

Captiva Community Panel
MINUTES
June 11, 2024

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

Audience: 23

Meeting convened at 9 a.m. Following introductions, minutes from the April 9 and May 14, 2024, meetings were unanimously approved (Jensen/Suarez).

LCSSO – Deputy Chris Lusk: We all made it through another Memorial Day weekend, relatively unscathed. Very busy, but as far as any major events occurring on the island or anything of substantial note, it went relatively smooth. We did bring out some extra help, we kept one of us on the boat the entire day, just circling the island, watching for manatees and violations and make sure people were staying off everybody's private docks. All month, we really didn't have anything to notable happen on the island. We're in that part of the season where we're seeing the ups and downs based on the events of the weekends that are going on, so our weekends are staying pretty busy. I don't know if you have noticed, but we've put a camera up at the Blind Pass Bridge that's going to be there for a couple of weeks. We noticed during the hurricane that it was a major deterrent for us. The camera's very visible, it's viewable from our phones or from our laptops, it reads license plates. But we've been noticing on the weekends, especially very late at night, that the bridge is very busy with fishermen anywhere between 10 p.m. and 2 a.m. Once I counted about 80 people on the bridge fishing. FWC has really been helping us out, they've been coming out on the weekends at night, and they've affected quite a few arrests out there for fishing violations. So it seems to be pretty effective. I've already talked to a couple of our normal fishing folks that come out on the weekends, and it's definitely something that's been noticed and they know they're being watched. It's not going to be there forever, just during these couple of weeks when we know we get that influx. Discussion about making the camera more permanent and how it is changing behavior on the bridge. *Lusk:* Ccameras are always a helpful tool. South Seas installed two cameras on the road there, two black boxes with the solar panels, those are tag reader devices. We've already used those during the holiday weekend. It reads the tags while the cars going up and down. It's definitely something that I will make a note of, we will sit down and have a discussion about it. The only other change that you're going to see is we're going to put up a couple of temporary roadside "No Parking" signs just for the upcoming holiday week of Fourth of July. We want to stop the roadside parking, there's a couple of spots in front of people's private beach accesses in their homes and up at Turner beach to prevent the cars from backing up into the road and blocking the traffic coming and going from the island as they wait for a parking spot. There are a couple of pullover spots that have been created by the constant vehicle traffic, and we're going to get those blocked off just to the holiday week. Discussion on options to address roadside parking.

CFD – Brown: Chief Jeff Pawul notified me earlier that he was not going to be able to make our meeting today as he's at some sort of conference. He asked me to report that nothing out of the unusual happened this last month. He said tax revenues are coming in slowly, and that was concerning him. *Mintz:* There's there was one other issue that occurred during the Memorial Day weekend. For the first time the owner of the parking lot at the post office decided to hire a valet service and charge for beach parking during the Memorial Day weekend. He was under-charging the rates as the Hagerup lot and was also creating some serious problems at the post office. It became very difficult for people to go to the post office or ATM and find parking because cars were lined up to get spots at this parking lot. The postmaster said on Saturday the federal postal office truck that picks up the mail, couldn't get into the parking lot. She had to rise to the occasion and take the mail herself to another post office in order to get it mailed out. I spoke to the

owner of the parking lot and I explained what was going on with the postal office and the unavailability of spots. He was unaware, he was doing a test case to see if he would consider selling parking spaces in season after the summer. Sergeant Zeltman got on it right away, he worked with the code enforcement officer at the county and also became aware of the code provision that doesn't allow for any temporary parking lots on Captiva could be used. The owner of the parking lot was made aware of the problems, and was aware of the code provision, and was aware of the violations that were being committed. A decision was made going forward that they would not use that parking lot for any paid parking in the future. Discussion.

CEPD – *Commissioner Linda Laird*: This weekend, Aptim is going to come out to do physical monitoring of the beaches to help design what we're going to be doing on renourishment. The renourishment bids are due June 14, we need to wait to see what they are. We also need to see what the physical monitoring shows again. Right now we believe it's likely we will be doing a renourishment next spring and we expect it to be a pretty much a full renourishment. The design of the project will be reviewed in a public meeting sometime in the next month or so, so you can see what is going to happen with the dunes and to take public comment on funding. We believe we're up to \$18 million in pledged funding, and we're continuing to look to for more. We were thinking we could do a smaller project, but that isn't proving practical, so we believe it's going to be a full beach renourishment. There's some thought among the commissioners that we're going to have to be doing renourishments more frequently, so we have to really work on funding to accomplish this. On the bayside planning, Aptim is continuing incorporating comments from the community. There's going to be another public meeting on June 27, where they will be presenting design content.

SCCF – *Environmental Policy Director Matt DePaolis*: The judge in the Chiquita Lock case has issued the Environmental Resource permit that allows the lock to be removed, so not great news. This is just the first step, there are already talks of challenging that in an appellate court so this is going to be a long drawn out one. Explanation of the Chiquita Lock situation. *DePaolis*: It's raining right now, we're expected to get a lot of water coming through the system over the next five days. Most of that is basin runoff, so we can expect to see a lot of water moving out of the Caloosahatchee River, but less than the amount we're seeing is actually hitting the lake. Through those lake releases we have built a lot of resilience into the lake right now. Before the rain started, we were at 12.5-12.6 feet, so that leaves some room for us to hold water in the lake without risking those large releases that we're trying to avoid.

IWA – *Mintz*: Diana Wilson asked that we send out a notice to residents to notify them that there's work to replace some of the infrastructure at the reverse osmosis facility that was damaged during hurricane. Because of that, they want to reduce demands for water and to remind people that Lee County has a schedule for irrigation on Captiva that people have to abide by. If your property ends with an even number, you're only permitted to irrigate on Thursday and Sundays. If you have property with an odd number, you're only permitted to irrigate on Wednesdays and Saturdays. The irrigation times for those days are between midnight and 9 a.m. or between 5 p.m. and midnight – but no irrigation is allowed any day between 9 a.m. and 5 p.m.

South Seas redevelopment – *Mintz*: In the fight over the code amendments which exempts South Seas from the height and density limitations that they had in the past then that applied everybody else on Captiva, have been challenged by the CCA and the Protect Captiva coalition. That has now been assigned to an administrative law judge, who we understand is very professional and highly respected, and the administrative law judge has asked the parties to collaborate to find dates in order to have a trial. We're looking at the end of July or the beginning of August, where the judge will determine whether these code amendments are consistent with the Lee Plan, which requires the county to enforce standards on Captiva that are consistent with the historic development pattern on Captiva. Our attorneys have already submitted discovery requests to the other side. Sanibel City Council voted unanimously to intervene on behalf of the

CCA and the Protect Captiva to protect the interests of us and to protect the interests of Sanibel residents in preventing increased development, increased traffic, and increased evacuation times that the amendments will most likely produce. We're very grateful to Sanibel for their continuing support and intervention in this case. They will be represented by the city attorney, and that's a great addition to our legal team.

Number two, as everybody knows, there was a settlement agreement back in 2003, where the county, the developer and the CCA agreed that hotels or condominiums on South Seas would be limited to 912 units. That 912-unit limit was in effect since 1973 – so more than 50 years. The settlement basically said the total number of dwelling units on South Seas Resort will be limited to 912, and no building permits may be issued by the county for dwelling units within South Seas that will cause the number to be exceeded at any time. The Protect Captiva coalition and CCA have filed a complaint in circuit court seeking to enforce that 912 limit. The county has filed a motion to dismiss claiming, among other things, that the Board of County Commissioners exceeded its authority back in 2003 to make that agreement. We obviously do not believe the BoCC exceeded its authority, because the settlement agreement just enforced a legitimate zoning approval from back in 1973. The court has set a July 9 date for a hearing on that motion to dismiss; we are we are hopeful that the motion to dismiss will be denied, and the court will then set dates to resolve this dispute that the 912-unit cap will be enforced.

Number three, South Seas submitted a master plan application, which was rejected twice by the county as being insufficient. They submitted a third revised grant application on May 28, and they are still requesting 435 additional hotel units but they've reduced the number of condominiums from 272 to 196. So this new application is seeking to increase density to 1,271 units rather than the cap of 912. Protect Captiva believes that increase violates the zoning approval, the administrative interpretation, the settlement agreement, as well as the Lee Plan, which requires that historic development pattern and Captiva be maintained and enforced. In their application for the first time, they claim their requests for the additional hotel rooms and the additional condos is consistent with the historic development pattern. They claim the building heights on Captiva outside the gate are the same height they are proposing inside the gate – which is 45 feet above base flood elevation as a minimum, up to 75 feet above base flood elevation. There's nothing I'm aware of on Captiva that's 45 feet above base flood elevation. As everybody knows, originally buildings heights were 35 feet above grade or 42 feet above sea level, whichever was lesser. Then when FEMA came into play, we amended our Captiva Code to 28 feet above base flood elevation as an option. We have nothing that's 45 feet above base flood elevation that I'm aware of. For buildings outside of South Seas that are greater than 45 or up to 45 feet above base flood elevation, the only building that even comes close to that is the Sunset Captiva condominiums, and they were pre-code and they don't even reach that height. In addition, they still have not yet gotten a letter of sufficiency from Island Water Association, which asked for the water usage at the water park that's being proposed. They're also asking for how many bedrooms are in the condominiums, so they can make a determination as to the needs for potable water, and that hasn't happened. So South Seas has asked for a waiver on their obligation to provide a sufficiency letter from Island Water -- and I don't believe the county is going to give them a waiver on that. So there's a good chance this third revised plan application was going to be rejected again by the county as being insufficient, but we don't know. The CCA and the Protect Captiva coalition has submitted a set of comments in response to this revised application, and those comments will be distributed later today.

Number four, we continue to review the public records requests we made from the county, they're like 100,000 pages. What we found was similar to what David Dorsey found in his article, that the amendments that were passed were not county-initiated it all. They were initiated by the developer, and we have a lot of evidence of exchanged emails to that effect. The attorneys are determining whether mislabeling of the amendments invalidates the process, or the amendments themselves, and whether there is sufficient grounds for additional legal action on that.

Finally, I just want to everybody to know that the Protect Captiva legal fund, which is supporting all of this legal work, is approaching the \$600,000 mark in terms of contributions with over 900 separate contributions. There's a lot more work that needs to be done, so we're continuing to ask people if they have the financial ability to do so to continue to make contributions to legal fund, which are tax deductible. *Brown*: Do you have any idea how they got to the number of 196 for condo units? *Mintz*: The developer had 140 units for employee housing, 107 Hotel units and 25 unbuilt units, which equal 272. So arguably, they are vested under the 912 cap for 272 units. They have reduced that request to 196. The problem is they want 435 additional hotel units on top of that. I think that they're recognizing that you can't seek rezoning and see, say you're vested at the same time. If you're going to rezone you're going to resolve you can't be vested under the old zoning. So I think they're moving away from the investing argument, and saying we're going for a density of 2.4 units on our 81 acres of upland acres. In other words, they're eliminating the wetlands, they're saying they have about 80 acres of upland buildable space, and they're going to have a density of 2.4, which is less than three units per acre. And they're now claiming that the 435 hotel units are going to be on the five acres of commercial that existed under the old zoning. So they're still confusing the old and the new rezoning applications. The five acres of commercial under the original zoning was not for hotels, the hotels were part of the 912; the five acres of commercial zonings worth for restaurants, and various amenities. So they claim that they can put 435 hotels on five acres of commercial doesn't make any sense, either.

Mintz: When they were 304 acres, originally, they did three units per acre to get to the 912 and they included wetlands back in 1973. In today's world, wetlands aren't a basis for increasing your density. So they really don't have 304 acres on buildable space on se anymore, they have closer to 178 acres. If you if you multiply 178, by the maximum, you can have in Outlying Suburban zoning, it's only three times 178, which was like 500 and change. They already have 640 units on South Seas without anything from the new developer, so it's creating a big problem of what they're entitled to. So what they're basically saying is we have 80 acres of our own, and we want a density of 2.4 units. But they would never get the 2.4-units of density on a barrier island in today's world. So it's creating a big problem in terms of how you calculate what density they're entitled to if they don't take their vested units, which is the 272. We believe that's what's been vested for 50 years, we're not looking to take that away. But if you're going to rezone this property, you already have more units, already, than anybody in their right mind would approve on a barrier island. It's a real problem for them, because they're probably not technically here, in my view, entitled to anything more than the 640 units that are already there without their units. So, if I were them, I would take the 912 and run to the bank with them. But that's not what they're doing at this point. *Brown*: So if they want to be rezone, you could make the argument they should be building to the current zoning laws just as they do to the current building laws. *Mintz*: Yes, the current zoning laws probably would not give you three units per acre on that property anymore. Certainly they wouldn't take into account wetlands as buildable area. So it's a real challenge for them at this point, today you probably wouldn't get 912 units. That's what they were told was the cap – 912. The county provided them due diligence documents that said, “You're capped at 912, you're entitled to 272 units.” They knew that before they purchased it. Then they try to figure out a way with the county and with their agents, and with their lawyers and with their plans to get more height and more density. *Question*: When I read through the charge to the county planners, what they said is they included a line in it about looking specifically at South Seas. Did I read that correctly? *Mintz*: Commissioner Ruane at the Board of County Commissioners meeting asked the staff to look at the code provisions and plan provisions in the county that prevented property owners from rebuilding after a hurricane and how to make the rebuilding more resilient – and, he said, including South Seas. But he has adamantly said he was not asking for increases in density. He was just looking for allowing code changes that would allow for greater resiliency when you build back. It had nothing to do with density, and what we're facing on Captiva is primarily an increase in density and intensity of use, which is very different than resiliency.

NFIP – *Mintz*: We're still waiting to see if the 25% discount for the FEMA flood insurance is still going to be applicable to the county. The last I've heard is they're working that through and people are hopeful that 25% discount will continue.

Sunset Captiva crosswalk – *Mintz*: The county sent people out to evaluate the crosswalk. I spoke to Tom Sampson about this, to evaluate the feasibility of putting a crosswalk between the condos and the single family homes on Captiva Drive. They have assigned somebody to come out and do that evaluation, and as soon as they finish that evaluation, they'll have a report for the panel. The only reasons would be traffic and feasibility. In other words, you have to have enough space before and after the crosswalk for cars to fit in and stop. So when they tried to do a crosswalk between the gift shop and the Bubble Room, there was not enough room between it and Andy Rosse Lane to put a crosswalk in there because cars couldn't go through the stop sign and then quickly stop for the crosswalk. I think it was an issue that also arose with the Rauschenberg property when they wanted to put a crosswalk in by the turn. I don't remember how that was resolved, but it shouldn't be a problem.

Wastewater – *Brown*: The significant thing that happened over the past month is we have learned there is a substantial public funding opportunity to pay for our central wastewater system for Captiva. So we are going to make an application to have HUD pay for the collection system to gather the wastewater in Captiva and the cost to have the new piping to transport our wastewater through Sanibel. Sanibel is going to apply to pay for the new deep injection well that will be required. I don't know much about the history of this type of funding. Kevin Ruane brought it to our attention and encouraged us to go for this. So we're doing that. We will be working very hard to get this funding request together over the next week or so. That would be amazing if we could get this paid for because the costs have grown quite a bit versus what they were under our original thinking. I think for the public to approve a central wastewater plan, we're going to have to get the costs paid by the homeowners down substantially versus where they are now. So at any rate, we hope to have an application for funding done in the next week, and we hope we'll get a successful conclusion on this. *Mintz*: We have to figure out who's going to be the lead on this project. We're hoping that county can make the request for the funding, and then we can figure out the best way to engineer it going forward once the funding is in place. It's complicated because Sanibel doesn't quite know what amount of wastewater is coming from Captiva; we're not even quite sure what's going to be in the future, given changes in the code. But we want to get our place in line for this funding so that when the pieces all come together, we will have that funding available. Discussion of costs.

Stormwater – *Mintz*: We're online to get the \$200,000 for the stormwater study for the village of Captiva. We've been told about a week ago that Commissioner Ruane has asked for a waiver and our understanding is that it's going to be granted to allow Kimley-Horn to do that project. In other words, many of these projects have to be done by a firm that did not create the proposal initially, initially and did not do the scope of the project, but that would be unfair to Kimley-Horn. So we requested a waiver and we're hoping that gets approved.

Iguanas – *Jensen*: Alfredo made a comment he's seen more than he liked to see. When he comes out, he gets 20 to 30 a day. He did say a hot spot he goes down to the new seawall at South Sea by the pool, and when he goes down there, he right away sees a bunch of iguanas sitting on the seawall. He likes to go to the hot spots, because he knows he can get them -- but he's hitting all the properties on Captiva that he's allowed to go on. He did say that there's a Cape Coral charter company advertising iguana hunting. They take a boat on the canals and they look for iguanas in people's yards and shoot them; he gives people guns and they can shoot iguanas along these canals. I don't know how long that's going to last, right? *Lapi*: There's quite a few of them, some big ones, around our sewer plant, which is away from all the guests. You know, he could go in there and have a very good shooting gallery if he wants.

Development – *Brady*: There was some discussion online between Margarethe and Sandy about doing something in the fall regarding the iguanas and merging into a fundraiser. But I don't have any updates on that... I don't know if either of them do or that's still something in the works. *Brown*: I think that depends on our financial situation. *Gooderham*: Summary of report in packet. Discussion of iguana hunting.

Other business: *Question*: I heard from someone yesterday about discussing the Alison Hagerup parking lot being relocated. Does anybody know anything about that? *Laird*: In the CEPD meeting, it was discussed as a possibility to obtain more parking spaces in the lot to obtain more money for the CEPD as an ongoing funding source. It was not clear if all of the commissioners were not in favor, although we did not vote. So it is being discussed, and different people have different concerns. *Mintz*: This is an issue that involves a lot of people in the community, and a lot of surrounding properties there, as well as whether or not we have infrastructure, available bathrooms, etc., for increased parking and what that would mean to the village. So I think before that decision gets made – and it should not just be a financial decision as to whether or not CEPD gets more money or the community gets more money—but I think it has to be a decision that that involves the community as to what issues get balanced, and what's important to the community with respect to this. So I just don't think it's a dollar question. *Laird*: I agree. This has not been discussed in detail, so these questions are sort of early. I would suggest those of you who are interested in this to attend the next CEPD meeting. *Suarez*: Does CEPD have sole discretion on this issue? *Laird*: I don't know for a fact but I believe so. Discussion of status. *Suarez*: There was an agreement between Mariner Group and CEPD back in 1989. There's an easement agreement, or they just gave up the property for some environmental reasons is what happened. I actually have that document that I can share with the panel, if you're if you want to see it. But CEO does have sole discretion to waive that easement. *Laird*: The issue here is the CEPD believes that we are going to be doing more and more renourishments and that the cost of that those re nourishments is going to be high. So the question is, is there anything the CEPD can do to reduce the costs to the taxpayer on Captiva, while protecting the beach? Different possibilities are being looked at? There's issues, as you all know, with the Army Corps of Engineers, there's issues in that the limited access we have to the beaches for the public, which means that the possibility of getting funding is limited based upon our limited access to those beaches. *Question*: Is the lot included in the legal description of South Seas? *Suarez*: It's been carved out. If you look at the second submission of the zoning application, there is a number of survey pages. That's how I found the agreement in the first place, because that that parcel is carved out of their property and is separate. So this easement agreement is a pretty important agreement... if CEPD starts this conversation in a higher level, I think that the community needs to be aware of this.

Meeting adjourned at 10:30 a.m. Video link online at <https://youtu.be/-Y0E13ruz-o>.