

## **Problems with the Hearing Examiner's Recommendation:**

Fundamentally, the recommendation fails to recognize that South Seas commenced development in 1973 pursuant to a Zoning Approval that created a Planned Unit Development ("PUD") that downzoned the full 304 acres to 3 units per acre with a density limit of 912 units inclusive of hotels and residential dwelling units as part of a complete development package. It permitted the developer to cluster units, aggregate open space, and reduce or eliminate buffers and setbacks. The developer constructed and sold off units and development rights as part of the PUD upon which hundreds of purchasers relied. The current rezoning application and recommendation provides South Seas, as a successor in interest, with a windfall of additional development rights at the expense of those who purchased units within the resort and who will lose the benefit of a very low density resort community with significant open space established by the original master plan. South Seas and the County should not have been permitted to rezone and increase development on a minority portion of the 304-acre resort, and certainly not without providing the majority of owners on the resort with full party status to participate in the hearing.

## **Some Specific Errors:**

1. The Hearing Examiner acknowledges that South Seas purchased its 120 acres of the resort with an allowable 107 hotel units, 140 employee housing units and the right to build another 25 units, but then recommends replacing its 272 units with 628 units (193 condos/timeshares and 435 hotel units).
2. The recommendation rejects the testimony of 52 witnesses from the community who credibly testified (i) that the application violated the Captiva Community Plan and the specific intent of the zoning that created the resort, (ii) that the islands' constrained evacuation roadway cannot handle the development, (iii) that there is insufficient parking for the project or its employees, and (iv) that the sewer treatment plant does not have capacity for this growth in development.
3. Dismissing the traffic implications of more than doubling the density on South Seas' 120 acres, the recommendation mirrors the resort's claim that traffic will be reduced because the resort and all its amenities will be closed to the public. According to the Hearing Examiner, "excluding public access to Resort restaurants, cafes, spa, golf course, and water park further reduces traffic generation from existing development approvals."

However, this policy of exclusion will not reduce traffic after the resort builds 435 new hotel rooms and 193 multi-bedroom condos. Moreover, recommending increased development because South Seas will exclude the public and discourage its visitors from ever leaving the resort is a particularly offensive approach to community planning.

4. The recommendation wrongly concludes that increasing building heights to 45 feet above base flood elevation is necessary to protect life and property. The recommendation confuses increasing heights below the first habitable floor for greater resiliency from floods with increasing heights above the first habitable floor for more units and rooms. The Hearing Examiner also states that “neither the Lee Plan nor the Land Development Code require the height of adjacent buildings/properties to match.”

5. The 2002 Administrative Interpretation (ADD) governing development at South Seas provides that “current and future development” at South Seas “will be limited to a development density of 912 units utilizing a number of small scale clusters.” Moreover, “the final phases of development [at South Seas] include three (3) basic types of projects in accordance with the [South Seas Development Plan] and the allowed limits: upgrading of resort service facilities; development of small scale clusters of residential units; improvement of guest facilities.”

The recommendation provides that the ADD “does not prohibit future zoning actions” that would allow for an increase in development. It contends that the ADD’s “references to ‘future development’ do not bar the current request” from South Seas.

6. The Captiva Community Plan requires the County to **enforce** development standards that **maintain** the historic low-density residential development pattern of Captiva, **continue** existing land use patterns, and **limit** development to that which is in keeping with the historic development pattern on Captiva.” Yet the recommendation provides that “the Captiva Community Plan is no impediment” to the South Seas application for increased density and heights. The recommendation ignores the **enforce, maintain, continue and limit** language of the Plan, provides little analysis of the history of density and building height regulations on Captiva – and somehow concludes that the substantial increases in density and heights are consistent with Captiva’s historic development pattern.

7. The Hearing Examiner states “the proposed plan of development rehabilitates the storm damaged resort to economic viability.” There was no financial data presented at the hearing that the resort had to increase density and building heights for economic viability.

8. The Hearing Examiner’s recommendation provides that since South Seas has always included hotel, residential and commercial uses, and since the application does not introduce new land uses to the resort, the increase in density and intensity is permissible. The recommendation completely ignores the scale and intensity of development. South Seas had 107 hotel units; the Hearing Examiner now recommends 435 hotel units.

9. According to the recommendation, island residents and guests will have adequate time to evacuate Captiva and Sanibel in advance of an impending storm – notwithstanding the increased development on South Seas.

10. The recommendation, failing to recognize the special and fragile nature of Captiva and Sanibel, and what brings visitors to both islands, includes the following:

“Land development creates jobs, increases property values, generates tax revenue, and contributes to economic growth. The MPD [the South Seas proposed development] contributes to a positive business climate and creates additional employment opportunities. Proposed hotel uses support business and leisure tourism, further strengthening the County’s economy.”

According to the recommendation, “Sanibel and Captiva are vital to the County’s tourism industry.” Yet the recommendation threatens the very island attributes that bring visitors to Sanibel and Captiva.

11. The recommendation provides “Captiva Island features estate homes, hotels, bed and breakfasts, and condominiums, many of which are vacation rentals.” It was evident that the Hearing Examiner did not visit Captiva immediately prior to the hearings, or even early on in the hearings as suggested. The majority of homes on Captiva are not “estate homes” and there are no “bed and breakfasts” on Captiva.

12. The Hearing Examiner writes “the LDC exempts South Seas from Community Plan provisions unless provided otherwise in the code.” There is nothing in the Land Development Code that exempts South Seas from the provisions of the Captiva Plan. And a Land Development Code provision cannot exempt a property from the Plan.

13. The recommendation fails to fully account for the traffic related to South Seas employees and their need for parking. The Hearing Examiner states:

“Applicant testified that many Resort employees arrive via three transport vans operated on a daily basis. The van transport reduces the need for onsite parking for employees and ostensibly reduces overall trip generation below that assumed in the transportation analysis.”

South Seas has claimed it will hire 1,000 employees. There is no provision in the rezoning application or recommendation for employee parking and the claim that three transport vans will significantly reduce employee vehicles traveling through Sanibel and Captiva is not worthy of belief.

14. The Hearing Examiner states that “the property has access to public services and infrastructure, including public water and sanitary sewer, paved roads, police, fire, and emergency medical services.” The Hearing Examiner also states “the Captiva Island Fire Control District will provide fire protection and emergency medical services from Captiva

Fire Department Station 181 on Captiva Drive.” But the recommendation fails to acknowledge the following facts presented by the Captiva Fire Chief during the hearing:

“If the rezoning is approved, the Fire District will be adversely impacted due to the proposed changes to building heights. The Fire District will not have the ground ladders or fire flows to provide a sufficient response to the upper floors of a building within the resort. The Fire District recognizes that other buildings, including residential homes, are being elevated within the district due to the recent hurricanes. However, the intensity of hotel space and timeshares creates a large life safety and property risk for the visitors to the resort. In addition to the building being lost if a fire occurs due to the inability to suppress fire on upper floors, lives may also be lost.”

The recommendation also fails to acknowledge the data provided by SCCF that the FGUA wastewater treatment plant at South Seas could not handle the increased development. Neither South Seas nor the County responded with any data to contradict the SCCF presentation.

15. The Hearing Examiner’s recommendation approves virtually everything that South Seas (and the County) proposed with arguably one exception – there needs to be additional off-street parking spaces for amenities at both the north and south development sites of the resort. With respect to the members of the public who testified at the hearing and live on South Seas, the other areas of Captiva and Sanibel, the Hearing Examiner stated in a footnote “while the enjoyment of their property may arguably be impacted by the request, they will not be deprived of the use of their property.”