

Upper Captiva Community Panel  
Approved Minutes of the October 27, 2011 Meeting

Meeting called to order at 10:00 AM

Present: Panel Members Kristie Anders, Chair; Dave Tompkins, Vice-Chair; Rick Fox, Treasurer; Zeke McDonald, Secretary; Peter Aldrian; Member; Dr. Margaret Banyan, FGCU Planning Consultant; Lee County Commissioner John Manning; Lee County Staff: Kathie Ebaugh, Lindsey Sampson, Bill Newman, Michael Jacob; and members of the public.

Phone conference option provided as well: no public identified themselves by phone.

September 20, 2011 Meeting Minutes

**Zeke McDonald Motion:** table September 20, 2011 meeting minutes until next meeting

**Peter Aldrian: Second**

**Discussion:** None

**Decision:** Minutes were tabled by a unanimous vote.

Treasurer's Report

**Treasurer's Report:** Rick Fox provided the financial report as of October 27, 2011 and requested that it be attached to the 10/27/11 minutes. There was no activity and the balance remaining for the project remained at \$23,718.

**Zeke McDonald Motion:** Accept Treasurer's Report

**Peter Aldrian: Second**

**Discussion:** None

**Decision:** Treasurer's Report accepted by unanimous vote.

Public Comment

No public comment at this time

Commissioner John Manning Comments

Commissioner Manning described his early involvement with community planning in Lee County. Commissioner Manning described that communication in the process of planning was the pre-eminent goal but recognized that disagreements were likely to occur in the process. He stated that he was here to listen and help in any way that he could. He asked the Chair to establish communication as a goal of the Panel.

Hart Kelly stated that the panel should do a better job of communication. Zeke McDonald added that communication was a problem on the island due to the Florida Sunshine Laws. Discussion regarding the applicability of the law to local governments ensued. Dave Tompkins added that the law imposes a rhythm on the panel where action can only take place once per month. Some members of the public suggested that the panel send out mailings 4-6 times per year and get a consensus of all 700+ property owners before writing code. Fran DeTure disagreed with the statement that the panel did not communicate well and cited examples of the website, email distribution of agendas, etc. Peter Aldrian clarified the role of the panel in this stage of the process was to write code and there was a need to follow the process through. Peter viewed the liability of property owners to be the biggest issue, as owners could be sued if there was an accident. Kathie Ebaugh and others clarified that the panel was advisory to the Board of County Commissioners (BoCC) and that any code that was developed had to go

through the Land Development Citizens Advisory Committee (LDCAC), the Executive Regulatory Oversight Committee (EROC); and the Local Planning Agency (LPA) before they go to the BoCC for final adoption. Hart Kelly was concerned about uncertainty on the island about codes. Commissioner Manning stated that the island had to move onward and that he wanted to be kept in the loop and get a better sense of communication. Arthur Mason invited all attendees to the UCCA meetings. Jeff Morrel asked about existing codes on Upper Captiva. Discussion ensued about island-specific and county-wide codes. Commissioner explained that all codes are enforced by the County. Kristie Anders expressed the importance of the panel as a means of communication with Lee County government.

### Updates

#### *Pathways*

Kristie Anders reported on the meetings with Commissioner Manning and attorneys Michael Jacob and John Fredyma. Kristie summarized the idea of regulating golf cart use through rental agreements or ordinances to enhance safety.

Arthur Mason expressed concern about property owners blocking off access to pathways.

Michael Jacob (County Attorneys Office) explained that owners could not put up a fence without a permit. However, the right to stop owners from putting up other blockages (rocks, chains, etc.) would likely have to be enforced through a claim of prescriptive rights. If owners did block easements and a user hit the blockage, the owner may be open to a lawsuit. Mr. Jacob also explained that re-platting each subdivision could be a mechanism to legitimize the location of the pathways, but that it involved a long and expensive process and may include the affirmation from some lenders.

Kristie Anders asked if a MSTU / BU could be used to legitimize the roads. Mr. Jacobs said that it could be used to pay for the re-platting of each subdivision. The MSTU/BU process can be difficult, as the methodology to set it up might be difficult or controversial. Mr. Jacobs stated that the fire district boundaries could be used, but it was its own entity – and would be managed separately from the fire district. Zeke McDonald stated that the Fire District has a clear purpose and that managing a MSTU/BU would not likely fall within its purpose.

Discussion ensued regarding which regulating rental agreements might work to enhance safety. Pathway maintenance costs were discussed. Manning noted that Upper Captiva is a "donor community" to the County.

Zeke McDonald stated that the Fire District has a duty to be able to get its trucks to the farthest part of the island, which may involve pathway maintenance.

Commissioner Manning stated that he wanted to be kept in the loop on this issue.

### Brazilian Pepper

Dave Tompkins reported on the current thinking on Brazilian Pepper removal. Members of the public noted the difficult problem in maintaining a pepper-free property after removal. Arthur Mason asked about funding from the Sanibel-Captiva Conservation Foundation for pepper removal on state lands. Kristie responded that the process would begin in November 30, 2011. Commissioner Manning suggested that Kathie Ebaugh look into state grants for pepper removal on state lands and private property owner incentives. It was noted that pepper control requires a strategic plan and recurring funding. Safety Harbor has regulations for pepper removal and property owners have the duty to maintain it.

## Night Sky

Zeke McDonald stated there were no new updates.

## Planning Panel Organization

*Discussion and final approval of by-laws.* Kristie Anders asked for any further comments on the draft bylaws. Commissioner Manning suggested that the term, “residing on” be reconsidered in order to eliminate week – long renters from attempting to vote.

*Implementation date.* The panel discussed the implementation dates of elections in the month of January-February and transitions in March 2012.

**Zeke McDonald Motion:** Replace term, “residing on” with “registered voter of”

**Peter Adrian:** Second.

**Discussion:** Community poll to ask whether the panel should incorporate was discussed. The panel agreed it was necessary to maintain legitimacy. It was suggested that the UCCA make a statement that supported the panel to in becoming independent. Margaret Banyan asked how long to leave the poll open. It was discussed that she would report the results at the next meeting and close when sufficient feedback was obtained, but the general feeling was that it should close towards the end of 2011.

**Zeke McDonald Amended Motion:** to add verbiage to the poll describing UCCA agreement for the panel to incorporate.

**Peter Aldrian:** Seconded the amendment.

**Decision:** Unanimous in favor.

## Other Items Before the Panel

Kristie Anders asked for clarification from Commissioner Manning on whether the panel needed to obtain 51% agreement from property owners for any UCCP decisions. Commissioner Manning and Kathie Ebaugh described that the panel was only advisory to the BoCC and therefore, did not need to have a 51% vote of island members. Citizens are represented through their county commissioners – panels provide input.

Kathie Ebaugh announced that Lee County is working on an update to the Lee Plan and that they may be adjusting how some of the community planning goals are written. She will keep members and citizens informed as the process unfolds. The process should be completed by Spring 2012 and implemented by Dec/Jan 2013. Kristie Anders wanted to make sure that the document clearinghouse idea was retained. Kathie Ebaugh said it would be in some form.

Next meeting date will be sometime in December due to holiday travel schedules. Margaret Banyan will send out a meeting poll request.

**Peter Aldrian Motion:** Adjourn

**Zeke McDonald:** Second

**Decision:** Unanimous in favor.

Meeting adjourned at 12:00 pm