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**COVID-19 NOTICE:**

The April 20, 2021 Village Planning Zoning and Design Board Meeting will be conducted physically in Council Chambers at Village Hall, 9401 Corkscrew Palms Circle, with an opportunity to participate virtually. The meeting will be broadcast live via the Village of Estero website link: <https://estero-fl.gov/council/watch-meetings-online/>. Access in Council Chambers will be limited in order to comply with the safety instructions relating to COVID-19. Please see page 2 of this agenda for further information and instructions for public participation.

**AGENDA**

**PLANNING ZONING AND DESIGN BOARD**

**TRAINING WORKSHOP**

**9401 Corkscrew Palms Circle, Estero, Florida**

**April 20, 2021**

**4:30 P.M.**

*Planning Zoning and Design Board: Co-Chairman - Scotty Wood; Co-Chairman Howard Levitan: Anthony Gargano; Kristin Jeannin; Barry Jones; Marlene Naratil; Michael Sheeley; James Tatooles; Jim Wallace*

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. INTRODUCTION OF MEMBERS**
- 6. BUSINESS**
  - (a) PowerPoint Presentation: Land Use Regulation Process – Mary Gibbs and Nancy Stroud
  - (b) Board Discussion
- 7. BOARD COMMUNICATIONS**
  - (a) **Next meeting – May 11, 2021**
- 8. ADJOURN**

## COVID-19 INFORMATION AND INSTRUCTIONS

**To view and/or participate in the Planning Zoning and Design Board Meeting, the following options are available:**

- 1) View the meeting online, but not participate: You may watch the meeting via the Village of Estero website link: <https://estero-fl.gov/council/watch-meetings-online/>.
- 2) View the meeting online as indicated above and provide public comment prior to the meeting by utilizing the eComment Card on the Village website: <https://estero-fl.gov/ecomment-cards/>. Please fill out all required information. Comments must be received by noon on Monday, April 19<sup>th</sup> and they will be distributed to the Board but will not be read at the meeting.
- 3) Council Chambers will be open to the public during the meeting, in accordance with social distancing orders. Public who attend in person may speak during scheduled public comment periods. Participants are recommended to wear their own-supplied mask.

For additional information or for special assistance prior to the meeting, please contact Carol Sacco, Village Clerk at, [sacco@estero-fl.gov](mailto:sacco@estero-fl.gov) or 239-221-5035.

If you desire to address the Council, please complete a Public Comment Card located on the table in the lobby and return it to the Clerk. Citizens desiring to speak must step up to the podium, state their full name and address and/or whom he or she represents.

ADA Assistance – Anyone needing special assistance at the Board meeting due to a disability or physical impairment should contact Executive Assistant, Carol Sacco, 239-221-5035, at least 48 hours prior to the meeting.

Pursuant to Section 286.0105, Florida Statutes:

“If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a recording of the proceeding, and that, for such purpose, he or she may need to ensure that a verbatim recording of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.”



# Planning Zoning & Design Board

**April 20, 2021**

**Training Workshop**

# Agenda

- **Legal Issues**
  - Florida Public Official Laws
  - Quasi-Judicial proceedings
  - Other legal issues
- **“New” Role of PZDB**
- **Questions**



# Florida Public Official Laws



## Government in the Sunshine

- Public Meetings
- Public Records

## Financial Disclosure

## Conflict of Interest Disclosure

# Role of the PZDB Board



- **Functions as “ Local Planning Agency” per the Florida Community Planning Act**
- **Responsible for preparation of Comprehensive Plan**
- **Comprehensive Plan is the land use “constitution” for the Village. All land use decisions and all land development regulations must be consistent with Estero’s Comprehensive Plan.**
  - **Review Amendments to Plan**
- **Land Development Code**  
**Purpose: Implements the Comprehensive Plan**
  - **Review Amendments to Code, including their consistency with the Comprehensive Plan**



# Cases PZDB will review

## Legislative

- Comprehensive Plan Amendments
- Ordinance Review (Example: LDC Amendments)

## Quasi-judicial (examples)

- Development Orders
- Rezoning
- Planned Developments and Amendments
- Special Exceptions
- Variances

# Types of Cases/Typical Agenda



## **Public Information Meetings**

(Application specific, Development Order or Rezoning)

**Workshops** (Generally design oriented, by DRB)

**Public Hearings** (Rezoning, Development Orders) (PZB or DRB)

## **Ordinance Review**

All ordinances related to Land Development (formerly done by PZB)

**\*Agenda Packets will be posted online 1 week prior to the meeting**





# Conduct of Meeting

## Public Information Meetings & Workshops

- Staff introduces item
- Applicant presentation
- Board's questions or suggestions
- Public Input
- Informal, no testimony

# Conduct of Meeting



## Public Hearings – Quasi-Judicial

1. Swearing in, disclose ex-parte communications and conflicts
2. Staff overview of case
3. Applicant presentation (1 hour maximum)
4. Board Questions
5. Public Input (5 minutes)
6. Board Discussion
7. Motion and vote( Recommendation or Decision)
  - Decorum

**\* Must have quorum present**

# Quasi-Judicial proceedings



**All rezoning hearings, and the decisions delegated to the PZDB by the Code will be heard by the PZDB in a quasi-judicial proceeding. These include for example Deviations, Variances, Special Exceptions and Development Orders**

**Florida case law requires the Board to conduct quasi-judicial proceedings to ensure that due process is provided to applicants for site-specific zoning decisions**

# Quasi-Judicial proceedings



## Minimum requirements for quasi-judicial proceedings:

- 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**
- 7. A written decision supported by competent, substantial evidence in the record of the proceedings**



# Quasi-Judicial proceedings

A written decision supported by substantial competent evidence in the record of the proceedings

## What is "Substantial Competent Evidence"?

- Based on facts
- Credible (believable)
- Material (relevant)
- Not speculative
- Legally sound
- A reasonable mind would accept as enough to support the conclusion

# Board Decisions and Recommendations



## **PZDB will review and make decisions:**

- Development Orders
- Special Exceptions
- Variances
- Consumption on Premises for outdoor seating
- Monument Signs
- Commercial building repainting and building alterations



## **PZDB will review and make recommendations to Council:**

- **Rezoning**
- **Planned Development Zoning and Amendments**
- **Comprehensive Plan Amendments**
- **Miscellaneous Ordinances**

**Example: Amendments to Land Development Code**

# Process Changes

## Staff will now review administrative items

- **Minor setback variance** (Example, 1 ft. or less)
- **Limited (small) Development Orders (Except Pickleball)** (Example, small clubhouse renovation)
- **Minor Technical Deviations**
- **No more review of Plats (PZB)**
- **Consumption on Premises - Alcoholic Beverages (except outdoor seating)**





# Role of Staff

- Review all cases and prepare Staff Reports for PZDB
- Provide recommendations and guidance
- Staff has “expert” opinion
- We are also here to help with any questions!



# New LDC has additional items for certain cases



- **Development Order Review – more than Architecture and Landscaping**
- **Connectivity, Site Plan Design**
- **Green Building Standards**
- **Public “Gathering Places”**
- **Residential Impact Criteria (Commercial next to Residential)**
- **Placemaking for Mixed Use Areas**

# Rules of Procedure



**The Board will adopt procedures for the conduct of business and meetings, conduct of public hearings, and conduct of workshops**

**The Board will adopt minutes of each meeting**

**The Village Clerk will maintain the Board's records (agendas, reports, minutes)**

**At least 7 days' notice of all meetings and the agenda for the meeting will be provided**

# Other Legal Issues



1. The **constitutionality** of a PZDB decision may be based on whether or not it is **confiscatory**
  - A "regulatory taking" occurs when government action leaves property with **no economically viable use**
  - The decision does not have to allow the most economically beneficial use

# Other Legal Issues



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

# Other Legal Issues



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**

# Other Legal Issues



For certain matters, state law or federal law may **pre-empt** procedures and standards for approval

## Examples:

- Wireless facilities and other special uses
- Uses implicating freedom of speech - Signs and billboards
- Uses implicating freedom of religion

# Bert J. Harris Act



Intended by the Florida Legislature to provide a damages remedy to a property owner where a constitutionally based 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.





**Questions?**