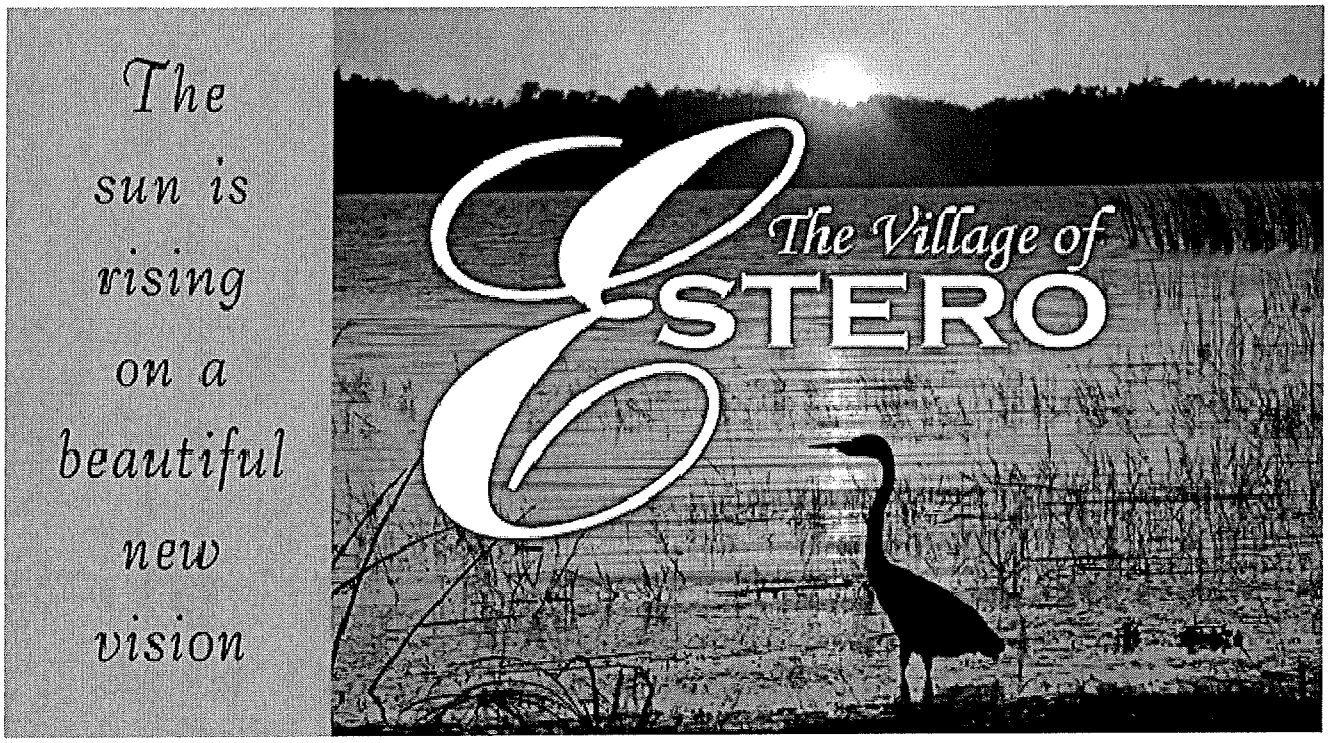

VILLAGE COUNCIL WORKSHOP
Agenda

Village Council: *District 1 – Bill Ribble; District 2 – Howard Levitan; District 3 – Donald Brown; District 4 – Katy Errington; District 5 – Jim Boesch; District 6 – Nick Batos; District 7 – Jim Wilson*

Friday, March 27, 2015
1:30 p.m.
Estero Fire Rescue District
Meeting Room
21500 Three Oaks Parkway, Estero, FL 33928

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA

4. *COUNCIL BUSINESS*

Items on the agenda are generally treated in sequential order, and due to the length of the agenda any or all of the items listed for discussion may be rescheduled to a later date for consideration. The public will have an opportunity to speak during each agenda item. Each individual has one opportunity to speak for three minutes per agenda item.

(A) DISCUSSION – Discussion regarding Land Use Boards Ordinances and Processes

Attachments: (1) Interoffice Memorandum from Nancy Stroud, Esq.

(2) Ordinance Establishing Land Use Advisory Boards

(B) DISCUSSION – Discussion regarding Ex Parte Ordinance

Attachments: (1) Ordinance Establishing Procedures for Ex Parte Communications Related to Quasi-Judicial Proceedings

5. *PUBLIC INPUT of Non-Agenda Items* – Each individual will be given three minutes to speak.

6. *COUNCIL COMMUNICATIONS*

7. *ADJOURN*

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 Council meeting due to a disability or physical impairment, should contact Daphnie Bercher at 239-598-3601, 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.

Lewis Stroud & Deutsch, P.L.

INTEROFFICE MEMORANDUM

TO: Estero Council of Community Leaders
c/o Howard Levitan

FROM: Nancy E. Stroud, Esq.

RE: Proposed Ordinances Creating Land Use Boards and Establishing Ex Parte Communication Procedures

DATE: March 23, 2015

Introduction. At your request, I have prepared drafts of two ordinances for the consideration by the Estero Council of Community Leaders and potentially for the Estero Village Council's consideration. The first ordinance creates two advisory boards to the Village Council. The ordinance would establish the Village Planning and Zoning Board and the Village Community Appearance Board. Until these boards are established, according to the Charter, the Village Council is vested with all of the duties and responsibilities of the Board of County Commissioners, County Hearing Examiner, and Department of Community Development. See Section 12 "Referendum election; transition", (6) "Transitional Comprehensive Plan":

> ...(b) All powers and duties of the Lee County Department of Community Development, the Lee County Hearing Examiner, and the Board of County Commissioners of Lee County, as set forth in these transitional land use development regulations, shall be vested in the council until such time as the council delegates all powers and duties, or a portion thereof, to another agency, department, or entity."

There are many different options available for the Village Council's choice of how to divide the land use review and approval responsibilities of the Village. The proposed draft follows a standard method of apportioning those responsibilities by creating an advisory board – the Planning and Zoning Board -- to review of development proposals, and comprehensive plan and zoning amendments, and to provide its recommendations to the Village Council for the ultimate approval of those proposals or amendments. Another board – the Design Review Board – follows a model that municipalities with a particular interest in community appearance have adopted to ensure that architectural and landscape design receive significant attention and review. Both boards have been discussed extensively by the Estero Council of Community Leaders (ECCL) in preparation for the transition process for the new Village of Estero. The draft Ordinance substantially follows the recommendations of the ECCL drafts with a few clarifications and modifications.

One Lincoln Place, 1900 Glades Road, Suite 251, Boca Raton, Florida 33431
Telephone — 561 826 2800 Facsimile — 561 826 2828

The second ordinance creates regulations governing communication between the Village officials and persons who have made application for land use approvals or persons who are interested parties regarding those applications. This type of communication is commonly referred to as "ex-parte" communication, and is governed by case law and by statute to protect the integrity of quasi-judicial procedures which are conducted by the Village when reviewing those applications. The Florida legislature has created rules for such communications at section 286.0115, Florida Statutes, that are incorporated in the proposed ordinance.

Procedure for Adopting the Ordinances

The Village Charter provides that "(t)he procedure for adoption of ordinances and resolutions shall be as provided in s. 166.041, Florida Statutes." See Section 7 "Ordinances and resolutions", (3) "Adoption of Ordinances." The statute in relevant part requires the following (emphasis added):

> (3)(a) Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

The preparation of notices for the two ordinances should follow the statutory procedure referenced above.

Please do not hesitate to call on me if you have any questions.

ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, ESTABLISHING LAND USE ADVISORY BOARDS TO THE VILLAGE COUNCIL TO INCLUDE THE PLANNING AND ZONING BOARD AND THE DESIGN REVIEW BOARD; PROVIDING A SEVERABILITY CLAUSE; REPEALING AND RESCINDING ALL ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero was incorporated by referendum held on November 4 3, 2014 and the Village Council was elected on March 3, 2015, pursuant to the Charter of the Village of Estero ("Charter") created by Ch. 2014-249, Laws of Florida; and

WHEREAS, the Charter provides that the Village Council shall have the broadest exercise of home rule powers permitted under the state Constitution and the laws of the state; and

WHEREAS, the Charter at Section 6, "Personnel", paragraph (3) "Planning", provides that the Village shall designate an agency or agencies to execute the planning functions with such decision making responsibilities as may be specified by ordinance or general law; and

WHEREAS, the Charter further provides at Section 11, "General Provisions", paragraph (5) "Transitional Ordinances and Resolutions", that all applicable county ordinances currently in place at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and

WHEREAS, the Village Council has determined that it is in the best interests and welfare of the Village and its residents to enact an ordinance that establishes advisory boards to the Village Council to review and provide recommendations to the Village Council on certain land use proposals; and

WHEREAS, the Village Council intends that this Ordinance adopting the Planning and Zoning Board and the Design Review Board shall replace the Lee County regulations in conflict with this Ordinance upon its adoption; and

WHEREAS, the Charter at Section 11, "General Provisions", paragraph (6) "Transitional Comprehensive Plan", provides that the Village Council is the Local Planning Agency for the Village until such time as the Village Council established a separate local planning agency; and

WHEREAS, the Village Council, as the Local Planning Agency, has determined that the advisory boards established by this Ordinance are consistent with the Comprehensive Plan.

NOW THEREFORE, THE VILLAGE OF ESTERO HEREBY ORDAINS as follows:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby incorporated as a part of this Ordinance.

Section 2. Village of Estero Planning and Zoning Board.

Sec. 2-1. Created; composition; term of office.

(1) A planning and zoning board is hereby created, consisting of 7 members, each of whom shall be appointed by the village council for a term of 3 years. The terms shall be staggered such that not less than 2 nor more than 3 terms shall expire each year.

(2) The terms of board members shall commence on April 1 and shall expire on March 31. Each member of the board shall serve until the expiration of his term.

(3) Notwithstanding any provision of this ordinance, and in addition to the 7 voting board members, the Lee County school board may appoint as nonvoting, uncompensated

members of the planning and zoning board and representatives of the school board pursuant to Section 163.3174, Florida Statutes, one or more officers or employees of the school board; provided, however, that only one representative so appointed shall attend any meeting of the planning and zoning board. The term of such members shall be for the term specified by the school board or, if no term is specified, for the duration of the tenure or employment of the member with the school board, or until removed by the school board. The school board shall notify the village clerk in writing within ten days of the appointment or removal of any member.

Sec. 2-2. Qualifications for membership.

Members of the planning and zoning board shall be appointed by the village council by affirmative vote of a majority of the village council membership on an at large basis provided that such member appointed is qualified for membership under the terms of this Section 2-2. At least 4 members of the planning and zoning board shall be residents of the Village. All other members shall either (i) own a business in the village, (ii) own property in Estero, or (iii) work in Estero. The members of the planning and zoning board shall have diverse backgrounds, and, wherever possible, prior experience in land use, planning, zoning, legal matters, environmental matters, or building and development. Each member shall be,sympathetic to municipal development consonant with the Estero Community Plan (as set forth in Goal 19 of the Lee County Comprehensive Plan) and with the health, safety and welfare of its residents. No board member shall hold any other public office, appointive or elective.

Sec. 2-3. Vacancies; removals.

(1) Vacancies on the planning and zoning board shall be filled pursuant to the administrative ordinances of the Village of Estero.

(2) The village council may remove any member of the board from office after notice and hearing, upon the affirmative vote of a majority of the village council membership.

Sec. 2-4. Compensation.

The members of the planning and zoning board shall serve without compensation.

Sec. 2-5. Organization; meetings; procedures; records; quorum.

(1) An organizational meeting of the planning and zoning board shall be held on April 1 of each year, or as soon thereafter as practicable, for the purpose of electing officers for the ensuing year. The village council shall appoint a chairman from among the members of the board for terms of 1 year to preside at meetings of the board. The chairman shall be well versed in the land development process, specifically with planning and zoning matters, and shall have the requisite knowledge and ability lead the planning and zoning board in conducting quasi-judicial hearings. The vice-chairman shall be elected for terms of 1 year by the board from its membership, and shall serve in the absence of the chairman. A secretary shall be appointed by the village manager to serve as clerk to the board but not as a voting member, and the village shall pay for all costs and expenses related to the operation of the board. At least 1 regular meeting of the board shall be held each month, and special meetings may be called by the chairman or by any 3 regular members of the board.

(2) The board may adopt reasonable rules of procedure to govern the conduct of its business and the holding of public hearings and workshops, consistent with any procedures established for it by the village council. The board shall keep a record of its proceedings pursuant to Florida law, and shall file approved minutes of each meeting with the village clerk within 30

days of the date of the meeting, or as soon thereafter as practicable. The village clerk shall maintain all records of the board. All meetings of the board shall be open and available to the public pursuant to Florida law.

(3) Four members in attendance shall constitute a quorum of the board.

Sec. 2-6. Staff; other assistance.

The village development services director shall advise and assist the planning and zoning board in all of its deliberations. In the event that the village chooses to engage the services of the Lee County Department of Community Development for purposes of planning and zoning advice and assistance, then the development services director shall be deemed to mean the Director of the Lee County Department of Community Development and his or her designated staff. The village manager shall provide such other staff and clerical assistance as the board may require in the performance of its duties, subject to the availability of such staff and clerical assistance as approved by the village council. The board may call upon any department or other agency of the village for information or advice in the performance of its work. The board, upon the approval of the village council, may accept grants or other monetary or physical assistance to aid in its work.

Sec. 2-7. Designation as local planning agency.

The planning and zoning board is hereby designated as the local planning agency for the purposes of the Community Planning Act, Section 163.3164, Florida Statutes, et seq., and successor provisions thereto. All of the functions, duties, powers and responsibilities of a local planning agency as per such statutory provisions are hereby delegated to the planning and zoning board.

Sec. 2-8. Additional Powers and duties.

The planning and zoning board shall:

(1) Utilize current data, maps, graphic material and other available information to adequately depict and record past developments and existing conditions for the purpose of analyzing, interpreting and projecting trends with respect to population, economic base, property values, building construction, tourist and industrial development, transportation, housing, public facilities, utilities, recreation, natural environment, traffic and land uses of the village.

(2) Conduct studies and surveys and otherwise determine the needs and goals of the community for current and future development.

(3) Conduct the comprehensive planning program of the village, including, without limitation, the development of the village's first comprehensive plan (following transition) and preparation of the future land use map, review of all proposed amendments to the comprehensive plan or elements or portions thereof, and report its recommendations with respect to said first comprehensive plan and future land use map, and on proposed amendments to the comprehensive plan and future land use map, or elements or portions thereof within such time as the village council shall specify or as may otherwise be required by law or ordinance.

(4) Act as the Land Development Regulation Commission under Section 163.3174, Florida Statutes, and prepare and review the initial land development code for the village and all subsequent amendments thereto or to elements or portions thereof. With respect to the development of the land development code, and any amendments thereto, the board shall consult with the Estero Design Review Board with respect to matters relating to design of developments, structures and projects and development orders relating thereto.

(5) Conduct public hearings after due public notice and make recommendations to the village council regarding proposed amendments to the comprehensive plan or elements or

portions thereof, applications for future land use map amendments, proposed amendments to the land development code, proposed amendments to the zoning district regulations, applications for the rezoning of property, and other matters as may be required by law or ordinance.

(6) Conduct public hearings after due public notice and make determinations with respect to all applications for administrative actions, variances, and special exceptions from and pursuant to the land development code.

(7) In addition to any other public hearings required by law, with respect to all development proposals that require comprehensive plan amendments, planned development zoning actions, rezonings, variances, and special exceptions, or other development applications as determined by the village manager should be subject to workshop, the planning and zoning board shall conduct a workshop meeting to provide public information about the proposal prior to the determination by the village staff that an application is sufficient. The applicant shall provide a detailed overview of the project at the workshop for any interested citizens, and shall supply the planning and zoning board such documents and other information in connection therewith as are set forth in the rules of procedure adopted by the board pursuant to section 2-4(2) hereof. The workshop shall be held within the village of Estero at such a place and time as are designated by the chairman of the board. The minutes of such a meeting shall include a meeting summary document that contains the following information: the date, time, and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting. The applicant shall provide the planning and zoning board with a proposal for how the applicant will respond to any issues that were raised at such a workshop prior to a finding of sufficiency with respect to such application.

(8) Monitor and oversee the effectiveness and status of the comprehensive plan and land development code and recommend to the village council such changes as may from time to time be required. Prepare periodic reports on the plan for submission to the village council upon the request of the village council or when the board deems appropriate.

(9) Recommend to the village manager and to the village council projects, plans, codes and ordinances designed to implement the comprehensive plan or promote the development of the village.

(10) Review and make recommendations on all plats for the subdivision of land within the village.

(11) Respond to requests from the village manager on matters pertaining to planning and zoning.

(12) Perform such other duties as may be assigned by the village council or required by ordinance.

Sec. 2-9. Advisory capacity; exceptions.

(1) Except as stated in sub-section 2 below, the actions, decisions and recommendations of the planning and zoning board shall not be final or binding on the village council, but shall be advisory only.

(2) The board shall review and approve, deny, or approve with conditions, administrative amendments, variances and special exceptions. In such instances, the decision of the board shall be reduced to writing in the form of a resolution, signed by the chairman of the board, and filed with the village clerk within 30 days of the signed resolution. Any party aggrieved by a decision of the board shall, prior to seeking judicial review, file with the village clerk within 30 days from

the filing of the resolution a notice of appeal to the village council. Upon the filing of a notice of appeal, the village council shall as soon as is practicable hold a public hearing upon the matter and shall affirm, reverse or affirm with modifications the decision of the board.

Section 3. Design Review Board.

Sec. 3-1. Creation; composition; terms; appointment.

A design review board is hereby created. The board shall be composed of 8 members, appointed by the village council for terms of 2 years. The members of the design review board shall be appointed by the affirmative vote of a majority of the village council membership on an at large basis provided that they are qualified for membership pursuant to Section 3-2 below.

Sec. 3-2. Organization; qualification of members.

(1) The village council shall appoint a chairman from among the appointed members of the design review board to serve for one year terms and to preside at its meetings. The design review board shall elect a vice-chairman for 1 year terms to preside at its meetings in the absence of the chairman. The board shall formulate its rules and regulations for the conduct of its business, which shall govern except as inconsistent with any procedures established for it by the village council.

(2) The members of the board shall have the following qualifications:

(a) At least 4 members must be residents of the village. All other members shall either (i) own a business in the village; (ii) own property in the village; or (iii) work in the village;

(b) At least 3 members of the board shall be state-registered architects, and at least 1 other member shall be a state-registered landscape architect. The remaining members of the board shall be state-registered architects, state-registered landscape architects, state-registered professional engineers, professional land planners, building contractors, or shall possess a similarly related professional background which is well versed in the land development process; and

(c) No board member shall hold any other public office, appointive or elective.

Sec. 3-3. Review of plans and specifications for certain development orders and building permits.

(1) The signature of the chairman or presiding member on each set of plans and specifications for either a development order or a building permit required to be reviewed by the board shall be prerequisite to the issuance of any such development order or building permit by the village. The board may require such changes in the plans and specifications as in its judgment may be requisite and appropriate to the maintenance of a high standard of architecture, beauty and harmony as established by the standards adopted by the village council for the guidance of the board. The affirmative vote of at least a majority of the board members present at a meeting shall be required for any action of the board. The action taken by the board shall be reduced to writing, signed by the chairman, filed with the village clerk within 30 days of the signed writing, and a copy thereof made available to the applicant upon request.

(2) The design review board shall review every application for a development order that has any impact on building appearance and design, landscaping, hardscaping, pedestrian and vehicular connectivity, open space, and the like, including but not limited to site plans and any permit (i) to erect a building or structure, or (ii) for a ground mounted monument style sign, or (iii) to materially alter a front or side elevation of any existing building or structure in the village, excluding applications related to single-family dwellings other than applications related to front porches. The application shall be accompanied by 2 sets of detailed plans. If the plans submitted do not furnish sufficient information adequately to show the scope of the planned construction for which a permit has been requested, then there shall be furnished, in addition to the 2 sets of detailed plans, 1 set of detailed specifications for such proposed work. Both the plans and specifications shall be prepared by a registered architect or registered engineer, qualified under the laws of the state to prepare such

plans and specifications, and no development order or building permit therefor shall be issued until such plans (and specifications when required) have been previously approved by the board as hereinabove provided. No plans or specifications in violation of this or any other ordinance of the village shall be approved. No permit for the construction or addition to any building (excluding permits related to single-family dwellings other than permits related to front porches) shall be issued until and unless the plans therefor have been approved by the board as being in accordance with the standards as provided for in (1) above.

(3) Prior to the conduct of a design review board meeting to consider a development order or permit approval, the design review board shall conduct a workshop meeting to provide public information about the proposal prior to the determination by the village staff that an application is sufficient. The applicant shall provide a detailed overview of the project at the workshop for any interested citizens. And shall supply the design review board such documents and other information in connection therewith as are set forth in the rules of procedure adopted by the Board pursuant to section 3-2(1) hereof. The workshop shall be held within the village of Estero at such a place and time as are designated by the chairman of the board. The minutes of such meeting shall include a meeting summary document that contains the following information: the date, time, and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting. The applicant shall provide the design review board with a proposal for how the applicant will respond to any issues that were raised at such a workshop prior to a finding of sufficiency with respect to such application.

Sec. 3-4. General criteria of the board.

The board may approve, approve with conditions or disapprove the issuance of a development order or building permit in any matter subject to its jurisdiction after consideration of

whether the proposal complies with the following general criteria. If the criteria are met, the application shall be approved. Conditions may be applied when the proposed building or structure does not comply with the criteria, and shall be such as to bring the structure or project into conformity with the criteria. If any application is disapproved, the board shall detail in its findings the criterion or criteria that are not met.

(1) The plan for the proposed development, structure or project is in conformity with good taste, good design, and in general contributes to the image of the village as a place of beauty, spaciousness, harmony, taste, fitness, and high quality.

(2) The proposed development, structure or project is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment or evolving environment to materially depreciate in appearance and value.

(3) The proposed development, structure or project is in conformity with the standards of the land development code (including but not limited to Sections 33-51 through 33-477 of the Lee County Land Development Code) and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.

(4) The proposed structure or project is in harmony with the proposed developments in the general area, and fully consistent with the comprehensive plan for the village and with the criteria set forth in any Supplemental Criteria of the board, as the same may be adopted by ordinance of the village council from time to time. If the board makes a recommendation to the village council for any changes to the criteria for review, the council shall consider same and may adopt such recommendations with or without modifications by ordinance or may reject the same.

(5) The proposed landscape and irrigation design shall promote water conservation. Water requirements may be reduced by providing for:

(a) Preservation and reestablishment of native plant communities;

(b) The use of drought-tolerant, site specific, and shade producing plants; and

(c) Design and maintenance of irrigation systems, which eliminate waste of water due to over-application or loss from damage.

Sec. 3-5. Meetings; quorum; records; staff.

The board shall meet at least twice per month, at the call of the chairman, or more often as may be required in order to consider applications pending without unnecessary delay. All meetings shall be open to the public and the order of business and procedure to be followed shall be prescribed within the rules and regulations to be adopted by the board, and pursuant to Florida law. The board, with the assistance of the village clerk, shall keep a record of its proceedings, and shall file approved minutes of its meetings with the village clerk within 30 days of the date of any such meeting, or as soon thereafter as practicable. Four members shall constitute a quorum, provided that any quorum must include at least one member who is a state-registered architect. The village manager is authorized and empowered to appoint necessary staff for the board, and the village shall pay for all costs and expenses related to the operations of the board as approved by the village council.

Sec. 3-6. Appeals.

Any person aggrieved by a decision of the board shall file a notice of appeal with the village clerk and pay the appeal fee as specified by the village within 30 14 days from the filing of the board's written decision with the village clerk. The notice of appeal shall specify the action taken by the board and in what respect the appellant is aggrieved by such action, and the action which appellant desires the village council to take with respect to the decision of the board. Upon the filing of a notice of appeal, the village council shall as soon as is practicable hold a public hearing upon

the matter and shall affirm, reverse or affirm with modifications the decision of the board.

Sec. 3-7. Compliance with other village code provisions.

The requirements of this ordinance are in addition to any other requirement of the village code. Approval by the board of a given set of plans and specifications does not necessarily constitute evidence of applicant's compliance with other requirements of the village code.

Sec. 3-8. Violations.

Violations of this division may be referred to the appropriate code enforcement agent or board for disposition. In such event, the person alleged to be in violation of this ordinance and the village shall be governed by the code enforcement provisions of the village code.

Section 4. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 5. Conflict. All sections or parts of sections of the applicable county ordinances currently in place at the time of the incorporation of the Village of Estero in conflict herewith are intended to be rescinded and repealed to the extent of such conflict.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED and ADOPTED on first reading this ____ day of _____ , 2015.

PASSED and ADOPTED on second reading this ____ day of _____, 2015.

_____

Nick Batos, Mayor

Attest:

_____
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
Burt Saunders, Interim Village Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Batos	yes_____	no_____
Vice Mayor Levitan	yes_____	no_____
Councilmember Boesch	yes_____	no_____
Councilmember Brown	yes_____	no_____
Councilmember Errington	yes_____	no_____
Councilmember Ribble	yes_____	no_____
Councilmember Wilson	yes_____	no_____

ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, ESTABLISHING PROCEDURES FOR EX PARTE COMMUNICATIONS RELATED TO QUASI-JUDICIAL PROCEEDINGS; PROVIDING A SEVERABILITY CLAUSE; REPEALING AND RESCINDING ALL ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero was incorporated by referendum held on November 4 3, 2014 and the Village Council was elected on March 3, 2015, pursuant to the Charter of the Village of Estero ("Charter") created by Ch. 2014-249, Laws of Florida; and

WHEREAS, the Charter provides that the Village Council shall have the broadest exercise of home rule powers permitted under the state Constitution and the laws of the state; and

WHEREAS, the Charter at Section 11, "General Provisions", paragraph (5) "Transitional Ordinances and Resolutions", provides that all applicable county ordinances currently in place at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and

WHEREAS, the Village Council has determined that it is in the best interests and welfare of the Village and its residents to enact an ordinance providing for ex-parte procedures in quasi-judicial proceedings that are authorized by Section 286.0155(2), Florida Statutes, but which are in conflict with Lee County ex-parte procedures; and

WHEREAS, the Village Council intends that this Ordinance adopting the ex-parte quasi-judicial procedures shall replace the Lee County ex-parte quasi-judicial procedures upon adoption; and

WHEREAS, the Charter at Section 11, "General Provisions", paragraph (6) "Transitional Comprehensive Plan", provides that the Village Council is the Local Planning Agency for the Village until such time as the Village Council establishes a separate local planning agency; and

WHEREAS, the Village Council, as the Local Planning Agency, has determined that the ex-parte quasi-judicial procedures established by this Ordinance are consistent with the Comprehensive Plan.

NOW THEREFORE, THE VILLAGE OF ESTERO HEREBY ORDAINS as follows:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby incorporated as a part of this Ordinance.

Section 2. Communications with Local Public Officials. Communications with local public officials (as defined in F.S. § 286.0115(2)) regarding quasi-judicial matters shall be governed by the following procedure:

(1) If any person not otherwise prohibited by statute, Charter provision, or ordinance discusses with any local public official representing the Village of Estero the merits of any matter on which action may be taken by any board, council or commission on which the local public official is a member, such communication shall not raise any presumption of prejudice, provided that the following process of disclosure occurs:

a. The subject and substance of any ex parte communication with a local public official representing the Village of Estero which relates to quasi-judicial action pending before

the official, as well as the identity of the person, group or entity with whom the communication took place, is disclosed and made a part of the record before final action is taken on the matter.

b. A local public official representing the Village of Estero may read a written communication from any person; however, a written communication that relates to quasi-judicial action pending before such official shall be made a part of the record before final action is taken on the matter.

c. A local public official representing the Village of Estero may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending before him or her, provided that such activities and the existence of such investigations, site visits, or expert opinions are made a part of the record before final action is taken on the matter.

(2) Disclosure made pursuant to Section (1) a., b. and c. above must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the applicable county ordinances currently in place at the time of the incorporation of the Village of Estero in conflict herewith are intended to be rescinded and repealed to the extent of such conflict.

Section 13. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED and ADOPTED on first reading this ____ day of _____ , 2015.

PASSED and ADOPTED on second reading this ____ day of _____, 2015.

_____
Nick Batos, Mayor

Attest:

_____
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
Burt Saunders, Interim Village Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Batos	yes_____	no_____
Vice Mayor Levitan	yes_____	no_____
Councilmember Boesch	yes_____	no_____
Councilmember Brown	yes_____	no_____
Councilmember Errington	yes_____	no_____
Councilmember Ribble	yes_____	no_____
Councilmember Wilson	yes_____	no_____