize flood insurance in flood zone areas on barrier islands like Captiva, and constantly have to pay out rebuilding costs to keep rebuilding houses that get destroyed because they're not raised in flood zone areas. They want anybody who gets a discount or anybody gets flood insurance subsidized by the government to make sure that those homes rebuild up to current code. Well. 10 days ago, FEMA advised Lee County, including unincorporated areas

of the county as well as Cape Coral Fort Myers Beach, Estero and Bonita Springs, that all residents in those areas would lose their flood insurance discounts because the county, according to FEMA, did not enforce the compliance rules, the 50% rule and other code requirements that you needed to get a discounted flood insurance. We had in Lee County a 25% discount on flood insurance, because the county had complied with the prior FEMA requirements. FEMA is claiming that the county after Hurricane Ian didn't properly apply the code and the requirements for resiliency. In terms of rebuilding, it'll affect about 115,000 flood insurance policyholders and the average increase around the county would be about \$300 a year. Obviously, in certain places it could be more and in certain places there'll be less. Basically, FEMA was saying that the county didn't enforce the 50% rule, so when houses were damaged more than 50% the county let them rebuild those houses without meeting current code. FEMA claims there was a lot of unpermitted work and a lack of documentation. The county did not provide FEMA with a number of homes that were substantially damaged by Ian, and how many were properly elevated to meet current code. According to FEMA, they sent three letters to the county in February, June and December, asking for information on the number of damaged homes. And according to FEMA, they didn't get sufficient answers. FEMA came out and looked at the status of some 590 properties that were substantially damaged in their view, and they asked for the permitting and code applicable to those homes – and they didn't get the information that they wanted.

At this point, the NFIP changed the county rating from five to 10, which eliminates the 25% discount. If this issue isn't resolved, we could lose flood insurance altogether in Lee County, all subsidized flood insurance. So the county according to FEMA needs to do a remediation plan. But under no circumstances could discounts get reinstated before April 2026. So for example, Miami complies better with FEMA rules, they have a 35% rating, Pinellas County has a 40% discount, we had a 25% discount which is now reduced to 0% discount. I actually looked at the three letters that the team has sent to the county, and they do raise the issue. But the first letter complements the county on complying with all the FEMA regulations. The second letters to the county does ask for more information about the homes that were damaged by the hurricane and how the county was investigating to see which ones needed to be rebuilt according to code and which ones could be rebuilt without raising them above the flood elevation levels. There was discussion in the email exchange between the county and FEMA, and frankly I could not tell from the exchange whether people were being really reasonable. All I could tell is that FEMA was telling them that discount was going to disappear. In response to county officials, state legislators and federal Florida representatives being upset about FEMA removing the discount, we just heard that FEMA has given the county a 30-day reprieve period, where the county can hopefully provide the information that FEMA is looking for. If the county can do that, the discounts won't be removed.

Sunset Captiva crosswalk – Mintz: On behalf of John Jensen I contacted the Lee DOT, Julian Shola, the person in charge of crosswalks. I waiting to hear back so we can set up a conference call.

Wastewater – Brown: The third study that Sanibel required to evaluate processing wastewater for Captiva was the economic study, which is basically a study to determine what kind of compensation Captivans should make to Sanibel that reflects all the past investment Sanibel has made in building their wastewater facility. That study commenced a couple of days ago, and they should have it finished in early June. So in early June, then we will know all the components of the costs of having Sanibel process or wastewater for us. There are going to be some complications in this that have to be worked out. As I look at the two engineering studies that were done, to me, it's kind of questionable that Sanibel needed to spend all this money. They want \$20 million to run additional piping parallel to their existing piping down San-Cap Road to handle our wastewater. They feel like their existing piping is not adequate, which would be a cost of \$20 million to us. They're also saying that we're producing enough additional processed effluent that Sanibel will be forced to create another deep-injection well to handle the increased processed wastewater that would be coming from Captiva. These amounts seem extraordinarily high to me, and there's going to have to be some means of reviewing these projects and make sure that that these

costs really reflect the additional burdens that we're putting on Sanibel. I think before we have a final plan, we're going to have to have more resolution about what's going to happen with South Seas and what their total processing requirements are. Then we'll finally get an idea of total project costs. One other thing is that Sanibel has a lot of material going into their wastewater pipes that isn't wastewater -- people draining their yards into the sewer system, like intrusion or something like that into their pipes that's not wastewater that's going through the processing plant. Another huge step in front of us is how much public support are we going to get for this project, because the costs have just gone way beyond what our estimates were. When we did the straw poll and got buy in from the community, at that time, we were assuming an average cost per property about \$30,000. If Sanibel does need in fact to put in all these parallel pipes, and if they need to do another deep water injection, well, that's got to be more like \$75,000.

Stormwater – *Mintz*: At this point, the county was seeking funding from what they call the CDBG-DR, which is a Community Development Block Grant for Disaster Recovery. It goes to a committee and then it'll get funded, probably by the end of the summer. They're optimistic they will get funding. But the problem with it is that Kimley-Horn, who we were working with to develop the proposal, couldn't bid on the project. That seemed unfair, and it was not what we intended. So I met with a county commissioner about this. And I've been told that they will seek get funding from a different source so that Kimley-Horn would be able to do the study that they developed the scope for and worked with the community to develop. I have a commitment, but I don't have a final results of that commitment. Hopefully within the next month, we will get funding for it separate and apart from CDBG-DR. If for some reason that doesn't take place, I already spoke to Molly Williams from Kimley-Horn and she understands the situation. She appreciates that we're trying to get funding so that she can do the project. But if she can't, then we'll have to go to CDBG-DR route, which would be unfortunate, so we'd be able to go out for bid to someone who we haven't even discussed this issue with at this point. We'll see what happens, but I'm fairly hopeful that there'll be \$200,000 from state funding for recovery, or some other source that will get this project funded.

Iguanas – *Jensen*: It's the time of the year when the females are laying their eggs, so Alfredo is looking for them digging holes and trying to get them before they lay their eggs. But he's still going at it two days a week. *Brown*: Are you're getting any feedback as to whether or not the problem is being controlled by him, or are we just spending more money? *Jensen*: I think it's definitely it's definitely helping. I still see a couple big ones here and there, but not as many as I was seeing last year. So I think it's definitely helping.

Development – *Brady*: That segues nicely into the conversation about the budget. Our 2024 proposed budget is about \$78,000.40 6% of that is on iguana eradication, so that is the biggest line item in our budget. I know we have requested funds from Lee County to replace that money for us, but we're not sure if they're going to do that. So if we continue to pay for it, obviously that amount can go down based on the number of times that Alfredo comes out every month. But assuming we say with the current time allotment, we might want to consider doing a targeted fund-raiser in the fall. We have the annual letter that goes out, and we have the "Welcome Back" cruise. But we also have to consider that a lot of people have contributed it and will continue to contribute to Protect Captiva, so I think we have to be very thoughtful about how often we ask and what we ask for. So we'll look at it again in the late summer, and I'm certainly open to ideas or suggestions. But I think if we do something that it should really be specifically for the iguanas, so that people understand that the money is not necessarily going to the general fund, it's going specifically for this issue. Until we get rid of the problem, this is going to continue to be a line item in our budget assuming the county is not going to participate. We looked at the budget, and there's nickel-and--dime, things we might be able to slice off, but our budget is pretty tight. Obviously, the administrative expenses are important. We have some Zoom fees, we have insurance, everything else is under \$1,500. Discussion.

Other items: *Brady:* There have been a couple of rumors and conversations about what's happening on our property that Lisa Riordan and some other people have mentioned to me. I just want to say that anyone in the community is more than welcome to reach out to me at any time. I'm actually the one that can answer those questions. People have asked "Is there going to be a pond in front of the new building on the corner of Laika Lane and Captiva Drive?" No, there is not going to be a pond. *Brown:* I had a brief conversation with Verizon, and they expect the small cell towers to be operational sometime between July and October of this year.

The meeting adjourned 10:30 a.m. The video link for the meeting is <https://youtu.be/8oIA-Gqx9-w>

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