

**CPA2010-15
CAPTIVA ISLAND
COMMUNITY PLAN HEIGHT
RESTRICTION RE-EVALUATION
BOCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Lee County Board of County Commissioners
Sponsored Amendment and Staff Analysis

BoCC Adoption Document

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September 28, 2011

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2010-15**

Text Amendment

Map Amendment

This Document Contains the Following Reviews	
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
<input checked="" type="checkbox"/>	Staff Response to Review Agencies' Comments
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: May 13, 2011

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. SPONSOR/APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

CAPTIVA COMMUNITY PLANNING PANEL
REPRESENTED BY FORGEY PLANNING SERVICES

2. REQUEST:

Amend Policy 13.1.2 to clarify the building and structure height regulations on Captiva Island.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION: Staff recommends that the Board of County Commissioners *adopt* the proposed amendment to Policy 13.1.2 as shown below. Proposed text has been depicted in strikethrough and underline format as it relates to the existing provisions of the Lee Plan.

POLICY 13.1.2: ~~No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower.~~ Due to the nature of a barrier island, the height of buildings and structures is dependent on conditions such as elevation of the site above sea level and mandatory flood elevation requirements. In response to these conditions, the height of buildings and structures may not exceed the least restrictive of the two following options:

- a. 35 feet above the average grade of the lot in question or 42 feet above mean sea level measured to the peak of the roof, whichever is lower; or
- b. 28 feet above the lowest horizontal member at or below the lawful base flood elevation measured to the mean level between eaves and ridge in the case of gable, hip, and gambrel roofs. If lowest horizontal member is set above the base flood elevation the 28 foot measurement will be measured starting from the base flood elevation.

Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may extend an additional four (4) feet above the roof peak or eight (8) feet above the mean height level in the case of gable, hip, and gambrel roofs, whichever is lower, so long as these elements equal 20% or less of the total roof area.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Board of County Commissioners initiated this plan amendment on September 28, 2010.
- The Federal Emergency Management Agency revised the Flood Insurance Rate Map Flood Zones in 2006 and 2008.
- The current height limitations on Captiva Island were adopted by the Board of County Commissioners on January 9th, 2003 as part of the Captiva Island community planning effort.
- The proposed amendment to Policy 13.1.2 will not affect the allowable density on Captiva Island or increase the overall population in the coastal high-hazard area.
- The limited increase in height will be limited, and will not alter the character of Captiva Island.
- The Captiva Community Panel held approximately 2 dozen public meetings to gather input about the possibility of raising the maximum allowable height from June 2009 through April 2011.

- On April 26, 2011, Lee County staff made a presentation to residents on Captiva Island, highlighting the affects of the proposed plan amendment within the different FEMA Flood Zones.
- On April 26, 2011, the Captiva Community Panel passed a motion modifying the requested amendment to allow the least restrictive option to apply.

C. BACKGROUND INFORMATION

The current height restrictions on Captiva Island were enacted by Lee County Ordinance 03-01, with the adoption of the Captiva Island Community Plan. The height restrictions currently limit building heights to 42 feet above "mean sea level" or 35 feet above "average grade of the lot." The community proposed the height limitation at the time to limit taller structures that would alter the island's character. County staff supported the language because "the proposed Policy may help control density...the desire to control density in Captiva Island is justifiable, given the likely road constraints during a possible evacuation." Prior to the adoption of the Captiva Island Community Plan, height on a property was limited by the zoning district or future land use category as is typical in Lee County.

The current standard is clear and enforceable. However, like all standards, the current standard has consequences depending on a lots location in various Federal Emergency Management Agency (FEMA) Flood Zones. For homes right along the coast FEMA regulations require higher base flood elevations (BFE). The BFE is defined by FEMA as follows:

"The computed elevation to which floodwater is anticipated to rise during the base flood. Base Flood Elevations (BFEs) are shown on Flood Insurance Rate Maps (FIRMs) and on the flood profiles.

The BFE is the regulatory requirement for the elevation or floodproofing of structures. The relationship between the BFE and a structure's elevation determines the flood insurance premium."

The height restrictions are currently based on either the height above mean sea level, or average grade of the lot. The BFE is not currently considered. The coastal areas of Lee County have some of the highest BFE requirements. The interaction between the BFE requirement of FEMA and the Captiva Island height restriction results in different building and structure limitations across the island. In order to comply with the current height limitation, areas with the higher BFE requirements are forced to squeeze their distance between floors or between second floors and ceilings. This results in ceiling heights, usually on second floors, being cramped and/or architectural elements such as roof lines that are flattened or eliminated.

Recent revisions in the BFE for Captiva Island, approved by FEMA in 2006 and partially revised in 2008, highlighted that even minor changes in BFE requirements could have a serious impact on structures trying to comply with island's long-standing building height restrictions.

This issue is particularly acute for the lots seaward of Florida's 1991 Coastal Construction Control Line (CCCL). The CCCL is a jurisdictional line based on the estimated damages resulting from a 100-year storm event to an island's shoreline and the adjacent upland properties and structures. Construction seaward of the 1991 CCCL requires approvals from the Florida Department of Environmental Protection (FDEP). This approval includes setting a mandated elevation for a structure's lowest horizontal structural member to minimize damage from waves associated with the 100-year storm event. Typically, FDEP sets these clearance elevations at 2-3 feet higher than the BFE requirements of FEMA.

Accordingly, the Captiva Community Panel sought to investigate its options as part of its planned update of the Captiva provisions of the Lee County Land Development Code (LDC). The current building height language was already in place in both the LDC and the Lee Plan. Inclusion of the height restriction in the Lee Plan showed the commitment of the island's residents to maintain low-rise structures without the option for variance.

At a series of approximately 2 dozen meetings and workshops open to the public, the Captiva Community Panel offered background on building heights and the impact of various BFE changes. The Captiva Community Panel also provided a number of drafts of new language to provoke discussion and refinement through public input and interaction. Lee County staff worked with the residents of Captiva Island as well as members of the Panel and the Panel's consultants to finalize the proposed amendment to the Lee Plan.

Additional background information is provided in the Comprehensive Plan Amendment Application materials provided by the Captiva Community Panel, see Attachment 1.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

To address the concern of island residents while not significantly affecting the character of Captiva Island, the Captiva Community Panel is proposing an amendment to Policy 13.1.2 that will keep intact the existing regulation and also include a regulation directed at the parcels that are most impacted by the base flood elevation requirements of FEMA. Most residents on Captiva Island are within one of five different flood zones, with base flood elevations ranging from ground elevation to 16.5 feet above mean sea level (16.5 NAVD). The range of base flood elevations and difference in the average grade of the lots creates numerous scenarios with different construction requirements placed on the parcels. The proposed amendment, which provides two options, will allow homeowners to choose the option that works best for their particular parcel. The proposed amendment to Policy 13.1.2 is shown below:

POLICY 13.1.2: ~~No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower.~~ Due to the nature of a barrier island, the height of buildings and structures is dependent on conditions such as elevation of the site above sea level and FEMA minimum flood elevation requirements. In response to these conditions, the height of buildings and structures may not exceed the least restrictive of the two following options:

- a) 35 feet above the average grade of the lot in question or 42 feet above mean sea level measured to the peak of the roof, whichever is lower; or
- b) 28 feet above the lowest horizontal member at or below the lawful base flood elevation measured to the mean level between eaves and ridge in the case of gable, hip, and gambrel roofs. If lowest horizontal member is set above the base flood elevation the 28 foot measurement will be measured starting from the base flood elevation.

Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may be permitted to exceed the maximum height allowable by this policy so long as these elements equal 20% or less of the total roof area.

The “new” option in the proposed amendment, option b, would in essence tie the maximum building heights to governmental regulations, such as the base flood elevation requirement of FEMA, that mandate how high above NAVD habitable structures must be elevated. There are several BFE zones that affect buildable lots on Captiva. These zones include the VE-13 on the seaward-most lots on the Gulf to AE-12, -11, -10 and -9 further inland, and the X Zone on the Pine Island Sound side of the island. In the areas designated in the X Zone BFE requirements were eliminated in the last FEMA revision, meaning there is no federally

mandated base flood elevation which would allow structures on those areas to be built at grade. It is proposed that the “old” option should remain in Policy 13.1.2 because the new option would place greater restriction on properties within the X Zone. The Lee County presentation that was provided to residents on Captiva Island, highlighting the affects of the proposed plan amendment within the different FEMA Flood Zones is attached as Attachment 2 to this Staff Report.

The 2006 and 2008 FEMA elevation changes caused BFE heights in some areas to be higher, and some areas to be lower or without BFE requirements altogether as in the X Zone. This highlighted that Captiva Island’s uniform building height regulation was not uniformly fair to island property owners, as the livable space between the BFE and maximum height varied depending of the location of the lot.

The proposed amendment to Policy 13.1.2 will not affect the allowable density on Captiva Island or increase the overall population in the coastal high-hazard area. The proposed amendment to Policy 13.1.2 will allow property owners on Captiva Island to continue to build homes using the current regulation, or to build the mean level between the roof eaves and ridge in the case of gable, hip, and gambrel roofs up to 28 feet above the base flood elevation. This preserves the existing property rights of owners on Captiva Island and will provide additional flexibility to residents who are impacted by the interaction between the FEMA base flood elevation and the Lee County maximum height requirements.

The proposed language in Policy 13.1.2 will allow structures to be built with architectural embellishments that the current height restrictions in the Lee Plan do not specifically permit, although allowed currently in the Land Development Code. The proposed amendment will also accommodate current building trends for higher ceiling heights in the main living areas, but will not remove all height restrictions. In most cases the maximum height will only change by two or three feet. The maximum change will occur in the V Zone, which has a base flood elevation of 16.5 NAVD, where the difference in permitted height could be more depending on construction type and grade elevation. The limited increase in height will not alter the character of the Captiva Island in any significant way.

The ability to develop multi-story buildings will remain as restricted as it is under current guidelines. This would allow all property owners the ability to build a home with the same livable space regardless of the FEMA flood zone the building lot is contained within. This would also be true for structures built prior to the current regulations should property owner decide (or be forced) to redevelopment under these proposed new restrictions. The proposed language will be more accommodating for the lots in the FEMA V or A Zones.

The Lee County Building Official has reviewed the proposed amendment and finds the language to be clear and enforceable.

CONSISTENCY WITH THE LEE PLAN

Planning staff finds that the proposed amendment to Policy 13.1.2 of the Lee Plan is internally consistent with the remainder of the Plan, and the original intent of the existing Policy.

CONSISTENCY WITH FLORIDA STATE STATUTES

The proposed amendment is consistent with the Florida Statutes.

B. STAFF RECOMMENDATION

County staff recommends that the Board of County Commissioners **transmit** the proposed amendment to Policy 13.1.2 to amend the height regulations on Captiva Island.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: May 23, 2011

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief summary of the proposed amendment and staff recommendation. One LPA member asked if this amendment would address the issues identified by the community. Staff responded that the amendment would allow flexibility for those property owners in the FEMA designated V Zones. The Community Panel's consultant provided that this issue has been discussed for about 2 years on the island. One of the panels goal was to keep the height to a maximum of 3 floors while allowing slope roofs and architectural roof features. The consultant provided that the amendment is the result of many public meetings and workshops.

Two members of the public addressed the LPA. Both members of the public saw no need for the amendment. One member of the public read a letter from a local land use attorney that stated the Captiva Civic Association (CCA) is opposed to the amendment. One LPA member asked a member of the public if the objection was because the modification would allow taller structures. The member of the public responded affirmatively, that the allowance of taller structures is the issue. Staff clarified that the additional height is minor in nature. One member of the LPA questioned staff as to their involvement with the Civic Association. Staff responded that they had met with the Civic Association as well as hearing their concerns in various public meetings and workshops and heard from citizens on both side of this issue.

One LPA member concurred with the CCA position. One LPA member noted the link with the revision to the FEMA flood zone requirements.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

- 1. RECOMMENDATION:** The Local Planning Agency recommends that the Board of County Commissioners *transmit* the proposed amendment.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by the staff report.

C. VOTE:

NOEL ANDRESS	<u>NAY</u>
CINDY BUTLER	<u>ADSTAIN</u>
JIM GREEN	<u>NAY</u>
MITCH HUTCHCRAFT	<u>AYE</u>
RONALD INGE	<u>AYE</u>
JACK MEEKER	<u>AYE</u>
CAROL E. NEWCOM-JONES	<u>ABSENT</u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: June 13th, 2011

A. BOARD REVIEW:

Staff provided a brief summary of the proposed amendment and staff recommendation. Staff stated that the amendment would allow minor flexibility in height for those property owners in the FEMA designated V Zones and seaward of the FDEP Coastal Construction Control Line. One Board member asked for clarification from the Lee County Building Official concerning how the building code affects construction on Captiva Island. The Building Official stated that the issue is the minimum flood elevation requirements, the most significant of which is the FDEP coastal construction control line included as part of the 2002 Florida building code. The Community Panel's consultant also provided a brief presentation stating that the Captiva Community Panel supported the staff and LPA recommendations and that this issue has been discussed for about 2 years on the island. The consultant identified two goals the Captiva Community Panel had for the proposed amendment. One of the panel's goals was to assure flexibility in build-back in case of a major storm event. The second goal is for aesthetic purposes.

Four members of the public addressed the Board of County Commissioners concerning the proposed amendment. All four members of the public saw no need for the amendment and did not find that there was consensus for the change on Captiva Island. One member stated that the character of Captiva Island is at issue here and the increased flexibility would allow additional height that would alter the character of Captiva Island.

The Board of County Commissioners asked for clarification from staff about the current build-back requirements. Staff clarified that the square feet of the structure intensity is permitted to be built back but that the structure height is not necessarily guaranteed for build-back.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

The Board of County Commissioners voted to *transmit* the proposed amendment. The Board of County Commissioners also provided direction to staff to work with the community to further review the proposed language concerning the exception for architectural and mechanical features and the areas where the proposed amendment should apply.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The Board of County Commissioners accepted the findings of fact advanced by staff and the Local Planning Agency.

C. VOTE:

BRIAN BIGELOW	NAY
TAMMARA HALL	AYE
RAY JUDAH	AYE
FRANK MANN	NAY
JOHN MANNING	AYE

**PART V – REVIEWING AGENCIES’ OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS**

DATE OF DCA COMMENTS: July 29th, 2011

A. COMMENTS FROM REVIEWING AGENCIES:

No reviewing agency provided comments concerning the proposed amendment that need to be addressed.

B. RESPONSE TO BOARD DIRECTION AT TRANSMITTAL HEARING:

At the Transmittal Hearing the Board of County Commissioners provided direction to staff to work with the community. The primary issues that needed addressed were language concerning the exception for architectural and mechanical features and the areas where the proposed amendment should apply.

In response to Board of County Commissioner direction, Lee County staff hosted a Captiva Height workshop at the Captiva Yacht Club on Wednesday, August 17. This meeting was attended by representatives of the Captiva Island Planning Panel and the Captiva Civic Association. Staff presented the following language at the Workshop:

POLICY 13.1.2: ~~No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower.~~ Due to the nature of a barrier island, the height of buildings and structures is dependent on conditions such as elevation of the site above sea level and FEMA minimum mandatory flood elevation requirements. In response to these conditions, the height of buildings and structures may not exceed the least restrictive of the two following options:

- a. 35 feet above the average grade of the lot in question or 42 feet above mean sea level measured to the peak of the roof, whichever is lower; or
- b. 28 feet above the lowest horizontal member at or below the lawful base flood elevation measured to the mean level between eaves and ridge in the case of gable, hip, and gambrel roofs. If lowest horizontal member is set above the base flood elevation the 28 foot measurement will be measured starting from the base flood elevation.

Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may be permitted to exceed the maximum height allowable by this policy extend an additional four (4) feet above the roof peak or eight (8) feet above the mean height level in the case of gable, hip, and gambrel roofs, whichever is lower, so long as these elements equal 20% or less of the total roof area.

The revisions recommended by staff addressed the two concerns expressed by the Board of County Commissioners. The first revision removes the specific reference to the “FEMA minimum” flood elevation and replaces the specific reference with “mandatory”

flood elevation requirements. This change addresses the Board concern about where the proposed amendment will apply by recognizing that there are minimum elevation requirements that are not controlled by FEMA. The Florida Department of Environmental Protection's (FDEP) Coastal Construction Control Line (CCCL) also requires that structures be elevated, sometimes to a higher elevation than required by FEMA.

The second revision clarifies and limits an exception to the height limitation for appurtenances for ornamental and mechanical or structural functions. The proposed revision will limit this exception to an additional four (4) feet above the roof peak or eight (8) feet above the mean height of the roof in the case of gable, hip, and gambrel roofs, whichever is lower.

A representative for the Captiva Civic Association met with staff to discuss a possible compromise to the proposed language. The proposal discussed at the meeting would have set the maximum height at the peak of the roof as opposed to the mean roof line, and only allowed the increased height seaward of the CCCL. The Lee County Building Official calculated that the proposal discussed at the meeting would allow an additional 2.5 feet above what is currently permitted seaward of the CCCL. This would not provide the flexibility that would be allowed by the language that was transmitted and is recommended by staff for adoption. Staff does not recommend incorporating the ideas discussed by the Captiva Civic Association into the proposed amendment.

C. STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners adopt the proposed amendment as identified above.

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: September 28th, 2011

A. BOARD REVIEW:

Staff made a brief presentation to the Board of County Commissioners highlighting the changes proposed to the amendment that included the limitation to the height exception for mechanical and architectural features four feet above the roof peak or eight feet above the mean height of sloped roofs. Staff also reported to the Board of County Commissioners that an additional workshop was held on Captiva Island to gain additional public input. Staff recommended approval of the proposed amendment. A representative of the applicant also gave a brief presentation to the Board of County Commissioners stating that every effort had been made to get public input concerning the amendment.

Eight members of the public addressed the Board of County Commissioners concerning the proposed Lee Plan Amendment. There were four that were in favor of the proposed amendment, stating that additional height permitted by the amended policy would result in fewer structures with flat roofs. The members of the public stated that the additional height would be limited so that it would not change the character of the island. There were also four members of the public that were not in favor of the proposed amendment. The concerns expressed by those opposed to the amendment were that the majority of the island did not desire the change and that there was no need for the proposed amendment. The members of the public who were opposed were also concerned that the additional height allowed by the proposed amendment would alter the character of Captiva Island, and that the newer structures would overshadow the existing homes in the “village” area, where the lot sizes are relatively small.

The Commissioners asked staff questions concerning the proposed amendment, such as the ability to build a third floor and the safety of flat roofs during storm events. Following staff clarifications the Board of County Commissioners voted to adopt the proposed amendment.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

The Board voted to *adopt* the proposed amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The Board accepted the findings of fact as advanced by staff and the Local Planning Agency.

C. VOTE:

BRIAN BIGELOW	NAY
TAMMARA HALL	AYE
RAY JUDAH	AYE
FRANK MANN	AYE
JOHN MANNING	AYE