
LAW OFFICE OF MATTHEW D. UHLE, LLC

MATTHEW D. UHLE

1617 HENDRY STREET, SUITE 411

FORT MYERS, FLORIDA 33901

(239) 226-4500

MATTHEWUHLE@AOL.COM

May 18, 2011

Mr. Mitch Hutchcraft, Chairman
Lee County Local Planning Agency
P.O. Box 398
Fort Myers, FL 33902

Re: Captiva Height Amendment/CPA2010-15

Dear Chairman Hutchcraft:

My client, the Captiva Civic Association, is an organization of approximately 400 Captiva registered voters and property owners (this represents roughly 25% of all island property owners) that was created in 1936 for the purpose of preserving the quality of life on Captiva Island. Please be advised that the CCA opposes the Captiva height amendment for the following historical, factual, and policy reasons:

1. Prior to 1998, the Captiva height requirement in the LDC read as follows:
No building and/or structure shall be erected or altered so that the height exceeds two (2) stories above the lowest habitable floor; however a building may not be erected or altered so that the peak of the roof exceeds the height of 28 feet above the lowest habitable floor.
2. The County amended the LDC in 1998 at the request of the CCA to change the standard to 35 feet above existing grade and 42 feet above sea level. The new requirement was based on, and is similar to, the height requirements for Pine Island and Gasparilla Island.
3. Around 2000, many Captiva residents, in response to unwelcome development proposals for property on the island, began pursuing incorporation as a solution to this perceived problem. An organization called the Captiva Property Owners Association (CPOA) was subsequently created to resist the incorporation effort. The CPOA consisted, both then and now, primarily of business owners. It proposed to create a community plan as a substitute for incorporation.
4. In 2002, the CPOA presented its proposal for a community plan, under the auspices of a panel under its control, to the Lee County Board of County Commissioners. The BOCC approved a contract for the expenditure of County funds for the creation of a community plan in response to this initiative. The BOCC responded to the CCA's concerns regarding the makeup of the panel by including a provision in the contract which authorized the CCA to appoint two members to the panel. This language was not included in subsequent contracts between the County and the CPOA, and the CPOA has also increased the number of members of the panel to ten to further dilute the CCA's

representation. As a practical matter, the CCA currently has very little influence on the decisions of the panel, which only represents a small faction of the community.

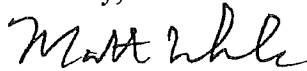
5. The CCA found the CPOA's initial iteration of the community plan to be inadequate, and proposed its own version of the plan. The two were ultimately merged, with the final product receiving the support of both parties. During this process, the CCA conducted a survey of property owners and registered voters on the island and found that no less than 86 percent of the respondents (approximately 30 percent of the recipients of the survey) supported the concept of including the LDC height limit in the community plan. There was, therefore, a demonstrated consensus in favor of the LDC standard in 2003.
6. The panel has been working on LDC amendments to implement the community plan for several years. In response to the request of some CPOA members for taller buildings, the panel decided to promote a revised height limit. This could not be accomplished without a Lee Plan amendment, so the panel persuaded the staff to put a re-evaluation of the height limit on its 2010-2011 list of amendments.
7. The panel created a height limit proposal which mirrored the pre-1998 28 foot standard, with three significant differences: first, the height was tied to minimum flood elevations, not the lowest habitable floor, which was stricter than the previous standard; second, the height would be measured to the midpoint of particular kinds of roofs and not to the peak of the roof, which is more liberal than the previous standard; and third, the original limitation to two stories has been eliminated.
8. The panel then conducted an online web survey of property owners and registered voters. Owners of multiple parcels thereby received multiple votes; for example, we understand that one panel member voted nine times, while another voted six times. The outcome of this process was that 51 percent of the responses were in favor of the panel's proposal, while 49 percent opposed it. Similarly, when a second survey was conducted on the height issue that was geographically limited to the "Village" area, more than half of the 82 votes that were consistent with the panel's position were cast by six people, using multiple votes. The appropriateness of the panel's vote counting methodology is, therefore, highly suspect.
9. The panel's proposed language has been revised significantly in light of staff's concerns, so it is impossible to tell if the results of the survey (even ignoring its flaws) are valid today.
10. It is the CCA's position that:
 - (a) The Captiva height limit is primarily an aesthetic issue that should be resolved in a manner consistent with the desires of the residents of the island. The County's interest in the issue is limited to making certain that the restriction is practically enforceable;
 - (b) The current height limit is easily understood, is consistent with the limits applied to other, similar islands, and has been enforced without undue difficulty since 1998;
 - (c) There was a clearly demonstrated consensus in favor of the current height limit in 2002, as shown by the results of the survey;
 - (d) The results of the flawed 2010 survey do not reflect the existence of any such community consensus in favor of height increases;
 - (e) Due to changes in the language that have occurred since the 2010 survey, it is impossible to tell if the proposed language commands the support of a majority of

Captivans, even if it is accepted that 51 percent approval constitutes a community “consensus;”

- (f) There is no compelling policy reason or change in circumstances that provides adequate justification for the revision to the 2003 language. The adjustments to the FEMA maps were not significant on Captiva, and there is no history of prohibiting buildback after Hurricane Charley. To the extent that buildback might be viewed as an issue in the future, it can easily be addressed by amendments to the County’s Post-Disaster Ordinance without changing the requirements for new development on the island; and
- (g) The mere fact that the panel supports the amendment does not establish the existence of any kind of community consensus, since the panel is not an elected body and does not otherwise represent a majority of residents of the island.

The CCA consequently requests you to vote against the height increases proposed in this amendment.

Sincerely,



Matthew D. Uhle

Cc: Paul Garvey