

VILLAGE OF ESTERO
PLANNING, ZONING AND DESIGN BOARD

RULES OF PROCEDURE

May 4, 2021

The following Rules of Procedure shall control the proceedings of the Village of Estero Planning, Zoning and Design Board.

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SECTION ONE. PURPOSE AND AUTHORITY

- 1.1 Purpose. The purpose of these Rules is to provide for the orderly conduct of the business of the Village of Estero Planning, Zoning and Design Board (the Board). These Rules are intended to ensure a reasonable and consistent process for the Board to consider, hear and act upon certain matters under its authority, to promote the orderly and efficient conduct of public proceedings convened to decide matters before the Board, and to ensure the fair and impartial treatment of each person who appears before the Board.
- 1.2 Authority. These Rules are adopted pursuant to the authority of the Village of Estero Land Development Code, as may be amended from time to time (the “LDC”), Section 2-302.A.10.

SECTION TWO. MEMBERSHIP AND OFFICERS

- 2.1 The number, qualifications and appointment of members, their terms of office and the filling of vacancies shall be in accordance with the LDC. These Rules provide additional details regarding membership and officers.
- 2.2 All members shall hold membership until their successors are appointed, and all officers shall hold office until their successors are elected.
- 2.3 Officers shall be Chairman and Vice-Chairman. At the option of the Village Council, Co-Chairs may be appointed instead of a Chairman and Vice-Chairman. Co-Chairs, if appointed, shall each share equally the powers and duties of the Chairman set forth herein. The Co-Chairs at the first meeting following appointment shall establish a yearly schedule for the designated chairman for each meeting, and shall coordinate during the year with the Village Manager in the event

that deviations from the schedule for a particular meeting may be needed.

2.3.1. The Chairman, or the designated Co-Chair, shall preside at all meetings of the Board, shall decide all points of order or procedure at such meeting, and may appoint members to any committee of the Board. The Chairman, or the designated Co-Chair present at the meeting, shall sign all resolutions of the Board with respect to such meeting. The Chairman, and each Co-Chair, shall have the right to debate and vote on any issue before the Board, except as prohibited by law. The Chairman, or each Co-Chair, shall be the primary contact(s) with the Village Manager and Board staff on matters of administration and Village support to the Board. The Chairman, or each Co-Chair, shall be the chief spokesperson(s) for the Board, unless another member shall be delegated by the Board to speak for the Board or on any specific Board matters.

2.3.2 Unless the Village Council appoints Co-Chairs, a Vice-Chairman shall be elected by a majority vote of the Board whose office will run concurrent with the Chairman's office. The Vice-Chairman shall perform the duties of the Chairman in the absence or incapacity of the Chairman. In the absence of both the Chairman and the Vice-Chairman, or both Co-Chairs, and when a quorum is present, an interim Chairman shall be appointed from the members present in the alphabetical order of the members' last names.

2.4. A Clerk shall be appointed by the Village Manager to take minutes of all meetings, and shall attest to all resolutions of the Board. The Clerk shall provide the minutes to the Board with the agenda at the next regularly scheduled meeting, or as soon

after as reasonably possible. The Clerk shall administer oaths as necessary. The Clerk shall provide to attendees and collect Request to Speak cards during any meeting at which public comment may be heard, and provide them to the Chairman or delegated Co-Chair. The Clerk is not a member of the Board, does not count for a quorum of the Board, and may not vote.

- 2.5 Members shall conduct themselves according to the standards of ethical conduct required by the Florida Code of Ethics for Public Officers and Employees, Sections 112.311-112.326, Florida Statutes, as may be amended from time to time.

SECTION THREE. MEETINGS

- 3.1 Regular meetings shall be held by the Board on the second Tuesday of each month, at the Village Hall Council Chambers. A second meeting during a month may be scheduled by the Village Manager or his or her designee, on the fourth Tuesday of a given month at the foregoing time and place, when the Village Manager deems it necessary to conduct the business of the Board. The Board by vote may cancel or reschedule any such meetings as required by exigency of the Board. Notice of any change shall be promptly posted at the regular meeting place, at the Village administrative offices, and on the Village website.
- 3.2 Special meetings are meetings in addition to regular meetings, which are called for a particular purpose or purposes, or to consider applications or matters that may need more time than is normally available at the regular meeting. Only business relating to such purpose(s) may be discussed or transacted. A special meeting of the Board may be called by the Chairman or by consent of a majority of the members of the Board. A designated Co-Chair shall be considered the Chairman

for purposes of all remaining sections of these Rules.

- 3.3 All meetings of the Board shall be noticed at least seven (7) days' prior to the meeting. Notice shall be posted on the Village website, at the regular meeting place, and at the Village administrative offices. The agenda for each meeting along with website links to materials referenced in the agenda shall be posted with the notice. The notice shall include the day, time, place of the meeting and shall include the following language:

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

- 3.4 All meetings shall have an imposed curfew of 9:00 p.m. to be printed in the agenda. If public hearings are before the Board, the public input portion of the public hearing then in progress before the Board must be completed if possible. If not, then it must be completed at the time the hearing is resumed at a later date. When public input is completed, or if no public hearing is occurring, the Board may then take either of two actions:

1. PROCEED AT THE MEETING

Upon a majority vote of the Board, the meeting may proceed as prescribed in the approved motion.

2. CONTINUE THE MEETING

The Board will continue the meeting to a certain future time and date not to

exceed thirty (30) calendar days.

- 3.5 Meetings of Board Committees shall be called by the Committee Chairman as may be required to conduct the business assigned to a specific committee. All such meetings shall be scheduled so as not to interfere with regular or special meetings, and shall be held at a time and place which will not discourage attendance by the public. At least seven (7) days' notice and the nature or purpose of the committee meeting shall be provided to members, the Board, the Village Manager, and the public.
- 3.6 The presence of a majority of the full membership of the Board shall constitute a quorum. The Chairman may wait up to thirty (30) minutes after the scheduled meeting time for a quorum to be present. A majority vote of the members of the Board present and constituting a quorum shall be necessary to decide any item of business requiring action by the Board. If a quorum of the Board is physically present at the Meeting, the remaining members of the Board may attend the meeting by electronic means, may fully participate in the meeting, and shall vote on all matters to come before the Board, except as otherwise provided by law.
- 3.7 All business shall be conducted in the same order as it appears on the agenda, except that by majority consent the Chairman may alter the order of items to be considered.
- 3.8 Consent Agenda. The Board may consider items on a Consent Agenda that do not require public hearings as may initially be determined by the Village Manager or the Manager's designee. A Board member at the meeting at the time the agenda is approved may request that any item on the Consent Agenda be removed and placed on the regular agenda. The Board shall vote on the removal of any consent item

agenda.

- 3.9 All persons who wish to address the Board on matters scheduled for a public hearing shall complete a “Request to Speak” form, on which each person shall list his or her name, home address, and the item on which that person wishes to speak. The Chairman may waive this requirement for members of the Village government or other Village Boards in an effort to save time. Any person who addresses the Board on a public hearing item shall verbally provide his or her name and any organization that the person represents, for the record. The Chairman may take measures to limit the presentation of information that is unrelated to the item or repetitive in nature, while giving due consideration of the importance of public input. Public comments shall be limited to five (5) minutes per speaker, unless the Chairman, or the Board by majority consent, allows a different time limit. The Board shall apply consistent time limits to all recognized to speak.

At each meeting, there shall be a period of time reserved for general public comment near the end of the meeting, which is in addition to the opportunity for the public to speak regarding an item for a public hearing. Each speaker shall complete a speaker form, identify himself or herself, and shall be limited to a time period as provided above in regard to public hearings.

- 3.10 Parliamentary procedure in a meeting of the Board is informal. However, if required to keep order, the Chairman may apply Robert's Revised Rules of Order to resolve any parliamentary issue not covered by these Rules.

3.10.1. MOTIONS

Actions by or decisions of the Board shall be determined by motions duly

moved and seconded and carried by a majority of the members present; provided, however, in the event a supermajority voting requirement is set forth in the Village Code of Ordinances or otherwise by law, said supermajority voting requirement shall control.

3.10.2. DEBATE AND DECORUM

The member whose motion brought a subject before the Board is entitled to open and close the debate, but not until every Board member wishing to speak has spoken. The Chairman cannot, however, avail himself or herself of this privilege after debate has been closed. Merely asking a question or making a suggestion is not considered as speaking. In debate a member must confine himself or herself to the question before the Board and avoid personalities.

If two-thirds (2/3) of the Board wish to close the debate they can do so by motion ordering either "the previous question" or "the closing of debate at a certain time." These motions require a two-thirds (2/3) vote, as they suspend fundamental right of every member to have every question fully discussed before it is finally disposed of.

3.10.3. VOTING

All members shall vote on all questions, unless that member has a conflict of interest as defined in Section 112.3143, Florida Statutes, as may be amended from time to time. No one can vote or participate in debate or discussion on an item at public hearing or a question or a proposal in which that member, or that member's family or business associate, has a direct or

indirect pecuniary interest. A member that has represented a party on an item before the Board shall not vote on that item. In either case, the member shall file a "Conflict of Interest" form available from the Clerk. The customary method of taking a vote for decisions on applications for development approval or recommendations to the Village Council shall be by roll call (yeas and nays). Other votes may be taken by show of hands or voice or by general consent.

A member has the right to change his or her vote up to the time the vote is formally announced. After that, he or she can make the change only by permission of the Board, which may be given by general consent; that is, by no members objecting when the Chairman inquires if anyone objects. If objection is made, a motion may be made to grant the permission, which motion is undebatable.

3.10.4. YEAS AND NAYS OR ROLL CALL

When a vote is to be taken by yeas and nays the Chairman puts the question in a form similar to this: "As many as are in favor of the question will, as their names are called, answer yes (or yea); those opposed will answer no (or nay)." The Chairman shall then direct the Clerk to call the roll. The Clerk shall call the roll, and each member as his or her name is called, shall answer yes or no.

A motion to approve, when defeated by a voice or a roll call vote, shall be considered as a motion to deny which was approved by a voice or roll call vote. A motion to deny, when defeated by a voice or a roll call vote,

shall not be considered as a motion to approve. In this instance there must be placed before the Board a motion to approve. On a tie vote the motion fails.

3.10.5 RECESS

The Chairman may call a recess for a reasonable time. If there is an objection, the Chairman is obliged to call for a motion which must be seconded to determine the result by a majority vote. This is not debatable, but is amendable as to time. The length of time of the recess and the time the meetings will be reconvened must be announced before recessing.

SECTION FOUR. REGULAR MEETING AGENDA ORDER

4.1 The standard form agenda which delineates the order of business to come before the Board during regular meetings shall be as follows:

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda
5. Business
 - a. Consent Agenda
 - b. Public Information Meeting(s)
 - c. Public Hearing(s)
 - d. Workshop(s)
6. Public Input
7. Board Communications
 - a. Committee Reports
 - b. Chairman's Report
 - c. Member Reports and Comments
 - d. New Business
8. Adjournment

SECTION FIVE. CONDUCT OF PUBLIC HEARINGS

Public hearings on applications for the Board's recommendation or approval as authorized by the LDC will be conducted as quasi-judicial hearings, except for recommendations for legislative amendments to either the Comprehensive Plan or the LDC. The order of conduct shall be as follows:

- 5.1 The Chairman or his designee shall announce the public hearing by reading the application number, stating the significant purpose of the hearing and identifying the applicant.
- 5.2 In the case of a quasi-judicial hearing, the Clerk or the Village Land Use Attorney shall administer the oath to the Village staff members and to those persons who intend to participate in the hearing.
- 5.3 In the case of a quasi-judicial hearing, the Board members shall disclose any ex-parte communications. Any member who has a conflict of interest shall declare the conflict.
- 5.4 In the case of a quasi-judicial hearing, the Chairman shall declare the rules under which the hearing will be conducted, which generally shall be as follows:
 - 5.4.1 The Chairman shall then introduce the staff representative from the Village who will present an overview and introduction to the case under consideration.
 - 5.4.2 The Applicant (if any) may present such relevant material, evidence and statements as the Applicant deems would be of assistance to the Board. With respect to hearings on applications for Development Orders, the electronic copy of the plan under consideration shall be available for public

view, unless the Chairman determines that the plan approval is for a minimal change that does not require electronic view, in which case paper materials sufficient to represent the matter under review shall be available for public view.

All required plans, pattern books, materials, reports, presentations, and the like, including, without limitation, expert testimony in the form of written reports and affidavits, to be submitted into evidence by the Applicant as a part of its presentation shall be provided to the Village Staff at least ten (10) days prior to the date scheduled for the public hearing. Such documents shall be distributed by the Staff to members of the Board along with the meeting agenda no later than seven (7) days prior to such public hearing date. No such documents shall be allowed into evidence without a vote of the Board, unless distributed within such time limits. If expert testimony on behalf of the Applicant is submitted in written form by report or affidavit as a part of its presentation, the author of such written materials shall be present at the public hearing for questions of the Board or cross-examination. For rezoning applications, the Applicant shall also provide to the Village Staff, at least eight (8) days prior to the date scheduled for the public hearing, a letter generally summarizing the issues on which it agrees with the Staff Report and stating all of the issues that in its opinion remain unresolved between the Applicant and the Village Staff concerning the Application (the "8-Day Letter").

5.4.3 During the Applicant's presentation in a quasi-judicial proceeding, only

members of the Board shall ask questions and, unless allowed by the Chairman, Board questions shall be held until the Applicant has completed its presentation. The Applicant's presentation shall be limited in time to one (1) hour in total, not to include any questions by the Board or other parties or cross-examination by the Village Staff or Land Use Counsel. The Chairman may extend such time period where fairness dictates.

- 5.4.4 After the Applicant's presentation, the Chairman shall then introduce the staff representative from the Village who will present relevant material, evidence and statements as the staff representative deems would be of assistance to the Board.

The staff shall have prepared a comprehensive report (the "Staff Report"), based upon material facts available to him or her, at least ten (10) days prior to the date scheduled for the hearing, which Staff Report shall be distributed to the Applicant and the Board along with the notice, the agenda for the meeting and the Applicant's 8-Day Letter, at least seven (7) days prior to such public hearing date.

All public input (by mail or electronic means) received by the Staff as of 12:00 p.m. noon on the Monday prior to the hearing shall be distributed to the Board by 5:00 pm on the Monday prior to the public hearing. All such public input once distributed shall be deemed to be part of the record in such public hearing. No public input by mail or electronic means shall be presented by the Staff to the Board if received after such time and date.

As part of the Staff presentation, the staff shall present a

recommendation to the Board, and summarize differences, if any, between the Applicant's proposal and the staff recommendations. The staff may dispute the Applicant's description of the issues in the Applicant's 8-Day Letter.

- 5.4.5 After the staff's presentation, the Chairman shall open up the public hearing for presentation by the public to the Board. During such presentations in a quasi-judicial hearing, only members of the Board shall ask questions.
- 5.4.6 Any individual who presents written or oral testimony on behalf of a civic association, homeowners association, civic entity, or other organization must state for the record at the outset of his or her presentation whether the organization has authorized the substance of the testimony. The Chairman may allow persons who represent such organizations additional time for presentation.
- 5.4.7 After the Applicant, staff, and all persons have made their presentations in a quasi-judicial hearing, the Board shall determine, based on the laws of the State of Florida, which persons, if any, in addition to the Applicant and the Village staff, have standing and shall be considered parties in the matter. All such parties or their counsel shall be permitted to cross-examine participants in the hearing, including the staff and the Applicant, in the order of their appearance at the hearing. Anyone who testifies at a quasi-judicial hearing shall remain until the conclusion of the hearing in order to be available for cross examination.
- 5.4.8 Each speaker will give his or her name, address and shall disclose any

relationship he or she may have with the subject matter under consideration.

Each speaker shall be limited to five (5) minutes unless the Board shall waive or vary such requirement.

5.4.9 Order and decorum shall prevail and be enforced by the Chairman. The hearing shall not be allowed to be conducted as a debate or a political forum.

5.4.10 Any person may be represented by an attorney or other spokesman. No person serving as a member of the Board may represent a person as an Applicant before the Board, and such member of the Board shall be required to step down from the dais during any such hearing, and may not participate in discussion as a Board member on the item for which the Board member represented a party, nor may the Board member vote upon such item. In such case, the Board member also must file a conflict of interest form with the Board Clerk.

5.4.11 Should provisions of the Charter, Ordinances of the Village or other law delineate matters which shall be considered in reaching a decision, the presentation to the Board and the deliberations of the Board shall be reasonably restricted to such considerations.

5.4.12 The Applicant (if any) may, after public testimony and before the close of the quasi-judicial hearing, present a brief rebuttal with a time limit to be determined by the Board.

5.4.13 At any time after convening a hearing, the Board may recess the hearing and continue it to another date, place and time. Any Board member may move to continue a hearing. A motion to recess the hearing and continue it

at another time must be approved by a vote of a majority of the members of the Board present and voting. If the date, time and place of a continued hearing are not announced during the hearing that is continued, the date, time and place of the rescheduled hearing must be noticed as for the original hearing.

- 5.5 The Chairman shall close the public hearing and then open the floor for Board member discussion, motions, debate and vote for its decision or its report and recommendation to the Village Council, as applicable. Any motion to approve an Application with conditions must specify the conditions to which the approval is subject.
- 5.6 At the discretion of the Chairman, with the consent of a majority of the other Board Members who are present, the Applicant or members of the public or staff, or any or all of them, may be requested or permitted to comment further upon the matter being considered.
- 5.7 In making its recommendation or decision, the Board shall consider the evidence in the record, the public's input and any recommendations of the Village staff. The Chairman, with the advice of the Board attorney, may rule on any objections to admission of any irrelevant or immaterial evidence, but the public hearing need not conform strictly to the rules of evidence or procedure that govern judicial proceedings. On all decisions made in a quasi-judicial proceeding, the Board's decision shall be based on competent substantial evidence in the record of the proceeding, and the applicable law. Should any application be denied, the Board shall state findings in regard to the criterion or criteria that are not met.

- 5.8 The Board's decision on matters for which it is the final decision maker shall be embodied in a Resolution. A Resolution is considered rendered when signed by the Chairman and attested by the Clerk.
- 5.9 Action of the Board may be reconsidered at the same meeting or the very next meeting only upon motion by a Board member who voted on the prevailing side of the question and with a concurrence of a majority of those present. Adoption of a motion to reconsider shall rescind the action reconsidered. A motion to reconsider, whenever made, shall not be considered unless at least the same number of Board members is present as participated in the vote under consideration, or upon affirmative vote of the majority of the membership of the Board.

SECTION SIX. PUBLIC INFORMATION MEETINGS

- 6.1 Public information meetings held pursuant to LDC Section 2-401 shall be held whenever possible during a regular meeting. No quorum shall be necessary for the conduct of a public information meeting.
- 6.2 The party whose proposed project is the subject of a public information meeting shall be responsible for the submission of relevant documents and other information to the Village Clerk so that the documents and information may be included in the agenda for the meeting. Documents and information shall include digital copies that may be electronically displayed at the public information meeting.
- 6.3 Representatives are encouraged to present proposed projects at a conceptual stage to provide the public with sufficient information to anticipate issues related to the proposal. The scheduling of a public information meeting shall be at the discretion of the Village Director of Community Development. Any questions by Board

members regarding the proposed project shall not bind the Board or any member of the Board to approve or disapprove the project when it is considered by the Board in a quasi-judicial hearing; it being understood that any questions are preliminary and that the nature of the discussion is that of information gathering and not a decision making discussion.

6.4 The order of presentation at a public information meeting shall be as follows:

6.4.1 The Village Director of Community Development shall present a brief overview of the proposal;

6.4.2 The representative for the proposed project shall present information to the public and the Board regarding the proposal;

6.4.3 The Board members may ask questions of the representative;

6.4.4 Members of the public may speak, including asking questions, for a period of three (3) minutes each, or for a time as allowed in the discretion of the Chairman; and

6.4.5 The Board may further discuss the proposal and ask questions as appropriate.

SECTION 7. AMENDMENTS

These Rules of Procedure may be amended at any regular meeting of the Board by and affirmative vote of a majority plus one (1) of the total number of members serving at that time. An amendment, having been adopted, goes into effect immediately upon its adoption, unless the motion to adopt specifies a time for its going into effect.

SECTION 8. EFFECTIVE DATE

These Rules of Procedure shall become effective on May 11, 2021.