

This Final Action Agenda/Minutes is supplemented by electronic recordings of the meeting, which may be reviewed upon request to the Village Clerk. Village Council meetings from June 8, 2016 forward can be viewed online at <http://estero-fl.gov/council/watch-meetings-online/>. Staff reports, resolutions, ordinances, and other documents related to this meeting are available at <https://estero-fl.gov/agendas/> at the corresponding agenda date.

**APPROVED BY COUNCIL
JULY 19, 2017**

FINAL ACTION AGENDA/MINUTES

Village Council Comprehensive Plan Amendment Transmittal and Rezoning Hearings

**Village of Estero Council Chambers
9401 Corkscrew Palms Circle
Estero, FL 33928
May 24, 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 Boesch.

Invocation: Pastor Todd Weston from River of Life Assembly of God.

Roll Call: Present: Mayor Jim Boesch - District 5, Vice Mayor Bill Ribble - District 1 (via teleconference), Councilmember Howard Levitan - District 2, Councilmember Katy Errington - District 4, Councilmember Nick Batos - District 6, and Councilmember Jim Wilson - District 7.

Also present: Village Manager Steve Sarkozy, Village Land Use Attorney Nancy Stroud, Community Development Director Mary Gibbs, and Executive Assistant Carol Sacco.

- 2. COMPREHENSIVE PLAN AMENDMENT TRANSMITTAL AND REZONING ORDINANCES FIRST READINGS AND PUBLIC HEARINGS:**

- (a)** Comprehensive Plan Amendment Transmittal First Reading and Public Hearing Ordinance No. 2017-04 An Ordinance of the Village Council of the Village of Estero, Florida, Approving an Amendment to the Village Transitional Comprehensive Plan to Amend Policy 1.3.2 to Allow Residential Uses at the Southwest Quadrant of the Corkscrew Road Interchange if Rezoned to a Mixed-Use Planned Development with Certain Conditions and Allowing Density up to a Maximum of 10 Units Per Acre; Providing for Transmittal Pursuant to State

Statute; Providing for Conflicts; Providing for Severability; And Providing for an Effective Date

Mayor Boesch provided introductory information regarding the quasi-judicial hearing. The title of Ordinance No. 2017-04 was read by Community Development Director Mary Gibbs. Staff and audience members providing testimony were sworn in by Village Land Use Attorney Stroud.

Disclosure of ex-parte communication:

Councilmember Levitan: has had multiple meetings over the years; viewed Village streaming meetings; he was secretary to the Community Planning Panel and wrote minutes for all meetings; had at least one meeting with Stock Development representatives and their attorneys; has spoken on numerous occasions with Bill Savage and other people in Island Club at Corkscrew Woodlands; over the years, has received multiple emails; has discussed the project on a general basis with planners during the Village Center process with the working group and with the planners working on the Village's first Comprehensive Plan.

Councilmember Batos: attended many meetings over the years; received approximately 150 emails from residents.

Councilmember Errington: received many emails; attended one meeting at Island Club at Corkscrew Woodlands and many people talked to her about their concerns.

Councilmember Wilson: attended a public information meeting and received numerous emails regarding the proposal.

Mayor Boesch: has spoken to many people in the community about their concerns; spoke with Bill Savage; and attended one or two hearings regarding this project.

Vice Mayor Ribble: attended a couple Planning and Zoning Board meetings; received numerous emails.

Village Land Use Attorney Stroud confirmed that the emails received by Council were part of the record. She noted that any emails received not on Village phones needed to be transmitted to the Village Clerk to be included in the record. Another alternative would be to forward the emails to their Village email accounts.

Community Development Director Gibbs provided an explanation of the requests for a Comprehensive Plan text amendment and rezoning from Commercial Planned Development to Mixed Use Planned Development with deviations for the 43-acre site located 1,000 feet west of the intersection of Corkscrew Road and I-75, on the south side of Corkscrew Road. The applicant proposed commercial uses on a portion of the property and residential uses on the majority of the property, approximately 2/3 of the southerly side of the site; requesting 350 multiple-family units, four stories high, maximum 50 ft. building height, 60,000 sq. ft. commercial use including a convenience food and beverage store with 18 pumps, hotel with 100 rooms and 100,000 sq. ft. mini-warehouse.

The proposed development would be mostly multifamily residential use with commercial tracts on the northern portion along Corkscrew Road. The applicant was requesting a Comprehensive Plan Amendment because the current General Interchange land use category does not allow residential use; the rezoning was needed if residential is to be allowed because the site is now zoned for commercial uses only.

Community Development Director Gibbs noted that staff's recommendation was to not transmit amendments to the state for review, due to the current work on the Village's first Comprehensive Plan; during the preparation of the Comprehensive Plan, a more generally applicable plan solution could possibly be developed. However, the Planning and Zoning Board did recommend transmitting the Comprehensive Plan amendments to the state for review. The Board also recommended approval of the rezoning with staff's revisions and conditions, also including the mini-warehouse use, and adding a condition that the proposed traffic light and the proposed reverse frontage road be included in the Village traffic study because the Planning and Zoning Board was very concerned that the study should show that the frontage road and traffic light would improve traffic flow and safety.

Questions or Comments: Councilmember Errington inquired whether the applicant's request included an 18-pump service station. Community Development Director Gibbs responded that the applicant's request includes 60,000 sq. ft. of various types of commercial uses and they were asking for a convenience store with gas pumps.

Presentations by:

Neale Montgomery, Esq., Pavese Law Firm
Keith Gelder, MBA, Stock Development
Scott Windham, RLA, Windham Studios
John Wojdak, P.E., DeLisi Fitzgerald, Inc.
Dan DeLisi, AICP, DeLisi, Inc.

Neale Montgomery spoke regarding the history of the Comprehensive Plan text amendment, which was originally submitted as a change to the land use map to Intensive Development; the request was modified to a text amendment. Ms. Montgomery noted that Attachment C to the staff report contained the text amendment language prepared by staff, and agreed to by the applicant, and that it was recommended for transmittal to the state by the Planning and Zoning Board.

Ms. Montgomery referred to the request for rezoning from Commercial Planned Development to Mixed Use Planned Development; noted that the parcel was transitional; indicated the uses on the adjacent parcels including intensive commercial and residential; and reviewed the applicant's proposed uses as well as requirements imposed by the Planning and Zoning Board when the Board recommended transmittal of the Comprehensive Plan Amendment at the March 21, 2017 meeting. Ms. Montgomery elaborated regarding the proposed traffic light and reverse frontage road that the Planning and Zoning Board asked to be included in the Village traffic study due to the Board Members' concern that the study should show the frontage road and traffic light as improving traffic flow and safety.

Keith Gelder provided information regarding Stock Development, background on the property, public outreach, and their vision for the project.

Dan DeLisi spoke regarding the site plan, frontage road, pedestrian connectivity, and open space.

Scott Windham addressed the architectural character, public pocket park, frontage road, signage, and landscape including buffers for Corkscrew Road, Island Club, and Villa Palmeras.

John Wojdak addressed engineering aspects related to regional drainage, site solid waste management plan, drainage from the east, utilities/water pressure, and 3-lane frontage road.

Dan DeLisi provided an explanation regarding the existing transportation entitlements compared to proposed entitlements, noting that commercial use would always be a higher trip generator. He also spoke regarding application of the text amendment; building height; site plan comparison; reverse frontage road; traffic light; compatibility; and neighborhood concerns.

Councilmember Wilson asked for clarification of the process of today's hearing. Village Land Use Attorney Stroud explained that two questions were before the Council: (1) whether to transmit the proposed Comprehensive Plan amendment to the state; if the Council chose to transmit the amendment, it would come back to Council for a decision after state review; (2) first reading of an ordinance for a rezoning request. Brief discussion followed. Councilmember Levitan inquired whether staff would be presenting the detailed information regarding staff recommendation to not transmit to the state, as provided in the staff report.

Questions or Comments: Councilmembers Levitan, Batos, and Errington.

Discussion included concerns regarding: creating a designer category that applied to only one property; the Village being in the process of adopting an ordinance to change the bonus density systems for three particular properties and an inquiry why this project should be treated differently for residential in the General Interchange; comparison pictures of the Master Concept Plan and the Development Order; intensity of use and the square footage on each floor of the residential buildings; water flow, if it went to the south branch of the Estero River, whether it would be the same flow that would occur with commercial development; whether the Estero River would be further impaired by the effluent or if it was going to make it better; whether they were planning on littoral plantings completely around the lake; concern about fertilizers leaching into the lake; concern regarding whether or not the reverse frontage road was configured to work; LDOT's intention to change the left in/left out to a left in only when the traffic light is installed; the Planning and Zoning Board Member's comments at a 2016 meeting; and the intimidation tactics from the testimony if the transmittal did not go forward along with the proposed intense development, including a gas station across the street.

Ms. Montgomery agreed that the Council had a choice to leave it as is, have a big box commercial development, not have a reverse frontage road, less buffer, not take care of drainage, not do all of the things that the developer has agreed to do based on all of the meetings with the residents; if Council decided to deny the residential and not transmit the amendment, they knew what they were going to get.

Mr. Wojdak stated that the water flow met state water quality requirements and addressed the required discharge rate by acre; the rate of discharge for the proposed plan was the same as the other plan, which was substantially less than the rate of the undeveloped condition. Ms. Montgomery provided further clarification regarding water quality analysis. Mr. Wojdak reiterated that they are testing the water and therefore meeting the water quality requirements; they are not required to test for nitrogen or phosphorus.

Councilmember Levitan inquired whether there have been discussions at the various Planning and Zoning Board meetings about changing the General Interchange uses completely, on all four quadrants, to a different land use category. Community Development Director Gibbs responded that staff recommended that the Comprehensive Plan amendment not be transmitted because of the current work on the Comprehensive Plan. The Planning and Zoning Board has received information related to different elements including land use; the consultant was working on land use categories, and there have been general discussions with the Board. She noted that staff has been discussing coming up with different land use categories with the consultants, as well as talking about the idea of a mixed use category for different parts of Estero; they may look at a mixed use category for the entire interchange and it may be recommended for the interchange category to go away and change to a different category. She reiterated that it would be better to wait for the Village Comprehensive Plan rather than making site specific uses.

Mr. Delisi apologized for testimony sounding threatening; he stated that he was comparing the allowed uses to the proposal; the current zoning is more intense than what they are trying to achieve. He added that, in the transmittal, they are asking for a zoning category that is less intense than the land use category currently requires. He also addressed Board Member Wood's comments at a 2016 Planning and Zoning Board meeting. He indicated that, after that meeting, they lowered the density, height, overall impacts, met with residents numerous times, and came back with a proposal with significant revisions. He also spoke regarding the reverse frontage road that would not be created unless the property is developed.

Councilmember Errington inquired why they can't wait until the Village Comprehensive Plan was completed. Mr. Delisi responded because they have been in the process since 2014.

Public Testimony:

Bill Savage, Island Club

Paul Mandelaro, Corkscrew Woodlands

Jack Otte, Island Club

Sally Russer, Island Club

Susan Prock, Bella Terra

Bobbi Nelson, Island Club

Joe Miceli, Rookery Pointe

Mr. DeLisi commented that the Planning and Zoning Board requested removal of the gas station from the plan and that the Council could make the same request; they will not be proactive in removing the gas station. He also commented that Council was not voting to transmit the project today; they would be voting to transmit the text amendment that would allow for residential. He continued that a vote for transmittal did not mean sending the plan as is for review by the state; only the text amendment allowing transitional use between residential and a big box store. He added that, if Council voted to not transmit the amendment to the state, the applicant could not move forward with zoning and the discussions to rush to get the light installed were over; everyone waits for the reverse frontage road; and all discussions cease if they were still not in the process.

Councilmember Batos commented he believed that the proposal was better than the existing zoning on the property, indicated that he had a number of significant items that he was very concerned about, and hoped that if it did go further that Stock Development would be willing to remedy the situations. He added that he would really not like to go ahead unless the Council understood what the Comprehensive Plan had in store for the Village. He said his understanding was that, whatever Council does today and if Council decided to transmit the amendment, there would be no obligation in accepting the plan as is.

Councilmember Levitan stated he was not in favor of transmitting; he believed Council should support the staff recommendation. He added that the Village was in middle of developing the first Comprehensive Plan which will very likely have very different land use categories and future land use map, especially in the interchange district. He inquired where the overriding necessity to change the temporary Comprehensive Plan was today.

Dan DeLisi requested a continuance which would allow them to stay in the process and work with the Village.

Discussion ensued.

Village Land Use Attorney Stroud stated that if Council continued the future land use, the rezoning would need to be continued as well; they could ask to continue both or just continuance of the rezoning.

Motion: Move to not transmit the Comprehensive Plan amendment as proposed.

Motion by: Councilmember Levitan

Seconded by: Councilmember Wilson

Questions or Comments: Councilmembers Errington and Batos.

Discussion included supporting staff recommendation and an inquiry regarding continuance.

Action: The Comprehensive Plan amendment as proposed will not be transmitted.
Vote: (roll call)
Aye: Councilmembers Levitan, Errington, Wilson, Vice Mayor Ribble, and Mayor Boesch
Nay: Councilmember Batos
Abstentions:

(b) Rezoning for Estero Crossing First Reading and Public Hearing

Ordinance No. 2017-05 An Ordinance of the Village Council of the Village of Estero, Florida, (Approving with Conditions) (Denying) a Rezoning from Commercial Planned Development to Mixed Use Planned Development to Allow a 350 Unit Multiple Family Project and Commercial Development on Property Located 1,000 feet West of Interstate 75 and South of Corkscrew Road Consisting of Approximately 43 Acres; Providing for Severability; and Providing an Effective Date

The title of Ordinance No. 2017-05 was read by Community Development Director Mary Gibbs.

Brief discussion ensued regarding continuance.

Motion: Move to continue the request to a time uncertain.

Motion by: Councilmember Levitan

Seconded by: Councilmember Batos

Questions or Comments: Councilmember Wilson inquired whether the first hearing was being continued. Village Land Use Attorney Stroud responded that the ordinance first reading and hearing would be continued.

Action: Continued the request to a time uncertain.

Vote:

Aye: Unanimous (roll call)

Nay:

Abstentions:

A motion to adjourn was made and duly passed.

3. ADJOURNMENT: 12:55 p.m.

ATTEST:

VILLAGE OF ESTERO, FLORIDA

By: Kathy Hall
Kathy Hall, MMC, Village Clerk

By: James R. Boesch
James R. Boesch, Mayor