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Via email to all Lee County Commissioners:

June 14, 2023

Commissioner Kevin Ruane
Commissioner Cecil L. Pendergrass
Commissioner Ray Sandelli
Commissioner Brian Hamman
Commissioner Mike Greenwell
Lee County Board of County Commissioners
2120 Main Street
Fort Myers, FL 33901

Re: Public Hearing LDC Amendments for Building Height, Resiliency, South Seas

Dear Commissioners:

I am writing on behalf of the Captiva Community Panel, the Sanibel-Captiva Conservation Foundation (SCCF), the Captiva Civic Association, the Ding Darling Wildlife Society and 12 Condominium and Homeowner Associations located within the South Seas Island Resort.

We believe that holding a public hearing on June 20, 2023 to consider approval of *LDC Amendments for Building Height, Resiliency, South Seas* would violate Policy 23.4.1 of the Lee Plan. That policy, regarding the Captiva Community Plan, requires that “the owner or agent applying for an amendment to Captiva community-specific provisions in the Lee Plan or Land Development Code must conduct one public informational meeting.” Failing to first require public input during a noticed public informational meeting held in the community plan boundary of Captiva, where the property owner or agent provides a general overview of the amendment for interested citizens, would violate Policy 23.4.1.

We strongly disagree with the notion that a public informational meeting is not required because the amendments relating to the South Seas Island Resort (SSIR) are county-initiated, and not initiated by SSIR. The public record of the June 6 BOCC meeting demonstrates that the proposed amendments relating to SSIR were initiated by a private party, SSIR, and that the County is initiating the amendments at the request of SSIR.

During the June 6 BOCC meeting, Deputy County Attorney Jacob advised the BOCC that (i) SSIR owners want to rezone the property and desire changes in the LDC to do this, (ii) that SSIR desires to no longer be bound by the Administrative Interpretation and now seeks to initiate a zoning change, (iii) that SSIR wants to be excepted from the density limitations of the code and request a higher density allowance, (iv) that SSIR seeks an exemption from certain regulations, and (v) that SSIR seeks a density exception that is unavailable to other Captiva landowners. The statements of SSIR engineer Carl Barraco and SSIR counsel Neale Montgomery during the June 6 meeting provide additional evidence that the amendments were SSIR-initiated.

We believe it is a violation of Policy 23.4.1 for the County to allow any landowner or applicant to circumvent the public informational meeting requirement by asking the County to propose a code change on behalf of that private party. The reality is that this is a privately pursued change that would single out an individual owner for a beneficial regulatory change (and we might add, a potential burden to the public). It violates Policy 23.4.1 and would set a horrible precedent to allow those who seek these important changes to the rules to avoid this necessary public forum requirement simply by asking the County to re-label the application as its own. Legal doctrine holds that it is the nature of a governmental action, not its label, that matters. This is not some County wide change the Commission or staff has identified as a county need. It is a private applicant - driven proposal for which Policy 23.4.1 requires a prior public informational meeting.

This violation is not simply a technical one. A failure to comply with the requirements of Policy 23.4.1 would prevent the Captiva community the public participation and input to which it is entitled under the Lee Plan. It also prevents SSIR and the County from getting the public input needed from the community to develop an acceptable proposal before it was finalized and presented for public hearing. Sidestepping the requirement for this public meeting would prevent the proposed amendments from getting the public scrutiny intended by the Lee Plan. As a result, the amendments presented on June 6 and scheduled for public hearing on June 20 were confusing, incomplete and highly controversial.

Furthermore, a public informational meeting would have early on revealed the troubling fact that the proposed amendments create exceptions from the Captiva Code and provides a path to greater building heights and density for a single resort on Captiva. Currently, the Captiva Code places the same density and building height limitations on SSIR as every other residential property and resort on Captiva. The proposed amendments grant a special exception to one property owner, raising serious questions of fairness and equity. Moreover, the amendments that will now permit changes in density and building height regulations on SSIR cannot be fairly understood or evaluated while SSIR's new planned development is still hidden from public view. This distorted process has rightly generated a great deal of controversy, community anxiety and unnecessary difficulty for the BOCC.

Beyond the procedural irregularity, on their merit, the notion of increased building height and density on Captiva, while this community continues to recover from the tragedy of Hurricane Ian, is, in our view, troubling and reckless.

Finally, the County staff guidance provided to the BOCC to amend Chapter 33 of the Captiva Code and Chapter 23 of the Lee Plan appears to be incorrect. The staff report for the

CPA2023-00004 Transmittal Hearing states that the increase to building heights on Captiva is needed to accommodate increases of minimum flood elevations over time. This mistaken staff conclusion may have resulted from the error in Section 33-1627(a)(2) - Height restrictions on Captiva Island - that was provided to the BOCC in the draft amendment and is the document subject to the public hearing on June 20, 2023. The key provision provided to the BOCC starts with “Twenty-eight feet above grade” when the actual provision of the Code provides “Twenty-eight feet above the lowest horizontal member at or below the lawful base flood elevation” The mistaken insertion of the word “grade” arguably changes the meaning of the provision and suggests to the BOCC (and to staff drafting the report) that the current Captiva building height regulations do not accommodate for increases of minimum flood elevations. The mistake in this provision is not a small one; it is at the heart of the issue.

Compliance with Policy 23.4.1 of the Lee Plan requires that the June 20 public hearing be cancelled and that SSIR be directed to comply with if it wishes to amend the Captiva-specific provisions of the Land Development Code. Such an action will avoid a fundamental procedural flaw and lead to an end result that is better for all stakeholders involved.

Respectfully submitted,



Richard Grosso

cc: James Evans, SCCF
Jay Brown, Captiva Community Panel
Emily Hess Ankersen, Captiva Civic Association
Birgie Miller, Ding Darling Wildlife Society
Ken Suarez, President Council of Associations (South Seas)
Thomas Sadlowski, Bayside Villas Condominium Association, Inc.
Les Stewart, Beach Villas III Condominium Association, Inc.
Richard Foster, Sunset Beach Villas Condominium Association, Inc.
Robert Locker, Gulf Beach Villas Condominium Association, Inc.
Jeff Hogenmiller, Beach Cottages Condominium Association, Inc.
Buck Blessing, Beach Homes Condominium Association, Inc.
Susan Cellmer, Beach Homesites Homeowners Association, Inc.
Lawrence Sung, Sandrift Property Owners Association, Inc.
Bill Finley, Marina Villas Condominium Association, Inc.
Jonathan Appelbaum, Seabreeze Condominium Association, Inc.
Edwin Jorden, Lands End Condominium Association, Inc.
Ken Suarez, Tennis Villas Condominium Association, Inc.
Richard Wesch, County Attorney, Lee County Attorney’s Office
Michael Jacob, Deputy County Attorney, Lee County Attorney’s Office