

**Captiva Community Panel**  
**MINUTES**  
*Sept. 10, 2024*

**Attending:** David Mintz, Jay Brown, John Jensen, Ann Brady, Ken Suarez, Sandy Stilwell Youngquist, Ken Gill, Tony Lapi

**Absent:** Bruce McDonald, Margarethe Thye-Miville, Linda Laird

**Audience:** 33

The meeting convened at 9 a.m. Follow introductions and roll call, the July 9, 2024, minutes were unanimously approved (Youngquist/Jensen).

**LCSSO – Sgt. Rich Zeltman:** For the last couple of months, things have gone well. We have had no major incidents to report. We did have a plan in place for the Labor Day weekend. You know, typically, we get a big inflow of beach goers and boaters that come in on Labor Day weekend and on Labor Day but we had extra deputies to patrol the waters and the beaches, and seem to have gone well with no big problems. I would also like to thank the public for their cooperation, understanding and patience. We had to close the road for over a couple hours this past Sunday for the triathlon, right? And you know, it's an inconvenience for some people, some of the businesses -- I'm sure, they were wondering where their employees were Sunday morning when they were stuck at the Blind Pass bridge trying to get on the island. But overall, I thought things went well with that. *Youngquist:* I got a call from Officer Lusk letting me know ahead of time that that the roads were going to be closed. So my staff that needed to be there, they knew to either arrive early or arrive late, one of the two. We appreciated having the added business on the island, so it was actually a boost for the economy. *Zeltman:* That was our one of our plans that we had set up was to notify all the businesses and residents of the road closure, so that thank you for sharing that. Discussion.

**CFD – Chief Jeff Pawul:** Following up from two months ago, on beach safety and Blind Pass: I did have a meeting with the City of Sanibel and presented a few of the suggestions that we had as a fire district and some of the ones that came up on this call as well. They're trying to explore what options they can or can't do for that area. They put out some more signage, so we'll kind of see how that goes. I think we're all in agreement. We're working on a few other options for our beaches specifically, not specific to Blind Pass, but just looking at some new safety measures or programs that we can possibly implement as a fire district. But being that it's a public county beach, we have to work with them on anything specific that we would implement. Unfortunately, we had a drowning a few weeks ago, right after Tropical Storm Debbie went past. I did not get follow-up confirmation on whether it was a medical issue that caused the drowning, or if it was the surf conditions. The conditions were not conducive to swimming; people really shouldn't have been unless you're a really good swimmer. The following day, we actually had a family of three, a father and two daughters, also get pulled out in the surf, and we were able to save all three of them. Our rescue swimmer got out and saved that whole family due to early notification. I'm not sure if you guys saw it on the news, but I know there was a story that Sheriff Carmine Marciano did donate a drone for us out here to be able to help in these situations with surveillance and finding people in the water or areas or after hurricanes. So they just donated that drone to us a few weeks ago and been providing training with that. Want to thank them for that. Obviously, everybody's got to get trained on it before we can efficiently use it. We don't want them crashing into a bunch of tourists and causing more harm than good. But it'll definitely be a positive addition to our fleet, especially, you know, after events, or for large events, to be able to survey the island quickly, especially after a tropical storm or hurricane, when you might not be able to drive down the road but we can use that to survey quickly. So it'll be a

good tool for us in the future. I've said it every meeting, but it's September now so if you weren't prepared before – too late, we are at the peak of hurricane season. You can see all of them forming out there. So make sure you're prepared.

**CEPD** – *Brown*: I attended the meeting, made a few notes that I can pass along to you. They had an open seat as Dick Pyle resigned his seat, and the commissioners voted to replace Dick with Mike Lanigan. You probably all remember he did have prior service on CEPD, so probably be good to have him back. The Bayside Adaptation consulting project is progressing, and they expect to have that report finished from Aptim in October or November. I asked if they were contemplating any use of eminent domain to implement a bayside restoration plan, because I've gotten feedback from some property owners concerned that CEPD was going to make them do things with their property they don't want to do – can they command us to plant mangroves that they think there should be mangroves across the back, or do seawalls? At this point, they were not contemplating something like that, and they thought that it would unlikely be that they would get to a situation where they would be using eminent domain. My understanding of the output of this report is going to be trial programs they ought to put in place or begin experimenting with. This is a very long-range effort to protect the bayside, and they don't see any probability of in the next few years issuing things that owners don't have a choice to do. The board voted to take over the iguana project from the panel and to increase the frequency. They were planning on using Alfredo, and they were talking about perhaps having Alfredo come out three days a week versus two days a week. That seems a positive development that CEPD is going to take that on under the guise that iguanas can be destructive to the natural shoreline, so therefore the iguana problem falls under their purview. **Jensen**: I talked to Alfredo, and he's able to do one or two extra days. But I think the CEPD could work with the panel, if we can help out as much as we can. Alfredo said he's using a lot of gas when he comes out and he drives back and forth on the island. I mentioned that to John Riegert, and he said the CEPD might be able to let him use their like beach vehicle, so he could park wherever CEPD is and then drive around the island in their a four-wheel beach vehicle. So that would help, I think Alfredo a lot, and maybe help keep the cost down too. *Discussion*. **Brown**: When you say that you think the panel should still help out, what do you mean by that? **Jensen**: If we have feedback from owners, if we hear anything. If I'm still involved, I'd try and go to their monthly meetings, kind of a liaison between the panel and the CEPD and Alfredo because I talk to Alfredo or I see him every week. **Mintz**: If people want to have Alfredo, go on to their property, do they now contact the CEPD? **Jensen**: Yes, they'll be taking that over. And what John told me was their attorney said the CEPD is allowed to go on anybody's property. He can't go on the property and just start taking iguanas, but he can do like research if he thinks there's an area that he could get a lot of iguanas he's allowed to go on the property, then we'd have to contact that owner to give permission. **Mintz**: I think transferring it to CEPD is a good thing. I think the job of the panel is to be ahead of the curve on a lot of these issues, and then hand them off to various organizations, be it the county or CEPD or private organizations, to take over things over as they develop. Our job isn't necessary to run these operations, but basically to plan for them and figure out how other organizations can fund them and keep them going. That's the history of the panel, and I think that's a good thing,

**SCCF** – *Policy Associate Allie Pecenka*: Today, Lake Okeechobee is sitting at about 14 and a half feet, which is actually pretty good for this time of year. This time last year, we were at 15.4 feet, so we have about a foot more capacity to take on rainwater from the wet season and potential storms, and less chance of us getting those really large releases from the lake in an effort to lower it. We're also under the new lake operating schedule, LOSUM, if you're all familiar with that, so that puts us in a much better position for this time of year. And we are not seeing any blue green algae right now in the system, but we are seeing background red tide in Manatee County, that's not too much of a concern. It just means that we need to keep an eye out for potential increases in those cells and potential wildlife impacts. CROW did admit four birds last week with suspected brevetoxicosis from Red Tide, so we're just keeping an eye out for that, but we're not seeing anything directly offshore of us right now. We're also tracking those storms that were mentioned, and overall, we're seeing pretty decent water quality right now. **Brown**: What is the

statue of the Buck Key land acquisition by Conservation 2020? *Pecenka*: Now 100% certain, Matt can report on that next month.

**South Seas** – *Mintz*: I'm sorry I wasn't at the last meeting, but there was a five-day hearing, which I'll describe in a little while. I just want to fill everybody in on what's happening. We've completed about \$500,000 of legal work that's taken place since September 2023. We've met our initial fund-raising goal of \$750,000 from more than 1000 contributors from Captiva, Sanibel and beyond, which is incredibly impressive, and we're now about to seek another \$750,000 to continue and possibly finish this job. We always thought it would plus about \$1.5 million to do it, and we're on track according to our original goals and the timeline. Each of the original contributors to our legal fund, which was the panel, CCA, SCCF, and Ding Darling, are being asked to repeat or increase their original contributions. They were between \$10,000 and \$20,000 originally. We're going to ask our more than 1,000 contributors to do the same, and we'll talk about that later on.

But first, I'd like to explain where we are at this point, in a way that I hope makes sense. We discovered there are some complicated legal issues because of what the county did in amending our code. And when I say our code. I'm talking about the code that the community panel developed with our community through surveys and workshops. And the amendments of our code are somewhat convoluted, so I'm going to try to make sense of it for everybody. We've learned a lot over the last couple of months. In 1973 there was the rezoning approval which created a PUD, a Planned Unit Development, on South Seas, which allowed for clustering and open space, but it limited all development on South seas to three units per acre, including hotel rooms. So in exchange for down-zoning to 912, units, South Seas had the ability to cluster, to have some flexibility where they put things – clusters in some places, more open space than the others – but the whole 304 acres was limited to 912 units. In 1982 the Captiva Civic Association lobbied the county to limit development on the rest of Captiva to three units per acre, including hotel rooms. And that was an ordinance that was passed in 1982. In 2002 the county passed the administrative interpretation which memorialized the 912 units and the three units per acre on South Seas. So for 50 years from 1973 to today, South Seas was limited to three units per acre, including hotel rooms. For more than 40 years outside of South Seas, the rest of Captiva was also limited to three units per acre, including hotel rooms. These rules were put in place to protect our barrier island from increased density and over-development.

The Lee Plan, which governs the county, requires the county, and I'm going to quote this, “to enforce development standards that maintain the historic low density residential development pattern on Captiva, and quote to limit development to which to that which is in keeping with the historic development pattern on Captiva.” State law requires that our land development code amendments be consistent with maintaining the historic development pattern on Captiva, and what we've learned is that the code amendments (the county passed last year) do not do what they're supposed to do. The code amendments exempt South Seas from density and height limitations that apply to the rest of Captiva. The code amendments would allow for 75 feet above base flight elevation to be built on South Seas that would take you over 95 feet in some places, and there was no limit under the code amendments on the hotel room density. Our expert planner testified that the code amendments could potentially permit construction of easily 2,500 hotels on South Seas, and under certain conditions over 10,000 hotel units, if that was redeveloped in a different way. This is not what they proposed, but this is what could happen under the code amendments. So our legal intervention in three separate venues are geared to basically one thing, which is to limit development on South Seas to three units per acre, the original 912, units in place for over 50 years, and to limit heights to their historic limits, and to limit heights on the rest of Captiva to its historic limits. That's all we're trying to do in the three venues that we're working.

The first venue was the administrative proceeding, where we just had five days of trial. There were 20 depositions taken in that case. There were eight lawyers for the other side – there were four lawyers from South Seas, two lawyers from the county and two lawyers from the state Department of Commerce. We

had three lawyers, including John Agnew, the city attorney for the City of Sanibel, who worked with us. There were 14 witnesses, and we believe we put on an extremely compelling case that the code amendments are inconsistent with the historic development pattern. We had an expert planner who explained what could happen under the code amendments. I just explained up to 10,000 hotel rooms in certain circumstances, and easily 2,500 hotel rooms could be built. We actually had a witness who drafted the administrative interpretation for the county in 2002 who testified that the limit was always to be 912 units – and that was agreed upon by not only the developer, but by the county and all of Captiva community at the time. We also had the police chief from Sanibel who explained the traffic situation on Captiva. We also had the testimony of the zoning manager for the county, who we deposed, who agreed that the historic development pattern on Captiva is basically the administrative interpretation, which is 912 units. So we believe there's really no dispute at all before the judge as to what the historical development pattern is on Captiva, and we feel the case is very strong. South Seas argued that nothing's been approved yet, but we explained to the judge it's not about what was approved, it's about what could be approved, right? What's important is whether the code amendments are consistent with the plan, not what somebody applied for now. It's what they could apply for two years from now, 10 years from now, or after another hurricane, it's what the code permits.

The judge has to decide is whether the code amendments is consistent with the plan, not whether somebody's application is consistent. The other thing that South Seas argued is that we have hotels on Captiva that exceed three units per acre, and the answer is those are nonconforming hotels that were built prior to zoning and prior to codes – and some of them are historically designated. They're very bad examples of what can be permitted on Captiva, and we strongly believe that the judge understands that. So if we prevail in this case, which we should know by the end of October, the governor and Cabinet will then be charged with enforcing the decision against the county, and if we win we're going to seek repeal of the five code amendments that increase density and heights on Captiva. So where we felt we put on a good case. We had great lawyers, and we're very cautiously optimistic about what's going to happen in that case. The only concern we have is, if we were in a normal trial where the winner of the case would be the team that presents the preponderance of the evidence, I would feel very comfortable to say we will win on this case. However, the standard of proof is geared to deferring to the county and to municipalities and to developers, and the standard of proof is fairly debatable. So if the county can convince the administrative law judge that their interpretation is fairly debatable, then we would not prevail. The burden is on us to show that there what the county has done, that these amendments are not even fairly debatable that they're consistent with the Lee Plan. So it's a tough burden of proof, because it's a deferential burden that's been created by the state Legislature to defer to governments

*Brown:* But how can they argue that codes that could permit up to 2,500 new hotel rooms would be consistent with the historical pattern of development on Captiva? How do you argue that? *Mintz:* With great difficulty. I can't tell you how this is going to turn out. You know, over my legal career, I've won cases I should have lost and lost cases I should have won. The administrative law judge we had was extremely attentive... she listened to everything, she took copious notes, she handled objections very professionally, and she understood land development issues. We could have had an administrative judge that wasn't geared to land development issues like these, but we happen to get a judge who really understood these issues. So I think we have a fair chance here, and a fair judge. When we first started this case, we said it would take us about two days to put on our case, and the county said their case would be over in one day. Then South Seas intervened, they put on seven witnesses, they had four lawyers, and this case took full five days. So it's turned out to be much more complicated, and obviously there's much greater concern on the part of South Seas and the county regarding the merits of our case than there was initially. I think our lawyers really understood this, I think our community understands this now, and I hope the judge understands it. *Brown:* If we win, how will it be enforced? *Mintz:* Under the statute, there are different ways of enforcing it. They can ask the county to repeal the amendments. If the county doesn't want to do that, they can then impose sanctions on the county, such as to not give them

opportunities to get grant monies from the state. If and when we win this case, we'll do everything we can to convince the county to repeal the five amendments that increase heights and density, and therefore they won't suffer any remedial action on the part of the state. It's a complicated process that the state Legislature created, but we're going to see it through, and we'll do whatever we have to do. We have 30 days after the transcripts are filed to submit a 40- to 60-page brief, a proposed final order that we have to prepare and submit to the judge. The other sides will do the same thing, and then the judge will look at all of the various proposals from the various parties, and look at the arguments submitted with the proposals, and then she will make a decision. She will either adopt one of the parties proposed orders, or she will pick and choose and figure out how best to formulate her position based on the evidence that she heard, but it was a full blown trial with cross examination of the parties and the witnesses.

The second thing that's happening is that we have the settlement agreement in 2003 that Plantation Development Company (which was the developer at that time on South Seas), the county and the CCA signed an agreement which was approved by the court, which said that the total number of dwelling units on South Seas is limited to 912 and the county will issue no building permits within South Seas that will cause that number to be exceeded at any time. We filed a lawsuit to enforce that settlement agreement. The county filed a motion to dismiss. The court adopted our order and denied the county's motion to dismiss. As soon as the motion to dismiss was denied, South Seas then intervened in this case also. At this point, we believe that the some of the other associations or timeshares on South Seas who support limiting the development to 912 units may intervene also in that case. If they do, then we will either file a motion for summary judgment, saying that the Settlement Agreement is clear on its face, and the judge should enforce the rule that no building permits can be issued beyond 912 units – which would put an end to this whole dispute, actually—or the judge may say, “I want to have a trial. I need to take witness testimony. I need to hear from witnesses who drafted this agreement at the time. I need to understand better what the implications are.” Then we would have a trial with witnesses and depositions and discovery, etc, just like we had in the administrative hearing case. They denied the motion to dismiss, and we are hopeful to get a decision by the end of the year. In terms of the other case, the administrative case, we hope to get a decision by the end of October.

The last thing is, the rezoning application: South Seas has reduced its ask from the 272 condos to 196 condos, but they still want two hotels, one at the north end, one at the south end, with a total of 435 units. You have to understand that the 435 units is what they're asking for. If you reconfigure the South Seas, you can get a lot more than 435 – they're putting 435 units on five acres and four acres. So can imagine what you can do if you use some of the other acreage over time on South Seas because you bought a property, or you change the configuration, or some places were knocked down in a storm. That's what's important in understanding what these code amendments do. In any case, they submitted their application for the 196 condos and 435 units. Once again, the county has deemed their application is insufficient, and so South Seas now has another 15 or so days to resubmit their application. Once again, the associations' attorney, which is the Becker law firm, has been submitting letters regularly to the county regarding the insufficiency of their application, as we have been doing also with our attorney, Richard Grosso. The last letters are very powerful comments, and may be part of the reason why this application is still deemed insufficient. Once it's deemed sufficient, the county staff will make a recommendation as to whether they think the application makes sense and should go forward, and then it'll be sent to the hearing examiner, who will then conduct a trial.

During this hearing, all the environmental, height, density, flooding, traffic, evacuation – all the issues that we've been talking about will be heard. There will be witnesses, there will be examination, there'll be cross examination. It will be a full-blown trial before the hearing examiner, who will then make a recommendation as to what she what development she believes should take place on South Seas, and that recommendation will go to the Board of County Commissioners. We will have expert witnesses that will argue that South Seas should be limited to its historical development pattern of 912 units. The applicant

has burden of proof to show that its development is compatible with the rest of South Seas and the rest of Captiva, it has to show that it's not going to create any environmental problems that is happening, show it's not going to impact evacuation negatively, and will have to show that it is consistent with the Lee Plan, meaning the historical development pattern. In many respects, the hearing examiner will be dealing with the same issues that we're dealing with in the administrative proceeding before the Division of Administrative Hearings. The consistency issue will still be before the hearing examiner in the same way, with a different burden of proof, with a different party who has the burden. There'll be very similar issues that will be heard in a different forum, and she will then make a recommendation with findings of fact to the Board of County Commissioners. We will try to convince her that the historical development pattern does not allow for increases of density behind 912, and also issues of whether the sewer capacity is sufficient, whether the evacuation will be negatively affected. All those issues will be heard, as well as some very specific issues related to the other owners on South Seas, like easements, the road, how it will affect the other communities in South Seas if we allow this development to take place in one part of South Seas, that 120 of the 304 acres.

The other issue that had to be developed is this PUD at South Seas was a unit development that created a development of 921 units on 304 acres. But instead of saying you had to put each unit on a certain plat, you can cluster so you could have higher density in some places and open space in the other. Once you break that apart, you possibly end up with some of the associations having higher densities because they clustered then is allowed under the current plan or the current code. It creates all kinds of complex legal issues that were not contemplated when this was first started. All of this will have to get resolved during the plan application process, assuming it even gets that far, because if we prevail in the other two cases, it may place a finite limit on the number of units that will be allowed. So this is all happening all at once. They're intertwined. They're interrelated. They're going on, like I said, at the same time. So it's just really important that the panel and the community understands this, and particularly the panel because the code changes that have taken place. As I said it earlier, these are the codes that we recommended to the county and were adopted by the county after we held all those surveys and all those workshops with our community and got their agreement and their participation. That's what's so painful about this whole process.

*Mintz:* The only other thing is that the four initial organizations that launched our legal defense fund – the panel, CCA, SCCF and Ding Darling – the CCA, SCCF and Ding Darling are going to be asking their organizations to re-up so we can raise the second \$750,000. I would ask you to ask the panel: Do we do the same thing and either ask for another \$10,000 or even \$20,000 to our initial contribution? *Brown:* David's requesting that the panel make a \$20,000 contribution to the legal fund. Our first contribution was \$10,000. Can you give us a brief summary of what the panel's current cash position is relative to its future spending needs? *Gooderham:* Well, as you'll see in the packet, in the last page, you have an update of where we are year to date. We have an upcoming fundraiser planned, as well as a contribution letter, which Ann will talk about later. We certainly have cash on hand to handle that with the switch in the iguana program, that may free up some money. We were spending \$4,000 a month for iguana eradication, because the panel wanted him to come out twice a week. So we were planning on spending that money out of reserves. If that expense is going over to CEPD, that should obviously lessen that burden. *Brown:* Do I hear a motion to contribute \$20,000 to the Protect Captiva legal defense fund? (Suarez/Lapi). Unanimous approval.

*Question:* Is it possible for owners at South Seas to bring a class action suit against Timbers, with the understanding when they purchased that the resort would be capped at 912 units? *Mintz:* I don't know the answer to that. I think that there would have to be a contract or documents or a long standing practice that would support that. My understanding is that, for example, Timbers is in process of building a restaurant on arguably easements that were granted to the some of the associations to get to the beach that have been in effect for decades. A lawsuit has now been filed to enjoin that building because it's being built on

easements that would block other associations and their members from getting to the beach. So there are ways in which you can file lawsuits to maintain your rights. If South Seas members are interested in that, they can speak to the Becker Law Firm or their associations, or they can speak to Michael Bell, who's the attorney for the timeshares, and figure out if there's another approach? *Question:* Do you have any information about the new injunction filed by the timeshare associations against chambers in regards to our use and rights to the Sunset Beach easement? *Mintz:* I understand is that there was a declaratory judgment action filed in court to maintain the rights to get to the beach through that easement that's been in effect for decades. I don't think any injunctive relief has been issued at this point, but if I hear anything, I will make sure that it goes out in one of our legal updates. *Suarez:* Michael Bell has requested an emergency hearing, so he's waiting to hear back from the court on a date or emergency hearing.

Discussion.

*Suarez:* What we're facing is a developer who... take this Sunset Beach easement, this is the length they will go to achieve what they're looking for. And if we don't stop this, our island will change. I don't say that being hyperbolic whatsoever. If people don't understand what's happening with this easement, a lot of people could be confused. Basically, in a nutshell, quickly, is there's a 30-foot-wide Gulf of Mexico access easement for the owners that reside in Section 22 of Township 45; basically that section of township 45 is anything north of the beach homes. If you cut the resort in half and go north, those residents have access to this 30-foot easement. This Sunset Beach easement has been in place for since 1960, and basically Timbers went to Lee County and our county fire district and Chief Pawul and told them that easement will be used for emergency access and for their buffering, basically taking away the rights of those owners that it's been places for 64 years. That right consists of pedestrian and vehicular access for parking on the first 235 feet of the 435-foot-long easement. The latter 200 feet is for pedestrian traffic only. The county granted a development order given that Timbers would be able to use that easement as buffering and also emergency access. This is the mindset of this group and how important it is that we continue to build on this legal fund and fight them, because they will destroy our island. *Pawul:* Just to clarify: The resort didn't just come to us on this project for access. That easement has always been emergency access for us. Pretty much forever, we've always had access through there as emergency access to get all the way to Lands End on the path that was improved back there. So it wasn't brought up specifically. In review of the restaurant project we did mandate that access stayed open and could not be used for parking for the restaurant. Discussion. *Mintz:* That's what's so sad about this whole thing. In 2008 South Seas came to us with a plan and said, "Listen, we want to knock down these buildings and create these other ones. We'll stay within the 912." In 2014 they said, "We're going to knock down the employee housing, but we're going to build it some condos, and we're going to replace it, but we'll stay within the 912." They came to the panel, they came to the community. We had FGA come in, discuss what the implications were, and we worked together as a community. There was never an attempt to increase density or increase heights beyond what was permitted. But even if someone came in and wanted to do that, we would discuss it, we would talk about it, we would think about it. Maybe there would be room for compromise, but that never happened. It was just this idea that you can bypass the Captiva community, you could ignore the Captiva Community Panel, and you could ignore the CCA. You could ignore everybody who lives on Captiva and just make a deal with the county, make changes without us knowing about it, hold hearings in the middle of June and hope that nobody would notice. That's just not the way to do business, and the reason we're stuck with all this litigation and hard feelings and disagreements is because there was never any effort to work with the community and discuss what was going to happen. What's amazing about it is that we had just worked with the county amending our ordinances. Remember, we changed our noise ordinance, a light ordinance, parking ordinances, we were working closely with the county, and they didn't tell us about these other changes that were taking place in our land development code that were far more significant, even though we were talking to them at the same time about other ordinances and other changes. The county may end up with egg on its face as a result of this, and it's not necessary. We still work with the county, which we'll talk about in a little while, with stormwater. We're still part of unincorporated Lee County, and we still have to work with them on

other things. It's difficult, but we're going to do it. *Suarez*: One of the issues I'm often asked by the owners inside the resort is why don't you sit down and have a conversation with Timbers and try to make a compromise. And I tell people all the time, it's because they don't want to. They have no desire to sit down and hear the concerns of the community in general, whatsoever, and it is unfortunate, but they will tell everybody that they're willing to give this information. They have these monthly webinars where they only tell the owners what they want to tell them. They won't answer any hard questions. They won't talk about their parking deviations or their buffering deviations, trying to limit all buffers between buildings like the buildings that I'm the president association of. They just won't answer those questions, and it's very unfortunate.

**FEMA** – *Mintz*: Everybody received a letter from FEMA saying our flood insurance rates may go up, we may be placed on probation, etc., because the county did not enforce the FEMA rules after Hurricane Ian. My understanding is that the county is working very closely with FEMA to resolve these differences. On Aug. 5, County Manager David Harner put out a letter also to everyone in the county, saying they are working closely with the FEMA to resolve these issues, that we're not going to lose our 25% discount on our flood insurance, and hopefully this will get resolved. FEMA was required to put out its letter, and the county put out its letter in response. I believe that the our federal legislators have been involved in this, the senators and congressmen, and hopefully FEMA and the county will resolve whatever post-Ian differences they had about what could be rebuilt and what couldn't be rebuilt, etc., and that this issue will go away. It also could lead to the whole problem of subsidized flood insurance for the county as a whole, but that's not going to happen. They will fix this one way or another. After the hurricane, you had two different conflicting things going on. On the one hand, the county wanted to help people as much as possible to be able to rebuild. FEMA, on the other hand, because they subsidize flood insurance, doesn't want anybody to rebuild in a way that would make them susceptible to flooding and future hurricanes. So you can see that there was goodwill on both possibly on both sides. On the one hand, the county wants to help people rebuild. On the other hand, FEMA wants to save taxpayer money by making sure they don't rebuild in vulnerable areas. Discussion.

**Sunset Captiva crosswalk** – *Mintz*: The county Department of Transportation came out pursuant to a request made by Sunset Captiva to put a crosswalk between the Sunset Captiva homes and the condos across the street on Captiva Drive. They came out, and looked at the feasibility of doing that, and they reported back that, given the fact that you had driveways on both sides, they could not put a crosswalk in where there's a driveway. And if they moved it to either side of the driveway, they wouldn't have enough room for cars to stop in between the Andy Rosse stop sign and that area. And because they have to make any crosswalk accessible for whatever disabilities that people have, whether they have wheelchairs, etc., it was impossible to put a crosswalk there. So what they did as an alternative is put in caution signs that say pedestrian crossing for the next 1,000 feet.

**Wastewater** – *Brown*: Recap of steps to this point up to the discussion of a partnership with Sanibel. So when one adds in all of these additional costs that we didn't know, the cost of the project is moving from something like an average cost of \$30,000 per property owner to something approaching \$100,000 per property owner. In my feeling it is almost impossible to build a legitimate case that it's worth spending \$100,000 per property to have a central sewer system on Captiva, particularly if we're going to ask Captiva residents to pay for that \$100,000. We did find a grant opportunity that would have paid for a significant portion of those Sanibel incremental costs. I believe it was a HUD grant, and our grant request was denied in the last few weeks because our project is not far enough along to being shovel-ready. The problem we have with getting this project shovel-ready is that Sanibel is really preoccupied with all of their post-hurricane issues, and we're having a great deal of difficulty getting them to focus on this project when they have so many other projects that have resulted from the hurricane. Also, Sanibel is reluctant to move forward, because many people feel that if we have a central sewer system that will be contrary to our density arguments we're trying to make against South Seas, that if we have a central sewer system that



will be encouraging, you know, more density and make it more likely that South Seas might be successful. So the net of this is we're at a standstill now in moving this project forward, at least until we get the South Seas issue resolved. Secondly, we're going to have to find significant amounts of outside funding to make this project economically feasible to Captiva property owners. So at this point, I think I'm stuck for the next several months until we get some kind of resolution of the South Seas issue. I'd like to open it up to the panel if, if they see any other opportunities or things we might be doing, or do you all agree with me that the best course of action is to wait until the South Seas density issue is resolved and Sanibel is in a better position to take on a major project like this, when they can give it the amount of attention it deserves.

*Jensen:* I agree with you. I think when the sewer projects came up in the past, they usually got shot down because people thought it was going to encourage development. So now that we had these codes in place, we thought that's not going to happen, right? Because, you can't build higher, you can't build more units. But we see that changed with the South Seas amendments. So I think we should wait to see what happens with South Seas. *Brown:* There are possible other actions, like maybe it turns out that it's better off trying to do something with the FGUA plant, because we have all these costs involved with Sanibel that we didn't anticipate. So maybe once the South Seas matter is resolved we take another look at the FGUA plant is where we process our wastewater. *Lapi:* That plant is not owned by South Seas. Is that correct? *Brown:* Yes, it's owned by FGUA. *Lapi:* Is there any kind of easement or agreement where South Sea agrees to use the effluent from it? *Brown:* I don't think so. In my earlier investigations of the possibility of FGUA, the problems were twofold. First, it's in an environmentally sensitive area, even though Kimley-Horn feels those sustainability issues can probably be resolved. *Lapi:* I agree with John. The pause button is the way to go. With the knowledge that you gained through all your research, that'll be helpful – but I think you're right, until South Seas gets resolved, we don't want to go there. *Suarez:* I think they do have an agreement, though, to spread effluent on the golf course. That's why they needed to do out the golf course so quickly, because as the resort was opening up and rental units were taking reservations, so they needed to be able to spread the effluent that was being produced. *Discussion:* *Lapi:* If you starting looking ta hooking up all of Captiva to that plant, they'd need some means to dispose of effluent – a deep-injection well or something. *Brown:* They were looking at that even before we started exploring options for the island.

*Mintz:* It's complicated. The FGUA organization took over that plant basically because it was a distressed plant. They take over distressed plants, they don't usually run them or rehabilitate them. Right now Lee County is actually looking into taking over FGUA plants. Commissioner Ruane was never happy with the way FGUA ran that plant, because Sanibel had to bail them out by taking partially treated effluent from them. If you wanted to make that plant sustainable, you'd have to get the Corps of Engineers to agree, the water management district and FDEP, you'd have to add a deep-injection well, figure out how to deal with the effluent. So it's a very complicated issue. Sooner or later, we're going to have to be on central sewer, in my view, because rising groundwater is making septic systems almost unacceptable. That is going to be our long-term solution, which is why the panel has to stay involved because once this other situation is resolved we're going to have to figure this issue out and work with the county and FGUA or Sanibel to figure it out.

**Stormwater** – *Brown:* Recap of need to address stormwater and flooding in Village area. Working with Kimley-Horn to develop a stormwater management system for the Village, the county committed to approving \$250,000 for that plan. Ran into a snag that Kimley-Horn could not be firm that did the work because they developed the scope for the project. *Mintz:* Explanation of Village flooding issues and stormwater problems. County moved project to federal funding source (HUD CDBG-DR), which blocked K-H from participating, so project went out to bid. Bids are due Sept. 16 at 2:30 p.m., have spoken to at least firms interested in bidding on the project. Unfortunate that K-H put in that work but was unable to proceed with the project. We as a panel will have to work with whomever is awarded this project, so we

need to be prepared to take that on. *Brown*: Linda Laird originally volunteered to run this effort, but she has plans to move off Captiva and will no longer be on the panel when that happens. So we will need some panel members to work on this project; David and I will help, but we need someone to step up. Discussion. *Youngquist*: I can offer some help, but it's out of my area of expertise. May not have the ability to take the lead.

**Iguanas** – *Jensen*: Discussion of how the trapper was being paid... by the county or by the panel. *Gooderham*: Check were coming from the panel, he'd send me a bill and I'd send him a check.

**Nominating Committee** – *Brown*: Status of panel composition for next year: I am termed out and will be off the panel next year. I will help with the stormwater project if asked, and wastewater as a committee head. The CCA has appointed Mike Bennett to replace me, very dedicated to the community and a wonderful addition. Ken Gill has advised me that although he is eligible for another term he does not want to continue due to time conflicts, so CPOA will have to come up with a replacement for him. The third person is David Mintz, who is eligible for another term. He is a panel appointee, so we formed a Nominating Committee headed by John Jensen to address that appointment. *Jensen*: The committee was me, Bob Adler and Bobby Rando, we nominated David Mintz for another term, and I believe he accepted for another term. Discussion about Laird's status. *Brown*: She has said she wants to stay on the panel until she leaves Captiva, if she ever does.

**Development** – *Brady*: Greatly relieved about the iguanas. We will host a "Welcome Back" cruise on Tuesday, Dec. 3, and we will be sending out a "Save The Date" note soon. *Brown*: Hopefully all panel members can work the cruise into their schedules. *Brady*: We will be sending our annual request for donations after Thanksgiving. The cruise is not a huge money-maker, but the donation drive is. *Brown*: We discussed developing a brief history of the panel at the last meeting. *Brady*: Recap of discussion at last meeting. Had a conversation with Rene Miville, who gave me a detailed history of CPOA, Then talked with Ken Gooderham about developing a narrative of the panel's history for the website, to give the details and in the interests of transparency on how the panel formed and has evolved. A draft has made the rounds, has been edited and will be posted on the panel website. We can send you a draft if you want to look at it. *Brown*: Forward a copy to all the other panel members and see if they respond. *Lapi*: Somebody could write an article for the papers to let the public know that this has been posted. *Mintz*: Also ask if people are interested in serving on the panel. *Brady*: Something we might want to think about doing annually, an update on the panel. *Brown*: A review of panel work and accomplishments.

**Other**: *Jensen*: Are any of the stormwater firms local? *Mintz*: Don't think so, but they may have a state presence. There may be others who did not contact me. *Brown*: Bids will go to Mintz? *Mintz*: No, goes to county, some combination of county procurement and HUD? Discussion.

The meeting adjourned at 11 a.m.

Video link: <https://youtu.be/efX06lMhO54>

-- Ken Gooderham