

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20061323

1. ACTION REQUESTED/PURPOSE:

Approve an agreement with the Upper Captiva Civic Association, Inc. to provide public financial support up to \$46,000 for the development of the Upper Captiva Community Plan. Funds are available.

2. WHAT ACTION ACCOMPLISHES:

Section 3.1 of Administrative Code 13-3 requires contract approval by the Board of County Commissioners

3. MANAGEMENT RECOMMENDATION:

Approve.

4. Departmental Category: 04

A4A

5. Meeting Date:
October 24, 2006

6. Agenda:
 Consent
 Administrative
 Appeals
 Public
 Walk-On

7. Requirement/Purpose: (specify)
 Statute
 Ordinance
 Admin. Code AC 13-3
 Other

8. Request Initiated:
Commissioner _____
Department Community Development
Division Planning
By: Paul O'Connor, AICP, Director
POC 10/12/06

9. Background: The Upper Captiva Community Panel (UCCP) has submitted a request for financial support to the Board of County Commissioners. The applicant is requesting \$46,000.00 of public funding in accordance with Administrative Code (AC) 13-3, Section 3. The applicant proposes to develop the Upper Community Plan with the intent that its recommendations will be incorporated into the Lee Plan.

Obtaining this grant is contingent upon UCCP complying with the terms and conditions of the contract and the provisions of Administrative Code 13-3. It is understood by all parties that the community planning effort: is subject to the Florida laws on Open Government; must provide an adequate opportunity for public participation; must provide reasonable notice of all meetings pertaining to the planning effort; and, that all meetings of the Community Panel and Subcommittees must be open to the public. The Community Panel must also maintain both recorded and written minutes of all its full meetings.

The estimated cost of the Upper Captiva Community Plan is \$50,000.00. This request to the Board for \$46,000.00 of Lee County funds will pay for approximately 92% of the total estimated project cost. This project will include all of Upper Captiva Island, aka North Captiva Island.

Funds are available in account: LB5150715500.508309.05 (Community Development at/Planning/Unincorporated MSTU/Other Grants & Aids/Sector Planning)

Attachments:

- Grant contract
- Map of geographic area subject to the Community Planning effort
- Application materials

10. Review for Scheduling:

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services | | | | County Manager/P.W. Director |
|---------------------|-------------------------|-----------------|-------|-----------------|--|--------------------------------------|--|-------------------------|------------------------------|
| <i>MAM (RHS)</i> | N/A | N/A | N/A | <i>JMK</i> | Analyst <i>JAD</i> <i>10/12/06</i> | Risk <i>56</i> <i>10/12/06</i> | Grants <i>19</i> <i>10/12/06</i> | Mgr. <i>12/12/06</i> | <i>10-13-06</i> |

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

REC'D
by CO. ATTY.
10/12/06
9:50 am
CO. ATTY.
FORWARDED TO:
10/12/06 1:15

RECEIVED BY
COUNTY ADMIN:
10/12/06 1:25 PM
COUNTY ADMIN
FORWARDED TO:
10/13/06
SA

COMMUNITY PLANNING AGREEMENT
BETWEEN LEE COUNTY AND UPPER CAPTIVA CIVIC ASSOCIATION, INC.

RECITALS

- A. The Board of County Commissioners recognizes that unincorporated Lee County consists of many diverse communities with various visions on how their community should develop.
- B. The residents of the Upper Captiva community have expressed a desire to prepare a community plan to propose goals, objectives, and policies applicable to the Upper Captiva community that may ultimately be incorporated into the Lee Plan.
- C. The Upper Captiva Community Panel has approached the County requesting planning funds to be used for expenditures incurred to prepare and submit a community plan for the Upper Captiva community.
- D. The Upper Captiva Community Panel is a sub organization of the Upper Captiva Civic Association, Inc.
- E. The Upper Captiva Civic Association, Inc., through its community planning panel, is responsible for preparing and submitting to Lee County a community plan for the Upper Captiva community.
- F. Lee County Administrative Code 13-3 requires communities who seek planning funds from the County to enter into a contract to govern the disbursement and use of public money on the community planning effort.

NOW, THEREFORE, THE PARTIES HERETO AGREE as follows:

1. Geographic Area. This agreement pertains to the preparation of a community plan for a geographical area known as Upper Captiva (aka North Captiva).

The geographic area has been illustrated in Exhibit A hereto.

2. Deliverables. The Upper Captiva Planning Panel (the "Panel") is responsible for the preparation of a community plan, including suggested goals, objectives, and policies applicable to the area described in paragraph 1 above. The intent of the parties is that the County may ultimately incorporate the proposed goals, objectives, and policies into the Lee County Comprehensive Land Use Plan. The parties agree that the draft community plan

will include data and analysis to support recommended goals, policies, and objectives for consideration by Lee County Planning Division staff. See Exhibit B for detailed description of deliverables.

3. Eligibility for Public Funds. The parties agree that Lee County will provide the Panel with up to \$46,000 in planning funds that will be used solely for expenditures incurred by the Panel in the preparation and submission of a community plan. \$5,000 will be provided up-front as seed money. The remainder of the funding will be provided when proper documentation of expenditures is provided to the County as specified in paragraph 8. Total disbursements from the County will not exceed \$46,000.

4. Applicability of Lee County Administrative Code. The parties agree that the community planning effort will be governed by the regulations set forth in Lee County Administrative Code 13-3 entitled "Administrative Procedures Governing Community Planning Efforts Receiving Financial Support From the BOCC." Lee County Administrative Code 13-3 is attached hereto as Exhibit C.

5. Applicability of Florida's Public Records and Open Meetings Laws.

A. Open Government

1. The parties agree that the community planning effort is subject to Florida laws on Open Government. Accordingly, all meetings of the Panel and its subcommittees will be open to the public. Moreover, the Panel will provide an adequate opportunity for public participation in the Upper Captiva community planning effort. In addition, the Panel will encourage and allow the participation of residents, property owners, the school district, and other interested parties at all meetings and workshops on the community planning effort.
2. The Panel will provide reasonable notice of all meetings pertaining to the community planning effort.
3. Notification of meetings and workshops will include the posting of meeting date, time, and location of the meeting/workshop in accordance with Section 5, Lee County Administrative Code 13-3.
4. The parties agree that subcommittees consisting of members of the Panel and other community members may meet for the purpose of

information gathering, information sharing, and the exploration of common concerns. Subcommittee meetings are also required to be publicly noticed. Common concerns explored by the subcommittees must be presented to the full community panel during a properly noticed public meeting consistent with Section 5 of Lee County Administrative Code 13-3.

5. The Panel must maintain minutes of its meetings in accordance with Section 5, Lee County Administrative Code 13-3.

B. Public Records

All records created in connection with the community planning effort must be retained by the Panel for three years following the date of submission of a completed comprehensive plan amendment application. The records will be considered public records as defined by Chapter 119, Florida Statutes.

6. Record Keeping. The Panel must retain all financial, supporting documentation, and other records necessary to document the community planning effort and expenditures during the term of this agreement. If any litigation, claim, negotiation, audit, or other action involving the records are initiated prior to the expiration of a three-year period, the records must be retained for an additional one year after the final resolution of the action and final resolution of all issues that arise from the action.

7. Assurance, certification, and compliance. The Panel agrees that:

- A. It will comply with Chapter 760, Florida Statutes, and Lee County Ordinance 00-18 that prohibit discrimination in employment on the basis of race, color, national origin, sex, religion, disability, or marital status.
- B. Products or materials purchased with public funds will be procured in accordance with the provisions of 403.7065, Florida Statutes, which refers to the procurement of products or materials with recycled content.
- C. It will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.

- D. It will notify Lee County of any significant change in the organization of the Panel.

8. Disbursement of Public Funds.

- A. Lee County will disburse \$5,000 of seed money followed by the remainder of the funding, not to exceed a total of \$46,000, to the Upper Capiva Civic Association, Inc. during the term of this agreement, subject to the provisions pertaining to return of funds and suspension and termination of the agreement. (See paragraph 11.) The Panel agrees to spend the public funds only on items set forth in the scope of work and schedule of deliverables set forth in the document attached as Exhibit B. With the exception of \$5,000 of seed money, the County will disburse money upon the receipt and approval of a completed payment request report. Disbursements may be made in installments based on the completion of items contemplated in the deliverables. The payment request report must include documents to support the expenditures. If the Panel fails to submit a payment request report, disbursements will be delayed until the receipt of a report. The County reserves the right to approve or disapprove payment requests.

Copies of supporting documentation must be attached to the payment request report. The County may require additional supporting documentation before agreeing to disburse money.

- B. Unsupported/unallowable costs. The County has the option to defer payment to the Panel during the period of a County audit or monitoring due to questionable items. If, as a result of the audit or monitoring, unallowable or unsupported costs are found, no further disbursements will be made until the full amount of overpayment is remitted to Lee County or the County accepts a repayment agreement.

9. Audits, Monitoring, and Records.

- A. Monitoring. The Panel agrees to permit County employees to inspect records, papers, and documents to be assured of satisfactory performance with the terms and conditions of this agreement. The monitoring is a limited scope of review and does not relieve the Panel of its obligation to manage

the public monies disbursed by the County in accordance with Lee County Administrative Code 13-3 and sound management practices.

Following this monitoring, the County may deliver to the Panel a written report regarding the status of compliance with the terms and conditions of the agreement. The panel must rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the County with a reasonable and acceptable justification for not correcting the noted shortcomings. The Panel's failure to correct or justify the deficiencies within the time specified by the County may result in the withholding of future disbursements or termination of the agreement.

B. Audit and Inspections. The Panel will make all records and items included on financial statements available for audit or inspection purposes during normal business hours and as often as County deems necessary. The Clerk of Courts internal audit division and Lee County have the right of timely and unrestricted access to books, documents, papers, and other records of the panel that are pertinent to the agreement in order to make audits, examinations, excerpts, transcripts, and copies of those documents.

10. Risk Management. The Panel will defend, hold harmless, and indemnify the County from and against all liability, loss, claims, damages, costs, attorneys fees, and expenses that the County may sustain, incur, or be required to pay either by reason of the loss of or improper use of money disbursed or to be disbursed hereunder including, but not limited to, fraud, embezzlement, or dishonesty on the part of any person represented or employed by the Panel, or by reason of the intentional or negligent act of the Panel or its agents, representatives, or employees.

11. Suspension/Termination. The County reserves the right to suspend the disbursement of money for failure to comply with this agreement. The County may cancel this agreement by giving 24 hours written notice to the Panel by certified mail following a determination by the Board of County Commissioners that the cancellation is in the best interest of the people of Lee County. Neither party will have further obligations under this agreement as of the date of cancellation unless specified otherwise in the termination notice. The Panel may cancel this agreement by giving 72 hours prior written notice to the County by certified mail. The County's obligation to make further disbursements under this agreement will cease as of the effective date of termination.

12. Reports.

- A. The Panel agrees to prepare a report outlining the progress of the Upper Captiva community planning effort and deliver the report to the County with each request for disbursement of funds.
- B. A closeout report is due 60 days after the termination of the agreement or upon the submission of a completed community plan in the form of a comprehensive plan amendment application.
- C. If the required reports are not sent to the County or not completed in a manner acceptable to the County, the County may withhold further disbursements until the reports are completed.

13. Duration of agreement. Parties agree that the Panel will deliver a proposed community plan for consideration by the Lee County Planning Division no later than September 2007 unless this agreement is terminated beforehand as specified in Paragraph 11.

14. Notice. The parties agree all notices provided under or pursuant to this agreement will be in writing either by hand delivery or first class certified mail, return receipt requested, to the representative identified below and at the address set forth below. The name and address of the County representative is: Paul O'Connor, Director, Planning Division, Department of Community Development, 1500 Monroe Street, P. O. Box 398, Fort Myers, Florida 33902-0398. The name and address of the representative of the Upper Captiva Civic Association, Inc., responsible for the administration of this agreement is: Karen Wildeman, PO Box 3038, Pineland Florida 33945. In the event different representatives or addresses are designated by either party after the execution of this agreement, notice of the new information will be provided in accordance with this section.

15. Applicable Law. This agreement will be construed under the laws of the State of Florida and the venue for any actions arising out of this agreement will lie in Lee County.

In witness thereof, Lee County and the Upper Captiva Civic Association, Inc., have executed this agreement:

Attest: Clerk of Court

Lee County

By: _____
Deputy Clerk

By: _____
Chairman
Board of County Commissioners

Date: _____

APPROVED AS TO FORM:

Donna Marie Collins
Assistant County Attorney

Upper Captiva Civic Association, Inc., A
Florida Not-for-Profit
Corporation

By: _____
Karen Wildeman, Vice President

Date: _____

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this _____ by
(date)
Fran DeTure, President of the Upper Captiva Civic Association, Inc.,
a Florida Not-for-Profit corporation, on behalf of the corporation. He is personally known
to me or has produced _____ as identification.
(type of identification)

(Signature of person taking acknowledgment)

(Name typed, printed, or stamped)
(Title or Rank)
(Serial Number, if any)

Exhibits:

- A: Map of Geographic Area subject to the Community Planning effort
- B: Deliverables - Prepared by Upper Captiva Community Panel

North Captiva Island Planning Area

Cayo
Costa

Exhibit A

Safety
Harbor

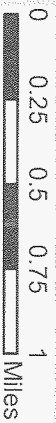
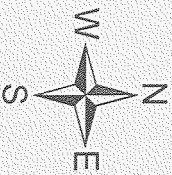
North Captiva Island

Captiva
Island

**NORTH CAPTIVA
FUTURE LANDUSE CATEGORIES**

- Public Facilities
- Outer Island
- Conservation Lands - Uplands
- Wetlands
- Conservation Lands - Wetlands

**LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING**



Map Created:
August 23, 2006

Exhibit B

COMMUNITY PLANNING PROPOSAL for UPPER CAPTIVA COMMUNITY PANEL

The following information is provided in support of an application to initiate a Community Panel and for Seed Money to initiate a community plan for the island of North (Upper) Captiva. One or more representatives of the proposed Panel have met with the District Commissioner on 2 occasions and with the Lee County Planning staff and assistant county attorney on 1 occasion prior to filing this application.

A. The proposed name of the Community Panel will be the Upper Captiva Community Panel. The initial Community Panel will consist of the following individuals:

A. Peter Aldrian
311 Spanish Gold Lane
Upper Captiva, FL 33924

Mailing Address
P.O. Box 613
Pineland, FL 33945

Kristie Anders – Vice Chair
4550 Schooner Drive
Upper Captiva, FL 33924

Mailing Address:
P.O. Box 978
Sanibel, FL 33957

Richard Craven – Chair
4591 Oyster Shell Drive
Upper Captiva, FL 33924

Mailing Address:
P.O. Box 396
Pineland, FL 33945

Rick Fox
3722 Yucatan Parkway
Cape Coral, FL 33993

Mailing Address
c/o Safety Harbor Club
P.O. Box 2276
Pineland, FL 33945

David Tompkins – Secretary/Treasurer
4591 Hodgepodge Lane
Upper Captiva, FL 33924

Mailing Address:
P.O. Box 609
Pineland, FL 33945

No current budget has been prepared for the Panel at this time. However, it is expected that the Panel's budget will not exceed the maximum permitted for community planning provided by Lee County. The Panel is currently a committee of the Upper Captiva Civic Association. The Civic Association has been funding the cost of exploring the viability of forming the Panel and obtaining financial assistance for the Planning Effort.

B. Copies of Form 1 "Statement of Financial Interests" for each community panel member and for myself are attached as Composite Exhibit "B".

C. Lee County Community Development staff has committed to provide a county map of North Captiva (Upper Captiva), which is intended to be covered under this proposed plan.

D. The main issues the planning effort intends to address are:

- Transportation (Traffic) Element and Public Safety
 - Island Access (Island has no bridge to mainland)
 - Air
 - Boat
 - Nature of and Use of System of Pathways (Island lacks public roads)
 - Pathway Usage & Maintenance
 - Canal Usage & Maintenance
 - Noise-Limitation of Use of gasoline-powered personal vehicles on the island. (Historical ban in jeopardy)
 - Underage golf cart drivers.
 - Speed limits and reckless operation of carts.
 - Code enforcement and specifically illegal dumping.
 - Law Enforcement
 - Disaster Planning
 - Hurricanes & Tropical Storms
 - Evacuation and return
 - Funding for future storm contingencies to avoid delay in obtaining help for post hurricane needs.
 - Garbage, trash, and construction debris removal.
 - Fires, especially wildfires

Capital Improvements Element

Potential Needs-Public Facilities

- Fire Station/Emergency Services-Station Expansion
- Community Center
- Library Facility
- Public Docks/Canoe Launch
- Public Restrooms
- Utilities & Communication Facilities

Intergovernmental Coordination Element

- Coordination of garbage & solid waste with other islands & county

Future Land Use Element

- Uses, density & development standards
- Design standards
- Building Standards
- Open space and state parkland

Wastewater, Solid Waste, Drainage, Potable Water Element

- Review of existing systems
- Illegal dumping
- Surface Water Management
- Solid Waste (see above)

Conservation Element

- State Parkland coordination
- Beaches and Beach Access
- Funding for beach renourishment
- Maintenance of marine and estuarine habitat.
- Maintenance of wetland and other environmentally significant habitat.
- Mosquito Control
- Wildlife and Vegetation

Housing Element

- Workforce Housing

The resources for addressing these issues will be the requested Seed Money and a future Planning Fund grant from Lee County. It is hoped that the State of Florida will participate also, due to the large portion of the island that is covered by state lands.

E. The preliminary timetable is as follows:

- The target date for submitting a complete draft of implementing regulations to Lee County is 9 months after approval of the planning grant.
- The final date for submitting these regulations is 1 year after approval.

- After submission of the draft language, the community panel will assist with potential revisions during the county's normal review processes until the LDC amendments are formally adopted
- All work under this planning grant is anticipated to be completed within 2 years after approval of the planning grant

F. Meetings will be duly noticed and held approximately monthly at the Upper Captiva Fire Station. All members of the public are invited to attend and participate.

G. The estimated full cost of the planning effort is \$50,000.00.

H. This panel projects that 95% of the projected costs will be provided through County funds. \$2,500 has already been provided by Upper Captiva Civic Association.

I. The creation of the Upper Captiva Community Panel is a tangible demonstration of the motivation and ability of those involved to initiate a complex public planning project and bring it to completion while encouraging public input.

Favorable consideration by the County of this Community Planning Proposal would be greatly appreciated.

Submitted by: Richard Craven, Chair
Upper Captiva Community Panel

Through: Robert D. Pritt, Esq.
Roetzel & Andress
2320 First Street
Fort Myers, FL 33901
239.338.4214

495173.113403.0002

UPPER CAPTIVA COMMUNITY PANEL

BUDGET-IN CONJUNCTION WITH REQUEST FOR SEED MONEY

Please consider the following tentative budget for the community planning process for the Upper Captiva Community Panel. This is submitted in connection with the Panel's request for seed money for the community planning process submitted on March 29, 2006. Planning staff has requested that the proposed budget be submitted. This should be attached to the Community Planning Proposal.

The Panel has not issued RFPs for Planning services yet, without having seed money for the project. However, if approved for seed money, the Panel will advertise for Proposals.

Budget items:

| Expected Services | Estimated Cost |
|---|----------------|
| A. Planning Consultant- | |
| 1. Meetings with panel, identify Scope of Services and needs as identified in previous surveys, UCCA meeting minutes, meetings with County staff and input from Island residents. | |
| 2. Identify relevant current Lee Plan elements; identify which Goals, Objectives and Policies can be addressed by planning process and which cannot. | |
| 3. Identify and consider planning challenges resulting from unique island circumstances including those set out in Paragraph D. of Proposal. | |
| 4. Obtain data and analysis to address issues identified in Paragraph D. of Proposal and as identified in the Community Planning Process, including inventory of Governmental services provided and those not provided. | |
| 5. Draft proposed changes to Lee Plan to implement Panel's recommendations. | |
| 6. Work with County staff in implementing changes resulting from Community Planning process. | |
| 7. Follow up on implementation of plan amendments and other proposals resulting from Planning process. | |
| Total Planning | \$30,000.00 |
| B. Legal Consultant | |
| 1. Consultations with staff; drafting Proposal; Drafting and/ | |

| | | |
|----|---|--------------------------|
| | or reviewing draft RFP for Planning Consultant; setting up legal aspects of Panel; notices. | \$4,500.00 |
| 2. | Title reviews; obtain & analyze data for determination of nature of pathways, air and water facilities and governmental facilities. | \$1,500.00 |
| 3. | Attendance and legal advice at some meetings (some via phone). | |
| 4. | Review drafts of Proposed Plan changes and advise. | |
| 5. | Provide legal advice to Panel and Planning Consultant regarding legal parameters. | |
| 6. | Work with County Attorney's Office on issues needing legal assistance up to adoption hearings. Appear at LPA and BOCC hearings if and as needed. | |
| | Total 3-6 | <u>\$7,500.00</u> |
| | | Total Legal \$13,500.00* |

C. Miscellaneous Out-of-Pocket Expenses

| | | | |
|----|---|--------------|---------------------|
| 1. | Notices-Surveys-Mailings, Miscellaneous | Total Misc. | <u>\$ 2,500.00</u> |
| | | Total Budget | <u>\$ 46,000.00</u> |

*Portions of this amount may not be necessary, depending upon the extent of assistance that can be provided by County legal staff, by the County's database, or by the Planning Consultant's database. Portions may need to be allocated to Planning Consultant.

Note: Upper Captiva Civic Association has already paid \$2,500.00 toward planning process and additional sums for notices of meetings.

Jim: Yes, we are asking for \$5000.00 as seed money. Thanks for moving quickly on this. We would like to be able to send out RFPs and get planning consultant on board as quickly as possible, so as to start the process while people are here. Bob

1. Robert D.Pritt
Board Certified City, County & Local Government Lawyer
Roetzel & Andress, L.P.A.
850 Park Shore Dr. Third Floor
Naples, FL 34103
239.649.2714