

Lewis Stroud & Deutsch, P.L.

MEMORANDUM

TO: Steven Sarkozy
Village Manager
Village of Estero

FROM: Nancy Stroud
Village Land Use Counsel

RE: Estero on the River

DATE: November 20, 2018

You have asked me to summarize land use provisions that are included in the proposed Agreement between the Village and the Trust for Public Land and Village Partners, LLC (“Village Partners”), regarding the Estero on the River property (the “Property”). Mary Gibbs and I reviewed the existing approved zoning resolution and Master Concept Plan (the “MCP”) that currently applies to the Property to determine which conditions of the zoning and MCP need special note within the proposed Agreement.

The Property includes five tracts, and the Village plans to purchase the tracts west of the railroad tracks, which are labelled as Tracts 1, 2 and 3. Tracts 4 and 5, east of the railroad tracks, are to remain in Village Partners, LLC ownership at the time of the Village purchase. Thus, although the Property will be in two different ownerships, there may be conditions that apply more specifically to one ownership than the other. The Agreement clarifies how in this circumstance the obligations created by the MCP conditions are to be borne by the different owners. Where the conditions are standards conditions and would be required, under the Village code, of any developer, they are not specifically addressed in the Agreement. For example, the requirement to protect gopher tortoises is found in the Village code and is a matter of state law and would apply to any owner. Subsequent owners are bound by the Agreement.

The following conditions are addressed specifically in the proposed Agreement:

1. Dedication of the drainage maintenance and all maintenance within the river buffer -- the Village is responsible for the area west of the railroad tracks, and Village Partners for the area east of the railroad tracks.
2. Maintenance of the preserves -- the Village is responsible for the designated preserves west of the railroad tracks, and Village Partners for the designated preserves east of the railroad tracks.
3. Infrastructure improvements (roads, bridges, river walks) or monetary contributions associated therewith – Owners are only responsible for those improvements or monetary contributions for infrastructure on the lands they own.

4. Village Partners will retain bonus density units for Parcels 4 and 5 as shown on the MCP, and is not responsible for bonus density units on Parcels 1, 2 or 3. The owner of Parcels 4 and 5 shall provide the required contribution pursuant to Village Ordinance No. 2017-03 for the use of such bonus density units.
5. Village Partners shall participate in a joint effort with the Village, including funding its share of the effort applicable to Parcels 4 and 5, to accommodate a “greenway” area along the Estero River from the railroad bridge to Sandy Lane.
6. Village Partners shall restore any areas within Parcels 4 and 5 per the Estero on the River Restoration Plan.
7. Village Partners shall delineate a minimum 50 foot wide natural waterway buffer for the area along the Estero River from the railroad bridge to Sandy Lane.
8. Village Partners may rely upon the preserve areas within Parcel 3 shown on the MCP for the calculation of indigenous open space requirements for Parcels 4 and 5, if those parcels are developed in accordance with the approved MCP, or if under a future alternative plan by Village Partners or its successors no more than the same number of acres of preserve land on Parcels 4 and 5 shall be required (1.59 acres for Parcel 4 and .35 acres for Parcel 5).

The Agreement ensures that the separate development of the Village Partners’ property and the Village’s property may proceed under the existing MCP without further obligations of one party to another, except that both parties will work together to establish the Green Way along the Estero River, per Condition 6 of the zoning resolution. This condition originally anticipated the Lee County Parks and Recreation Department would establish the Green Way, but with incorporation that obligation would be assumed by the Village.

The Agreement also affirms that any owner may apply for rezoning of its respective property, and neither the Village nor Village Partners will withhold permission to file such application. The Village will consider any rezoning in the normal course of business. This anticipates that in the future the Property may be separately rezoned by either the Village or Village Partners. Thus, the Village is not restricted from adopting a rezoning for Tracts 1-3 in the future.