



# COUNCIL WORKSHOP

**Planning and Zoning Hearings**

November 16, 2015



# Agenda

- **Planning and Zoning Basics**
- **How the Process Works**
- **How Public Hearings Will Be Conducted**
- **Council Role**
- **Role of:**
  - **Planning and Zoning Board**
  - **Design Review Board**
  - **Staff**
- **Legal Issues and Terminology**



# Legal Issues

Quasi Judicial vs. Legislative  
Ex Parte  
Bert Harris  
Constitutional Issues

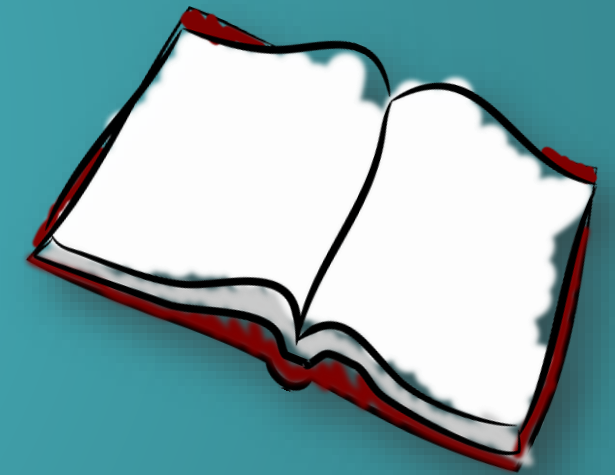




# Difference Between Planning and Zoning

## COMPREHENSIVE PLAN

- **The Vision for the Future**
- **Long Range (20 Year) Plan**
- **Policy Document**
- **Includes many elements:**
  - Vision Statement
  - Transportation
  - Future Land Use (Categories & Map)
  - Housing
  - Community Facilities & Services
  - Parks, Recreation & Open Space
  - Capital Improvements



Required by State Law for all Counties and Cities



# Zoning

## Specific Code Language that Implements the Comprehensive Plan

- Zoning categories (Example, Commercial)
- List of permitted uses for each category
- Lot sizes
- Building setbacks
- Open space requirements



# Each property has a specific **LAND USE CATEGORY** and specific **ZONING DISTRICT**

## Land Use Category

- Urban
- Suburban
- Rural
- Wetlands
- DR/GR
- Interchange



## Zoning District

- Commercial
- Residential
- Agricultural
- Industrial



## When Estero incorporated it adopted the Lee County Comprehensive Plan and Land Development Code

### There are Estero - Specific Provisions in the Plan and Land Development Code:

- Estero Vision
- Estero Community Plan Policies
- Additional Requirements for:
  - Landscape
  - Architectural Design
  - Signage

**Estero must adopt its own Comprehensive Plan and Land Development Code within 3 years of incorporation (December 31, 2017)**





# HOW THE PROCESS WORKS

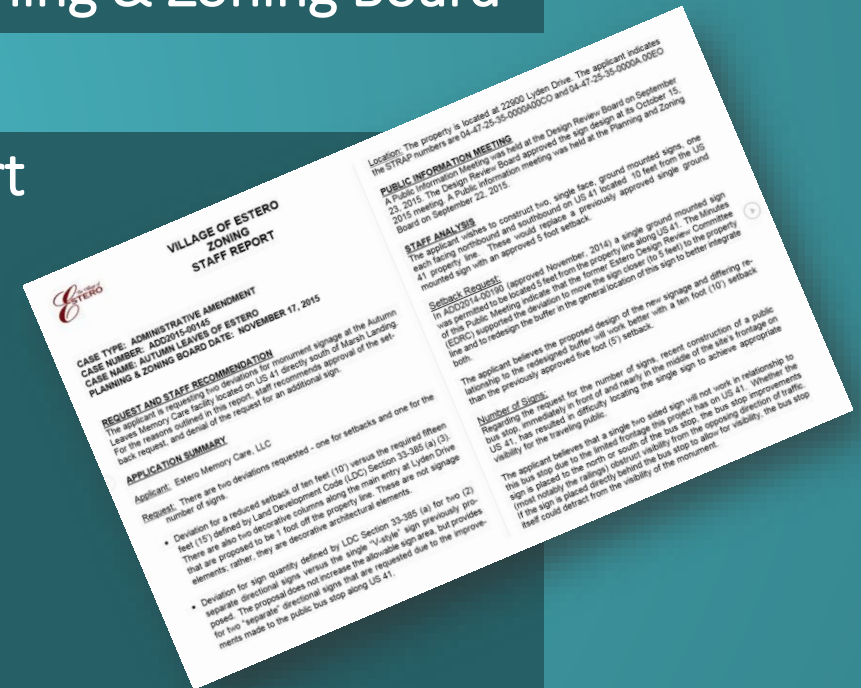
## REZONING - Change to a different zoning category

Step 1 Property owner files application

Step 2 Public Information Meeting at Planning & Zoning Board

Step 3 Staff reviews & prepares Staff Report  
Staff Report analyzes:

- Transportation Impacts
- Environmental Impacts
- Neighborhood Compatibility
- Comprehensive Plan Consistency
- Consistency with Land Development Code Criteria







# HOW THE REZONING PROCESS WORKS

Step 4 Planning & Zoning Board holds public hearing and makes recommendation to Council

Step 5 Council holds public hearing & makes decision



# HOW THE PROCESS WORKS

## ***COMPREHENSIVE PLAN AMENDMENT* - Change to a different Land Use Category**

Step 1 Property owner files application

Step 2 Public Information Meeting at Planning & Zoning Board

Step 3 Staff reviews and prepares Staff Report analyzing criteria in State Statute and other policies

Step 4 Council holds hearing to decide whether to send to state "Transmittal Hearing"

Step 5 State reviews and provides comments to village

Step 6 Council holds "Adoption Hearing"



# HOW COUNCIL PUBLIC HEARINGS ARE CONDUCTED

## Rezoning

- ➔ Staff introduces case
- ➔ Applicant presentation
- ➔ Public input
- ➔ Council questions (at any time)
- ➔ Council discussion and disclosure of “Ex Parte”
- ➔ Council vote\*

\*Council can:

Approve the request  
Approve with specific conditions, or  
Deny the request

*Note: “Ex Parte” does not apply to Comprehensive Plan Amendments*



# Role of Council & Boards

## ROLE OF COUNCIL:

- ➔ Make decisions on Rezoning and Comprehensive Plan Amendments

## ROLE OF PLANNING AND ZONING BOARD:

- ➔ Make recommendations to Council on Comprehensive Plan Amendments and Rezoning
- ➔ Make decisions on Variances, Special Exceptions, Administrative (minor) Amendments and Temporary Permits



## **DESIGN REVIEW BOARD ROLE:**

- ➔ **Review Site Plans for landscaping, architecture & general design features**
- ➔ **Review Signage**

## **STAFF ROLE:**

- ➔ **Analyze applications**
- ➔ **Review and prepare Staff Reports & recommendations**
- ➔ **Present to Planning & Zoning Board and Design Review Board**
- ➔ **Present to Village Council**





# LEGAL ISSUES



# Comprehensive Planning – Legal Issues

- Defending a Comprehensive Plan Amendment
  - Must meet statutory requirements of the Florida Community Planning Act
    - Specifically, the PZB must hold a public hearing and make a recommendation to the Village Council prior to transmittal of the Plan to the state.
    - Substantively, the Act sets out the components of the Plan and the procedural requirements for adoption
    - The Plan acts as the “Constitution” for local land use decisions; land development regulations and development orders must be consistent with the Plan
  - Must meet other legal requirements of the state and federal Constitutions and statutes

# Comprehensive Planning, cont.

- Defending a Comprehensive Plan Amendment: Constitutional
  - The Plan amendment will be upheld if:
    - If the regulation is “fairly debatable”
      - Not arbitrary and capricious
      - Has some conceivable rational basis
      - The local government is given the presumption of correctness
      - Low standard for defensibility
    - Exceptions: certain types of uses are given special protection and the standard is higher for defensibility (adult uses, religious uses)
  - The Plan amendment is a legislative action – no special due process requirements except notice and hearing



# Comprehensive Plan, cont.

- Defending a Comprehensive Plan Amendment: Constitutional
  - The Plan amendment will be upheld if it is **not confiscatory**
    - A “regulatory taking” occurs when government action leaves property with **no economically viable use**
    - The plan amendment does not have to allow the most economically beneficial use

# Rezoning and Site Specific Amendments to the LDC

- Defending these site specific actions:
  - Decision making body must follow quasi-judicial procedures
    - 1. An impartial decision-maker (ex parte disclosures)
    - 2. All fact witnesses to be sworn and testimony under oath
    - 3. Proponents (applicants), staff and interested parties have full opportunity to present evidence and argument, including expert witnesses
    - 4. Witnesses may be cross-examined by the parties
    - 5. Public testimony may be allowed
    - 6. Formal rules of evidence do not apply, but fundamental due process is required
    - 6. A written decision supported by competent, substantial evidence in the record of the proceedings

# Rezoning and Site Specific Amendments to the LDC

1. The constitutionality of the decision will be based on the same standards as the comprehensive plan amendment, i.e. Is the decision **fairly debatable**? Is it **confiscatory**?
2. The decision may not interfere with **vested rights**
  - The landowner has no automatic vested rights in a particular zoning classification
  - But the landowner may have a vested right in the use of a prior issued approval if the landowner **relied in good faith** on the approval and made **substantial expenditures in reliance** to his detriment, and it would be **unfair** to take away the approval

# Rezoning and Site Specific Amendments to the LDC

- 3. Otherwise, on the basis of state law, the court will decide
  - Was there any **substantial competent evidence** to support the decision? The court will not re-weigh the evidence but only look at whether there was any evidence to support the local decision
  - Did the decision-making body follow the **correct** law?
  - Was procedural due process accorded (**quasi-judicial** procedures followed)
- If yes to all of the above, the local decision will be upheld even if the court would come to a different conclusion than the local government

# Bert J. Harris Act

- Intended by the Florida Legislature to provide a damages remedy to a property owner where a regulatory takings could not otherwise be found.
- The property owner must prove that the regulation **inordinately burdens** its private property rights such that the owner is **permanently** unable to attain the reasonable **investment-backed expectations** for the 1) existing use or 2) vested right to a specific use of the property as a whole.
- The Act's procedures require notice to the government before filing in court and the opportunity to negotiate a resolution. Resolution can include damages, a change to the regulation, and other resolutions. Court may approve a resolution that is inconsistent with the existing LDC.