

**Harbour Pointe Rezoning Hearing  
CCA, SCCF and Conservancy Advocate  
Protecting Captiva Mangroves to the Greatest Extent Possible**

An Update For CCA Members on the Proposed Harbour Pointe Wetlands Development at South Seas Report

The Captiva Civic Association, Sanibel-Captiva Conservation Foundation, Conservancy of SW Florida and other public interest groups recently participated in a two day county rezoning hearing on July 30<sup>th</sup> and August 7<sup>th</sup> in Ft Myers to oppose the proposed destruction of mangrove wetlands at the Harbour Pointe development site. This site is situated on the north east section of South Seas Resort. Mariner Properties Development d.b.a. Plantation Development Limited brought back its pending rezoning application from 2005 to the Lee County Hearing Examiner. The Hearing Examiner takes testimony from all interested parties and then makes a recommendation to approve or deny rezoning applications to the Lee County Board of County Commissioners, who in turn make the final decision.



This county rezoning process has been held in abeyance for three years pending issuance of a state wetlands impact permit from the South Florida Water Management District. The rezoning case will move forward once the Hearing Examiner issues a revised recommendation to the Lee County Commission Board. The final county rezoning hearing will likely be scheduled for November.

The Harbour Point wetlands development issue at South Seas continues to be full of twists and turns going back to 1985 when Mariner Properties Development, the owner-developer of South Seas Plantation Resort from 1972 to 1998 received rezoning approval from Lee County to build 18 hotel units wholly on the 1.1 upland acres created from spoils during the dredging of the marina harbor on the north end of South Seas Resort decades ago. Mariner did not build on Harbour Point but is still vested for 18 hotel units. Mariner is not vested to destroy wetlands.

In addition to the 18 hotel units, Mariner is seeking through this rezoning process to combine 6 unallocated units it retains at South Seas Island Resort from its sale of the resort in 1998. Mariner

essentially sold off all but 1 acres of upland and held on to about 77 acres of wetlands / mangroves. Mariner now claims it can not avoid developing its proposed luxury condo project in mangroves or it would be a taking of property rights if denied.

Mariner's most recent revised development plan provides for 2.7 acres of black mangrove impacts to accommodate a twenty-four, 2,700 sq ft per condo unit development. The CCA has no objection to Mariner building 18 or even 24 units on the upland spoil portion as long as wetlands are not impacted.

Despite this obvious self-crafted hardship, the remaining 24 undeveloped units Mariner retains is via a private trade agreement with the current resort owner and are part of the original 912 vested units for the entire 304 acre South Seas Plantation Resort rezoned in 1973. As such, the CCA and other public interest groups contend that Mariner can avoid building in mangroves by developing uplands on other locations in the South Seas Resort.

Avoidance is the first fundamental step to mangrove protection. This standard was apparently set aside by the state wetland permitting agency and county zoning review staff. The public interest groups also contend, even if you ignore the avoidance rule, Mariner has not sufficiently demonstrated consistency with minimization and mitigation standards for wetland impacts at both the state and county permitting forums.

A real estate expert testifying on behalf of Mariner at the recent rezoning hearing opined the 2,700 sq ft unit sizes are the minimum size necessary to make the project feasible. The proposed project area includes 1.1 acres of uplands. Mariner deems additional building space from the filling of 2.7 acres of mangroves is required. The expert further explained that Mariner's projected profit potential on a total project sale price upwards of \$46M for 24 three bedroom, three bath 2,700 sq ft condos is 8.9% while the industry average is 20%. It was also reported at this hearing by Mariner's bridge expert that the proposed drawbridge across Bryant Bayou, estimated in 2006 to cost between \$1M to \$2M will now cost upwards of \$6M.

When Mariner last appeared before the Hearing Examiner in 2005, proposed unit sizes were 2,400 sq ft. The Hearing Examiner in 2005 issued a recommendation to approve the rezoning of Harbour Pointe with conditions that limit unit sizes to approximately 1,000 sq ft, consistent with historical development at South Seas and limit mangrove impacts to 1.1 acres for the entire development. This includes impacts for a new access road through mangroves to connect to a proposed bridge across the Bryant Bayou boat channel.

The 2005 Hearing Examiner recommendation has been held in abeyance for three years pending issuance of an Environmental Resource Permit (ERP) from the South Florida Water Management District. The state permit issued last March allows Mariner to fill upwards of three acres of mangroves at Harbour Pointe. The state permit was delayed two years pending an

administrative hearing in 2006 at the petition of the CCA, SCCF and Conservancy to determine whether or not the District issued the ERP in accordance with the District's permit application review process. The revised ERP issued by the District's Governing Board last March provides for about 10% less mangrove impacts than in the contested 2004 permit.

In 2006, a new mangrove policy was added to the Lee County Comprehensive Land Use Plan for Captiva which provides that mangroves shall be protected to the greatest extent possible. CCA attorney Matt Uhle at the rezoning hearing last week argued that greatest extent possible is on its face, a very enforceable standard. The state basis of review standard for permitted wetland destruction is that mangroves shall be protected to the extent practicable, which involves elements of balancing economic concerns, technological concerns and other concerns.

The CCA believes the new county comp plan mangrove protection language to protect mangroves to the greatest extent possible, advocated for comp plan inclusion in conjunction with the Captiva Community Panel, and supported unanimously by the Board of County Commissioners, is the more controlling mangrove protection standard on Captiva. As a matter of jurisprudence, we trust the Hearing Examiner will thoroughly review and consider the new Captiva mangrove protection policy.

We will inform members of the Hearing Examiner's recommendation and the final county rezoning hearing date before the Board of County Commissioners when available.