



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING

and

COMPREHENSIVE PLAN AMENDMENT HEARING

AGENDA

Wednesday, December 6, 2023

9:30AM

DCI2022-00061
Z-23-033

ORIOLE ALICO WEST, MPD

CPA2023-00007

MCGREGOR MIXED USE OVERLAY – ADOPTION

CPA2022-00019

CARY+DUKE+POVIA MAP AMENDMENT - TRANSMITTAL

This case has been continued to January 17, 2024

CPA2023-00004

BUILDING HEIGHT AND RESILIENCY – ADOPTION

**REVISED NOTICE OF PROPOSED AMENDMENT TO THE
LEE COUNTY COMPREHENSIVE LAND USE PLAN
(ADOPTION HEARING)**

The Lee County Board of County Commissioners will hold a public hearing to consider the adoption of proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan). This hearing was initially published to occur on November 8, 2023. The new hearing date will be held on Wednesday, December 6, 2023. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers, 2120 Main Street in Downtown Fort Myers.

The Board proposes to adopt an ordinance amending the Lee Plan as follows:

CPA2023-00004 Building Height and Resiliency Amend Lee Plan Goal 23 removing reference to one and two story building heights and Policy 23.2.3 to remove reference to building height regulations being established as of March 23, 2018.

Copies of this Notice and the proposed ordinance are available for inspection or copying during regular business hours at the Minutes Office of the Clerk of Courts of Lee County. The Minutes Office is located in the Courthouse Administration Building, 2115 Second Street, Fort Myers, Florida. This meeting is open to the public. Interested parties may appear at the meeting and be heard with respect to the proposed plan amendment. A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

Lee County will not discriminate against individuals on the basis of race, color, national origin, sex, age, disability, religion, income or family status. To request language interpretation, document translation or an ADA-qualified reasonable modification at no charge to the requestor, contact Joan LaGuardia, (239) 839-6038, Florida Relay Service 711, at least five business days in advance. El Condado de Lee brindará servicios de traducción sin cargo a personas con el idioma limitado del inglés.

CPA2023-00004

Building Height and Resiliency

SUMMARY SHEET
CPA2023-00004, BUILDING HEIGHT AND RESILIENCY
ADOPTION HEARING

BOARD DIRECTION:

The Board of County Commissioners (BoCC) directed staff to identify regulatory constraints when seeking redevelopment to accommodate increased resiliency to future natural disasters at the January 17, 2023, regular Board meeting. Based on this direction, staff analyzed the entire Lee Plan to identify restrictions that may create problems with rebuilding and found two provisions that met the criteria.

SUMMARY:

The proposed amendments are to Amend Goal 23 and Policy 23.2.3 to remove language that prevents redevelopment of existing structures to base flood elevation while maintaining previous usable space.

PUBLIC COMMENTS:

10 members of the public provided comments concerning the proposed amendments. Members of the public who spoke against the amendments were concerned the amendments could lead to an increase in density and intensity and development that is out of character with existing development in the Captiva Community Plan area. Members speaking in favor of the proposed amendments stated the amendments were needed to provide certainty in order to rebuild following Hurricane Ian and changes to the FEMA flood maps for Lee County that became effective in November of 2022.

TRANSMITTAL HEARING:

A motion was made to transmit CPA2023-00004 as recommended by staff and the LPA. The motion passed 4 to 1.

MIKE GREENWELL	<u>AYE</u>
BRIAN HAMMAN	<u>AYE</u>
CECIL L. PENDERGRASS	<u>AYE</u>
KEVIN RUANE	<u>NAY</u>
RAY SANDELLI	<u>AYE</u>

STATE REVIEW:

Lee County received responses from FloridaCommerce, the Florida Department of Environmental Protection (DEP), the Florida Department of Transportation (FDOT), the Florida Fish and Wildlife Conservation Commission (FWC), and the South Department of Agriculture and Consumer Services (FDACS). As discussed in the staff report there was one comment from FloridaCommerce and a letter of opposition from the City of Sanibel.

STAFF RECOMENDATION:

Staff recommends that the Board of County Commissioners **adopt** the amendments to the Lee Plan as transmitted and as provided in Attachment 1.

LEE COUNTY ORDINANCE NO. 23-XX
Building Height and Resiliency
(CPA2023-00004)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE “LEE PLAN,” ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT PERTAINING TO THE BUILDING HEIGHT AND RESILIENCY (CPA2023-00004) APPROVED DURING A PUBLIC HEARING; PROVIDING FOR PURPOSE, INTENT, AND SHORT TITLE; AMENDMENTS TO ADOPTED MAP AND TEXT; LEGAL EFFECT OF “THE LEE PLAN”; PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan (“Lee Plan”) and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners (“Board”); and,

WHEREAS, the Board, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code AC-13-6 provide an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency (“LPA”) held a public hearing on the proposed amendment in accordance with Florida Statutes and the Lee County Administrative Code on May 22, 2023; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on September 6, 2023. At that hearing, the Board approved a motion to send, and did later send, proposed amendment pertaining to Building Height and Resiliency (CPA2023-00004) to the reviewing agencies set forth in Section 163.3184(1)(c), F.S. for review and comment; and,

WHEREAS, at the September 6, 2023 meeting, the Board announced its intention to hold a public hearing after the receipt of the reviewing agencies’ written comments; and,

WHEREAS, on December 6, 2023 the Board held a public hearing and adopted the proposed amendment to the Lee Plan set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt map and text amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the "Lee Plan." **This amending ordinance may be referred to as the "Building Height and Resiliency Ordinance (CPA2023-00004)."**

SECTION TWO: ADOPTION OF COMPREHENSIVE PLAN AMENDMENT

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, which amends Lee Plan Goal 23 and Policy 23.2.3 to remove requirements that restrict the ability to redevelop or rebuild structures in a way that reduces potential flooding threats by accommodating required minimum flood elevations. This amendment is known as Building Height and Resiliency (CPA2023-00004).

The corresponding Staff Reports and Analysis, along with all attachments and application submittals for this amendment are adopted as "Support Documentation" for the Lee Plan. Proposed amendments adopted by this Ordinance are attached as Exhibit A.

SECTION THREE: LEGAL EFFECT OF THE "LEE PLAN"

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

SECTION FOUR: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION FIVE: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

SECTION SIX: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the

powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SEVEN: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION EIGHT: EFFECTIVE DATE

The plan amendments adopted herein are not effective until 31 days after the State Land Planning Agency notifies the County that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the State Land Planning Agency or the Administrative Commission enters a final order determining the adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status.

THE FOREGOING ORDINANCE was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____. The vote was as follows:

Kevin Ruane	_____
Cecil L Pendergrass	_____
Raymond Sandelli	_____
Brian Hamman	_____
Mike Greenwell	_____

DONE AND ADOPTED this ____ day of _____ 2023.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Brian Hamman, Chair

DATE: _____

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

Exhibit A (Adopted by BOCC December 6, 2023):
Adopted revisions to Lee Plan Text

CAO Draft 10/30/2023 11:37:41 AM

EXHIBIT A

Note: Text depicted with underscore represents additions to the Lee Plan. Strike-through text represents deletions from the Lee Plan.

PROPOSED TEXT AMENDMENTS

FUTURE LAND USE ELEMENT

GOAL 23: CAPTIVA COMMUNITY PLAN. The goal of the Captiva Community Plan is to protect the coastal barrier island community's natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history. This goal will be achieved through environmental protections and land use regulations that preserve shoreline and natural habitats, enhance water quality, encourage the use of native vegetation, maintain the mangrove fringe, limit noise, light, water, and air pollution, create mixed use development of traditionally commercial properties, and enforce development standards that maintain ~~one and two story building heights~~ and the historic low-density residential development pattern of Captiva.

Objective 23 through Policy 23.2.2 unchanged.

POLICY 23.2.3: Building Heights. Maintain building height regulations ~~established as of March 23, 2018~~ that account for barrier island conditions, such as mandatory flood elevation and mean-high sea level, for measuring height of buildings and structures.

STAFF REPORT FOR CPA2023-00004: BUILDING HEIGHT AND RESILIENCY



County Initiated Text Amendments to the Lee Plan

Amendment Type:

County Initiated
Direction: 01/17/2023

Recommendation:

Adopt

Amended Element(s):

Future Land Use

Hearing Dates:

LPA: 05/22/23
BoCC #1: 09/06/23
BoCC #2: 11/08/23

Attachment(s):

1: Text Amendments

PURPOSE

Amend Lee Plan Goal 23 and Policy 23.2.3 to remove requirements that restrict the ability to redevelop or rebuild structures in a way that reduces potential flooding threats by accommodating required minimum flood elevations.

SUMMARY

Staff reviewed the Lee Plan and identified two provisions, Goal 23 and Policy 23.2.3, which do not accommodate increased height due to increases of minimum flood elevations over time. The intent of the amendments is to accommodate increased resiliency to flooding, while minimizing changes to height that would be inconsistent with the character of the surrounding community.

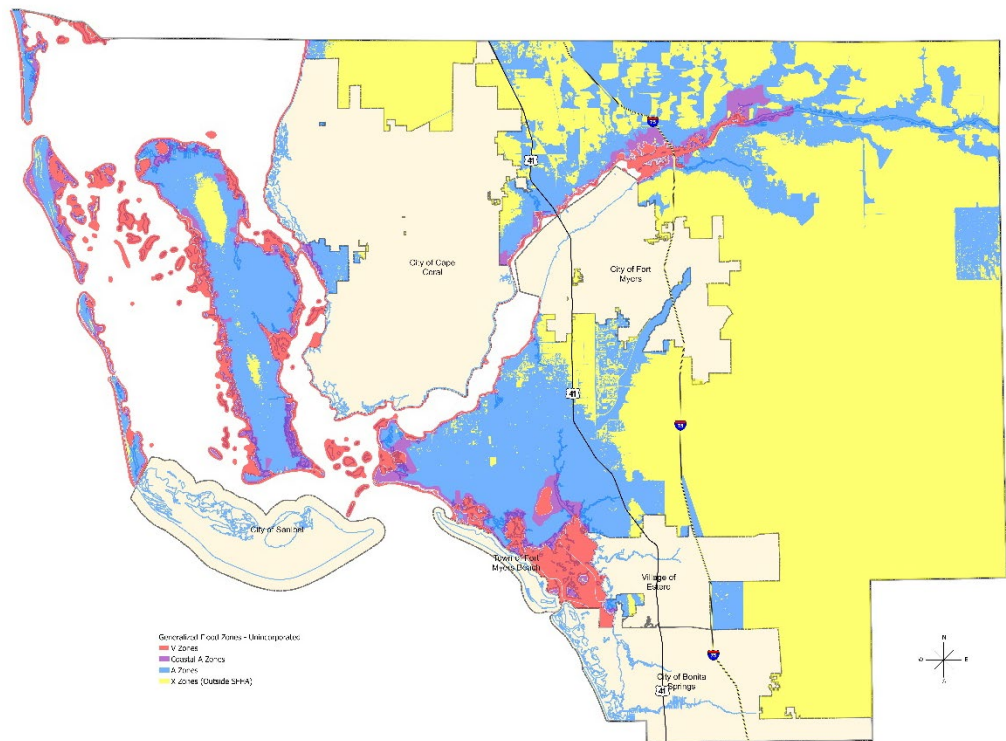


Figure 1: Generalized Flood Zones - Unincorporated Lee County

RECOMMENDATION

Staff recommends that the Board of County Commissioners **adopt** the amendments based on the analysis and findings provided in this staff report.

PART 1
STAFF DISCUSSION AND ANALYSIS

BACKGROUND

In the wake of Hurricane Ian, residents and business of Lee County have encountered conflicting federal, state, and county regulations during the process of rebuilding or redeveloping lawfully existing structures. In Lee County one of the most frequently identified concerns is meeting current minimum flood elevation requirements while also meeting local height requirements.

Adding to this concern, on November 17, 2022, the Federal Emergency Management Agency released updated flood maps which generally increased required base flood elevations from the previously effective flood maps.

On January 17, 2023, the Board of County Commissioners directed staff to identify regulatory constraints when seeking redevelopment to accommodate increased resiliency to flood events. Based on this direction staff analyzed the entire Lee Plan to identify restrictions that may create problems with rebuilding in accordance with state and federal building regulations. Staff identified one goal and one policy within the Lee Plan that limit maximum height without allowing for increases to state and federal minimum flood elevations. Both of these provisions relate to height within the Captiva Community Plan Area.

COMMUNITY PLANNING

The Captiva Community Plan was adopted into the Lee Plan by Ordinance 03-01, the adopting ordinance of CPA2001-00010: Pertaining to the Captiva Island Community Plan, on January 9, 2003. The staff report of CPA2001-00010 states that “The Community expressed a desire to implement a stronger community approach to land use and zoning issues to proactively address community character, density, natural resources, public participation and transportation.”

Goal 23 intends to “protect the coastal barrier island community’s natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history.” The goal of the Captiva Community Plan is accomplished through various environmental protections and limits on development. The full Goal 23, including proposed amendments, is identified below:

GOAL 23: CAPTIVA COMMUNITY PLAN. The goal of the Captiva Community Plan is to protect the coastal barrier island community’s natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history. This goal will be achieved through environmental protections and land use regulations that preserve shoreline and natural habitats, enhance water quality, encourage the use of native vegetation, maintain the mangrove fringe, limit noise, light, water, and air pollution, create mixed use development of traditionally commercial properties, and enforce development standards that maintain ~~one and two story building heights and~~ the historic low-density residential development pattern of Captiva.

The generality with which the current Goal 23 is written, concerning building heights, is vague but still limiting. The wording is ambiguous because it does not define a starting point for the “one and two story building heights,” nor does it clarify if areas within a structure but below the base flood elevation, which may include storage or parking, would be considered one of the allowable two stories. Without a clear

definition of “one and two story building heights”, land owners seeking to make their properties more resilient are left with limited ability to rebuild their properties while retaining the same amount of useable living space within the structure. Community character will continue to be enforced through specific height limitations within the Land Development Code.

Policy 23.2.3 as currently written, ties land owners to past regulations on building height and restricts property owners’ ability to adapt to dynamic regulations and coastal environments. While this policy does aid in protecting the character of the island, it also prevents residents and business owners who had structures damaged by Hurricane Ian from rebuilding within federal and state flood regulations while maintaining previously approved usable living space. The full Policy 23.2.3, including proposed amendments, is as follows:

POLICY 23.2.3: Building Heights. Maintain building height regulations established as of March 23, 2018 that account for barrier island conditions, such as mandatory flood elevation and mean-high sea level, for measuring height of buildings and structures

The original Captiva Plan provided guidance for heights allowed in the Community Plan Area with the purpose of limiting density on the island that provided a maximum height of 35 feet above grade or 42 feet above sea level, whichever was lower. This guidance was later updated by Ordinance 11-19 (CPA2010-00015), which added an option to have a maximum height of “28 feet above the lowest horizontal member at or below the lawful base flood elevation.” These specific heights were later removed from the Lee Plan and relocated to the Land Development Code, where they are more appropriate, through Ordinance 18-4 (CPA2015-00009). At that time the specific language was replaced by the language currently in Policy 23.2.3 which commits to maintaining LDC regulations that appropriately regulate height. Subsequently, the Captiva Plan Goal was renumbered from Goal 13 to its current Goal 23 in 2018 by Ordinance 18-18 (CPA2017-00010).

The proposed amendment to Policy 23.2.3 is to delete a specific date that does not allow for updates to state or federal requirements. Captiva’s community character and low density will continue to be maintained by **Policy 23.2.4** and **Policy 23.2.5**. Policy 23.2.4 states that development on Captiva is limited to the historic development pattern, which is “comprised of low-density residential dwelling units.” Policy 23.2.5 prohibits certain rezonings that reduce the minimum lot size per unit, aiding in the protection of the low-density character of the island. Staff finds the potential change in character resulting from the proposed amendments is minimal and is consistent with the intent of the Policy.

Policy 17.3.2 requires all privately-initiated amendments within a community plan area to conduct one or more public meetings within the boundary of the community plan area in question. Since the proposed text amendments are county-initiated, there is no requirement to hold a meeting within the boundaries of the Captiva community plan area per Policy 17.3.2.

OTHER LEE PLAN CONSIDERATIONS

The proposed amendments remove potential inconsistencies with **Policy 5.1.2** by allowing for design of residential structures to be adjusted accordingly where physical hazards such as flooding exists.

Objective 72.2 requires the county to “maintain land development regulations that reduce the vulnerability of development from the threats of natural and man-made hazards”. The proposed text

amendments are consistent with this policy by clarifying and allowing development standards that will reduce risk of damage to life and property from storm water.

The proposed amendments take into account Lee Plan **Chapter XII. Property Rights Element** by clarifying the ways in which property owners in Lee County can rebuild their property to the standards necessary to minimize future risk of property damage.

The proposed amendment does not change the number of residential dwelling units or the types of non-residential development that may be approved within the Captiva Community Plan Area. Appropriate uses within the Captiva Community Plan Area will continue to be determined by the Future Land Use Map as well as the objectives and policies within Goal 23.

PUBLIC FACILITIES AND INFRASTRUCTURE AVAILABILITY ANALYSIS

The proposed amendments will not increase density in the Community Plan Area, therefore there will be no significant impacts to public facilities and services.

CONCLUSIONS

The Lee Plan, with the proposed amendments, will provide for greater resiliency by allowing structures to minimize flood hazards through design and construction. The proposed amendments will impact the Captiva Community Plan Area by providing for consistent treatment of structures that require elevation and removing ambiguous language from the community plan. These amendments will not impact the community plan's intent to retain low-density development. The amendments are internally consistent with the Captiva plan and the Lee Plan as a whole, including Policy 5.1.2, Objective 72.2, and Chapter XII.

For the reasons discussed in this staff report, staff recommends that the Board of County Commissioners ***transmit*** the proposed amendment as shown in Attachment 1.

**PART 2
LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: May 22, 2023

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief presentation addressing Board of County Commissioners' direction, reasons for and impacts of the amendment, consistency with the Lee Plan, and staff recommendation.

The LPA discussed the proposed amendments and various merits of the case, including the community meeting requirements for county-initiated amendments.

There was no public comment concerning the proposed amendment at the LPA Hearing.

B. LOCAL PLANNING AGENCY RECOMMENDATION

A motion was made to recommend that the Board of County Commissioners ***transmit*** CPA2023-00004. The motion passed 4 to 0.

RAYMOND BLACKSMITH	AYE
KEITH DEAN	AYE
DUSTIN GARDNER	ABSENT
DAWN RUSSELL	ABSENT
DON SCHROTENBOER	AYE
STAN STOUDE	AYE
HENRY ZUBA	ABSENT

C. STAFF RECOMMENDATION

Staff recommends that the BoCC ***transmit*** the proposed amendment as provided in Attachment 1.

**PART 3
BOARD OF COUNTY COMMISSIONERS
TRANSMITTAL HEARING**

DATE OF PUBLIC HEARING: June 21, 2023

A. BOARD REVIEW:

The hearing scheduled for June 21, 2023, did not occur. At the regular Board of County Commissioners (BoCC) Meeting on June 20, 2023, the BoCC voted to continue the transmittal hearing on CPA2023-00004 until September 6, 2023. Staff was instructed to hold meetings with the public to discuss the proposed changes and listen to public comments prior to the September 6 hearing.

DATE OF PUBLIC HEARING: September 6, 2023

B. BOARD REVIEW:

Staff provided a presentation for the proposed amendment which included the purpose of the proposed amendments, anticipated impacts of the amendments, consistency with the Lee Plan, and staff recommendation.

10 members of the public provided comments concerning the proposed amendments. Members of the public who spoke against the amendments were concerned the amendments could lead to an increase in density and intensity and development that is out of character with existing development in the Captiva Community Plan area. members speaking in favor of the proposed amendments stated the amendments were needed to provide certainty in order to rebuild following Hurricane Ian and changes to the FEMA flood maps for Lee County that became effective in November of 2022.

One member of the BoCC expressed disagreement with the amendments.

C. BOARD ACTION:

A motion was made to transmit CPA2023-00004 as recommended by staff and the LPA. The motion passed 4 to 1.

VOTE:

MIKE GREENWELL	<u>AYE</u>
BRIAN HAMMAN	<u>AYE</u>
CECIL L. PENDERGRASS	<u>AYE</u>
KEVIN RUANE	<u>NAY</u>
RAY SANDELLI	<u>AYE</u>

PART 4
STATE REVIEWING AGENCIES'
OBJECTIONS, RECOMMENDATIONS, AND COMMENTS

Comments from the State Reviewing Agencies were due to Lee County by October 6, 2023.

A. OBJECTIONS, RECOMMENDATIONS AND COMMENTS:

Lee County received responses from the following review agencies addressing the transmitted amendment:

- FloridaCommerce,
- Florida Department of Environmental Protection (DEP),
- Florida Department of Transportation (FDOT),
- Florida Fish and Wildlife Conservation Commission (FWC), and
- South Department of Agriculture and Consumer Services (FDACS)

As discussed below there was one comment from FloridaCommerce.

FloridaCommerce:

Comment #1:

The amendment appears to fly a "false flag" of "resilience" as a primary purpose. When, in reality, the amendment is clearly at least in-part for the purpose of an increase in hotel room density. Whether or not an increase in hotel room density is appropriate is for the community to decide. Rather, we are simply urging you to have a transparent discussion with the community about the actual purpose of the amendment.

Response Comment #1

Section 163.3184(3), Fla. Stat., provides the process for Expedited State Review of local Comprehensive Plan Amendments. As the State Land Planning Agency under Chapter 163, Fla. Stat., FloridaCommerce is tasked with reviewing Lee County's Comprehensive Plan Amendments in accordance with the limited authority granted to it under § 163.3184, Fla. Stat.

Pursuant to § 163.3184(3)(b)2., Fla. Stat.,

*State agencies **shall only comment on important state resources and facilities that will be adversely impacted by the amendment** if adopted. Comments provided by state agencies shall state with specificity how the plan amendment will adversely impact an important state resource or facility and shall identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts.*

Section 163.3184(3)(b)4.h., Fla. Stat., provides:

*4. Comments to the local government from state agencies **shall be limited to the following subjects as they relate to important state resources and facilities that will be adversely impacted by the amendment if adopted:***

h. The state land planning agency [FloridaCommerce] shall limit its comments to important state resources and facilities outside the jurisdiction of other commenting state agencies and may include comments on countervailing planning policies and objectives served by the plan amendment that should be balanced against potential adverse impacts to important state resources and facilities. (emphasis added).

The only comment received from FloridaCommerce referenced density, hotels, and transparency. The comment was not limited to only those concerning “important state resources and facilities that will be adversely impacted by the amendment if adopted” and therefore violated State law. See § 163.3184(3)(b)2., and § 163.3184(3)(b)4, Fla. Stat.

Notwithstanding the clear violation of State law, the comments from FloridaCommerce concerning density and hotel units were directed towards comments concerning the Land Development Code amendments and not the Lee Plan Amendments. Furthermore, to the extent the FloridaCommerce comment regarding transparency were directed toward the Lee Plan Amendment, the County’s actions were transparent and were consistent with the requirements of Chapter 125, Fla. Stat., Chapter 163, Fla. Stat., and all applicable Lee County regulations pertaining to the adoption of revisions to the Land Development Code and the Lee Plan.

That being said, Lee County has been transparent with all affected communities about the actual purpose of the proposed LDC and Lee Plan amendments. Prior to scheduling the proposed amendments for public hearing before the County Commission, County staff presented the proposed amendments to the following Board-appointed citizen advisory committees as part of publicly advertised meeting agendas:

- On May 12, 2023, staff presented the proposed amendments to the Land Development Code Advisory Committee (“LDCAC”). The LDCAC reviewed the proposed amendments to the Land Development Code (LDC) and recommended approval of the proposed amendments as modified.
- On May 22, 2023, the Local Planning Agency (LPA) reviewed the proposed amendments to both the Lee Plan and LDC and found them consistent with the Lee Plan.

The proposed amendments were then scheduled for a series of duly advertised public hearings before the County Commission to consider their adoption as follows:

- On June 6, 2023, a request to set the Ordinance for a public hearing was presented to the Board of County Commissioners during its publicly advertised Board meeting. The Board voted to set the public hearing for the proposed ordinance for June 20, 2023.
- On June 20, 2023, the Board of County Commissioners voted to continue the public hearing for the proposed ordinance until September 5, 2023 to allow for opportunities for public input. The Board also voted to continue the transmittal hearing of companion amendments to the Lee Plan from June 21, 2023 to September 6, 2023.

In response to the Board’s direction, staff scheduled and held a series of public meetings to engage concerned citizens and residents regarding the proposed amendments. These meetings were as follows:

- Thursday, July 13, 2023, 6:00 p.m. – 8:00 p.m., Captiva Civic Center, 11550 Chapin Lane, Captiva.
 - [Presentation](#)
 - [Summary of Discussion](#)

- Tuesday August 1, 2023, 6:30 p.m., Pine Island Civic Association Regular Meeting, Pine Island United Methodist Church - 5701 Pine Island Road, Bokeelia.
 - [Presentation](#)
- Wednesday, August 2, 2023, 6:00 p.m. – 8:00 p.m., BIG ARTS, 900 Dunlop Road, Sanibel Island.
 - [Presentation](#)
 - [LDC Overview and Clarification](#)
- Wednesday, August 9, 2023, 5:30 p.m. – 7:30 p.m., Lee County Public Works Building, Conference Room 1B, 1500 Monroe Street, Fort Myers.

Lee County will continue to include opportunities for public input if a property request zoning changes based proposed amendments to the Lee Plan.

The comment did not identify any “important state resources and facilities that will be adversely impacted by the amendment if adopted,” and did not “identify measures Lee County should take to eliminate, reduce, or mitigate the adverse impacts.” Therefore, it is the opinion of staff the comment provided by FloridaCommerce will not result in a challenge by the state land planning agency. No modifications or further actions are needed on response to the FloridaCommerce comment.

City of Sanibel:

In addition to the comment received from FloridaCommerce, a letter of opposition from the City of Sanibel dated October 6, 2023, was also received by Lee County. As provided in FS163.3184(3)(b)3.c. “municipal comments shall be in the context of the relationship of the proposed plan amendments on the municipal plan.”

Comment #1:

While there are no specifically identified comments or objections in the letter from the City of Sanibel, it is stated “any changes to the Lee Plan or Lee County Land Development Plan that allows for increased density, increased building height (as a means of achieving higher density), or increased intensity on Captiva has a direct and undesirable impact Sanibel.”

Response Comment #1

Lee County maintains that the proposed amendments to the Lee Plan do not increase density or intensity of development as defined in the Lee Plan. The Lee Plan defines density as follows:

DENSITY – The number of residential dwelling or housing units per gross acre (du/acre) (emphasis added). Densities specified in this plan are **gross residential densities** (emphasis added). For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included in the density calculation, unless otherwise stated in this plan.

When the calculation of the gross density of a development results in a fractional density, 0.50 of a dwelling unit or greater shall be rounded up to the next whole number and fractions less than 0.50

shall be rounded down. No further rounding is permitted. Fractional density rounding may not be applied to parcels subject to the Gasparilla Island Conservation District Act of 1980 (as amended) or existing, undersized parcels that would require a Minimum Use Determination pursuant to Chapter XIII to permit one single-family residence on said parcel. Fractional density rounding may not be applied to parcels of land created (subdivided or combined) after March 16, 2016 in a manner that would permit greater gross density than that was permitted (with fractional density rounding) prior to creation of the new parcel.

The changes transmitted by Lee County, shown below, as previously stated, do not in any way change the number of residential dwelling units.

GOAL 23: CAPTIVA COMMUNITY PLAN. The goal of the Captiva Community Plan is to protect the coastal barrier island community's natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history. This goal will be achieved through environmental protections and land use regulations that preserve shoreline and natural habitats, enhance water quality, encourage the use of native vegetation, maintain the mangrove fringe, limit noise, light, water, and air pollution, create mixed use development of traditionally commercial properties, and enforce development standards that maintain ~~one and two story building heights and~~ the historic low-density residential development pattern of Captiva.

POLICY 23.2.3: Building Heights. Maintain building height regulations ~~established as of March 23, 2018~~ that account for barrier island conditions, such as mandatory flood elevation and mean-high sea level, for measuring height of buildings and structures

The Captiva Community Plan Area is identified on Map 2-A of the Lee Plan. Lands within the Captiva Community Plan Area are within the Outlying Suburban, Public Facilities, and Wetlands future land use category as identified on the Future Land Use Map, Map 1-A.

- The Outlying Suburban future land use category allows a density of 3 dwelling units per acre as established by Policy 1.1.6.
- The Public Facilities future land use category does not allow residential density per Policy 1.1.8.
- The Wetlands future land use category allows a density of 1 unit per 20 acres¹ per acre as established by Policy 1.5.1, Policy 124.1.1 and Table 1(a).

The proposed amendments do not seek to amend Map 1-A, Policy 1.1.6, Policy 1.1.8, Policy 1.5.1, Policy 124.1.1 or Table 1(a). Additionally, because density is tied to gross acre, a building's height does not impact the allowable density. Therefore, there are no proposed amendments that could possibly change the density or number of residential dwelling units permitted within the Captiva Community Plan Area.

B. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners **adopt** the amendments to the Lee Plan as transmitted and as provided in Attachment 1.

¹ Lee Plan Policy 124.1.1 provides a density incentive when freshwater wetlands are preserved adjacent to certain land use categories.

PROPOSED TEXT AMENDMENTS

FUTURE LAND USE ELEMENT

GOAL 23: CAPTIVA COMMUNITY PLAN. The goal of the Captiva Community Plan is to protect the coastal barrier island community's natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history. This goal will be achieved through environmental protections and land use regulations that preserve shoreline and natural habitats, enhance water quality, encourage the use of native vegetation, maintain the mangrove fringe, limit noise, light, water, and air pollution, create mixed use development of traditionally commercial properties, and enforce development standards that maintain ~~one and two story building heights~~ and the historic low-density residential development pattern of Captiva.

Objective 23 through Policy 23.2.2 unchanged.

POLICY 23.2.3: Building Heights. Maintain building height regulations ~~established as of March 23, 2018~~ that account for barrier island conditions, such as mandatory flood elevation and mean-high sea level, for measuring height of buildings and structures.

Miller, Janet

From: Dunn, Brandon
Sent: Thursday, September 28, 2023 1:49 PM
To: Miller, Janet
Cc: Sarracino, Joseph; Rozdolski, Mikki; Jacob, Michael; Sweigert, Rebecca; Rodriguez, Anthony
Subject: FW: Proposed CPA-23-05ESR/ Lee County/ FDOT Review

FYI, this is concerning CPA2023-00004 – Building Height and Resiliency



Brandon Dunn | Manager
Community Development – Planning Section

1500 Monroe Street, Fort Myers, FL 33902-0398

office: (239) 533-8585

email: bdunn@leegov.com

web: www.leegov.com

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From: Suguri, Vitor <Vitor.Suguri@dot.state.fl.us>
Sent: Thursday, September 28, 2023 1:45 PM
To: Dunn, Brandon <BDunn@leegov.com>
Cc: Reina, Bessie <Bessie.Reina@dot.state.fl.us>; Merkle, Tanya <Tanya.Merkle@dot.state.fl.us>; McCaughey, Erica <Erica.McCaughey@dot.state.fl.us>; Babuji Ambikapathy (BAmbikapathy@VHB.com) <BAmbikapathy@VHB.com>; jzaballero@vhb.com
Subject: [EXTERNAL] Proposed CPA-23-05ESR/ Lee County/ FDOT Review

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Good afternoon, Mr. Dunn,

FDOT has reviewed the transmitted amendment for Lee County pursuant to Section 163.3184(3), Florida Statutes. The proposed CPA is not anticipated to have significant adverse impacts to transportation resources or facilities of state importance.

We appreciate the opportunity to review the proposed amendment, and if you have any questions, please do not hesitate to contact me.

Sincerely,

Vitor Suguri, Ph.D.

Community Planner

SIS Coordinator

Florida Department of Transportation - District One

10041 Daniels Parkway

Fort Myers, FL 33913

(239) 225-1959 - Desk

(863) 221-1707 – Cell



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FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER WILTON SIMPSON

October 3, 2023

VIA EMAIL (bdunn@leegov.com)

Lee County
Brandon Dunn
P.O. Box 398
Fort Myers, Florida 33902-0398

Re: Amendment Package Reference Number: Lee County #23-05ESR

Dear Brandon Dunn,

The Florida Department of Agriculture and Consumer Services (the "Department") received the above-referenced proposed comprehensive plan amendment on September 7, 2023. The Department has reviewed the proposed amendment pursuant to Section 163.3184, Florida Statutes, for any adverse impacts to important state resources or facilities related to agriculture, forestry, and aquaculture issues.

The Department has no comments on the above-referenced proposed comprehensive plan amendment as presented.

Please contact me at CompPlans@FDACS.gov if you have any questions.

Sincerely,

Steven Hall

Steven Hall
Assistant Deputy Commissioner

cc: Florida Department of Economic Opportunity
(SLPA #: Lee County #23-05ESR)

October 6, 2023

The Honorable Brian Hamman
Chairman, Lee County
Board of County Commissioners
Post Office Box 398
Fort Myers, Florida 33901-0398

Dear Chairman Hamman:

The Florida Department of Commerce (FloridaCommerce) has reviewed the proposed comprehensive plan amendment for Lee County (Amendment No. 23-05ESR) received on September 7, 2023. The review was completed under the expedited state review process. After consideration of the proposed amendment and citizen input, we have a comment regarding the proposed amendment.

The amendment appears to fly a “false flag” of “resilience” as a primary purpose. When, in reality, the amendment is clearly at least in-part for the purpose of an increase in hotel room density. Whether or not an increase in hotel room density is appropriate is for the community to decide. Rather, we are simply urging you to have a transparent discussion with the community about the actual purpose of the amendment.

The County should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment. For your assistance, we have enclosed the procedures for adoption and transmittal of the comprehensive plan amendment. In addition, the County is reminded that:

- Section 163.3184(3)(b), F.S., authorizes other reviewing agencies to provide comments directly to the County. **If the County receives reviewing agency comments and they are not resolved, these comments could form the basis for a challenge to the amendment after adoption.**
- **The second public hearing**, which shall be a hearing on whether to adopt one or more comprehensive plan amendments, **must be held within 180 days** of your receipt of agency comments or the amendment shall be **deemed withdrawn** unless extended by agreement with notice to FloridaCommerce and any affected party that provided comment on the amendment pursuant to Section 163.3184(3)(c)1., F.S.
- **The adopted amendment must be transmitted to FloridaCommerce within ten working days after the second public hearing pursuant to 163.3184(3)(c)2., F.S.** Under Section 163.3184(3)(c)2. and 4., F.S., the **amendment effective date** is 31 days after FloridaCommerce notifies the County that the amendment package is complete or, if challenged, until it is found to be in compliance by FloridaCommerce or the Administration Commission.

If you have any questions concerning this review, please contact Scott Rogers, Regional Planning Administrator, by telephone at (850)-717-8510 or by email at scott.rogers@commerce.fl.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Stansbury". The signature is fluid and cursive, with a large initial "J" and "S".

James D. Stansbury, Chief
Bureau of Community Planning and Growth

JDS/sr

Enclosure(s): Procedures for Adoption

cc: David Loveland, Director, Lee County Department of Community Development
Margaret Wuerstle, Executive Director, Southwest Florida Regional Planning Council

SUBMITTAL OF ADOPTED COMPREHENSIVE PLAN AMENDMENTS

FOR EXPEDITED STATE REVIEW

Section 163.3184(3), Florida Statutes

NUMBER OF COPIES TO BE SUBMITTED: Please submit electronically using FloridaCommerce’s electronic amendment submittal portal “**Comprehensive Plan and Amendment Upload**” (<https://fldeo.my.salesforce-sites.com/cp/>) **or** submit three complete copies of all comprehensive plan materials, of which one complete paper copy and two complete electronic copies on CD ROM in Portable Document Format (PDF) to the State Land Planning Agency and one copy to each entity below that provided timely comments to the local government: the appropriate Regional Planning Council; Water Management District; Department of Transportation; Department of Environmental Protection; Department of State; the appropriate county (municipal amendments only); the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services (county plan amendments only); and the Department of Education (amendments relating to public schools); and for certain local governments, the appropriate military installation and any other local government or governmental agency that has filed a written request.

SUBMITTAL LETTER: Please include the following information in the cover letter transmitting the adopted amendment:

_____ State Land Planning Agency identification number for adopted amendment package;

_____ Summary description of the adoption package, including any amendments proposed but not adopted;

_____ Identify if concurrency has been rescinded and indicate for which public facilities. (Transportation, schools, recreation and open space).

_____ Ordinance number and adoption date;

_____ Certification that the adopted amendment(s) has been submitted to all parties that provided timely comments to the local government;

_____ Name, title, address, telephone, FAX number and e-mail address of local government contact;

_____ Letter signed by the chief elected official or the person designated by the local government.

ADOPTION AMENDMENT PACKAGE: Please include the following information in the amendment package:

_____ In the case of text amendments, changes should be shown in strike-through/underline format.

_____ In the case of future land use map amendments, an adopted future land use map, **in color format**, clearly depicting the parcel, its future land use designation, and its adopted designation.

_____ A copy of any data and analyses the local government deems appropriate.

Note: If the local government is relying on previously submitted data and analysis, no additional data and analysis is required;

_____ Copy of the executed ordinance adopting the comprehensive plan amendment(s);

Suggested effective date language for the adoption ordinance for expedited review:

"The effective date of this plan amendment, if the amendment is not timely challenged, shall be 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If the amendment is timely challenged, this amendment shall become effective on the date the state land planning agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance."

_____ List of additional changes made in the adopted amendment that the State Land Planning Agency did not previously review;

_____ List of findings of the local governing body, if any, that were not included in the ordinance and which provided the basis of the adoption or determination not to adopt the proposed amendment;

_____ Statement indicating the relationship of the additional changes not previously reviewed by the State Land Planning Agency in response to the comment letter from the State Land Planning Agency.

From: [Plan_Review](#)
To: [Dunn, Brandon](#); [DCPexternalagencycomments](#)
Cc: [Plan_Review](#)
Subject: Lee County 23-05ESR Proposed
Date: Friday, October 6, 2023 4:31:12 PM
Attachments: [image001.png](#)

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To: Mr. Brandon Dunn, Manager

Re: Lee County 23-05ESR – Expedited State Review of Proposed Comprehensive Plan Amendment

The Office of Intergovernmental Programs of the Florida Department of Environmental Protection (Department) has reviewed the above-referenced amendment package under the provisions of Chapter 163, Florida Statutes. The Department conducted a detailed review that focused on potential adverse impacts to important state resources and facilities, specifically: air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interest in lands, including state parks, greenways and trails, conservation easements; solid waste; and water and wastewater treatment.

Based on our review of the submitted amendment package, the Department has found no provision that, if adopted, would result in adverse impacts to important state resources subject to the Department's jurisdiction.

Please submit all future amendments by email to Plan.Review@FloridaDEP.gov. If your submittal is too large to send via email or if you need other assistance, contact Lindsay Weaver at (850) 717-9037.





Florida Fish and Wildlife Conservation Commission

Commissioners

Rodney Barreto
Chairman
Coral Gables

Steven Hudson
Vice Chairman
Fort Lauderdale

Preston Farris
Tampa

Gary Lester
Oxford

Albert Maury
Coral Gables

Gary Nicklaus
Jupiter

Sonya Rood
St. Augustine

Office of the
Executive Director
Roger A. Young
Executive Director

Jessica Crawford
Chief of Staff

850-487-3796
850-921-5786 FAX

Managing fish and wildlife resources for their long-term well-being and the benefit of people.

620 South Meridian Street
Tallahassee, Florida
32399-1600
Voice: 850-488-4676

Hearing/speech-impaired:
800-955-8771 (T)
800 955-8770 (V)

MyFWC.com

October 6, 2023

Brandon Dunn
Lee County Planning Section
P.O. Box 398
Fort Myers, FL 33902
bdunn@leegov.com

RE: Lee County Comprehensive Plan Amendment 23-05ESR (CPA2023-0004)

Dear Mr. Dunn:

Florida Fish and Wildlife Conservation Commission (FWC) staff reviewed the above-referenced comprehensive plan amendment package and provides the following comments and recommendations for consideration in accordance with Chapter 163.3184, Florida Statutes. While there are no objections to the amendment, the following technical assistance information is provided to assist the Department of Economic Opportunity, the County, and any applicants during the amendment review and future project planning.

Proposed Amendments

The proposal is a county-initiated amendment to the Lee Plan Goal 23 and Policy 23.2.3 relating to building heights within the Captiva Community Plan Area. In the aftermath of Hurricane Ian, residents and businesses seeking to rebuild existing structures must meet state and federal building regulations related to minimum flood elevations. Lee Plan Goal 23 and Policy 23.2.3 both currently limit maximum height without allowing for these corresponding increases in minimum flood elevations. The proposed text amendments are designed to address this by providing consistent treatment of structures that require elevation, while minimizing increases in overall building height.

Comments and Recommendations

Marine Turtle Lighting

The beaches in Lee County provide important nesting habitat for loggerhead (*Caretta caretta*, Federally Threatened [FT]) and green (*Chelonia mydas*, FT) sea turtles. While the County is considering regulatory changes affecting redevelopment in the wake of Hurricane Ian, FWC staff recommends that the County consider updating the current Lee County lighting ordinance to align with recommendations under the Model Lighting Ordinance for Marine Turtle Protection (62B-55, <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=62B-55>) and/or develop a local lighting ordinance for Captiva. FWC staff are available to provide technical assistance with the development or revision of lighting ordinances and requests can be sent by email to MarineTurtle@MyFWC.com.

FWC staff appreciates the opportunity to provide input on this project. For specific technical questions regarding the content of this letter, please contact Sydney Wilson at (561) 236-6706 or by email at Sydney.Wilson@MyFWC.com. All other inquiries may be sent to ConservationPlanningServices@MyFWC.com.

Sincerely,



Josh Cucinella
Land Use Planning Program Administrator
Office of Conservation Planning Services

jc/sw
Lee County 23-05ESR_56968_10062023

October 5, 2023

Donna Harris (donna.harris@commerce.fl.gov; 850-717-8491)
Scott Rogers, Program Administrator (scott.rogers@commerce.fl.gov)
Florida Department of Commerce

Re: Amendment to the Lee Plan Transmittal Submission Package CPA2023-00004

Dear Ms. Harris and Mr. Rogers,

This letter conveys the City of Sanibel's strong opposition to the Lee Plan Amendment that was submitted to your office by Lee County (Submission Package CPA2023-00004). As you may know, for any person to visit the unincorporated Lee County barrier island of Captiva by land, one must travel through the City of Sanibel. Therefore, any changes to the Lee Plan or Lee County Land Development Plan that allows for increased density, increased building height (as a means of achieving higher density), or increased intensity on Captiva has a direct and undesirable impact on Sanibel.

The City of Sanibel was incorporated in 1974 to ensure the island was not overdeveloped. The residents who led Sanibel's municipal incorporation also led the development of the Sanibel Plan and the Sanibel Land Development Code. Together, the Plan and the Code work to guard against overdevelopment on the island, and to preserve the small town and scenic characteristics of our barrier island community. The dominant principal of the Sanibel Plan's Vision Statement states:

Sanibel is and shall remain a barrier island sanctuary, one in which a diverse population lives in harmony with the Island's wildlife and natural habitats. The Sanibel community must be vigilant in the protection and enhancement of its sanctuary characteristics.

The City of Sanibel will resist pressures to accommodate increased development and redevelopment that is inconsistent with the Sanibel Plan, including this Vision Statement.

The City of Sanibel will guard against and, where advisable, oppose human activities in other jurisdictions that might harm the Island's sensitive habitats, including the Island's surrounding aquatic ecosystems.

At the October 3, 2023, City Council meeting, the City Council expressed their desire to oppose the referenced Lee Plan amendment by endorsing the letter the Captiva Civic Association sent to your office on September 19, 2023, a copy of which is attached.

The Sanibel City Council has consistently expressed opposition to amending the Lee County Land Development Code (Chapters 30,33 & 34), which was approved by the Lee County Board of County Commissioners (BOCC) on September 5, 2023,



City of Sanibel

800 Dunlop Road
Sanibel, Florida 33957-4096

www.mysanibel.com


AREA CODE - 239

ADMINISTRATION	472-3700
CITY CLERK/LEGISLATIVE	472-3700
CITY COUNCIL	472-4135
BUILDING	472-4555
FINANCE	472-9615
IT SUPPORT	472-3700
LEGAL	472-4359
NATURAL RESOURCES	472-3700
PLANNING	472-4136
POLICE	472-3111
EMERGENCY MANAGEMENT	472-3111
PUBLIC WORKS	472-6937
RECREATION	472-0345
UTILITIES	472-3179

and the proposed amendments to the Lee Plan as transmitted to your agency. The letters sent to the BOCC by the City of Sanibel are attached to this letter.

Should you wish to discuss the City of Sanibel's concerns, please contact Dana Souza, City Manager at 239-472-3700 or by email at dana.souza@mysanibel.com.

Respectfully submitted,


Richard Johnson, Mayor


Mike Miller, Vice Mayor


Dr. Scott Crater, Councilmember


John Henshaw, Councilmember


Holly D. Smith, Councilmember

Richard Grosso, Esq.
Richard Grosso, P.A.
6919 W. Broward Blvd.
Plantation, FL 33317
Mailbox 142
richardgrosso1979@gmail.com
954-801-5662
richardgrossopa.com

sent via email

September 19, 2023

Donna Harris (donna.harris@commerce.fl.gov; 850-717-8491)
Scott Rogers, Program Administrator (scott.rogers@commerce.fl.gov; 850-717-8510)
Florida Department of Commerce

Re: Amendment to the Lee Plan Transmittal Submission Package CPA2023-00004

Dear Ms. Harris and Mr. Rogers,

I write on behalf of the Captiva Civic Association (“CCA”), a longstanding organization advocating for the benefit of the citizens of Captiva, and the owner of the Civic Center, the Captiva Memorial Library property and the home rented by Lee County for the Deputy Sheriff on Captiva, within unincorporated Lee County. CCA’s Land Use Committee consists of members from the key stakeholder organizations on Captiva. We write to share our significant concerns with this proposed Amendment, which would perversely allow an increase in hotel rooms and additional floors of buildable living space on a barrier island within the Coastal High Hazard Area just one year after that island was devastated by Hurricane Ian.

The Amendment Allows an Increase in Hotel Room Density and Greater Building Heights

First and foremost, the proposed Amendment – misleadingly labelled “Building Height and Resilience” - represents **a substantial increase in allowable hotel room density**. The statement in the staff report accompanying the proposed Amendment that the Amendment does not increase residential density fails to disclose that the Amendment allows an increase in hotel room density. The County’s transmittal cover letter represents that “[t]he amendment is as follows:

“CPA2023-00004, Building Height and Resiliency
Amend Lee Plan Goal 23 and Policy 23.2.3 to remove requirements that restrict the ability to redevelop or rebuild structures in a way that reduces potential flooding threats by accommodating required minimum flood elevations.”¹

¹ As far as we can tell, the transmittal cover letter and the brief staff report are the entire transmittal package transmitted to the Department by the County.

This is not accurate. Rather, the Amendment makes two material changes which, taken together, allow an increase in hotel room density on Captiva.

First, the Plan Amendment allows the County to raise the maximum building heights on Captiva from 28 to 35 feet above base flood elevation – allowing for an additional habitable floor to be built above base flood elevation. The Amendment permits an increase in the intensity of use by raising building heights and **increase in the number of habitable floors above base flood elevation from two to three (thereby permitting an increase in intensity of use by 50 percent).**

Second, the Plan Amendment exempts South Seas Island Resort from the building heights and hotel density limitations on Captiva - **thereby permitting South Seas Island Resort to substantially increase the height of its buildings up to 45 to 75 feet above base flood elevation – substantially higher than the permitted heights on the rest of Captiva, and allowing an increase in the number of buildable hotel rooms – also greater than the 3 hotel units per acre permitted for other hotels and resorts on the rest of Captiva.**

This effect of the Amendment is further explained in the attached August 23, 2023 letter from the Holland & Knight firm (**Attachment A**) and the attached statement of Mr. David Mintz to the County’s Local Planning Agency. (**Attachment B**). We trust that the points expressed in those letters, and which we make below, will, in combination with the agency’s own expertise and review, support strong objections by the DOC to the proposed Amendments. We have done our best in this correspondence to share the key documents we believe provide the full picture of the impact the Amendment would have,. Among other issues, the potential impacts on hurricane evacuation, evacuation routes, and coastal resiliency render the Amendment as having a potential adverse impacts on issues and facilities of statewide importance.

The Staff Report offers hints of the impact on hotel room density, but does not acknowledge the effect on hotel room density. It states that “[t]he original Captiva Plan provided guidance for heights allowed in the Community Plan Area with the purpose of limiting density on the island...” (Staff Report, p. 3 of 5). It then states that:

“The proposed amendment **does not change the number of residential dwelling units** or the **types of non-residential development** that may be approved within the Captiva Community Plan Area.” (Staff Report, p. 3 of 5) (emphasis added)

Close scrutiny reveals that it does not state that there is no change to the “intensity” of hotel room development that would be allowed – only that there is no change to the types (i.e. hotels) of non-residential development that may be approved on Captiva.

The proposed amendment to Future Land Use **Goal 23** reads as follows:

“GOAL 23: CAPTIVA COMMUNITY PLAN. The goal of the Captiva Community Plan is to protect the coastal barrier island community's natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history. This

goal will be achieved through environmental protections and land use regulations that preserve shoreline and natural habitats, enhance water quality, encourage the use of native vegetation, maintain the mangrove fringe, limit noise, light, water, and air pollution, create mixed use development of traditionally commercial properties, and enforce development standards that maintain ~~one and two story building heights and~~ the historic low-density residential development pattern of Captiva.” (bold emphasis added)

The proposed amendment to Future Land Use **Policy 23.2.3** reads as follows:

“POLICY 23.2.3: Building Heights. Maintain building height regulations ~~established as of March 23, 2018~~ that account for barrier island conditions, such as mandatory flood elevation and mean-high sea level, for measuring height of buildings and structures.” (bold emphasis added)

With this, the proposed Amendment repeals the previous standards that were stated, respectively, as a specific number of stories, and the maximum height of 28 feet above base flood elevation adopted by reference, and **replaces them with no standard**, granting the County complete discretion as to the standard to be adopted by regulation. The Amendment expressly repeals the two – story height limitation without any analysis of the resulting impacts on community character, natural resources, infrastructure demands, or other issues.

On September 5, 2023, the day before it voted to transmit the proposed plan Amendment, the County approved on second reading Ord. 23-22, which made a series of changes to the County’s land development code governing density, height and intensity restrictions on Captiva. That Ordinance, approvable only if the proposed plan Amendment currently under review goes into effect, exempts *South Seas Island Resort* from the current three unit per gross acre hotel unit density restriction established in the county code. (**Attachment C**: Ordinance Staff Report at pages 2 and 7 of 20). **A memo, apparently from the County Attorney’s Office, acknowledges that the Amendment would allow a approval of increased hotel room density at the South Seas Island Resort.** (**Attachment D**, at pp. 1, 5 and 9) The Ordinance is attached as **Attachment E**.

Thus, lifting the current height limits represents a substantial “up-planning” of the permissible intensity of such uses on the island. It is inexplicable how the County would not explain this impact in its transmittal package to the state, and that the entire amendment package it transmitted to the state consists of a single brief staff report that mentions only flood elevation and height restriction changes related to base flood elevation, but does not mention the resulting impact on hotel room density or additional building heights unrelated to base flood elevation to permit additional habitable floors both within and outside of South Seas Island Resort.

Because the Amendment lifts the current applicable building height restrictions, it has major implications for safety / hurricane evacuation and environmental impacts. To exacerbate these impacts, the related code amendments grant special benefits to a specific landowner, constituting inappropriate spot-planning, raising potential “equal protection under the law” constitutional issues, and rendering it almost certain that similarly situated landowners would be

able to seek and receive the same density increases, increasing the overall long – term environmental and evacuation impacts. This proposal has generated substantial opposition and data, analysis and other information that was submitted to the County but, to our surprise, not included as part of the transmittal package to the state.

Hotel Room Density Increases for one landowner which lack a binding, objective standard

The proposed Amendment repeals the previous standards that were stated, respectively, as a specific number of stories, and the maximum height of 28 feet above base flood elevation adopted by reference, and **replaces them with no standard**, granting the County complete discretion as to the standard to be adopted in its regulations.

While County Staff suggest that remaining Policy 23.2.4 will provide the required objective standards, that policy does not establish an objectively verifiable standard. Instead, Policy 23.2.4 states:

“POLICY 23.2.4: Historic Development Pattern. *Limit development to that which is in keeping with the historic development pattern* on Captiva including the designation of historic resources and the rehabilitation or reconstruction of historic structures. The historic development pattern on Captiva is *comprised of low-density residential dwelling units*, as defined in LDC, Chapter 10, minor commercial development and South Seas Island Resort.”

<https://www.leegov.com/dcd/Documents/Planning/LeePlan/LeePlan.pdf> (p. 78 of 311)

The lack of a specific maximum density standard violates Section 163.3177 (1), Fla. Stat., which mandates that a comprehensive plan “shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.” Section 163.3177 (6)(a), Fla. Stat. also requires that a plan’s Future Land Use Element:

“**designat[e] proposed future general** distribution, location, and **extent of the uses of land for residential uses, commercial uses** ... and other categories of the public and private uses of land. The approximate acreage and the **general range of density or intensity of use shall be provided** for the gross land area included in each existing land use category.” (emphasis added)

Also:

“**Each future land use category** must be defined in terms of uses included, and **must include standards to be followed in the control and distribution of population densities and building and structure intensities**. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and **measurable objectives**.” §163.3177 (6)(a)1, Fla. Stat.

In sum, the proposed amendment violates the requirement for meaningful and predictable standards set forth in Section 163.3177 (1), Fla. Stat.

The Height and Hotel Room Density/ Intensity Increase is Not Supported by Data and Analysis

The Amendment, which constitutes an “up-planning” of development on Captiva, are not supported by the data and analysis required by the Community Planning Act. The Staff Report accompanying the Amendment contains no data or analysis supporting the removal of the height limitation on Captiva or the resulting hotel room density increase. There is no explanation or analysis of the range of increase in the number of hotel rooms potentially authorized by the Amendment, and no assessment of the Amendment’s impact on Captiva’s infrastructure, roads, water resources, septic or sewer systems, or environmental resources. This omission seemingly springs from the faulty premise of the Staff Report, that:

“The proposed amendments will not increase density in the Community Plan Area, therefore there will be no significant impacts to public facilities and services.”
(Staff Report p. 4 of 5)

The complete absence of data and analysis of the impacts of the Amendment is an obvious and inexplicable compliance flaw, in contravention of the fundamental statutory requirement that all plan amendments be based upon relevant and appropriate data and analysis. Section 163.3177(1) (f), Fla. Stat. With all due respect, the sparse 6 – page staff memo in support of the Amendment does not come close to analyzing all of its impacts.

The lack of data and analysis is particularly egregious, as most of Captiva lies within Lee County’s Coastal High Hazard Area (“CHHA”). (**Attachment F**). The County has not conducted any review of whether increased population resulting from increased building heights and hotel density permitted by the Amendment will affect compliance with the hurricane evacuation level of service or the sufficiency of shelter space required by Florida law. Section 163.3178, Fla. Stat.

The Captiva Fire Department and the Island Water Association have raised serious concerns about the impacts of the Amendment. For some reason the County did not include that data and analysis in the transmittal package. We attach those letters as **Attachments G and H**.

The Amendment is inconsistent with §163.3177 (6) (a) 2 (c) and 163.3177 (6)(a)8.a., Fla. Stat., because they are not based upon surveys, studies, and data regarding the character of the land or the availability of public facilities and services, including evacuation, emergency medical, police and other public safety response times.

The Amendment Has Little to do with the need to accommodate changing base flood elevations.

The County’s position that the Amendment is intended only to allow base elevations to take into consideration changes to the FEMA flood maps is suspect. **Policy 23.2.3. of the Plan already incorporates changing base flood elevations into Captiva’s building heights regulation, and allows two habitable stories above base flood elevations.**

“POLICY 23.2.3: Building Heights. Maintain building height regulations established as of March 23, 2018 that account for barrier island conditions, such as mandatory flood elevation and mean high sea level, for measuring height of buildings and structures.”

<https://www.leegov.com/dcd/Documents/Planning/LeePlan/LeePlan.pdf> (p. 77 of 311)

The Amendment Creates Internal Inconsistencies

Section 163.3177(2), Florida Statutes provides:

Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent. Where data is relevant to several elements, consistent data shall be used, including population estimates and projections unless alternative data can be justified for a plan amendment through new supporting data and analysis. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements, and each such map must be contained within the comprehensive plan.

The Amendments are inconsistent with and fail to reflect key provisions of the Lee Plan.

Future Land Use Objective 23.1: PROTECTION OF NATURAL RESOURCES. To continue the long-term protection and enhancement of wetland habitats, water quality, native upland habitats (including rare and unique habitats), and beaches on Captiva.

[leegov.com/dcd/Documents/Planning/LeePlan/LeePlan.pdf](https://www.leegov.com/dcd/Documents/Planning/LeePlan/LeePlan.pdf) (p. 76 of 311)

Future Land Use Policy 23.1.5, which requires Lee County to encourage the size of any central sewer system to be consistent with existing development permitted by the Lee Plan and Land Development Code.

Id

The Amendment now makes questionable the current wastewater calculations as a result of possible increased allowable density and intensity, and jeopardizes the County’s central sewer wastewater project with the City of Sanibel.

“Future Land Use Policy 23.2.9: Dark Skies. Limit light pollution and light trespass on Captiva in order to protect wildlife from any detrimental effects and for the benefit of Captiva residents and visitors.”

leegov.com/dcd/Documents/Planning/LeePlan/LeePlan.pdf (p. 78 of 311)

“Future Land Use Policy 101.1.4: Require that comprehensive plan amendments which increase density within the Coastal High Hazard Area or on islands meet one of the following criteria in accordance with § 163.3178(8), Fla. Stat.:

1. Will not result in an out of County hurricane evacuation time that exceeds 16 hours for a Category 5 storm event (Level E storm surge threat); or
2. Will maintain a 12 hour evacuation time to shelter for a Category 5 storm event (Level E storm surge threat) and ensure shelter space is available to accommodate the additional population; or
3. Will provide appropriate mitigation as determined by Lee County Department of Public Safety, to satisfy both criteria above, which may include the payment of money or construction of hurricane shelters and transportation facilities.”

leegov.com/dcd/Documents/Planning/LeePlan/LeePlan.pdf (p. 181 of 311)

There is no mention of this policy in the staff report, let alone any analysis of the Amendment’s impact on evacuation times.

Conclusion

The Amendment has little to do with resiliency, and will make Captiva less resilient and less safe by increasing the intensity of use inside and outside of South Seas Island Resort. It grants a discriminatory benefit for a single property owner on South Seas Island Resort and sets a unavoidable precedent for more intense development over the entire island. There has been opposition from every sector of the Captiva and Sanibel communities to the Plan Amendment, including the Sanibel and Captiva Islands Chamber of Commerce. (**Attachment I**), and the City of Sanibel (**Attachment J**). The Amendment was approved after more than 13,800 people signed a petition opposing the Amendment, and despite more than two hours of testimony from public speakers opposing the Amendment.

We thank you for your consideration of these comments and information, and hope that the agency will raise strong and clear objection to the County’s proposal to increased hotel room density and building heights on a narrow barrier island with limited evacuation routes. We hope the Department will agree that this such an action is completely unacceptable response to the devastation wrought last year by Hurricane Ian.

Sincerely,



Richard Grosso

cc: Lisa Riordan, Chair, CCA Land Use Committee

June 16, 2023

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

Sent via email and USPS

Re: Proposed Amendments to Chapters 30, 33, and 34 of the Lee County LDC

Honorable Chair, Vice Chair and Members of the Lee County Commission:

On Jun 14, 2023, the Sanibel City Council held a special meeting to discuss the proposed amendments to Chapters 30, 33 and 34 of the Lee County Land Development Code (LDC), which were first presented to the Lee County Board of County Commissioners (BOCC) on June 6, 2023 and which are scheduled before the BOCC for public hearing on June 20, 2023. As you may know, the City invited Lee County staff to present a summary of the proposed LDC amendments; however, the County Manager declined our invitation.

There were 115 persons in attendance (excluding City Council and staff) and 245 independent viewers on the City's Facebook Live broadcast, for a total of 360 attendees and viewers. There were 14 public speakers who identified themselves as residents of Sanibel or Captiva, or as a leader of a Sanibel/Captiva organization. Notably, there were no comments in opposition to the general notion of increasing resiliency, which the City Council understood to be the original premise for the proposed LDC changes. However, there was universal opposition to the LDC amendments, as proposed, as they far exceed any aim of resiliency by also facilitating increased intensity of use throughout Captiva and facilitating potential increased density and perhaps vulnerability within South Seas Island Resort, in contravention of resiliency aims and the current Comprehensive Plans for both Captiva and Sanibel. The City Council is concerned that the proposed LDC amendments, if approved, will negatively impact Sanibel by increasing traffic congestion, increasing evacuation times, and put at risk the partnership between Sanibel and Lee County to develop a central sewer system on Captiva Island.



City of Sanibel

800 Dunlop Road
Sanibel, Florida 33957-4096

www.mysanibel.com


AREA CODE - 239

ADMINISTRATION	472-3700
CITY CLERK/LEGISLATIVE	472-3700
CITY COUNCIL	472-4135
BUILDING	472-4555
FINANCE	472-9615
IT SUPPORT	472-3700
LEGAL	472-4359
NATURAL RESOURCES	472-3700
PLANNING	472-4136
POLICE	472-3111
EMERGENCY MANAGEMENT	472-3111
PUBLIC WORKS	472-6937
RECREATION	472-0345
UTILITIES	472-3179

After hearing public comment and further discussion amongst City Councilmembers, the City Council voted unanimously to request the BOCC reject the proposed amendments to the Lee County Land Development Code that were presented at the June 6, 2023 BOCC meeting and which are scheduled for a Public Hearing at the June 20, 2023 BOCC meeting, as well as to reject the proposed amendments to the Lee County Comprehensive Plan scheduled to be heard at a June 21, 2023 BOCC's Zoning and Comprehensive Plan Amendment Hearing. The City Council saw no value in simply postponing the Public Hearing because City Councilmembers believe the proposed amendments increase vulnerability instead of improving resiliency and believe the potential increases in density and intensity will threaten the current quality of life on Sanibel.

This letter memorializes the City Council's unanimously approved motion and formally conveys its request that the BOCC reject the subject LDC amendments set for hearing on June 20, 2023, as well as reject the subject Plan amendments set for hearing on June 21, 2023.

Respectfully submitted,


Richard Johnson, Mayor


Mike Miller, Vice Mayor


Dr. Scott Crater, Councilmember


John Henshaw, Councilmember


Holly D. Smith, Councilmember

July 19, 2023

Commission Chairman, Brian Hamman
Commission Vice Chairman, Mike Greenwell
Commissioner Cecil L. Pendergrass
Commissioner Kevin Ruane
Commissioner Ray Sandelli
Lee County Board of County Commissioners
2120 Main Street
Fort Myers, FL 33901 **Sent via email and USPS**

RE: Captiva Community Panel Principles for Maintaining and Increasing Resiliency on Captiva

Honorable Chair, Vice Chair and Members of the Lee County Commission:

At the July 18, 2023, City Council meeting; and at the request of the Captiva Community Panel, the Sanibel City Council voted unanimously to endorse and support the *“Principles for Maintaining and Increasing Resiliency on Captiva”* (Principles) prepared by the Captiva Community Panel. A copy of the Principles is attached to this letter.

As you know, the Captiva Community Panel developed the Principles in response to the proposed amendments to the Lee County Land Development Code (LDC), Chapters 30, 33 and 34 (short title: LDC Amendments for Building Height, Resiliency, South Seas). These amendments were presented to the Lee County Board of County Commissioners (BOCC) for consideration on June 20, 2023. Prior to the June 20, 2023, BOCC public hearing, the Sanibel City Council held a Special City Council meeting on June 14, 2023, and voted to request that the BOCC reject the proposed amendments to the LDC.

During our discussion on July 18th, Sanibel City Councilmembers expressed gratitude to the BOCC for delaying the public hearing on the LDC amendments until September 5, 2023, and for directing Lee County staff to hold public meetings in Captiva and Sanibel to solicit public comment on the proposed amendments. Collectively, we all look forward to the August 2, 2023, public meeting in Sanibel.

While the discussion at the July 13, 2023, public meeting on Captiva provided a robust conversation concerning the base flood elevation (BFE) and its relationship to the build back height of 28’ above BFE on Captiva, there was no meaningful discussion on the issues of density and building height for new construction. The



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Sanibel City Council remains concerned about and opposed to the proposed exception for the South Seas resort to the current 3-units per acre limitation for hotel units. We feel any increase in density would overburden the water, sanitary sewer, and transportation public infrastructure systems, and would be detrimental to the quality of life for Sanibel and Captiva residents.

We remain committed to listening and learning about the proposed LDC amendments at the upcoming August 2, 2023, public meeting; however, for the reasons stated, we remain steadfast in our opposition to increasing density on Captiva.

This letter memorializes the City Council's unanimously approved motion to endorse and support the "Principles for Maintaining and Increasing Resiliency on Captiva Island" as developed by the Captiva Community Panel.

Respectfully submitted,


Richard Johnson, Mayor


Mike Miller, Vice Mayor


Dr. Scott Crater, Councilmember


John Henshaw, Councilmember


Holly D. Smith, Councilmember

Captiva Community Panel:

Principles for Maintaining and Increasing Resiliency on Captiva:

We oppose changing the existing height restrictions on Captiva which already incorporate increasing base flood elevations.

[We would consider offering property owners on Captiva the option to add up to four feet to their lawful base flood elevation. The current 28 feet height allowance for habitable space would then be measured from the higher base flood elevation.]

We oppose changing the maximum permitted density for hotels and motels on Captiva which may not exceed 3 units per gross acre.

We oppose any special exceptions to the existing height restrictions and density limitations on Captiva, and oppose exempting South Seas Island Resort from the height and density regulations applicable to Captiva when it seeks to redevelop its property.

We support the elimination of any ambiguity in the county's build-back policy to ensure that structures whose damage exceeds 50% of their value can be rebuilt to what existed at the time of the damage with the same use, density, intensity and size – including the originally permitted height which will be measured from the federal base flood elevations in force at the time permits are sought for rebuilding.

We request the county correct the outdated height limitations in Section 34 of the Land Development Code to reflect the Captiva-specific height limitations in Chapter 33 which incorporate base flood elevations.

We support efforts by parties governed by Administrative Interpretation - ADD2002-00098 on South Seas Island Resort to bring its existing master development plan into compliance with the Land Development Code provisions applicable to Captiva to reflect the more resilient height restrictions on Captiva which incorporate base flood elevations.

We support other revisions to the Land Development Code that can be shown to improve resiliency, enhance disaster recovery, and protect our fragile barrier island's environment – and which do not conflict with the principles stated above.



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August 25, 2023

Commission Chairman, Brian Hamman
Commission Vice Chairman, Mike Greenwell
Commissioner Cecil L. Pendergrass
Commissioner Kevin Ruane
Commissioner Ray Sandelli

Lee County Board of County Commissioners
2120 Main Street
Fort Myers, FL 33901 **Sent via email and USPS**

RE: Opposition to the Proposed Amendments to the Lee County Land Development Code and the Captiva Chapter of the Lee Plan

Honorable Chair, Vice Chair and Members of the Lee County Commission:

On August 15, 2023, the Sanibel City Council unanimously voted to express our continued opposition to the proposed amendments to Chapters 30, 33 and 34 of the Lee County Land Development Code (LDC) effecting Captiva and the Captiva Chapter of the Lee Plan.

We are grateful that the BOCC delayed the Public Hearing on the proposed LDC amendments from June 20, 2023, to September 5, 2023. At your direction, Lee County staff held a series of public meetings during the months of July and August to specifically solicit public input on the proposed amendments. If civic engagement is authentic, then the testimony and comments provided at the County's public meetings must be given great weight. We applaud the BOCC for requiring these public meetings and hope your decision on the proposed amendments to the LDC and Captiva Chapter of the Lee Plan will be consistent with the testimony provided.

Captiva and Sanibel are barrier island communities. They are unique and the development on and around environmentally sensitive land must be managed differently than the land in more densely populated urban areas. Maintaining the attributes of low density and less intensive use of the land is critical for the sustainability and resiliency of the islands. By significantly altering building height restrictions for Captiva, and removing provisions that prevent the South Seas Island Resort from increasing density on their property, the natural environment, and the quality of life for Sanibel and Captiva residents will most certainly be harmed.


By attending all the County's public meetings in July and August, as either participants or attendees, we have learned through discussions and public comment that a majority of Captiva and Sanibel residents oppose the proposed Captiva-related amendments to the LDC and amendments to the Captiva Chapter of the Lee Plan. Based on the feedback and our own analysis, we urge you to soundly reject the proposed Captiva-related amendments to the LDC and the amendments to the Captiva Chapter of the Lee Plan.

Respectfully submitted,


Richard Johnson, Mayor


Mike Miller, Vice Mayor


Dr. Scott Crater, Councilmember


John Henshaw, Councilmember


Holly D. Smith, Councilmember

CC: Dana Souza, City Manager
Steve Chaipel, Deputy City Manager
John Agnew, City Attorney
Scotty Lynn Kelly, City Clerk
Dave Harner, County Manager



Lee County
Southwest Florida

BOARD OF COUNTY COMMISSIONERS

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Richard Wesch
County Attorney

Donna Marie Collins
Chief Hearing Examiner

VIA ELECTRONIC & U.S. MAIL

October 20, 2023

James D. Stansbury, Chief
Bureau of Community Planning and Growth
Florida Department of Commerce
107 E. Madison Street
Tallahassee, Florida 32399

Re: Lee County Comprehensive Plan Amendment (No. 23-05ESR)

Dear Mr. Stansbury:

Lee County is in receipt of the October 6, 2023 letter you issued under Florida's Expedited State review process for the above referenced Lee County Comprehensive Plan amendment. Unfortunately, due to the seriousness of the allegations made in your letter and your comments made without an apparent basis in law or fact, Lee County is compelled to provide this response.

While the comments may have been added for persons unknown to us, your comments appear as though the Department of Economic Opportunity is questioning the integrity of the Lee County Board of County Commissioners and its Staff. In fact, one might take your comments as going beyond questioning and in fact alleging that the Lee County Board of County Commissioners and its Staff have lied to its residents. And to make such assertions without an apparent basis in law or fact might amount to an expansion of the Department's role in the Expedited Review process under State law. See § 163.3184(3)(b)2., and § 163.3184(3)(b)4, Fla. Stat.

Not only did your comments lack a basis in State law, they demonstrate your Department's complete lack of information on the facts surround this case and lack of effort to elicit the requisite information to make such comments (even though that review is outside the scope of your Department's role in the Expedited State Review process). Had your Department sought information to support your comments, you would have found that those comments are unsubstantiated and would not have included them. For the reasons stated below, Lee County respectfully requests that the Department immediately withdraw its October 6th letter and issue a revised letter without inclusion of the comments that clearly exceed the Department's scope of review under State law.

P.O. Box 398, Fort Myers, Florida 33902-0398 (239) 533-2111

Internet address <http://www.leegov.com>

AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

Re: Lee County Comprehensive Plan Amendment (No. 23-05ESR)

Since 2011, the Florida legislature has made it clear. The role of State Reviewing Agencies in the local comprehensive plan amendment process is very limited. The State legislature's actions over the past decade are in direct response to past actions by State reviewing agencies, such as yours, in expanding their roles in review of local regulations. Your letter is a direct representation of the types of letters that the Florida legislature intended to restrain State Reviewing Agencies from writing. As you are undoubtedly aware of the changes the State legislature made to Chapter 163, Fla. Stat., and Florida Administrative Codes over the past decade. Unfortunately, since your Department did not comply with the current Expedited Review process under Chapter 163, Fla. Stat., it's necessary to review those laws in this response.

Section 163.3184(3), Fla. Stat., provides the process for Expedited State Review of local Comprehensive Plan Amendments. As the State Land Planning Agency under Chapter 163, Fla. Stat., your Department is tasked with reviewing Lee County's Comprehensive Plan Amendments in accordance with the limited authority granted to it under § 163.3184, Fla. Stat.

Pursuant to § 163.3184(3)(b)2., Fla. Stat.,

*State agencies **shall only comment on important state resources and facilities that will be adversely impacted by the amendment** if adopted. Comments provided by state agencies shall state with specificity how the plan amendment will adversely impact an important **state resource or facility** and shall identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts. (emphasis added)*

Section 163.3184(3)(b)4.h., Fla. Stat., provides:

*4. Comments to the local government from state agencies **shall be limited to the following** subjects as they relate to important **state resources and facilities** that will be adversely impacted by the amendment if adopted: (emphasis added)*

*h. The state land planning agency [YOUR DEPARTMENT] **shall limit its comments to important state resources and facilities outside the jurisdiction of other commenting state agencies** and may include comments on countervailing planning policies and objectives served by the plan amendment that should be balanced against potential adverse impacts to important **state resources and facilities**. (emphasis added)*

Re: Lee County Comprehensive Plan Amendment (No. 23-05ESR)

Existing State law could not be any clearer concerning your Department's limited role in the Expedited State Review process.

Notwithstanding the clear limitations in Statute, your Department exceeded those limitations and provided the following comments:

The review was completed under the expedited state review process. After consideration of the proposed amendment and citizen input, we have a comment regarding the proposed amendment.

The amendment appears to fly a "false flag" of "resilience" as a primary purpose. When in reality, the amendment is clearly at least in-part for the purpose of an increase in hotel room density. Whether or not an increase in hotel room density is appropriate is for the community to decide. Rather we are simply urging you to have a transparent discussion with the community about the actual purpose of the amendment.

Nowhere within these comments do you reference a single State resource, facility, or any State interest as required under § 163.3184(3)(b)2., and § 163.3184(3)(b)4, Fla. Stat. Furthermore, these comments are factually inaccurate and demonstrate a complete lack of information to make such comments. These comments are not even applicable to the Plan Amendments before your Department.

Lee County understands the need for public input in the decision-making process, when permitted by law to accept that input. However, Lee County is unaware of any section of Chapter 163, Fla. Stat., or Florida Administrative Code that permit your Department to consider, let alone incorporate "citizen input" in the Expedited State Review process. There appears to be no legal authority for your Department to ignore the explicit limitations under State law concerning the scope of your Department's comments in the Expedited State review process. Having recently seen the "citizen input" you received, we are unable to find any reference to relevant "*important state resources and facilities.*" Your inclusion of "citizen input" into your Department's comments is highly irregular. In fact, we are aware of no other circumstance in Lee County in which your Department did so.

Notwithstanding the legal improprieties of your letter, as written, your comments were apparently based off nothing more than inaccurate and mischaracterized allegations put forth in a letter from a citizen's group. You allowed those assertions to become the official comments of your Department, in direct conflict with your scope of review under Chapter 163, Fla. Stat. And, you did so, without verifying the veracity of those allegations.

Re: Lee County Comprehensive Plan Amendment (No. 23-05ESR)

While Lee County strongly disagrees with any State agency taking the actions you did, at least before doing so, your Department should have provided Lee County with all the information you received and would consider in your review (written or via telephone). More importantly, your Department should have advised Lee County that, regardless of the limitations under State law, your review comments could be changed as a result of that information. Then, prior to issuance of a revised letter, you should have provided Lee County with an opportunity to respond to that new information prior to issuance of a Department letter.

Instead of affording Lee County this opportunity, you allowed inaccurate assertions, in violation of Chapter 163, Fla. Stat., to be included as your Department's official comments. If your Department were inclined to include such comments, then perhaps you should have either verified the veracity of such comments or contacted Lee County to discuss and explore that "citizen input" prior to including them as your Department's comments. To understand just how inaccurate your comments are, I'll provide you with an overview of the facts.

On September 28, 2022, Lee County was hit with the third most costly Hurricane in US History. Along with Hurricane Ian's dangerous winds, Hurricane Ian brought a catastrophic storm surge that destroyed many Lee County residents' homes and lives. As the County began assessing Hurricane Ian's impacts, one thing, among many others, became very clear. Rebuilding homes, businesses, and Lee County residents' lives would need help on multiple fronts.

One issue that residents and Lee County Community Development Staff needed to address concerned existing height regulations as they related to new flood requirements. In certain cases, Lee County's existing development regulations (having nothing to do with your Department) needed to be changed to allow property owners to rebuild their homes and businesses to the degree they once had while maintaining safe structures above new flood regulations and recently adopted FEMA map revisions. To accomplish that goal, certain Land Development Code ("LDC") amendments and Comprehensive Plan amendments relative to height restrictions were necessary to permit that reconstruction.

The actual Comprehensive Plan Amendment application that was before your Department was necessary to remove language within the Lee Plan that would serve as an impediment to changing height regulations throughout the County. While resiliency has many facets, it seems absurd that you would write a comment that the proposed Plan amendments concerning heights "*appears to fly a 'false flag'*" and that the amendment is for the "*purpose of an increase in hotel room density.*" Avoiding for a moment your obvious

Re: Lee County Comprehensive Plan Amendment (No. 23-05ESR)

allegation that the County is being deceitful, the sole text being amended concerned height regulations. Nothing within the comprehensive plan amendment that your Department reviewed concerned density or hotel units. Notwithstanding the fact that hotel rooms and density have nothing to do with State interests subject to your Department's review, the sole basis for this comment was from "citizen input" and not the Application before you. This comment is factually inaccurate, legally deficient, beyond your scope of review, and must be removed.

Your letter stated that the Department urges "*the County to have a transparent discussion with the community.*" Is it your Department's position that the Comprehensive Plan Amendment process was not transparent or has not be in accordance with existing laws? As written, your Department appears to be making that assertion. Your letter provides no citation to any procedural improprieties with the County's review of this application. Your letter fails to identify which State or County laws were not met concerning the notification, publication, or public hearings for this case. Assuming you can cite none, this comment is also factually inaccurate, legally deficient, beyond your scope of review, and must be removed.

Had your Department inquired, you would have learned that the County's actions in this case were beyond open and transparent. All actions taken by the Board were consistent with the requirements of Chapter 125, Fla. Stat., Chapter 163, Fla. Stat., and all applicable Lee County regulations pertaining to the adoption of revisions to the Land Development Code and Lee Comprehensive Plan. In fact, in direct rebuttal to your allegations that Lee County was not transparent, I draw your attention to the magnitude of public actions and hearings of the Lee County Board of County Commissioners in this matter.

On January 17, 2023, at a public meeting, the Lee County Board of County Commissioners provided direction to County Staff to review and bring back proposed amendments addressing height, setbacks, and other development limitations that are potentially restricting residents' ability to rebuild their homes and businesses in a manner that reduces potential flooding threats. That direction included review of and proposed amendments to provisions of the LDC applicable to development of South Seas.

Subsequent to receiving that direction, County staff from the County Attorney's Office and the Department of Community Development developed proposed amendments to the LDC and the Lee Plan to advance the County Commission's direction. While amendments to the LDC are outside the

Re: Lee County Comprehensive Plan Amendment (No. 23-05ESR)

scope of your Department's review, since you allowed "citizen input" concerning those amendments to infect your Department's comments and drive your comments concerning the transparency of this process, I've included dates of those meetings within this response.

Prior to scheduling the proposed amendments (LDC and Lee Plan) for public hearing before the County Commission, County staff presented the proposed amendments to the following Board-appointed citizen advisory committees as part of publicly advertised meeting agendas:

- On May 12, 2023, staff presented the proposed amendments to the Land Development Code Advisory Committee ("LDCAC"). The LDCAC reviewed the proposed amendments to the LDC and recommended approval of the amendments as modified.
- On May 22, 2023, the Local Planning Agency reviewed the proposed amendments to both the Lee Plan and LDC and found them consistent with the Lee Plan.

The proposed LDC amendments were then scheduled for a series of duly advertised public hearings before the County Commission to consider their adoption as follows:

- On June 6, 2023, a request to set the Ordinance for a public hearing was presented to the Board of County Commissioners during its publicly advertised Board meeting. The Board of County Commissioners voted to set the public hearing for the proposed ordinance for June 20, 2023 at 9:30 a.m.
- On June 20, 2023 at 9:30 a.m., the Board of County Commissioners voted to continue the public hearing for the proposed ordinance until September 5, 2023 at 9:30 a.m. to allow for opportunities for public input. The Board also voted to continue the transmittal hearing of companion amendments to the Lee Plan from June 21, 2023 at 9:30 a.m. to September 6, 2023 at 9:30 a.m.

In response to the Board's direction, staff scheduled and held a series of additional public meetings that are not required under Chapter 125, Fla. Stat., or Chapter 163, Fla. Stat. The purpose of those meetings was to engage concerned citizens and residents regarding the proposed amendments. These meetings were publicly advertised and held on:

- Thursday, July 13, 2023, 6:00 p.m. – 8:00 p.m., Captiva Civic Center, 11550 Chapin Lane, Captiva, FL 33924

Re: Lee County Comprehensive Plan Amendment (No. 23-05ESR)

- Tuesday August 1, 2023, 6:30 p.m., Pine Island Civic Association Regular Meeting, Pine Island United Methodist Church - 5701 Pine Island Road, Bokeelia, FL 33922
- Wednesday, August 2, 2023, 6:00 p.m. – 8:00 p.m., BIG ARTS, 900 Dunlop Road, Sanibel Island, FL 33957
- Wednesday, August 9, 2023, 5:30 p.m. – 7:30 p.m., Lee County Public Works Building, Conference Room 1B, 1500 Monroe Street, Fort Myers, FL 33901

We have no reason to doubt that the individuals responsible for your “citizen input” were present at most, if not all, of those meetings. Those individuals or their representatives made presentations and voiced their concerns regarding the proposed amendments, both Lee Plan and LDC. The County went above and beyond what is required under Chapter 163, Fla. Stat., in presenting these Amendments to the public. At no point was the County’s actions less than transparent. Nothing within the Comprehensive Plan Amendment application presented to your Department could have lead you to the conclusion raised in your letter. The sole basis for your comment concerning transparency was from unsubstantiated assertions made in “*citizen input*.”

The “*citizen input*” you relied upon to make your determinations are in large part a response to the County’s adoption of new height regulations in the LDC and speculation on how certain developments may utilize those regulations. A simple review of the “*citizen input*” would lead you to that conclusion. LDC regulations are not a part of the Comprehensive Plan Amendment application that was sent to your Department as part of the Expedited Review Process.

Like other development projects and proposed Code changes, there will always be those that do not want change or those that fear competition. While their “concerns” may be understandable to some degree, those residents were free to present their position concerning the LDC changes (and in fact did so) at the plethora of public meetings that were held before the Board of County Commissioners. While reasonable minds are free to agree or disagree, ultimately, the decision to move forward with these Amendments fully resides with the Lee County BOCC. The Lee County BOCC did in fact carefully consider the citizens input on the Lee Plan and LDC Amendments and decided to transmit the proposed amendments.

Re: Lee County Comprehensive Plan Amendment (No. 23-05ESR)

However, and more importantly, your Department is **NOT** free to interject these types of comments as part of your Expedited Review process. By doing so, you have openly defied the State legislature's intent since 2011 to preclude such behavior and your Department has done so in direct violation of State law. See § 163.3184(3)(b)2., Fla. Stat., and § 163.3184(3)(b)4, Fla. Stat. And, at the same time, you managed to question the integrity and disparage the entire Board of County Commissioners and County Staff for nothing more than obvious political expediency.

To remedy this overstep, Lee County is requesting that the Department issue a revised letter consistent with Chapter 163.3184, Fla. Stat., by limiting comments to only those concerning "*important state resources and facilities that will be adversely impacted by the amendment if adopted.*" See § 163.3184(3)(b)2., and § 163.3184(3)(b)4, Fla. Stat. If an additional conversation is needed or information concerning this case, please do not hesitate to contact me directly. Thank you for your time and attention to the matters raised herein.

Sincerely,



Michael D. Jacob
Deputy County Attorney

cc via email only:

Scott Rogers, Regional Planning Administrator
Commissioner Kevin Ruane, District 1
Commissioner Cecil L Pendergrass, District 2
Commissioner Raymond Sandelli, District 3
Commissioner Brian Hamman, District 4
Commissioner Mike Greenwell, District 5
Dave Harner, II, County Manager
Marc Mora, Assistant County Manager
Richard Wm. Wesch, County Attorney
Mikki Rozdolski, Director, Department of Community Development