

## Jenkins-Owen, Sharon

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**From:** Jenkins-Owen, Sharon  
**Sent:** Wednesday, September 23, 2015 3:19 PM  
**To:** 'kengooderham@comcast.net'; Max Forgey (max@zoningtechnologies.com)  
**Cc:** Lee Plan Review Distribution List  
**Subject:** Captiva plan amendment  
**Attachments:** Combined Staff comments on proposed amendments 092315.docx

Good afternoon Ken and Max,

Attached are staff's comments regarding the proposed Captiva Community Plan amendments.

I understand that the Contract Task 2 item regarding the Economic and Demographic Data update will be provided with your response addressing the attached comments.

Please feel free to contact me if you have any questions.

Thanks,  
Sharon

**Proposed Captiva Community Plan Goal, Objectives, and Policies**  
**Staff Comments**  
**September 23, 2015**

The following are staff's comments regarding the Captiva Island proposed Lee Plan amendment that was electronically submitted to the County on August 18, 2015. The document below is the Community's strike-out and underlined version of the proposed amendments (in black). Staff's comments have been added to the associated policy under the policy or provided in blue within the text as appropriate.

**Captiva Community Plan Goal, Objectives, and Policies**

This version shows the change between existing Lee Plan language related to Captiva Island and proposed language which is shown in ~~strikethrough~~ and underline format.

**GOAL 13: CAPTIVA.** ~~To maintain and enhance the historic pattern of development on Captiva, consisting of unobtrusive, low-density residential use in an environment characterized by diverse and healthy native vegetation, clean offshore water with diverse and healthy marine life, and limited commercial development and traffic. The purpose of this goal is to provide policies to confirm and reinforce that historic pattern. (Added by Ordinance No. 03-01).~~

CAPTIVA COMMUNITY VISION. Captiva Island is a coastal barrier island with a low-density residential lifestyle (**Low density is not a lifestyle; please consider changing it to development pattern**) and economic base, augmented by commercial activities which serve residents and tourists. **who are drawn toward a tranquil, unhurried experience in a natural setting.** As an island community, Captiva's natural **environment resources**-- beaches, wildlife and flora -- is its most important attraction, and Captiva residents regard the protection of its mangrove fringe, water quality, and dark skies as matters of paramount importance. Toward this end, its residents, owners and the business community must work together, with Lee County and other regulatory bodies to sustain the fragile and limited resources of the island.

Through its efforts and support, the Captiva community has shown that it values the following:

- A lifestyle which is mindful of the land and sea environments surrounding the island; commercial sustainability to allow residents access to basic needs without undue travel and encouraging services and facilities that support a community of individuals living together.
- The island's history as an informal resort destination.
- The island's future as a community that maintains high aesthetic and environmental standards.
- The sense of the island as a coastal community, balancing diversity of coastal community architecture, landscape, and tourism-oriented commercial activities with a
- respect for the privacy and property rights of the island's permanent and seasonal residents.
- Levels of services that reflect and acknowledge the balance between tourism, non-resident property ownership, seasonal occupancy and year-round residency.
- Recognition of its fragility as a coastal high hazard area.

- ~~To achieve these ends, Captivans must work together and with Lee County for:~~
- ~~Environmental preservation, including enhanced water quality, encouraging the use of native vegetation, and maintaining the mangrove fringe protecting the island's shores, while limiting noise, light, water, and air pollution.~~
- ~~Shoreline and natural resources management to preserve habitat, recreation and sustainability.~~
- ~~Accommodating mixed uses of traditionally commercial properties to maintain a business community sufficient to support the immediate needs of island residents and visitors.~~
- ~~Development and appearance standards that acknowledge the unique natural setting and hazards, which include overwash, erosion, invasive vegetation, and outdated lot sizes.~~
- ~~Creative responses to the economic pressure which encourages lot-by-lot redevelopment that maximizes building footprints and envelopes to the detriment of community appearance.~~
- ~~Upgrading public infrastructure and enhancing the appearance and functionality of the island's rare public spaces.~~
- ~~Building standards that limit density, restrict height, maintain lot sizes and reduce the intensity of uses through land use and zoning practices.~~
- ~~The future of the island will be secured and enhanced as Captivans (present and future) work together to reach consensus on island needs and goals, and work in unison with Lee County, the Captiva Erosion Prevention District, the state and its agencies, and nongovernmental organizations serving the island to ensure those goals are realized.~~

The text is too lengthy. This belongs in the community plan as backup to support the amendments or incorporated as policies if not already.

**OBJECTIVE 13.1:** *Protection of community resources.* Develop and maintain incentive and/or regulatory programs to ensure the long-term protection and enhancement of wetland habitats, water quality, natural upland habitats, community facilities, existing land use patterns, infrastructure capacity, and historically significant features on Captiva Island. (Added by Ordinance No. 03-01)

**POLICY 13.1.1:** *Subdivision of existing RSC-2 parcels.* No subdivisions of parcels that were zoned RSC-2 (Captiva Estate) on January 1, 2002, regardless of their zoning at any time thereafter, may be permitted unless all of the resulting lots comply with all of the minimum lot size and dimensional requirements in the RSC-2 district. (Added by Ordinance No. 03-01)

This provision is confusing. If a property is rezoned to RPD, is the minimum lot size the one found under RSC-2; or, does this size limitation only apply to RSC-2 district lots? Are variances or deviations for lot size permitted?

**POLICY 13.1.2:** *Building height.* 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 less 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.

If the Village, Gold Coast, Tween Waters or South Seas neighborhoods (**the location of the Village, Gold Coast, Tween Waters, South Seas have not been defined**) wish to establish building height standards to fit the unique characteristics of those neighborhoods, such standards can be set forth in the Land Development Code, as long as building heights in these neighborhoods cannot exceed those allowed by this policy and any such modifications are supported by a clear majority of the affected property owners.

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. (Added by Ordinance No. 03-01, Amended by Ordinance No. 11-19)

**This provision is internally inconsistent. Please delete “If the Village, Gold Coast, Tween Waters or South Seas neighborhoods wish to establish building height standards to fit the unique characteristics of those neighborhoods, such standards can be set forth in the Land Development Code, as long as building heights in these neighborhoods cannot exceed those allowed by this policy and any such modifications are supported by a clear majority of the affected property owners”**

**These are maximum heights. If a property owner in one of these communities wants to build lower, they are free to do so without additional regulations. Also note, development approvals will not be subject to receiving a clear majority of the affected property owners.**

~~POLICY 13.1.3: Lee County will encourage and support efforts by Captivans to strengthen existing vegetation ordinances to establish a landscaping code for Captiva Island that will require all new development, including single family residences, to implement minimum landscaping requirements intended to preserve, promote, and enhance the existing native vegetation and tree canopy on the Island. New landscaping requirements will focus on areas including, but not limited to, buffering and separation between new structures and Captiva Drive, buffering between adjoining properties, preservation and enhancement of native plant communities including, but not limited to, beach dune community, tropical hardwood hammock, coastal scrub and mangroves. (Added by Ordinance No. 03-04) [Intentionally left blank.]~~

**Do not leave 13.1.3 blank. Renumber the following policies.**

**POLICY 13.1.4: *Beach and shore preservation.*** Lee County will continue to support the effort of the Captiva Erosion Prevention District, a beach and shore preservation authority under provisions of Chapter 161, Florida Statutes, to preserve, protect and maintain Captiva's beaches using environmentally responsible methods. (Added by Ordinance No. 03-01)

**POLICY 13.1.5:** Quality of adjacent waters. Lee County will encourage and support efforts by the Captiva community to investigate and recommend measures that will improve water quality in Pine Island Sound and the Gulf of Mexico adjacent to Captiva Island. Such measures may include regulation of septic systems and sewers only if sized to limit development to that permitted by this plan. (Added by Ordinance No. 03-01)

Please delete this policy.

The first sentence of this provision is unnecessary. County Staff, the Board of County Commissioners and residents may investigate and recommend measures to improve water quality at anytime. The second sentence appears to create a regulation that precludes the size of septic systems and sewers. However, it's not clear what the second sentence is intended to accomplish. As written, it appears to limit the size of septic systems and sewers to a size that limits development. Septic systems are designed to accommodate the proposed development. Central sewer systems are designed to accommodate future growth in addition to current demand. You wouldn't create a sewer system that is built to limit development.

**POLICY 13.1.6:** County information clearinghouse. The Captiva Island Community will establish a document clearing house on Captiva, where copies of selected zoning submittal documents, staff reports, Hearing Examiner recommendations and resolutions will be provided for public inspection. The County's failure to provide or to timely provide documents to the document clearing house, or failure of the document clearing house to receive documents, will not constitute a defect in notice or bar a public hearing from occurring as scheduled. (Added by Ordinance No. 03-01)

**POLICY 13.1.7:** Public informational session for land use changes. The owner or agent for any rezoning, variance, or special exception request within the Captiva Planning Community must conduct one public informational session on Captiva where the agent will provide a general overview of the project for any interested citizens. The Captiva Community Panel will receive a minimum of two weeks' notice, along with a packet of materials for consideration, prior to its regularly scheduled meeting in order to assure that sufficient notice is provided to the public. The applicant may request a meeting at a different time and place than the Panel's regularly scheduled meeting, but the same notice and packet requirements shall apply.

Lee County encourages zoning staff to participate in such public workshops. This meeting must be conducted before the application can be found sufficient. The applicant is fully responsible for providing the meeting space and providing security measures as needed. Subsequent to this meeting, the applicant must provide county staff with a meeting summary document that contains the following information: the date, time, and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting; and a proposal for how the applicant will respond to any issues that were raised. (Added by Ordinance No. 03-01)

The County has maintained that public information meetings are not required to be presented to any particular group. This provision should be kept consistent with other community planning meeting requirements.

**POLICY 13.1.8:** Public participation. Lee County will encourage and support the solicitation of the

widest possible range of public input for any future Lee Plan amendments that directly apply to Captiva or the policies adopted for Captiva under this section of the Lee Plan. To that end, Lee County is committed to provide continuing assistance to the Captiva Community as part of the Evaluation and Appraisal Report process as well as ongoing technical expertise related to the functioning of the adopted policies. (Added by Ordinance No. 03-01).

**POLICY 13.1.9:** Consistent siting of structures and historical character. Lee County will encourage and support efforts by Captivans to develop and submit ordinances that will encourage the siting and building of structures consistent with the historical character of the island. (Added by Ordinance No. 03-01).

**POLICY 13.1.10:** Density increases prohibited. New requests for residential re-zoning that would increase density on said property above current zoning will not be permitted. (Added by Ordinance No. 05-19) No further residential lot splits or lot line adjustments will be permitted in the Village (Village is not defined) if they would result in increases in density or intensity of use.

**Please delete "No further residential lot splits or lot line adjustments will be permitted in the Village if they would result in increases in density or intensity of use"**

**The second sentence is unnecessary in light of the first sentence. In addition, the regulation in the second sentence goes too far. For example, if someone owned 10 acres, you would preclude a lot split, even if the density remained consistent with the Lee Plan. This would effectively further reduce their property rights and create a Bert Harris cause of action or an inverse condemnation lawsuit. Also, the sentence would preclude a property owner from acquiring multiple lots and combining them to create a parcel with lower density. This should not be prohibited.**

**POLICY 13.1.11:** Criteria for variance approval. Variances should be limited to unique, specifically authorized circumstances and will be allowed only in situations where unnecessary hardship would otherwise occur; i.e., where all of the following are met:

- Where the hardship cannot be corrected by other means allowed in the ordinances,
- Where strict compliance of the regulations allows the property owner no reasonable use of the property,
- Where the variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties located on the same street and within the same Future Land Use category, unless denial of the variance would allow no reasonable use of the property,
- Where the applicant did not cause the need for the variance, and
- Where the variance is not contrary to the spirit of the ordinance.

(Added by Ordinance No. 05-19)

**Do these criteria apply to deviations? Also consider deleting the provision in its entirety or refer to the requirements of LDC 34-145.**

**POLICY 13.1.12:** ~~Mangroves on Captiva Island will be protected to the greatest extent possible.~~ (Added by Ordinance No. 05-19) [Policy intentionally left blank.]

**Do not leave the Policy blank. Renumber the subsequent policies.**

~~POLICY 13.1.13: Within two years of the adoption of this policy Indigenous or Native trees will be replanted and maintained along Captiva Drive between Blind Pass and the north end of Captiva Drive. The replanting of trees within the Captiva Drive right-of-way is needed to replace the loss of tree canopy following Hurricane Charley. A comprehensive Captiva Drive landscape plan that addresses specific native tree species, tree placement, public safety, access and utilities to facilitate the restoration of tree canopy will be created. The comprehensive Captiva Drive landscape plan will identify funding sources for implementing the plan and will designate the entity or entities responsible for long term maintenance. (Added by Ordinance No. 05-19) [Policy intentionally left blank.]~~

**Do not leave the Policy blank. Renumber the subsequent policies.**

**POLICY 13.1.14: Telecommunications tower.** Notwithstanding anything pertaining to Captiva Community Plan Height Restriction Policy 13.1.2, due to the unique degree of public interest attached to it regarding emergency communications services, the existing telecommunications tower facility located in the maintenance and engineering area of South Seas Resort may be replaced in such area to a height not to exceed 170 feet, provided that said new facility makes space available to the county for adequate emergency communications service coverage for Captiva, as well as co-location within the capabilities of that tower for all wireless carriers desirous of serving Captiva. Destruction of mangroves will not be allowed in order to build or operate such a tower or related tower facilities. The telecommunication tower will be a monopole, unless public safety is compromised. (Added by Ordinance No. 05-19)

**POLICY 13.1.15: Dark skies.** The location of Captiva Island provides a unique view of the dark night sky that should be preserved whenever possible and without sacrificing public safety. Lee County will rely whenever possible upon public education and voluntary efforts to maintain dark skies on the island. If those efforts prove ineffective, Lee County will support the Captiva community's efforts to craft and codify land development regulations applicable to exterior residential and commercial lighting as a means to limit light pollution, light trespass and its potential detrimental effects on wildlife to the greatest extent possible.

**Please delete "If those efforts prove ineffective". There's no measure of effectiveness to determine when the application of this language would be required. Revise as suggested (see below) and consider adoption of regulations similar to Upper Captiva. Alternatively, delete the entire provision and wait. Once the public education and voluntary efforts are no longer effective, then regulations can be recommended.**

**POLICY 13.1.15: Dark skies.** The location of Captiva Island provides a unique view of the dark night sky that should be preserved whenever possible and without sacrificing public safety. **Lee County will rely whenever possible upon public education and voluntary efforts to maintain dark skies on the island. If those efforts prove ineffective, Lee County will support the Captiva community's efforts to craft and** codify land development regulations applicable to exterior residential and commercial lighting as a means to limit light pollution, light trespass and its potential detrimental effects on wildlife to the greatest extent possible.

**POLICY 13.1.16: Estuarine and wetland resources.** County regulations, policies, and discretionary

actions affecting Captiva Island will permit no further degradation of estuarine and wetland resources and will promote the preservation of native upland vegetation and wildlife habitat.

**Please describe how Policy 13.1.16 will be implemented to promote the preservation of native upland vegetation and wildlife habitat on single family lots?**

**POLICY 13.1.17: *Blind Pass.*** Lee County will support through advocacy at the federal, state, and regional level, efforts ~~by the Captiva community~~ to maintain Blind Pass as an open pass due to its benefits to the near-shore environment, marine ecology and water quality. Lee County will support efforts by the Captiva Erosion Prevention District to work with the City of Sanibel, county staff and state and federal agencies toward Blind Pass maintenance. (**“Toward Blind Pass maintenance” is not clear. See below**)

**POLICY 13.1.17 does not reflect the current roles or responsibilities related to Blind Pass. Please consider the following revisions:**

**POLICY 13.1.17: *Blind Pass.*** Lee County will support through advocacy at the federal, state, and regional and local level, efforts ~~by the Captiva community~~ to maintain Blind Pass as an open pass due to its benefits to the near-shore environment, marine ecology and water quality. Lee County will support efforts ~~by the~~ cooperate with the Captiva Erosion Prevention District ~~to work with the City of Sanibel, county staff and state and federal agencies toward Blind Pass maintenance. and the City of Sanibel to study Blind Pass and define long term maintenance alternatives.~~ (Delete Second Sentence based on CEPD position)

**The formal response from CEPD also recognizes the need to change the proposed language.**

**POLICY 13.1.18: *Underground utilities.*** Underground utilities will continue to be considered if supported by the affected property owners.

**This provision is not recommended.**

**As written, it is unclear who decides the amount of support needed, and who are the “affected property owners.” Also note that utility projects are not subject to a popular vote by “affected property owners.”**

**Instead, consider exploring the opportunity to establish a MSBU/MSTU if desired by the majority of the community.**

**OBJECTIVE 13.2: MIXED USE DEVELOPMENT.** The Captiva community seeks to preserve the island’s unique neighborhood-style commercial activities and to provide islanders with reasonable access to basic goods and services without having to leave the island. Toward that end, Lee County will encourage mixed use developments in specific and appropriate areas of the Captiva planning community through its regulations, policies and discretionary actions. (Added by Ordinance No. 07-09)

**POLICY 13.2.1:** Mixed use developments as defined in the Lee Plan, and mixed use developments containing both commercial and residential uses within the same structure, are strongly encouraged on Captiva properties that were zoned C-1 or CT as of Jan. 1, 2006. Such properties may be



allowed one or more residential units in addition to commercial uses at a density consistent with the Lee Plan. Such developments will only be permitted if approved as a Commercial Planned Development or Mixed Use Planned Development. Added by Ordinance No. 07-09)

**OBJECTIVE 13.3: TRANSPORTATION.** The Captiva Community will continue its efforts to limit automotive traffic on the island.

Public transportation infrastructure (i.e. roads, bridges, parking/transit facilities) should adequately support current and future development needs for all modes of transportation in accord with the approved Captiva Community Plan. Infrastructure should allow for safe and efficient emergency response, and timely evacuation during times of emergency.

Please consider the following revisions:

**OBJECTIVE 13.3: TRANSPORTATION.** The Captiva Community will continue its efforts to limit automotive traffic reduce automobile dependence on the Captiva Island.

**POLICY 13.3.1: Alternate transportation.** On Captiva, Lee County will encourage pedestrian- and bicycle-friendly development and trolley service that does not increase automobile dependence or increased parking. The County will support steps to make the island transportation network safer for pedestrians, golf carts, and bicyclists whenever possible.

The first sentence is confusing and needs to be revised. By default, development that includes pedestrian, bicycle, and trolley service would reduce “automobile dependence or increased parking,” however, all development increases the need for parking and automobile dependence to get to and from the development. Consider the revisions suggested below. Also consider Land Development Code amendments to incentivize property owners to provide these types of facilities.

**POLICY 13.3.1: Alternate transportation.** On Captiva, Lee County will encourage new development to incorporate pedestrian- and bicycle-friendly development facilities. Reduced parking requirements may be approved when development facilitates the use of sidewalks, bicycle paths, and trolley service that does not increase automobile dependence or increased parking. The County will support steps to make the island transportation network safer for pedestrians, golf carts, and bicyclists whenever possible.

**OBJECTIVE 13.4: TOURISM:** Tourism is vital to the economic health of Captiva, but must not overwhelm the infrastructure, amenities or limited services on the island and should maintain the historic sense of harmony between permanent residents, seasonal residents and shorter-term visitors.

Please consider the following revisions:

**OBJECTIVE 13.4: TOURISM:** Tourism is vital to the economic health of Captiva, The Captiva Island Community will work with Lee County Visitor and Convention Bureau to balance the benefits of tourism with the limited services and infrastructure available on the island. but must not overwhelm the infrastructure, amenities or limited services on the island and should maintain the historic sense of harmony

between permanent residents, seasonal residents and shorter-term visitors.

POLICY 13.4.1: Short-term rental of residential units. Residential units on Captiva Island (excluding those in South Seas Island Resort) may not be rented for a period of less than seven (7) consecutive days.

Please delete this policy. Due to the inability to enforce and property rights issues, this provision is not recommended.

OBJECTIVE 13.5: NATIVE VEGETATION AND TREE CANOPY: Lee County will encourage and support efforts by Captivans to enforce and strengthen existing vegetation ordinances intended to preserve, promote, and enhance the existing native vegetation and tree canopy on the Island. The creation of a diverse and sustainable plant community on the island is encouraged. County regulations, policies, and discretionary actions affecting Captiva Island will permit no further degradation of estuarine and wetland resources and no unnecessary loss of native upland vegetation and wildlife habitat.

POLICY 13.5.1: Trees along Captiva Drive. Indigenous or native trees and other non-invasive species should be planted and maintained along Captiva Drive between Blind Pass and the north end of Captiva Drive to facilitate the restoration of the historic tree canopy and vegetation buffers. The use of indigenous or native trees and vegetation requiring minimal irrigation once established is encouraged on all properties on Captiva Island.

Are these trees within the right-of-way or on single family lots? Will the trees conflict with existing utilities? What non-invasive species would be appropriate to install and will only need minimal irrigation. Also, as written this policy is not enforceable since it is only "encouraged." Regulatory language should be considered in the Land Development Code.

Please consider the following revisions and adding to the Land Development Code:

POLICY 13.5.1: ~~Trees along Captiva Drive. Indigenous or native trees.~~ Indigenous or native trees and other non-invasive species **should must** be planted and maintained **in all required plantings and buffers, along Captiva Drive between Blind Pass and the north end of Captiva Drive to facilitate the restoration of the historic tree canopy and vegetation buffers. The use of indigenous or native trees and vegetation requiring minimal irrigation once established is encouraged on all properties on Captiva Island.**

POLICY 13.5.2: Invasive vegetation and nuisance pests. The Captiva community and Lee County will cooperate to stop the proliferation of invasive exotic vegetation and nuisance pests as identified by the Exotic Pest Plant Council of Florida or its successor bodies. Incentives, disincentives and regulations may be developed to accomplish this policy.

Please delete the reference to the Exotic Pest Plant Council of Florida. The County is prohibited by state statute from enforcing this list.

POLICY 13.5.3: Heritage trees. Heritage trees, as defined in the Land Development Code, will be preserved or when possible, may be relocated on-site. If a heritage tree must be removed from the site then a replacement tree with a minimum 20-foot height must be planted within an appropriate

open space.

**Please delete this policy. This is a development regulation that needs to be moved to the Land Development Code.**

**POLICY 13.5.4: *New land developments.* New construction on Captiva Island should be designed to maintain or be compatible with the native and indigenous natural environment, especially when significant tree canopies or unique natural habitats exist on the parcel.**

**Please consider the revisions below and adding to the Land Development Code.**

**POLICY 13.5.4: *New land developments.* New construction ~~on Captiva Island should must~~ be designed to ~~maintain retain or be compatible with~~ the native and indigenous natural ~~environment, vegetation.~~ especially when significant tree canopies or unique natural habitats exist on the parcel.**

**Please describe how this policy applies to single family homes.  
Please define “significant tree canopies” and “unique natural habitats”**

**POLICY 13.5.5: *Mangroves.* Mangroves on Captiva Island will be protected to the greatest extent possible.**

**Does this Policy apply to single family dwelling units? If so, how will this be implemented? The Mangrove Act of Florida prohibits the county from regulating mangroves; therefore referencing a setback to protect mangroves and establishing a setback in the Land Development Code may be more appropriate. Please consider the following revision:**

**POLICY 13.5.5: *Mangroves.* A setback will be required from the mangrove fringe along Captiva Island to protect the shoreline and structures.**