

# Village of Estero PZDB Orientation

Estero Planning Zoning and Design Board

May 14, 2024

# Ethics

Voting Conflicts of Interest Section 112.3143, Fla. Stat

Cannot vote if it would inure to your special private gain or loss, or similarly affects your client, your relative, or your business associate

"Special private gain or loss" = economic benefit or harm

Rule of thumb regarding "special" gain or loss: Are you a member of a large group, i.e. homeowner association? If your financial interest represents less **than 10% of the group**, it is not "special" and no conflict is necessary to disclose

# Ethics

- 
- Per the Rules of Procedure, a Board member must disclose the conflict of interest prior to discussion on the item, step down from the dais, not participate in discussion, and not vote.
- The Board member must also file a conflict of interest form (Form 8B) with the Village Clerk within 15 days after the vote. The Form will be incorporated in the minutes.

# Ethics

- Section 112.313(7)(a), Florida Statutes prohibits a public officer from representing a client in matters that are before a board where he is a member because it may interfere with the full and faithful discharge of his public duties.
- An exception exists where Boards have designated professional members as required by ordinance. The designated members on the PZDB are state registered 1) civil engineers, 2) architects and 3) landscape architects
- A designated member may represent a client at a Public Information Meeting, but no other meeting

# Powers and Duties of the PZDB

- Act as the Local Planning Agency per the Florida Community Planning Act:
  - “Be the agency responsible for the preparation of the comprehensive plan or plan amendment and shall make recommendations to the governing body regarding the adoption or amendment of such plan.”
  - “Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the governing body such changes in the comprehensive plan as may from time to time be required.”
  - “Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof.”

# Powers and Duties of the PZDB

Make decisions regarding certain land development applications:

- Development Orders (Site Plans)
- Deviations relating to the height of building and structures (unless part of a rezoning application which the Council then decides)
- Variances (unless a part of a rezoning application)
- Special Exceptions
- Minor planned development amendment

*An appeal can be made of the PZDB decision within 30 days to the Village Council by an “aggrieved party,” or the Village Manager. The Council may also decide to take jurisdiction of the matter.*

# Powers and Duties of the PZDB

- Make recommendations to the Village Council regarding
  - Comprehensive plan amendments
  - LDR amendments, including rezoning
  - Planned development and amendments
  - Vacation of easements and right of ways associated with rezonings
  - Deviations to be heard by the Council
  - Flood variances

# Rules of Procedure

- The Board has adopted procedures for the conduct of business and meetings, conduct of public hearings, and conduct of public information meetings
- The Rules of Procedure supplement the procedures adopted in the LDRs
- Selected topics:
  - The Council appoints the Chairperson; the Board selects the Vice Chairperson
  - A quorum necessary to conduct business is four persons, including the designated architect
  - Meetings have a curfew of 9:00 pm unless extended by vote of the Board



# Rules of Procedure

- At least 7 days' notice of PZDB meetings are required, including the agenda
- Majority vote of a quorum is necessary to decide any item of business.
- If a physical quorum is in attendance, other members may participate by electronic means (zoom)
- Every member in attendance must vote, unless that member has a conflict of interest
- Public Information Meeting is required for all applications. No decisions are made at the PIM, but Board members may ask questions of a preliminary nature, not binding when the application is heard at a quasi-judicial hearing.

# Florida Law – Selected Topics

- The Community Planning Act of 2011 governs planning and land development regulation in Florida. It reformed earlier state planning legislation that originated in various forms since 1975
  - Each county and municipality in the state must adopt a comprehensive plan that meets criteria in the statute and is reviewed by the state for compliance with the statute. Plan amendments also are reviewed.
  - Land development regulations (LDRs) must be adopted to implement the plan, including certain types of LDRs.
  - All development permits and LDRs must be consistent with the comprehensive plan
  - If challenged in court, inconsistencies are subject to “strict scrutiny” by the court, i.e. no deference to local government

# Florida Law – Selected Topics

Bert J. Harris, Jr., Private Property Rights Protection Act, Section 70.001, Florida Statutes

- ... regulations or other government actions may “**inordinately burden**,” restrict, or limit private property rights, without amounting to a taking, and create a claim for **damages** in such cases
- **Inordinate burden:** Government action that has “directly restricted or limited the use of real property such that the property owner is permanently unable to attain:
  - (1) the reasonable, investment-backed expectation for the existing use of the real property,” or
  - (2) “a vested right to a specific use of the real property with respect to the real property as a whole,” or
  - (3) “that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.”

# Florida Law – Selected Topics

- Governmental Exactions, Section 70.45, Florida Statutes
  - “In addition to other remedies available in law or equity, a property owner may bring an action in a court of competent jurisdiction under this section to declare a prohibited exaction invalid and recover damages caused by a prohibited exaction. Such action may be brought by a property owner at the property owner’s discretion when a prohibited exaction is actually imposed or when it is required in writing as a final condition of approval for the requested use of real property. The right to bring an action under this section may not be waived. This section does not apply to impact fees adopted under s. 163.31801 or non-ad valorem assessments as defined in s. 197.3632.”
  - “Prohibited exaction” means any condition imposed by a governmental entity on a property owner’s proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.”

# Florida Law – Selected Topics

- Developments of Regional Impact, Section 380.06, Florida Statutes
- DRIs are large, planned developments that beginning in the 1970s were approved under by statutory procedures involving state and regional administrative review processes, and a local government development order (usually with a rezoning and sometimes a comprehensive plan amendment). The process for approval under current statute only requires local government review and approval.
- The Village has a number of approved and built DRIs, which have obtained “vested rights” to complete development according to their approvals. Local government is restricted from changing plans and regulations that interfere with the vested rights.

# Quasi-Judicial proceedings

- All rezoning hearings, and the decisions by the PZDB on site-specific applications are heard by the PZDB in a quasi-judicial proceeding. These include Development Orders , Deviations relating to the height of building and structures, Variances, and Special Exceptions
- Florida caselaw requires quasi-judicial proceedings to be conducted in order to ensure that due process is provided to applicants for site-specific zoning decisions
- Procedures are in Section 5 of the Rules of Procedure

# Quasi-Judicial proceedings

- Minimum requirements for quasi-judicial proceedings:
  - 1. An impartial decision-maker (ex parte disclosures)
  - 2. All fact witnesses to be sworn and testimony under oath
  - 3. Proponents (applicants), staff and interested parties have full opportunity to present evidence and argument, including expert witnesses
  - 4. Witnesses may be cross-examined by the parties
  - 5. Public testimony and comment is allowed
  - 6. Formal rules of evidence do not apply, but fundamental due process is required
  - 6. A written decision supported by competent, substantial evidence in the record of the proceedings

# Planning Zoning and Design Board

Questions?