



AGENDA MEMORANDUM

Legal Department

City Council Regular Meeting Date: June 4, 2024

To: City Council
From: John Agnew, City Attorney
Date: May 30, 2024

SUBJECT: Captiva Civic Association, Inc. (CCA) has requested the City of Sanibel intervene in the CCA's formal administrative hearing challenge filed with the Florida Division of Administrative Hearings (DOAH) against Lee County and the Florida Department of Commerce (FDOC), related to the Lee County Code changes to the density and height standards on Captiva.

BACKGROUND: On September 5, 2023, Lee County passed Ordinance 23-22, which amended the Lee County Land Development Code. The Ordinance authorizes significant increases in building heights, density, and intensity of use on Captiva, and particularly within the South Seas Island Resort (South Seas). Specifically, the Ordinance exempts development at South Seas from certain regulations which otherwise apply throughout Captiva, including height restrictions, hotel density limitation, minimum lot size regulations, and deviation and variance restrictions. Prior to the passage of this Ordinance, density for the 304 acres within South Seas was capped at 912 units (3 units per acre), and height was capped at the lesser of 35 feet above grade or 42 feet above sea level. As a result of the passage of this Ordinance, South Seas building heights could be approved up to 75 feet above base flood elevation, along with unlimited hotel room density. On December 18, 2023, South Seas submitted a rezoning application to Lee County, seeking to construct 707 new units, increasing density on South Seas from a maximum of 912 units to 1,347 units. The proposed new building heights as high as 64 feet above base flood elevation.

On March 7, 2024, the CCA filed a petition with the FDOC challenging the Ordinance, based upon it being inconsistent with the goals, objectives, and policies within the Lee County Comprehensive Plan (Plan). On May 6, 2024, the FDOC issued its decision that the Ordinance was consistent with the Plan. The CCA then timely filed its petition with the DOAH pursuant to Section 163.3213(5)(a), Florida Statutes, which provides as follows:

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(5)(a) If the state land planning agency determines that the regulation is consistent with the local comprehensive plan, the substantially affected person who filed the original petition with the local government may, within 21 days, request a hearing from the Division of Administrative Hearings, and an administrative law judge shall hold a hearing in the affected jurisdiction no earlier than 30 days after the state land planning agency renders its decision pursuant to subsection (4). The parties to a hearing held pursuant to this paragraph shall be the petitioning, substantially affected person, any intervenor, the state land planning agency, and the local government. The adoption of a land development regulation by a local government is legislative in nature and shall not be found to be inconsistent with the local plan if it is fairly debatable that it is consistent with the plan. The hearing shall be held pursuant to ss. 120.569 and 120.57(1), except that the order of the administrative law judge shall be a final order and shall be appealable pursuant to s. 120.68.

The CCA expects the owners of South Seas to seek to intervene in the proceeding on the side of Lee County, and the CCA has requested the City of Sanibel to seek to intervene on the side of the CCA. Except for good cause shown, a motion for leave to intervene must be filed at least 20 days prior to the final hearing. The date for the final hearing is not yet set but is expected to be set for late July or early August 2024.

FUNDING SOURCE: If Council authorizes the motion to intervene, it would be my recommendation that I (through my firm) handle any necessary or appropriate legal filings or presentations, rather than retaining outside counsel. Funding for participation in the DOAH proceeding is available in the adopted fiscal year 2024 legal professional services budget.

RECOMMENDED ACTION:

Discussion and direction.

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