

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
APRIL 18, 2018**

FINAL ACTION AGENDA/MINUTES

VILLAGE COUNCIL MEETING

**Village of Estero Council Chambers
9401 Corkscrew Palms Circle
Estero, FL 33928
March 21, 2018 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: Pastor Nolen Rollins from Legacy Church.

Roll Call: Present: Mayor Jim Boesch - District 5, Vice Mayor Bill Ribble - District 1, Councilmember Howard Levitan - District 2, Councilmember Jon McLain - District 3, Councilmember Katy Errington - District 4, Councilmember Nick Batos - District 6, and Councilmember Jim Wilson - District 7.

Also present: Village Manager Steve Sarkozy, Village Attorney Burt Saunders, Assistant to Village Manager Kyle Coleman, Finance Director Lisa Roberson, Community Development Director Mary Gibbs, Principal Planner Matt Noble, and Village Clerk Kathy Hall.

2. **APPROVAL OF AGENDA, ADDITIONS, AND DELETIONS:**

Motion: Move to approve the agenda.

Motion by: Councilmember Ribble

Seconded by: Councilmember Batos

Action: Approved the agenda.

Vote:

Aye: Unanimous (Roll Call vote)

Nay:

Abstentions:

3. PUBLIC COMMENT ON NON-AGENDA ITEMS:

C. David Nelson, The Reserve, support for construction of the roundabout on Estero Parkway.

4. ACTION ITEMS:

- (a)** Memorandum of Understanding between Village of Estero and School District of Lee County

Village Manager Sarkozy spoke to the collaboration between the Village and the School District, the mutual best interest, and reviewed discussion from the March 7, 2018 workshop.

Questions or Comments: Councilmember Batos appreciated the changes in the document as suggested at the March 7, 2018 workshop and indicated that this was an important first step.

Public Comment: None.

Motion: Move to approve the Memorandum of Understanding between Village of Estero and School District of Lee County.

Motion by: Vice Mayor Ribble
Seconded by: Councilmember Batos

Action: Approved the Memorandum of Understanding between Village of Estero and School District of Lee County.

Vote:

Aye: Unanimous (Roll Call vote)

Nay:

Abstentions:

- (b)** Appointment of Planning and Zoning Board Members and Design Review Board Members and Appointment of Chairman to the Boards

Village Manager Sarkozy provided background information regarding the upcoming vacancies and reviewed that applicants were interviewed at the February 21, 2018 Council meeting.

Councilmember Levitan questioned the ballot process, he indicated that Council would need to wave Council Rules to proceed, and brief discussion followed.

Village Attorney Saunders inquired whether there were any other objections regarding the ballot process from the rest of the Councilmembers. Councilmember Levitan reiterated his objection; there were no other objections to waving the rules and proceeding with the ballot process.

A vote by ballot resulted in appointing William Campos, Robert King, and Scotty Wood to the Planning and Zoning Board with terms expiring March 31, 2021 and Thomas

Barber, William Glass, Michael Sheeley, and Edward “Zach” Zachariah to the Design Review Board with terms expiring March 31, 2020.

Chairman Nominations:

Vice Mayor Ribble nominated Scotty Wood as Chairman of the Planning and Zoning Board; seconded by Councilmember Levitan.

Councilmember Errington nominated Marlene Naratil as Chairman of the Planning and Zoning Board; seconded by Councilmember Batos.

A roll call vote on the nomination of Scotty Wood resulted in a unanimous decision. Scotty Wood was appointed as the Planning and Zoning Board Chairman.

Councilmember Levitan nominated William Glass as Chairman of the Design Review Board; seconded by Councilmember McLain. There were no further nominations.

A roll call vote on the nomination of William Glass resulted in a unanimous decision. William Glass was appointed as the Design Review Board Chairman.

5. ZONING AMENDMENT FOR PARCEL G AT PLAZA DEL SOL FOR DEVELOPMENT OF AN ASSISTED LIVING FACILITY AND ORDINANCE FIRST READING

Ordinance No. 2018-03 An Ordinance of the Village of Estero, Florida, Amending the Commercial Planned Development Zoning for Parcel G at Plaza Del Sol for the Development of an Assisted Living Facility on 7.04 Acres at 10251 Arcos Avenue and Including Conditions of Development; Approving Deviations; Providing for Conflict; Providing for Severability; and Providing an Effective Date

Mayor Boesch introduced the ordinance and stated that the second reading and public hearing would take place on April 11, 2018, at which time public comments would be permitted. The title of Ordinance No. 2018-03 was read by Village Clerk Hall.

Community Development Director Gibbs provided a brief presentation.

Motion: Move to pass first reading of Ordinance No. 2018-03 and confirm second reading and public hearing for April 11, 2018.

Motion by: Councilmember Wilson

Seconded by: Vice Mayor Ribble

Action: Passed first reading of Ordinance No. 2018-03 and confirmed second reading and public hearing for April 11, 2018.

Vote:

Aye: Unanimous (roll call vote)

Nay:

Abstentions:

6. ZONING HEARING AND ORDINANCE SECOND READING: AMENDMENT FOR SHOPPES AT COCONUT TRACE COMMERCIAL PLANNED DEVELOPMENT TRACTS C AND D (NCH)

Ordinance No. 2018-02 An Ordinance of the Village of Estero, Florida, (Approving) (Denying) Zoning Amendments and (Approving) (Denying) a Building Height Deviation for Tracts C and D Within the Shoppes at Coconut Trace Commercial Planned Development for Property Located at 22951 and 22961 Lyden Drive in the Village of Estero, Florida and Comprising Approximately 3.54 Acres; Providing for Conflicts; Providing for Severability; and Providing an Effective Date

Mayor Boesch introduced the ordinance, noted that this was a public hearing, and that the Council would sit in its quasi-judicial capacity in this matter. Mayor Boesch inquired whether the ordinance had been properly advertised; Village Clerk Hall responded affirmatively. The title of Ordinance No. 2018-02 was read by Village Clerk Hall followed by Mayor Boesch explaining the quasi-judicial proceedings. Staff and audience members intending to testify were sworn in by the Village Clerk. Each Councilmember was asked to disclose any ex-parte communications on the application.

Disclosure of ex-parte communications: Councilmember Batos: was contacted by many people within the community and received numerous emails. Councilmember Levitan has been involved with this application since the outset and listed the numerous occasions. Vice Mayor Ribble: received 150 emails and had contact with Wayne Smith, a representative of NCH. Councilmembers Errington, McLain and Wilson: received numerous emails. Mayor Boesch: was initially introduced to this application by the Vice President of NCH and Wayne Smith, Estero Community Improvement Foundation President, and attended an event where he spoke with the President of NCH.

Community Development Director Gibbs provided information regarding the process being followed; then spoke to the application and specific requests: clarify that a freestanding emergency department is an expressly permitted use; remove a restriction on the hours of operation to allow NCH to operate 24 hours day; modification to design standards; and a deviation for building height. Staff did not believe that the use was expressly permitted, did not recommend that the restriction on the hours of operation be eliminated, and provided background information.

Land Use Counsel Nancy Stroud presented introductory comments regarding testimony and emphasized that the Council needed to make a decision based on the substantial competent evidence. She also emphasized that relevant evidence includes zoning criteria for approval of a zoning amendment. The Council and the public should not discuss anything that was non-relevant.

Councilmember Levitan stated that he believed that the Village included into the record all the proceedings in Lee County and NCH's file records at either the Planning and Zoning Board meeting or the first reading of the ordinance.

Land Use Counsel Stroud stated that the Hearing Examiner record and transcript from the Planning and Zoning Board were included.

Mayor Boesch reminded the Council to follow Land Use Counsel Stroud's guidance.

NCH Presentation:

Members of the team: Phillip Dutcher, COO and Dr. Shawn Patterson, ER Manager, NCH Healthcare System; Paula McMichael, AICP and Charlie Krebs, PE, Hole Montes; Richard Grant, Esq. and Charles C. Whittington, Esq., Grant Fridkin Pearson; Mark Shannon and Patty Rice-Spivey, AIA, Studio+.

Mr. Grant provided a summary of the project and stated that the applicant understands the hours of operation restriction and is requesting to change it. He explained that the question regarding whether an emergency department is a permitted use and stated that he sent a letter to the Council last week and wanted to correct a statement in the letter that the question whether an emergency department was a permitted use or not had not been brought to the applicant's attention until the Planning and Zoning Board hearing in January 2018. Mr. Grant explained that in an email exchange between himself and Land Use Counsel Stroud in June 2017, Ms. Stroud did note that the applicant might want to review the use. Mr. Grant went on to note that it was important for Council to know that NCH has tried to go through this process in a respectful way; have always believed that the project was a permitted use, and in compliance with the zoning ordinance.

Paula McMichael, AICP, Director of Planning, Hole Montes, Aerial view, explained size, and access; no connection to US 41 as part of this project; Project History; Approved Master Concept Plan Tracts C & D; Exhibit D – Design Standards; Project Description (DOS2017-E004); Proposed Master Concept Plan for Tracts C & D (per pending DO application); Request; Requested Amendment; Hours of Operation; Arrivals (Siren);

Councilmember Levitan inquired whether she was testifying as a planner and whether her area of expertise did not include noise generation. She responded that she was not testifying that she had experience in noise generation and noted that Dr. Patterson would address noise generation.

Councilmember Batos asked for clarification regarding ambulances arriving without operating sirens. Ms. McMichael responded that it would be one ambulance arrival a year that would arrive with sirens on between the hours of 11:00 p.m. and 7:00 a.m.

Councilmember Levitan referred to statistics and that there were records in Immokalee. He inquired whether those records were included in evidence for the record. Ms. McMichael responded that she has not entered the statistics into the record; however, she has looked at the records. He also asked if NCH also keeps records of people who arrive in cars at night and how many people during season arrive between 11:00 p.m. and 7:00 a.m. in cars. He would be interested in the volume of usage in an emergency room to determine the level of noise it creates. Councilmember Levitan stated this information is relevant to the Council's decision.

Continuing with the PowerPoint Presentation: Ms. McMichael spoke on the following points - Definition of "Compatible" per LDC; Hours of Operation; Approved Emergency Medical – Lee Health; Site Considerations; 3rd Requested Amendment; Service Area; 4th Requested Amendment; Building Elevations; Height Deviation – North and South; Deviation Justification; Consistency with the Comprehensive Plan; Planning Conclusion.

Councilmember Levitan stated that records regarding the night time use of the emergency room between the hours of 11:00 p.m. and 7:00 a.m. would be relevant to testimony. He also questioned Ms. McMichael's presentation regarding the opinion that hours of operation were arbitrary based on the fact that the Tulip Trace and Coconut Road commercial properties do not have hours of operations conditions. He stated that since those are separate zonings, separate findings/uses, these create a precedent for future development in the area. Ms. McMichael responded that they were not arguing that those properties set precedence, but that there are examples of where the hours of operations restrictions were reviewed and that the applicant was requesting that Council look at it again.

Councilmember Levitan stated he was curious about Ms. McMichael's statement regarding the zoning resolution predating the height limitation and explained that the Estero Comprehensive Plan was adopted in 2002 and after that Lee County adopted a series of land development code amendments that dealt with a number of Estero specific conditions which included height limitations that were adopted in 2002. Councilmember Levitan noted that the plans indicate different heights. Patricia Rice Spivey clarified that the height limitation refers to the height of the occupied space.

Mark Shannon provided further clarification and stated that the height deviation being requested was for the architectural features including undulation of the towers not the roof height. Councilmember Levitan inquired regarding the impacts the architectural features will have on surrounding neighbors and requested if the applicant had site lines to determine what the building will look like from the neighbors' perspective. Ms. Rice-Spivey stated that they do not have the site lines available for the Council.

Dr. Shawn Patterson provided his personal background and responded to questions regarding data collection on the number of patients seen per day and the impact of ambulance sirens on adjacent neighbors.

Councilmember Levitan questioned Dr. Patterson regarding the history of freestanding emergency departments and explained that the first emergency department was built in 2003 in the State of Florida. Councilmember Levitan explained that there was a moratorium on building freestanding emergency rooms from 2004 through 2006 and that the State of Florida decided to limit freestanding emergency departments to be operated and owned by hospitals. Discussion followed regarding the definition of the Group 3 only limitation and the number of people that utilize emergency services.

Councilmember Batos inquired why time limitations would have been put in place in the original zoning if there was intention to include an emergency room as a permitted use. Ms. McMichael responded regarding schedule of uses and extensive discussion ensued.

Land Use Counsel Stroud asked Dr. Patterson if state law requires that a facility must maintain an active hospital license in order to meet the licensure requirement for off-site emergency departments. Dr. Patterson responded.

Ms. McMichael further noted that the height of the tallest tower is about 62 feet, the smaller tower is at 50 feet and the rotunda is at 44 feet. She added that the largest portion of the building was along US 41.

Mr. Shannon offered to share drone footage at 65 feet from the site and Councilmember Levitan responded he wanted testimony and sightline from the architect of the project as this was the best way to show no negative impact.

Mr. Grant responded to questions raised by Councilmember Levitan regarding sightline drawings, noise data, and historic genesis of the ordinance. He stated that they do not have the data the Council was requesting. Councilmember Levitan stated that it was the applicant's purview to request a continuance from the Council.

Mr. Grant spoke regarding a letter sent to the Council during their appeal of the decision of the Design Review Board regarding a conflict NCH believed was in the CPD ordinance related to permitted uses and asked how the conflict would be resolved. He further stated that the applicant was asking for approval of a rezone to allow an exception for the 24/7 operation to allow the 12, 000 square foot facility to operate at night.

Councilmember Batos inquired whether the urgent care facilities was categorized as Group 3. Mr. Grant stated that he believed so but did not believe urgent care facilities would need to operate 24/7. Councilmember Batos also asked Land Use Counsel Stroud whether medical definitions would not be the same as zoning definitions and Ms. Stroud agreed they would not be the same.

Councilmember Levitan referred to page 16 of the Hearing Examiner's Report referencing a discussion between Chip Block, planner for Lee County, and Matt Uhle, attorney for the developer, regarding a series of items requested to be changed in the schedule of uses and Mr. Uhle requested that the asterisk be removed from Group 3. Discussion ensued regarding Group 3.

The meeting went into recess at 12:08 p.m. and reconvened at 12:19 p.m.

Mr. Grant requested that Council accept Dr. Grant and Paula McMichael as expert witnesses. Village Land Use Counsel Stroud agreed.

Public Comment:

Mark Ebelini, Fort Myers, representing Lee Health, presented exhibits for the record: Ebelini 2 for Collier County and Ebelini 3 for Lee County.

Michael Roeder, Fort Myers, had to leave; Mr. Ebelini requested permission to utilize his Mr. Roeder's 3 minutes

Craig Engdahl, Marsh Landing

Philip Douglas, Lighthouse Bay

Irv Nathanson, Lighthouse Bay

Peter Cangialosi, The Preserve

Lena Boles, Marsh Landing

Joyce Johnson, Marsh Landing

Don Eslick, ECCL

Dennis Lynch, 15226 Burnaby Drive, Naples

Bonnie Curtin, Marsh Landing, against

Lawrence Jones, Shadow Wood

Mark Ebelini spoke in lieu of Mr. Roeder, and provided additional exhibits (4 and 5)

The meeting went into recess at 12:50 p.m. and reconvened at 1:26 p.m.

Staff Presentation:

Principal Planner Matt Noble, expert in planning particularly Lee County Land Development Code. The Council accepted him as an expert witness.

PowerPoint Presentation: Freestanding emergency medical services department” not an approved use. He was a planner during the timeline when this was heard by the Hearing Examiner. Health Care Facilities; it was not known as a standalone use in that timeframe; urgent care use was available. There was no discussion at the hearing regarding a free standing. Put into the record a copy of the House of Representatives staff analysis concerning free standing emergency room department and stated there is a section what is the situation in the state of Florida at that time. He stated there were two off-premise emergency departments associated with hospitals located at Monroe Regional Medical located in the Ocala are and Fort Walton Beach Medical Center located in Fort Walton Beach. This was entered as Village Exhibit #13 House of Representatives Staff Analysis. Conditions have not changed since 2002; LDC Definition of Compatible; Typical Factors that Affect Compatibility; Comprehensive Plan Compatibility; Vision Statement; Policy 1.1.5. Suburban Policy Descriptor; Policy 6.1.1; Policy 6.1.3, 6.1.4, 5.1.5; Master Concept Plan; Site Considerations; Compatibility Conditions of Approval; Hours of Operation; Findings and Conclusions.

Council Questions or Comments: Councilmember Levitan stated that Mr. Lynch testified that the hours of operation limits were limited to Tract A but there was nothing in the record substantiating this statement. Mr. Noble responded that the hours of operation were applied to the project as a whole. Councilmember Levitan stated there was reference to noise impacts in the Hearing Examiner’s report and asked if there was any correspondence between staff and the developer regarding noise. Mr. Noble stated there were none that he could recollect. Further questions were asked regarding noise and its impact on surrounding neighbors including decibel limit. Mr. Noble stated that there was an assumption that the location would go dark from 11:00 p.m. to 7:00 a.m.; therefore, there was no need to provide limits on noise after that time.

Councilmember Levitan asked Community Development Director Gibbs questions regarding traffic impacts on the Shoppes at Coconut Trace and questioned the adequacy of access to the proposed project. Ms. Gibbs responded to his questions.

Land Use Counsel Stroud stated that the applicant’s planner stated that maintaining the hours of operation would be arbitrary. Mr. Noble responded that in his professional opinion it would not be arbitrary.

Applicant Rebuttal:

Dr. Patterson, reviewed a document received as an exhibit during the break Optimetrix ED “Naples FSED Summary View Report March 21, 2017 – March 21, 2018.”

Mr. Grant believed that the applicant had made its case that this project is compatible use. Mayor Boesch closed the Public Hearing and opened Council’s discussion at 2:03 p.m.

Councilmember Levitan stated he has struggled with this project. He stated there were two aspects of the findings in order to approve: 1) compatibility with existing and planned uses in the surrounding area; and 2) whether it provides access sufficient to support the proposal. He stated that he was struggling with the compatibility issues and did not believe it fits into the Group 3 health facility category. Councilmember Levitan stated that the residents of Marsh Landing have been actively involved since 2003 and provided comments in the Hearing Examiner's hearing. He explained that the neighbors did not support the project in the beginning and believed that the limit on the hours of operation was the only way to obtain support from the surrounding neighbors. He further stated he did not believe that an emergency room use 24/7 would be allowed and that he could not support increasing the building height without seeing the sightline.

Councilmember Levitan asked Ms. Stroud whether adequate competent substantial evidence had been developed to deny the application and she responded that it was up to the Council to decide.

Councilmember McLain agreed that this was a complex project.

Councilmember Errington stated that this was a complex issue and that she had a problem with the compatibility issue. She stated that the Council should not set a bad precedent when it comes to zoning and that the residents of Marsh Landing bought their homes with the expectations of what was going to be there and felt it would violate their trust in Council. She expressed concern regarding the height of the tower and the hours of operation.

Councilmember Batos stated that there were certain items allowed when the zoning was put into effect and that an emergency room was not included. He stated that the Council needed to protect zoning rights of properties and did not believe the intention was to build an emergency department.

Councilmember Wilson stated that he read Policy 5.1.5 which talks about protecting existing and future residential areas from any encroachment that is potentially destructive. He did not believe this location and this proposal exhibited a positive relationship that justified the Council making the zone change. He expressed that if the Council approved the zone change, they would be breaking new ground and it was not a change he was willing to make.

Councilmember Batos stated that NCH is welcome in the Village of Estero, but not at this location; he could not support the hours proposed.

Motion: Move to uphold staff recommendation to not approve the request for the reasons outlined in the staff report.

Motion by: Councilmember Batos
Seconded by: Vice Mayor Ribble

Action: Upheld staff recommendation to not approve the request for the reasons outlined in the staff report.

Vote:

Aye: Unanimous (Roll Call vote)

Nay:

Abstentions:

7. PUBLIC COMMENT ON NON-AGENDA ITEMS: None.

8. COUNCIL COMMUNICATIONS / FUTURE AGENDA ITEMS:

Vice Mayor Ribble: Reported that Charles Dauray - There are maps he wants to loan to the Village for the second side of the 2nd floor.

Councilmember Levitan: Reported that the Village has been negotiating with Canin Associates on the Land Development Code and after the second meeting, we realized it was going to be difficult to reach an agreement. He stated that staff has officially given Canin and Associates notice and that the Village has moved on to negotiating with the second bidder, Clarion. Councilmember Levitan further stated that there may be some further work for Canin Associates in the future. Brief comments followed regarding the Comprehensive Plan process.

Councilmember Batos: Spoke regarding a letter to the Bureau of Health Facility Regulation regarding support for Lee Health's efforts to obtain approval for a Certificate of Need for hospital beds in South Lee County.

9. VILLAGE ATTORNEY'S REPORT: None.

10. VILLAGE MANAGER'S REPORT:

Village Manager Sarkozy provided an update on the Old Corkscrew Plantation mining proposal and stated that the Hearing Examiner will be reviewing this proposal on March 27, 2018. He explained that if the Village wanted to be included as an interested party in this proposal, a representative from the Village would need to attend. Mr. Sarkozy stated that the Village does not have a position on this proposal and Councilmembers Errington and Levitan stated that the Village needed to have a position in order to address the Hearing Examiner. Councilmember Batos stated the Village could make general comments on concerns with traffic, stormwater flow, overdevelopment of the DRGR; he added that he would like someone at the Hearing Examiner meeting in order to make comments.

Councilmember Levitan stated the Council to develop a position on the DRGR and expressed concern on antagonizing the County on this issue. He stated that the Council needs to work on a position on the DRGR before speaking on this issue.

Councilmember McLain stated that even though the Village has not taken a position on this issue, he would like the Village to express its concern on impacts it may have on the Village of Estero.

Councilmember Wilson suggested that the Village urge the County to condition the approval or delay the project until the Corkscrew Road widening was done.

Mr. Sarkozy summarized that the Council would like the Village to be present at the hearing, weigh in and provide concerns regarding parking, stormwater, preservation of the wetlands, preservation of the DRGR, and possibly adding a conditional approval to wait until there was adequate road capacity.

Mr. Sarkozy also reported that the Village has been asked to speak at the Urban Land Institute Forum at Florida Gulf Coast University on April 6, 2018 regarding issues of development in the east Corkscrew Area. He stated that since the Village does not have a position on this issue, he was reluctant to provide comment.

A motion to adjourn was made and duly passed.

11. ADJOURNMENT: 2:35 p.m.

ATTEST:

VILLAGE OF ESTERO, FLORIDA

By: Kathy Hall
Kathy Hall, MMC, Village Clerk

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