

Lee County Board of County Commissioners
Agenda Item Summary

20030259
Blue Sheet No.

1. **REQUESTED MOTION:**

ACTION REQUESTED: Approve mediated settlement in Captiva Civic Association, Inc and Michael F. Kelly vs. Lee County, et al.; Case No. 02-9598CA JSC.

WHY ACTION IS NECESSARY: Consider and approve mediated settlement.

WHAT ACTION ACCOMPLISHES: Resolves all issues in this case.

2. **DEPARTMENTAL CATEGORY:**

COMMISSION DISTRICT # A12D

3. **MEETING DATE:**

03-11-2003

4. **AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. **REQUIREMENT/PURPOSE:**
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION Litigation
- BY: Thomas L. Wright
Assistant County Attorney

7. **BACKGROUND:**

This case was filed by Plaintiffs to challenge the consistency of an alleged development order with the Lee Plan. The alleged "development order" was the Administrative Interpretation and Compliance Agreement in which Lee County and the Defendant, Plantation Development, et al., entered which served to memorialize the prior development and unit constructions at "South Seas Plantation" on Captiva over the previous three decades. Plaintiffs allege that the allowed density had been exceeded, and that the Administrative Interpretation and Compliance Agreement constituted a "rezoning" of the subject property and a grant of additional residential density without the requisite public hearings, and in contravention of the Lee Plan.

The proposed mediated settlement agreement acknowledges the unit counts and other provisions of the Administrative Interpretation and Compliance Agreement, but places some additional affirmative duties on Defendant, Plantation Development prior to application for development permits, and limits permissible units at South Seas to number set forth in Administrative Interpretation and Compliance Agreements (912). In return, Plaintiffs dismiss the lawsuit, with prejudice.

The consideration given by Lee County in the settlement is simply to bear its own costs, and not proceed against Plaintiff for reimbursement.

County Attorneys' Office recommend approval of the mediated settlement.

The undersigned recommends the Board approve the mediated settlement.

8. **MANAGEMENT RECOMMENDATIONS:**

9. **RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA RK 2/27	OM CM 2/27	RISK JS 6/27/03	GC PM 2/27/03	<i>[Signature]</i> 2-27-03

10. **COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY COUNTY ADMIN. <i>RF</i>
<u>2-27-03</u>
10:40
COUNTY ADMIN. FORWARDED TO: <i>DS</i>
<u>2/27/03</u> <i>SUD</i>

2/27/03 10:20

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA** **CIVIL ACTION**

CAPTIVA CIVIC ASSOCIATION, INC.,
and MICHAEL F. KELLY,

Plaintiffs,

v.

CASE NO: 02-9598-CA-JSC

LEE COUNTY, FLORIDA, a political
subdivision of the State of Florida,
and PLANTATION DEVELOPMENT,
LTD.,

Defendants.

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MEDIATION AGREEMENT

Plaintiffs, CAPTIVA CIVIC ASSOCIATION, INC. ("CCA") and MICHAEL F. KELLY, ("Kelly") and Defendants, LEE COUNTY, FLORIDA ("County") and PLANTATION DEVELOPMENT, LTD. ("Plantation"), hereby agree as follows:

1. From March 1, 2003, until February 28, 2013, Plantation or its successors and assigns, or their agents and representatives, within 10 days after submittal, will provide counsel of record for CCA with written notice of any development order applications to Lee County on the five (5) parcels described by Lee County STRAP Numbers 22-45-21-00-00005.0000, 00006.0000, 00006.0250, and 23-45-21-00-00001.0000, and the parcel located East of Plantation Beach Club III and south and west of the main road (and more particularly shown on Exhibit A attached), regardless of whether the property is owned by Plantation on the date of application. This requirement may be waived in writing by CCA.

2. Amendments to the Master Development Plan for South Seas Resort and proposed reallocations of dwelling units pursuant to Condition 5.e. of the July 30, 2002

"Administrative Interpretation 2002-00098" may be considered for administrative approval by the Director of County's Department of Community Development on a case-by-case basis pursuant to the requirements of LDC Section 34-1038. No other amendments to Determinations 1-9 of the "Administrative Interpretation" may be approved without a public hearing pursuant to LDC § 34-1038(b).

3. The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time. CCA and Kelly agree that the unit count in Determination #1 of the July 30, 2002 Administrative Interpretation will control and is the basis for future development of South Seas Resort. Specifically Bayside Villas will be counted as 102 units and Employee Housing as 140 units unless revised in the future.

4. County and Plantation acknowledge that CCA and Kelly are not waiving any right they might have to challenge applications for permits within South Seas Resort other than the following four documents:

- a. Administrative Interpretation #2002-00098;
- b. Compliance Agreement dated July 30, 2002 between Lee County, Plantation and MeriStar;
- c. Administrative Amendment #ADD2002-00054 dated 08-09-02; and
- d. Limited Review Development Order #LDO 2001-00399 for Harborview Villas;

that were specifically challenged in the Complaint in Case No. 02-9598 CA JSC. CCA and Kelly specifically waive the right to challenge any permits, including certificates of occupancy, related to the approval of Harborview Villas.

5. CCA and Kelly agree to voluntarily dismiss the Complaint in Case No. 02-9598 CA JSC with prejudice.

6. Plantation agrees to voluntarily dismiss the Counterclaim filed in Case No. 02-9598 CA JSC with prejudice.

7. All of the parties to this agreement will pay their own fees and costs arising from the litigation in Case No. 02-9598 CA JSC.

8. The parties agree that this Mediation Agreement will be enforceable through application to the Court, notwithstanding the dismissals of the claims, and will prepare a proposed order for the Circuit Court jointly requesting it to enter a Final Judgment which incorporates the terms of this Mediation Agreement.

DATED this ____ day of _____, 2003.

CAPTIVA CIVIC ASSOCIATION, INC.

By: _____
Sharon Brace, President

Matthew D. Uhle, Esq.
Attorney for CCA and Kelly

MICHAEL F. KELLY

LEE COUNTY, FLORIDA

By: _____

Thomas L. Wright, Esq.
Assistant Lee County Attorney

PLANTATION DEVELOPMENT, LTD.
Mariner Group, Inc. General Partner

By: _____
Robert M. Taylor, Chairman

Kenneth G. Oertel, Esq.
Attorney for Plantation

Steven C. Hartsell, Esq.
Attorney for Plantation