

**Captiva Community Panel**  
**MINUTES**  
*May 14, 2024*

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

**Audience:** 22

The meeting convened at 9 a.m. with introductions.

**LCSSO update** – *Sgt. Rich Zeltman:* Things mostly are going well here on the island. What we have been noticing was some folks riding off-road ATVs along Captiva Drive, which is illegal as is driving on the beaches. Low-speed vehicles and golf carts are OK, but ATVs don't have the proper road equipment – brake lights, headlights, etc. – to be used on the roads. We're still enforcing the parking rules, including people parking along Captiva Drive to watch the sunset.

**Captiva Fire District update** – *Chief Jeff Pawul:* About a week ago, the landing zone on the Rauschenberg property is back up and functioning, so thanks to the Rauschenberg Foundation for making that happen. They did a lot of work regrading to make a permanent, dedicated area for landing use. The other reminder is when you're out on the water, we've had a lot of marine accidents and safety issues out there lately. It's the time of year to get back out there, but please be safe... and tell someone where you're going and when you expect to get back. It's been a rough start to the season, with both rental boats and private craft.

**CEPD update** – *Linda Laird:* The bond referendum is May 21, so I urge everyone to get out and vote. It's to authorize up to \$25 million in bonds to fund the next renourishment project, which we expect to come in at much less than that. We did put the project out for bid, which came in significantly higher than expected, much of that due to the cost of mobilizing equipment to bring it south for construction. We're now working with other counties and municipalities on ways to lower those costs and push back against vendors. Our view is the beaches are in OK shape, so we'll try pushing off renourishment as long as possible to save money. We also had a public meeting last Thursday. The first step in our planning for bayside adaptation to sea level rise. We also have a steering committee put together for that effort.

**SCCF update** – *Matt DePaolis, Environmental Policy Director:* The lake is actually looking pretty good. It's dipped below 14 feet last week. It's at 13.72 feet right now and still dropping, still aiming towards the Corps of Engineers' goal of 13 feet by June. If everything stays pretty dry, we might get close. That should hopefully stave off any large releases, barring any massive storm events or huge water events prior to the start of wet season. We're getting less than 2,000 cubic feet per second at the lock, which is resulting in the nice water that we're seeing. There's no real detrimental algae blooms in the river right now. There's been a couple of blue-green blooms popping up, but they've been able to keep the water moving enough to break those up. No real red tide, salinity is looking good all over. All in all, it's been pretty good. Until we get one really big storm, we are seeing Blue Green Algae popping up in the lake right now, and some of that is toxic. If that were to get released due to necessity from flood control, if we get back to back large

thunderstorms or any major storms moving through that area, that could result in algae hitting our estuary. But as long as nothing goes wrong, we're in a good place. *Brown*: What about the lawsuit the sugar industry is planning against the reservoir? *DePaolis*: There hasn't been any major developments recently, except for the petition that Captains for Clean Water is circulating. It's bringing attention to the issue, but submitting a petition isn't going to head off any legal challenges that are already under way. There's been a lot of money invested already. The sugar industry, for people who don't know, is intervening in the construction of the EAA reservoir, making the claim based on the water savings clause that's inherent to the Central Everglades Restoration Project that they're entitled to all of the water from that reservoir and additional water from reservoirs that haven't been conceived of yet, rather than sending that water where it should be going, to the Everglades. It's already been through the first stage in court, where a judge sided with the Corps saying sugar's interpretation of the water savings clause is ridiculous on its face. Hopefully the appeals court will see it the same way. It really is a life-or-death moment for Everglades restoration based on how this goes, because if it's decided that the water savings clause reads in the way that the sugar industry would like it to read, effectively nothing ever can ever reduce the amount of water that industrialized agriculture and other water supply needs south of the lake feel they deserve. That means nothing – including any water loss due to rising temperatures, which leads to excessive evaporation and transpiration – anything else going on in the system that would reduce the overall water quantity of the system based on sugar's understanding means we need to make up that difference for them, even if it's nature that's doing the removal of the water from the system.

**County/South Seas redevelopment rezoning and legal update** – *David Mintz*: I have four things to report. The first thing is that we have two important dates on May 24. We filed a complaint in the circuit court seeking to enforce the settlement agreement that took place between CCA, the county, and Mariner Properties back in 2003, which limited development at South Seas so that the county would not be permitted to issue any building permits greater than 912 units. The county has until May 24 to answer that complaint, after which the judge will have to determine whether he can decide the issue on the briefs or whether he will seek to permit discovery and hold the hearing. *Brown*: What would possibly be a theory that says an agreement is not enforceable or is no longer in fact? *Mintz*: One of them is that the county didn't have the authority back in 2003 to make that agreement to bind future Boards of County Commissioners. I don't think that will work, but they can make the argument that it's 20 years ago and 20 years is too long – make a “statute of limitations” argument. There may be an argument, what's called the contract zoning argument, which is that under Florida law counties are not permitted to make agreements with developers that are basically zoning agreements. In other words, you have to go through the hearing process by which you rezone properties, and there's been some talk that this settlement agreement constituted a contract zoning. But that is just not the case. The settlement agreement was just seeking to enforce a zoning action that had taken place correctly in the past, and that was being violated -- so it really doesn't constitute zoning. Those are my uneducated answers to your question, but you know there's always defenses that people can raise. We'll see what the judge does. I think the attorneys believe the decision should be made on the language of the settlement agreement, which could not be any clearer than it is – the county can issue no building permits for more than 912 units at any time on that property. Discussion.

*Mintz*: Number two. As people recall, we filed a petition claiming intending that the code amendments that exempted South Seas and only South Seas from the height and density limitations that apply to everybody else on Captiva violated the Lee Plan, which required that the amendments have to be consistent with the historic development pattern on Captiva. These changes allowed South Seas developers to increase density in hotel rooms on South Seas, by 286% on their property, and to allow building heights up to between 45 and 75 feet above base flood elevation, which is more than double the height actually permitted today. We filed to get before an administrative law judge and have a full-blown trial over that issue, with expert witnesses and testimony taken under oath, with discovery with interrogatory with depositions. To get to that stage, you had to go through two preconditions. You had a file that petition making that claim that the code amendments violate the plan with the county, and the county responded that the Captiva Civic Association and the Protect Captiva coalition did not have standing to make this claim before an administrative law judges. The court denied that and as soon as they answered our petition we were able to file with the Department of Commerce. They had 30 days to answer our petition in the same way that the county did. The Department of Commerce had an informal hearing that listened to the county for half an hour, and listened to our attorney and witnesses for half an hour, and they issued a decision on May 6. But it was a decision which cannot be enforced. It was basically the precondition get to a judge who will issue an enforceable final decision, but the Department of Commerce issued a 19-page written decision. And the written decision spent most of the 19 page pages on whether or not the CCA had standing to contest those code amendments. They said that the CCA in fact, does have standing and that we can proceed before administrative law judge. With respect to the consistency issue, they wrote that the code amendments are could be seen as fairly consistent with the plan. The problem with their written decision is that their reasons for saying it could be consistent with the plan were so wrong that I frankly believe that this decision is going to help us before administrative law judge. The first thing they said is that the county considers the administrative interpretation, which limits all development to 912 units, as the controlling document that outlines the current standards and development potential of South Seas Island Resort. If that were true, there will be no litigation. Of course, we're saying there are 912 units, that's what you're entitled, so plan your development within those 912 units. If the county's position was that was the extent of development permitted on South Seas, we wouldn't be here today on this issue.

The other thing they said that was amazing is that they accepted the county's claim that the 912 units don't include hotel units, but only the condos. That is so wrong because the administrative interpretation makes it absolutely clear that hotel units are included, and the 1973 downzoning document that was submitted and approved by the county made it as clear as day that hotel units are included in the 912 units. Even when Timbers Resorts submitted its application for the new development, they agreed that hotel units were part of the 912. So the Department of Commerce, just that got that completely wrong. The last thing the Department of Commerce said is that the three units per acre on Captiva doesn't apply to hotel and motels in that the other hotels on Captiva are not subject to the three units per acre limitation. There's nothing that could be more wrong than that statement, because the Captiva code says specifically that there are three units per acre for hotels and motels, as everybody knows, on Captiva that the three units per acre apply to both residential dwelling units and hotels. So it was sort of interesting to see how wrong the Department of Commerce got this. Our position is, if you only provide a half an hour to people to give an overview and you're listening to it, you're going to get things wrong. So anyway, to

make a long story short, we have until May 24, to file for the administrative hearing. Our attorneys at this point are preparing for that hearing. We're hopeful, and as confident as one could be under the circumstances, that our case is a strong case, and better than the county's case on this matter. State statute provides our right to petition to have a full-blown trial, with two preconditions is that we give the county and the Department of Commerce an opportunity to weigh in and maybe resolve the matter before it goes to a judge in a trial. We've met those two preconditions, and there's nothing that can stop us from having a full-blown administrative review.

Number three, on April 25 the county planning department, rejected for a second time the plan application submitted by Timbers to increase the building heights and density in the extra 435 hotel rooms. As you remember, it was submitted back in December and at the end of December the county rejected it as being insufficient. South Seas then submitted a new revised petition of about 300 pages, and the county rejected that second petition as also being insufficient. The county has stated as the as the cause of the insufficiency... one of them is what we've been saying all along, because South Seas is saying we're vested for 272 units under the administrative interpretation but now we want 435 hotel units on top of what the administrative interpretation would permit. So we want what the administrative interpretation gave us and call that vested, and they want an additional 435 units, which would not be permitted under the administrative interpretation. The county is saying again for the second time to South Seas: "Explain to us how you can have it both ways. If you're if you want something that the administrative interpretation doesn't permit and you want to rezone that property from scratch, how can you say you're vested?" This is a very serious issue for the community and for South Seas. Remember they have 120 acres out of the original 304 acres, and of those 120 acres only 80 acres are uplands. The rest are wetlands. Under current comprehensive plan and codes, wetlands don't count for density purposes. Back in 1973, when they downsized on the property to 912 units, they took 304 acres and multiplied it by three. But those 304 acres had a lot of wetlands -- in fact, there were only about 178 acres that weren't wetlands. So today, you would never get 912 units. We agree that that's vested, they've had it for 50 years, people relied on it. So we would support the 912 units. The problem is, if you rezone that property, you may not even get 912 units. Even if they had 178 acres of uplands, multiply by three (which is the maximum density), you get 534 units. There are already 640 units built out on South Seas, not including anything that Timbers wants to build, because they demolished everything. So you take a big risk, when you say we want to rezone that property from scratch, you may not even get what they had before.

The other thing the county said is that Timbers keeps forgetting that the Lee Plan Policy 23.2.4 requires the county to limit development to that which is in keeping with the historic development pattern on Captiva. They have to be consistent with that. But the county is asking how is this plan application consistent with that? You had 912 units, now you want 1,347 units? How is that consistent? The other things the county has said is that traffic and trip generation estimates don't fairly reflect the development that's being proposed. They didn't count the hotel units and the elimination of employee housing units, which will generate a lot of traffic as you would have employees commuting. So they say that trip that traffic impact statement is not sufficient. They also say you don't have a letter from Island Water that there is sufficient potable water for the project. They also say that for the deviations they're requesting -- for parking buffers, open space, signage and lighting -- they have not provided sufficient justification for any

of those deviations. And they also don't explain how the increase in intensity on South Seas will impact the existing residential dwelling units that already exist and are owned by other associations. Those are some of the reasons why their application was rejected as insufficient. The application can't go forward to the hearing examiner until it is found sufficient. There may be a way they can they can bypass the sufficiency requirement. But the problem with that is county staff has to make a recommendation to the hearing examiner, and if they're making a recommendation without sufficient information, it's unlikely staff would give a recommendation in support of this application.

The fourth thing I want to mention is I think people saw the article by David Dorsey in *Gulfshore Business*, which has created a bit of a stir. We knew all along that representatives of the attorneys and the plan engineers for South Seas were working with the County Attorney's Office to change our Captiva code to allow for increased height and density long before we knew anything about it, before Timbers bought it from the period of, say, January 2023 to June 2023, when the amendments became public, there were a series of meetings and exchanges of emails which we have and with David Dorsey got his hands on. There were exchanges of emails between the county and South Seas, basically discussing how to amend the Captiva code, how they would process these changes, and we have emails from the county saying, we don't have any pride of authorship want to help us address this language? This is all before we knew about it. What David Dorsey focused on is that the when the amendments appeared before the Board of County Commissioners, not only was the county saying this but South Seas was repeating this almost as a mantra, that these were county-initiated amendments, when in fact the emails and Dorsey's article show these were not county-initiated. These were initiated by the new owners of South Seas to make these changes happen – not a county effort to determine how resiliency could be improved following the hurricane, which was how it was presented to the public. Our lawyers are now looking at whether or not there's something unlawful about the fact that this these amendments were mischaracterized, and the public was arguably misled with respect to whether they were developer-initiated or county-initiated. If they were developer-initiated, they would have been required before any of this went to the Board of County Commissioners to hold the public information meeting about exactly what they were doing on Captiva. Then the Board of County Commissioners would have seen the reaction of the community prior to those amendments appearing before them in final form on June 6, and they would have known that the community did not want to see this happen, there would have been a lot of further scrutiny about it. It would have been a lot of discussion before it was in final form – by the way, that was never changed after June 6. By characterizing them as county-initiated, could that constitute something unlawful is what are our attorneys are looking at, to see if there is some action that would invalidate these code amendments because the processes were not followed properly. That's obviously a bad look, and it was obviously wrong. Whether it's unlawful still remains to be seen. That sums up where we are; in terms of our fund-raising effort we've had over 600 contributors to the Protect Captiva legal fund, and we've raised well over \$550,000.

*Question:* We have great arguments to challenge the South Seas request for increased density, but what is the likelihood that the height the ordinance will be reversed? *Mintz:* There were two on South Seas. The ordinance allows them to go between 45 and 75 feet above base flood outside of the gated Captiva the increased heights from 28 feet above base flood to 35 feet above base flood, which arguably can add another story and go from two stories to three stories. We have

also claimed the petition before the administrative law judge, that that amendment to the height limitations outside the gate of South Seas is inconsistent with the historical development pattern on Captiva and inconsistent with the Lee Plan, and we're trying to get those that heights changed back to what it was before. If we succeed before the administrative law judge, hopefully we can get the new height limits on the rest of the Captiva reversed. *McDonald*: There are a number of lots that have been cleared, where it looks like construction is imminent. Are they able to build to the new 35-foot elevation right now? *Mintz*: I hate to say it, but yes. Discussion.

**Annexation** – *Jay Brown* (not on agenda): At the last meeting, I informed the panel I had interest in doing a preliminary survey of Captiva residents to see if there would be any appetite for a possible consolidation of Sanibel and Captiva to protect us from the additional actions by the Board of County Commissioners, who seem more concerned with development than retaining the historical character of our island. The thought process was that if our land use policy could be under the control of someone like Sanibel, we would be much more likely to get favorable land use policy outcomes than if we continue to be part of unincorporated Lake County. So, over the past few weeks, I along with help from some others, drafted a proposed survey which made some assumptions that assumed if the two areas merged Captiva would be continue to be managed according to the Captiva plan, that there probably be not be a significant impact in property taxes, and also said we would probably have representation from Captiva on the city council. I took that survey to the Sanibel City Council at its meeting last Tuesday to get their input on the advisability of doing a survey and because I didn't want to do anything that might impact them in some unfavorable way. There was quite a bit of concern amongst the council members about doing the survey, and particularly in the way it was worded. They were concerned that Sanibel residents would start making assumptions that the City Council had agreed to all of these assumptions in the survey. They felt that could potentially cause backlash in the community about the survey written as I had done it. We concluded that discussion by saying that I understood their concerns, they've been a great partner with us throughout this whole battle, and I didn't want to do anything that was going to be a concern to council. We would continue to look at other ways of doing the survey that might reduce the risk of Sanibel people reacting to this and creating negative publicity.

*Mintz*: There was concern that the survey would be misinterpreted due to some of the assumptions in the survey, which we discussed at the last panel meeting, about maintaining our own land development code and our own plan, we keep our identity and, and have appropriate representation on city council. Jay was saying they haven't happened, these are just would be negotiable – but if those things could happen in a way that would satisfy Captiva residents, would they really be interested in us going forward and just continue to do fact-finding? There was a legitimate concern by council members that people on Captiva, and people on Sanibel would think that discussions that had already taken place, and that these assumptions were already agreed to. Nothing could be further from the truth, there have been no discussions or agreements about any of this stuff, it was just to take the temperature of Captiva residents. Given the fact there was room for a misunderstanding, it was prudent to basically go back to the drawing board and figure out a way to make sure that there would be no misunderstandings in the future and no misinterpretation. We all learned something from it, that Sanibel and Captiva working together, the cohesiveness that has developed, is something that's really the priority for us. We just want to make sure that, if we even look at annexation as a possible option, we want

to do it in the best way possible so that everybody understands exactly what we're doing, and more importantly, exactly what would not do. *Brown*: I just want everybody to be clear to that: I am not at this point in favor of annexation, all I'm in favor of is it's something that should be studied to protect Captiva long-term from additional actions at the county like we just experienced. It would be an enormously complicated undertaking. I was just trying to get some indication that people would at least be receptive to the idea before we started investing a lot of a lot of work on this. Discussion.

**FEMA & NFIP update** – *David Mintz*: I've been advised by the county that Senator Rick Scott has been working very hard on this National Flood Insurance Program issue. The county has until June 10 to respond to the requests that FEMA made regarding the issuing of permits and enforcing the 50% rule after Hurricane Ian. FEMA said that it was going to remove the 25% discount for flood insurance for the county and for some of the municipalities because the permitting requirements for rebuilding had not been documented properly. The county has been working with FEMA, answering questions to try to explain how they've been not violating the FEMA rules with respect to flood insurance. After June 10, FEMA will probably have around 30 days to respond to the information the county provides, and my understanding is that the county is optimistic that FEMA will allow them to reinstate or keep to 25% insurance discount for Lee County.

**Sunset Captiva crosswalk** – *John Jensen/David Mintz*: Lee DOT will be sending out a team to look at whether a crosswalk between Sunset Captiva and the bayside condo is feasible under current DOT rules. We hope to meet with them in the next two weeks.

**Wastewater Committee update** – *Jay Brown*: The remaining study to be completed by the city of Sanibel is the economic study, which would involve what kind of rates we would pay if we were to partner with Sanibel. I also thought that the study would indicate any payment Captiva property owners would have to make to buy into use of the Donax facility given all the prior investment that's been made there. I was meeting with Sanibel city attorney on this, however, and he informed me that it's not legal for them to make a one-time charge. So all we're going to get out of this is just a rate analysis, and we would not have some significant charge to access their system. That study is going to be done in the next few weeks here. But it's possible now to say where we are cost-wise for the Sanibel partnership plan.

Over two years ago, we completed the design of the Captiva collection system, which was gravity lines in the Village area, high-pressure lines going down Captiva Drive, and high-pressure lines connecting the large-lot area outside of the Village. The total price tag then was \$20 million for the collection system. Then Sanibel did a study which indicated that the city would have to run an additional pipe to handle our effluent from Blind Pass to hook up with the Donax plant, and that would cost approximately \$14 million if the pipe was sized to handle only wastewater from Captiva outside of South Seas. Then they completed another on what needed to be done with the increased processed wastewater due to including Captiva, and that cost was estimated to be \$25 million. So right now we're at a total project cost of \$59 million to connect the Sanibel WWTP to service proximately 500 600 properties, all the Captiva properties outside of South Seas, or a cost per property of about \$100,000 each. That's a very high figure, and one that would be very difficult to gain support amongst the community. I think if this project is

going to go anywhere, we're going to have to get substantial public funding, and we have to determine if we have any chance of getting substantial public funding to help us with this project.

Then, we also have the matter of what ultimately happens at South Seas. Based on what I know, if Timbers were to be successful and managed to get the PUD approved as they are proposing it now, with all this additional density, they would have to pay for a significant increase in the capacity of the FGUA plant that services South Seas. There is a scenario where as if they had to do something very significant with the plant to serve as additional density on South Seas, maybe it would make sense to look at connecting the rest of the island to the FGUA plant as a more cost-effective option than Sanibel. So the cost issue up in the air now, as is how much public funding might we get? Plus, should we just continue to go on assuming that FGUA is going to service whatever happens in South Seas, and we should just go on with a plan to provide sewer service for Captiva outside of South Seas. *Youngquist*: I'm wondering because of the water quality issues and everything, if there isn't some money that we can get in state or federal aid for this, because it's very clear that they don't really want people on septic systems. John Talmadge really has a good handle on all the grants that are out there and available as part of work he's done for Lee County Economic Development. He's probably one of the most brilliant people I've ever met, so if anybody has a good handle on what funding is out there, I would say John would be the one to talk with. There's more money available, I'm hearing, as part of this whole resiliency effort. I would suggest going directly to John Talmadge, and ask him what kind of funds continue to be available.

*Mintz*: People have to remember that the "South Seas" wastewater treatment plant is not part of South Seas, it's owned by Florida Governmental Utilities Authority -- South Seas is just a customer, like everybody else in South Seas is a customer. So it'll be the job of the utility to either be able to serve an expanded density or not be able to serve it; if they have an obligation to serve it because they have the franchise, they will have to harden the plant to raise the plant or expand the plant or increase the treatment levels of the plant that are required by DEP in federal and state law. My understanding also is that FGUA may not be the owner of that plant going forward. There's discussion at the county now of having someone else take over that plant, because FGUA usually runs distressed plants and if this plant is rebuilt and is expanded or hardened, it may not be FGUA that owns it. And then the question is, will the DEP or the State of Florida or the Army Corps of Engineers allow for an expanded plant in the middle of a wetlands area? There's a lot to be said for everybody who can hook up to the Donax WWTP at some point, and I think that's going to have to be looked at carefully. In terms of the funding, my understanding is that Sanibel has submitted a grant request for the full amount of the deep injection well, which was \$25 million taken off the top if that's approved. I think it behooves us to see if we can get as much, if not all, of the sewer infrastructure costs funded by funds that are earmarked for septic-to-sewer conversion. It's important that we keep the disagreement with South Seas about density and heights totally separate from the wastewater treatment issue. They're two separate things -- we can disagree about height and density, and we can still have the same wastewater treatment plant processing all the wastewater because that plant is not owned by South Seas, they are just the customer in the same way that we all would be. *Thye-Miville*: A lot of people on Captiva have the old septic systems with a drain field, but now they have new technologies that make these systems like miniature water treatment centers for your private



home. The water that comes out is nitrogen-free and can be used to irrigate plants. Also, if they enlarge the FGUA WWTP, maybe it makes sense to look at connecting the Village to FGUA and encouraging the larger lots to move to these on-site water treatment centers. That would be better than continuing with the old septic systems. Discussion.

**Stormwater Committee update** – *David Mintz*: I believe \$250,000 was submitted to HUD in a block grant to pay for the stormwater management plan in the Village, and my understanding is that request is going through the process. The problem we had with that is that the block grant bidding process would preclude Kimley-Horn, who developed the proposal, from bidding on the project. We spoke to the county, and they're trying to work it out so K-H can apply to do that engineering study for the stormwater management system. We should know by the next panel meeting whether that gets resolved.

**Iguana eradication** – *John Jensen*: Alfredo continues to come out twice a week, and is capturing a lot of iguanas. Discussion on whether this is making a visible impact, sense of those on call is that the numbers are noticeably down. *Mintz*: What is the status of county reimbursement? *Gooderham*: It's gone from being delayed to being ignored when I ask. *Mintz*: Send me the invoice you prepared, I'll follow up since we were promised some funding.

**Panel members' comments & questions**: None.

The meeting adjourned at 10:45 a.m. Video link: <https://youtu.be/1wm9mKsv1mE>.