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**APPROVED BY COUNCIL
JANUARY 18, 2017**

FINAL ACTION AGENDA/MINUTES

**Village of Estero
9401 Corkscrew Palms Circle
Estero, FL 33928
Village Council Meeting
January 4, 2017 9:30 a.m.**

1. **OPENING EXERCISES:** (Includes call to order, roll call, pledge of allegiance, announcements, proclamations, and ceremonial presentations)

Call to Order: 9:30 a.m.

Pledge of Allegiance: Led by Mayor Batos.

Invocation: Offered by Pastor Nolen Rollins from Legacy Church.

Roll Call: Present: Mayor Nick Batos - District 6, Vice Mayor Howard Levitan - District 2, Councilmember Bill Ribble, District 1, Councilmember Donald Brown (left the meeting at 10:40 a.m.) - District 3, Councilmember Katy Errington - District 4, Councilmember Jim Boesch - District 5, and Councilmember Jim Wilson - District 7.

Also present: Village Manager Steve Sarkozy, Village Attorney Burt Saunders, Village Land Use Attorney Nancy Stroud, Assistant to Village Manager Kyle Coleman, Village Clerk Kathy Hall, Finance Director Lisa Roberson, and Community Development Director Mary Gibbs.

Proclamation: Human Trafficking Awareness and Prevention Month – Presented by Mayor Batos to Nola Theiss, Executive Director and Elaine Cherisol, Board Member, Human Trafficking Awareness Partnerships, proclaiming January 2017 as Human Trafficking Awareness and Prevention Month.

2. APPROVAL OF AGENDA, ADDITIONS, AND DELETIONS:

Motion: Move to approve the agenda as revised: pull agenda item 3 (b) from the Consent Agenda and reschedule for the January 18, 2017 Council meeting; remove agenda item 10 (b) and delay discussion until it is determined whether there will be a Village election in March.

Motion by: Vice Mayor Levitan
Seconded by: Councilmember Wilson

Questions or Comments by: Vice Mayor Levitan requested that plat approval requests be accompanied by a staff report and information related to HOA, easements, and potential uses of the property.

Action: Approved the agenda as revised: pulled agenda item 3 (b) from the Consent Agenda and rescheduled for the January 18, 2017 Council meeting; removed agenda item 10 (b) and delayed discussion until it is determined whether there will be a Village election in March.

Vote:
Aye: Unanimous
Nay:
Abstentions:

3. CONSENT AGENDA:

- (a)** Approval of December 7, 2016 Council Meeting Minutes
- (b)** Resolution No. 2017-01 A Resolution of the Village Council of the Village of Estero, Florida, Approving the City Mattress at Coconut Point Plat; and Providing an Effective Date

Motion: Move to approve the consent agenda as revised; agenda item 3 pulled and rescheduled for the January 18, 2017 meeting.

Motion by: Councilmember Ribble
Seconded by: Councilmember Wilson

Action: Approved the consent agenda as revised; agenda item 3 pulled and rescheduled for the January 18, 2017 meeting.

Vote:
Aye: Unanimous
Nay:
Abstentions:

4. ACTION ITEMS:

- (a) Resolution No. 2017-02 A Resolution of the Village Council of the Village of Estero, Florida, Adopting Fees for the Review of Commercial and Residential Right-of-Way Permits; Amending Resolution No. 2015-68; and Providing an Effective Date

Village Clerk Hall read the title of Resolution No. 2017-02 and Village Manager Sarkozy provided explanation of the resolution, which establishes the cost of certain permits associated with the Village's take-over of roads within Estero.

Vice Mayor Levitan inquired why it was chosen to do this under a fee schedule as opposed to cost recovery. Village Manager Sarkozy responded that the fees were associated with smaller projects.

Public Comment: None.

Motion: Move to adopt Resolution No. 2017-02.

Motion by: Councilmember Ribble

Seconded by: Councilmember Brown

Action: Adopted Resolution No. 2017-02.

Vote:

Aye: Unanimous (roll call)

Nay:

Abstentions:

- (b) Resolution No. 2017-03 A Resolution of the Village Council of the Village of Estero, Florida, Authorizing the Waiving of Competitive Bidding Procedures and Authorizing the Village Manager to Execute a Contract for Road and Right-of-Way Maintenance Services with Pritchard Construction LLC; and Providing an Effective Date

Village Clerk Hall read the title of Resolution No. 2017-03. Village Manager Sarkozy provided an explanation of the resolution, which is consistent with the approach to provide public works services on a contract basis.

Vice Mayor Levitan addressed issues with Sections 4.3 (first sentence), 5.2 (corrections needed to the dates), and 14.2 (amending "Village Attorney" to "Village Manager"). The following revisions to the document were made: Section 4.3 first sentence was amended to read "Contractor shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials for one year after the completion of Contractor's services under this Agreement." Section 5.2 was amended to read: "Contractor agrees that any software, computer systems and databases used for providing the documents necessary to this Agreement shall be compatible with existing Village software and systems. It is anticipated that any software utilized will be run on windows based PC's and will consist of Microsoft Office 2013 (or newer) and Adobe Acrobat DC (or newer)." Section 14.2 was amended to read: "Contractor shall

carry a commercial liability insurance policy in coverage amounts as determined by the Village Manager and naming the Village of Estero as additional insured.”

Brief discussion followed related to the importance of a contract template.

Public Comment: None.

Motion: Move to adopt Resolution No. 2017-03 and approve the agreement between the Village and Pritchard Construction LLC as amended.

Motion by: Councilmember Errington

Seconded by: Councilmember Wilson

Action: Adopted Resolution No. 2017-03 and approved the agreement between the Village and Pritchard Construction LLC as amended.

Vote:

Aye: Unanimous (roll call)

Nay:

Abstentions:

(c) Traffic Signal Maintenance Agreement with Lee County

This agreement will provide the Village with maintenance services for the traffic signal intersection at Via Coconut Point and Coconut Road.

Village Manager Sarkozy explained that the agreement, a standard Lee County agreement, was part of the Village’s public works start-up process.

Vice Mayor Levitan inquired whether the Village would pay any share of other signals in Estero and Village Manager Sarkozy responded “no” and provided further explanation.

Public Comment: None.

Motion: Move to approve the Traffic Signal Maintenance Agreement with Lee County.

Motion by: Councilmember Boesch

Seconded by: Councilmember Ribble

Action: Approved the Traffic Signal Maintenance Agreement with Lee County

Vote:

Aye: Unanimous (roll call)

Nay:

Abstentions:

5. UNFINISHED BUSINESS: None.

6. PUBLIC COMMENT ON NON-AGENDA ITEMS:

Appearance by:

Ed Weil, Rookery Pointe, Parks and Recreation Coalition, spoke regarding parks and doing a study of the HOA's

Mayor Batos suggested that this topic be scheduled for a workshop. Village Manager Sarkozy suggested that it come back during the Comprehensive Plan process to allow for wide-range comment. Brief discussion followed.

7. COUNCIL COMMUNICATIONS / FUTURE AGENDA ITEMS:

Councilmember Ribble: Requested that the Village Manager resume one-on-one meetings.

Vice Mayor Levitan: Suggested that the Village Attorney provide guidance related to social media and the Sunshine Law. Village Attorney Saunders stated that he would get back to the Council with information.

Councilmember Errington: Requested that Lee County Sheriff's office resume providing incident reports for the Village; brief discussion followed. She also spoke to attending a radio program recently; the commentator interviewed her regarding the role of the Council related to the medical marijuana ordinance.

Councilmember Boesch: Inquired regarding a possible liaison position that Commissioner Kiker may be looking for to the DR/GR.

Councilmember Wilson: Inquired whether the Village Manager could take on as a staff project, reaching out to Lee County on how the Village could cooperatively work together with the county on the second entrance to the Estero Community Park, possibly toward the end of the construction of the Genova project. Village Manager Sarkozy agreed.

8. VILLAGE ATTORNEY'S REPORT: None.

9. VILLAGE MANAGER'S REPORT: None.

The meeting went into recess at 10:25 a.m. and reconvened at 10:32 a.m.; agenda items under section 11 were set for 11:30 a.m.

10. **WORKSHOP ITEMS:**

- (a) Tiffany Esposito, Executive Director – Bonita Springs Estero Economic Development Council

Ms. Esposito provided information regarding the Bonita Springs Estero Economic Development Council (EDC) vision; mission; investors; Board of Directors; resource partners; 2017-2019 strategic plan for quality of life, workforce development and talent retention and recruitment, and business retention and expansion; and the Village of Estero 2017 investment request with a one-year trial commitment: Councilmember voting seat on the Board of Directors and Village Manager as resource partner seat on the Board of Directors; and Enterprise Team investment of \$5,000. The Village was offered a one year membership for \$10,000; knowing that the City of Bonita Springs was paying \$25,000 for a similar role, the Estero Community Improvement Foundation offered \$5,000 to match the \$5,000 from the Village.

Questions or Comments by: Councilmembers Boesch, Wilson, Ribble, Errington, Vice Mayor Levitan, and Mayor Batos.

Discussion included Estero Chamber of Commerce involvement; quality of life information was impressive; the need for the Village to reach out and partner with many entities; deliverables to evaluate what the Village has gained at the end of the one year trial and the possibility of quarterly reports.

Wayne Smith, on behalf of the Estero Community Improvement Foundation, spoke regarding the \$10,000 investment and the commitment from the Foundation to commit funding in the amount of \$5,000.

Public Comment:
Don Eslick, ECCL

Consensus was to move forward and include this as an action item on the next Council meeting agenda.

- (b) Council Rules of Procedure – Removed from the agenda

- (c) Available Estero Properties

Discussion ensued related to the 12.02 acre parcel with DO and zoning in place, which could be used for recreational development that Village Manager Sarkozy addressed at the December 7, 2016 meeting. Consensus was to pass on the 12.02 acre parcel.

Discussion followed related to the parcel owned by Andy Djamoos. Village Manager Sarkozy noted that there have been informal discussions regarding the parcel. Village Attorney Saunders spoke to a process by which negotiations were exempt from disclosure for a specified period of time. He stated that he would get together with the Village Manager to review the statute.

Public Comment: None.

(d) State Legislative Agenda

Village Manager Sarkozy spoke to the information provided that included priorities in draft format; final format to be brought to the next Council meeting.

The meeting went into recess at 11:28 a.m. and reconvened at 11:40 a.m.

11. ZONING AMENDMENT ORDINANCE FIRST READING:

(a) Estero United Methodist Church Zoning Amendment

Ordinance No. 2017-01 An Ordinance of the Village Council of the Village of Estero, Florida, approving an amendment to the community facilities planned development with deviations to allow for reconfiguration of the master concept plan for property located at US 41 consisting of approximately 12.97 acres; providing for severability; and providing an Effective Date

Village Clerk Hall read the title of Ordinance No. 2017-01. Community Development Director Gibbs provided a brief explanation of the ordinance and spoke to the discussion held before the Planning and Zoning Board.

Questions or Comments by: Vice Mayor Levitan, Councilmembers Errington, Ribble, Boesch, and Mayor Batos.

Discussion included significant neighborhood compatibility and buffering issues that have not been addressed; requirement for a pattern book; environmental concern regarding septic system; building height limitation; further information regarding FDOT turn lane warrants; removal of heritage trees; and enhanced buffering for the parking area along US 41.

Motion: Move to pass first reading and set second reading and public hearing date for January 18, 2017.

Motion by: Councilmember Ribble

Seconded by: Councilmember Errington

Action: Passed first reading and set second reading and public hearing date for January 18, 2017.

Vote:

Aye: Unanimous (roll call; Councilmember Brown absent)

Nay:

Abstentions:

12. ORDINANCES: COMPREHENSIVE PLAN AMENDMENT ADOPTION AND REZONING ORDINANCES SECOND READINGS AND PUBLIC HEARING:

- (a) Ordinance No. 2016-15 An Ordinance of the Village Council of the Village of Estero, Florida, Approving an Amendment to the Village Transitional Comprehensive Plan to add Policy 19.3.4 Providing for the Option to Convert a Commercial Planned Development of not more than 5.5 acres within the Urban Community Future Land Use Designation and Mixed-Use Overlay to a Residential Planned Development when Combined with an Existing Adjacent Residential Planned Development under Certain Conditions for a Density not to Exceed Eight Dwelling Units Per Gross Acre across the Resulting Residential Planned Development Comprised of Both Parcels; Providing for Transmittal Pursuant to State Statute; Providing for Conflicts; Providing for Severability; and Providing for an Effective Date

Village Clerk Hall read the title of Ordinance No. 2016-15. Staff and audience members providing testimony were sworn in. Vice Mayor Levitan and Mayor Batos disclosed ex-parte communications.

Community Development Director Gibbs provided a review of the November 16, 2016 discussion of Ordinances No. 2016-15 and 2016-16, noted that amendments were made to some of the conditions in Ordinance No. 2016-16, and responded to an inquiry regarding Southwest Florida Regional Planning Council indicating that the Council would review the proposal at its January 19, 2017 meeting; the Council staff was recommending that the request be found not regionally significant, which was the same finding as the other reviewing agencies.

Vice Mayor Levitan inquired whether all of the evidence presented at the first hearing was incorporated into the record. Village Land Use Attorney Stroud responded affirmatively.

Vice Mayor Levitan inquired whether Kate English, attorney for the applicant, had any concerns with the draft zoning ordinance. Ms. English responded that there was concern regarding the restrictions for the use as student housing; as applied, it could have ramifications under the Federal Fair Housing standards and that they were not agreeable with the condition. Discussion ensued.

Councilmember Errington addressed concerns regarding part of the parcel (1.21 acres) being designated as wetlands.

Parke Lewis, Environmental Consultant, W. Dexter Bender & Associates, Inc., accepted as an expert witness at the November 16, 2016 hearing, referred to the state certified approved wetland jurisdictional boundary map and provided an explanation of the history related to the wetlands and additional remnant ditches.

Councilmember Errington inquired regarding the request to double the amount of units and increasing the number of parking spaces. Ms. English responded that the amount of units was due to economic viability. Regarding parking, she explained that every bed

needed a parking space and due to the population of the student housing, the amount of parking was appropriate.

Discussion ensued regarding wetlands regulations. It was noted that the wetlands issue was mitigated and the project was approved by Southwest Florida Water Management District.

Vice Mayor Levitan inquired whether the applicant was willing to accept Condition 19 and the revisions to Condition 17 in draft Ordinance No. 2016-16. Ms. English responded that she did not raise an objection to Condition 17; however, her point was they would abide by the conditions that the Council decided to impose; her advice to the applicant has been of concern to anything that put him at risk; if it was the Council's wish to impose this condition, they would abide by it.

In response to an inquiry regarding a precedent being set, Kathleen Berkey, AICP, addressed the criteria that would need to be met to be eligible. Community Development Director Gibbs stated that initially the request was a little bit broad and she was concerned with precedent; the project was refined, the Planning and Zoning Board said to continue working on the language before it went to Council; and Community Development Director Gibbs suggested that they refine the language so that it was very narrow in scope.

Vice Mayor Levitan asked Village Land Use Attorney Stroud whether there had been enough testimony in all of the hearings that provided legal justification for passing Condition 19 and whether it would be enforceable. Ms. Stroud responded that concern about the federal law was a valid concern, the language was revised so that it was not restrictive, it does give the guidance that, operationally, the applicant would use to guide his student housing. She also responded that there had been substantial evidence.

Public Comment: None.

Motion: Move to pass second reading and adopt Ordinance No. 2016-15.

Motion by: Councilmember Ribble

Seconded by: Councilmember Boesch

Action: Passed second reading and adopted Ordinance No. 2016-15.

Vote:

Aye: Councilmembers Ribble, Boesch, Wilson, Vice Mayor Levitan, and Mayor Batos

Nay: Councilmember Errington

Abstentions: (Councilmember Brown absent)

(b) Rezoning for the Reef Phase II Second Reading and Public Hearing

Ordinance No. 2016-16 an Ordinance of the Village Council of the Village of Estero, Florida, Approving a Rezoning from Commercial Planned Development to Residential Planned Development with One Deviation to Allow a 60 Unit Multiple Family Project for Property Located at Three Oaks Parkway Consisting of Approximately 5.32 Acres; Providing for Severability; and Providing an Effective Date

Village Clerk Hall read the title of Ordinance No. 2016-16.

Public Comment: None.

Motion: Move to pass second reading and adopt Ordinance No. 2016-16.

Motion by: Councilmember Wilson

Seconded by: Councilmember Ribble

Action: Passed second reading and adopted Ordinance No. 2016-16.

Vote:

Aye: Councilmembers Ribble, Boesch, Wilson, Vice Mayor Levitan, and Mayor Batos

Nay: Councilmember Errington

Abstentions: (Councilmember Brown absent)

A motion to adjourn was duly made and passed.

13. ADJOURNMENT: 12:53 p.m.

ATTEST:

VILLAGE OF ESTERO, FLORIDA

By: Kathy Hall
Kathy Hall, MMC, Village Clerk

By: Nicholas Batos
Nicholas Batos, Mayor