

## **ESTERO COMMUNITY PLANNING PANEL**

### **Minutes of Public Meeting #144 – January 28, 2013**

#### **Estero Community Park, Estero, Florida**

Panel Members Present: Jack Lienesch, Chairman, Estero Community Association; Neal Noethlich, Emeritus Chairman; Ned Dewhirst, Estero Development Community; Greg Toth, Founding Member; Paul Roberts, Estero Development Community; John Goodrich, ECCL; Roger Strelow, ECCL; Jeff Maas, Estero Chamber of Commerce; Howard Levitan, Secretary, and Bev MacNellis, Treasurer.

Also present: Kathie Ebaugh from Lee County Community Development; Bill Prysi and Al O'Donnell from EDRC; Rick Marini, Bob King and others from Bella Terra; Roger Sirlin, ECCL Sign Committee; Jeremy Franz from the SW Florida Conservancy; Dave McKee representing Monte Cristo and Dean Keehely, President of Wildcat Run HOA; and several others on the Sign-in sheet who are unidentified.

Public Notice: Secretary Levitan reported that the meeting notice was posted on the ECPP website and notice was also posted on the bulletin boards of several local banks. He noted that a quorum of the ECPP was present for this meeting.

Minutes. Chairman Lienesch noted that the minutes of the December 17, 2012 meeting had been vetted by the Panel, and the updated version is posted on our ECPP website. On motion made by Goodrich, seconded by Dewhirst, and unanimously passed, the minutes of the December 17, 2012 Meeting were approved.

Treasurer's Report: Treasurer MacNellis reported a balance of \$315.04 after expenses paid to DeLisi for the Community Plan Revisions. There was a discussion of the proposed ECPP Budget prepared by Treasurer MacNellis. Motion made by Strelow, seconded by Goodrich to approve the Treasurer's Report, which motion was unanimously approved.

#### **PRESENTATIONS**

Monte Cristo 2007 Zoning Resolution. Dave McKee reported on this project which is located on Corkscrew Road just east of Wildcat Run. The ECPP previously supported their re-zone in 2007. The current owner is going through the reinstatement process with the County Staff for an MCP Extension since it had expired. A large builder is interested in the property and it likely will be down-zoned from 720 single and multi-family units to 500+ single family units. Today Dave is seeking reinstatement of the current zoning to satisfy the buyer. The new owners will then be required to return with an administrative amendment to the MCP once their final plans are completed. Corkscrew Road has been upgraded since 2007, and the transportation study for the MCP will be upgraded appropriately.

Noethlich asked about process that the County is using. McKee stated that they have to reinstate the zoning MCP before the potential buyer completes the purchase, and then they may be allowed to go

through an administrative amendment process for further plan changes. Noethlich brought up another issue concerning the conveyance of water to a canal which adjoins the Wildcat Canal. Is there going to be greater discharge into that Canal? McKee stated that they intend to do an analysis on this issue, but in any event, they cannot exceed the existing runoff control requirements for the property.

Toth asked whether there is to be an emergency interconnect between Monte Cristo and Wildcat Run. McKee responded that there have been discussions on this between the parties and Wildcat Run, and likely there will be more discussions to follow. Dewhirst suggested that this issue be finalized now between the parties such that its removal later could be viewed as an external impact and not administrative. Dewhirst also asked about the Corkscrew Road MSBU which McKee stated that the beginning phased road improvements were completed.

Dean Keeheley, President of the HOA at Wildcat Run addressed the Panel. They have met with the current owner of this project, and have several concerns with which they are in communication. They expect these will be worked out in a reasonable period of time. The Community at Wildcat Run did not want one combined entry, and this is off the table at this point. They have concerns about water flow and planned buffers between the two communities. Overall, Wildcat Run is pleased to see the density reduced by down-zoning.

Lienesch stated for the record that based on these comments, the ECPP supports the request for a MCP extension, and will look forward to another meeting at a later date regarding the possible administrative amendments.

## **ECPP ISSUES**

1. LPA Meeting 1/28/13. Roger Strelow, who is also a member of LPA reported on actions at today's LPA Meeting:

a. Horizon Council Recommendations for LDC. Strelow described the Horizon Council recommendations to streamline the LDC's zoning procedures. When first presented last Spring, Chairman Lienesch expressed the panel's concern to the BoCC over several of the proposed changes, primarily those which called for a reduction in public participation at the development order stage. The final product that the Staff and Horizon Council presented at the LPA today had those troublesome provisions removed and was easily approved. A companion piece dealing with mining applications also was found acceptable to the LPA.

Dewhirst commented about what was in the Horizon Council proposed ordinance. MCP administrative changes were broadened with respect to reducing landscaping and open space where the reduction did not go below the LDC requirement (e.g. change by 10% but not below the requirement). There also was a discussion of the fact that these recommended changes now provide that the duration of a zoning MCP would be vested unless not in compliance with the Lee Plan. This is also a function of development orders as well. Jeremy Franz from the Conservancy also vetted these issues and did not object.

b. Impact Fees. The second issue before the LPA dealt with the proposed Moratorium on Impact Fees. By 5 to 2 vote the LPA found that the moratorium was not consistent with the Lee Plan. The LPA then went on by a 4 to 3 vote to recommend that it would be consistent if there were a specific set of commitments to make up the lost revenues during the two year suspension. The LPA urged the BoCC to look at other means to raise money for infrastructure such as a broader based mobility fee in the transportation area. It should be pointed out that the issue of consistency is not an objective decision, and that County Staff attorney felt that the BoCC could suspend without an amendment to the Lee Plan, but could not eliminate the impact fees without such an amendment. The BoCC may also look at various options for a mobility fee to cover transportation impacts. The legal issues as to consistency with the Lee Plan may need to be resolved.

2. Public Participation: Kathie Ebaugh from County Community Development Staff reported on common community planning elements which the Staff has standardized (called the Community Elements) and has put these into a separate section of the Lee Plan which would be applicable to all planning communities. If Estero wishes to go above and beyond this general language, Staff might be agreeable with that, but want all the common general provisions in one section of the Lee Plan. She reported that Staff used our public participation language as a template. They say this already has been cleared this summer through the LPA. The Staff does not want the redundancy of having our public review requirements different, although we can have variances above and beyond these in our Estero Community Plan, e.g. by stating in our Plan what is different from the general section. Several members of the Panel expressed concern about this suggestion, but she said we can be unique and different as long as we are not in conflict with the general provisions.

Prysi wanted to know if Estero could have public participation with design review which is part of our local process, but currently more on faith. That is, developers are not legally bound to go to EDRC for design review at the Development Order stage. Prysi expressed the view that EDRC wants language in our Community Plan in addition to our public participation language that contains a requirement to go to a design review process with them as a matter of law, not faith. Ebaugh countered that the County attorney's office will not allow a Community Plan to specify which organization conducts the public participation, since such a reference would then require such a community planning committee to be subject to appointment by the BoCC and under all of the rules as to meetings, minutes, Sunshine laws, legal representation, etc. relating to advisory committees. If the ECPP and EDRC were treated as advisory committees, the County would then be legally responsible for the actions of both groups, which they do not want to do.

With respect to design review, the Staff position is that it would be very difficult to come up with a legally binding standard for such review, as design review is by its nature subjective. They feel that it is hard to write design criteria into the process, and even more difficult to talk about separate incentives for higher quality development.

Noethlich stated that we may want to be different than the general public participation language, and may want to look at the development again in final form before the plan goes to the Hearing Examiner and the BoCC. For example, we may want to expand our outreach to see more zoning issues.

Prysi commented on this issue as well. The issue with the Community Elements is that the Estero language was duplicated with other planning areas. He does not see this as a big concern as long as what is unique to Estero stays unique. He wants to ensure that there is opportunity for a developer to create uniqueness that is acceptable to EDRC. O'Donnell argues for redundancy by having the Estero section of the Plan contain the public participation language. He says we do not want to have general language just in the Lee Plan that can be changed on a wholesale basis. Prysi says we should change our public participation from a force driven process to something that incentivizes developers to come to us and derive a benefit, such as giving public support of developments that are acceptable to the Community. Prysi further stated that we should require design review as a part of the required public participation process. He recognizes that Staff is not in favor of this at all. The bottom line for the EDRC is that even though we may not be able to regulate design, we want to at least add a provision that we hold a public participation hearing on the final plan for development. There are clearly issues here that we are going to have to deal with as we go forward with our Community Plan Revisions.

3. Bella Terra Commercial : Jack Lienesch commented on the issues raised by this development proposal. The developer came before the Panel at our April 16, 2012 meeting at which over 300 residents attended. The minutes of that meeting stated as follows with respect to Bella Terra: *“The panel recommended that a subgroup from Bella Terra and the developer team meet on-site to discuss these issues and attempt to come to an accommodation. The panel also commented that we cannot move forward with our assessment without proper documentation (a more detailed master concept plan, traffic studies, setbacks, schedule of uses, list of deviations, etc.) that are part of our normal submission package. The developer indicated they would comply with these requests and return for a later ECPP meeting to address them in more detail.”*

A subsequent public meeting was held at Bella Terra. They then submitted plans to the County Staff via a DRI NOPC (notice of proposed change) and zoning amendment calling for the commercial portion of the development to be changed to include four residential buildings with 192 MF units and 50,000 sf of commercial (retail/office/mini-warehouse). The Staff found insufficiency in the filing. The developer has now received an extension until March 26th to adequately respond to the staff sufficiency request. Lienesch went on to state that the developer never completed a sufficient document package to ECPP to enable the Panel to comment on the plan. The issue is whether or not the Panel should take a position on the project which the Panel found to be insufficient to properly review.

Although the Bella Terra residents were told there would be some type of grocery store at the site, the developer stated they could not attract any interest from Publix or Sweetbay to do this. Lienesch noted that there are planned developments within a 1.5 mile radius of this site which include almost 4850 residential units with current approved plans; however, the closest retail is at Ben Hill Griffith and Corkscrew. Noethlich asked how the County Staff could lean to granting such zoning amendment, when

the original plan was supposed to be neighborhood commercial, then mixed use with retail businesses with residences above. Dewhirst stated they are going through the proper zoning process to change their development, and it is being properly reviewed by County Staff. Strelow stated that they did not give us what we asked for, so why can't we testify before the HEX to that effect? They have met the letter of the law as to public participation. Why can't the Panel at least say that we cannot recommend this development? They have had two public participation meetings, and procedurally have satisfied the requirements for this in the LDC. Strelow stated we could testify before the HEX and at least review what has happened. A discussion ensued as to whether or not it is our responsibility as the ECPP to go before the HEX? In the past, the ECPP has testified at HEX hearings one way or the other. Dewhirst stated that the minutes should speak for themselves. Lienesch stated that we could go to the HEX and at least state what we did at our panel meeting and put it on the record. In other words, a panel member could testify that the Panel received a lot of negative comments from the community and the developer did not give the Panel sufficient material to properly review the project, and therefore the Panel could not comment on this development plan as it has typically done on other projects. The consensus of the Panel was that Lienesch was authorized to make such a statement before the HEX. The Panel was disappointed by the developer not providing the proper review material. Lienesch will put his comments together and vet through the ECPP members before testifying.

4. Community Plan Update approvals and funding. Noethlich and Lienesch reported that there has been a lot of discussion at the ECPP and among the various Estero organizations about the current draft language. The issue is the process of how to get it reviewed and approved by the Community. The funding contract is between the ECPP and the County to provide funds to revise the plan, although the ECCL has agreed to provide ECPP with one-half the funds to meet ECPP's obligations in the Contract. There is a separate contract between the ECPP and DeLisi Fitzgerald to do the consulting work. Noethlich stated that we need to know the process as to approval of the plan, i.e. who are the responsible players? He thinks it is ECPP and EDRC, then on for approval to LPA and BoCC. They also have another more complicated process to approve the actual changes to the LDC to reflect the Community Plan once approved. Kathie Ebaugh stated that we should defer this discussion until DeLisi is here next month. Lienesch then discussed how we deal with the Staff on the various issues that arise, and how we obtain more input from the community. Kathie Ebaugh stated that this is intended to be a continuing process until we reach consensus. The process will continue as scheduled. DeLisi will be coming to ECPP next month to discuss the process further.

Lienesch stated that the Panel will not be looking at specific policy language in the draft update at today's meeting because we had just received input from the ECCL and have not had time to review these in detail. This will be done at our February Meeting. DeLisi is meeting with the ECCL on February 18th at 9:00 a.m., and then at our regular ECPP meeting on the same date.

5. Belle Lago Administrative Amendment. Lienesch reported that the Belle Lago Administrative Amendment was approved by ECPP electronically by email among the panel members in between the meeting dates. We are including it in the minutes of this meeting as approved by us. We have advised the Staff (Pam Houck) that the Belle Lago board and our panel were supporting the amendment.

6. David Graham Award. Jeff Maas is still working on this with ULI for scheduling and Lowes to be the recipient. We need to do a story for publication on this.

7. Member Issues. ECCL reported via Strelow about the signage issues in violation of the LDC. With the exception of parts of US 41 under construction, the ECCL is undertaking a voluntary action program about this problem before asking County Staff to take action. With respect to the real estate community, Joe Pavitch Sr. has agreed to help work with us on getting the word out via the Bonita Estero Realtors group. Roger Sirlin agreed to take on this project on behalf of ECCL. ECCL is hoping that the Chamber will help out on this, but as of now has been unable to get to the President of the Chamber on this issue.

8. Al O'Donnell raised a transportation issue regarding the north-south corridor along Three Oaks which stops at Alico. This was designed to go from Naples to Fort Myers, but it does not do so. He sees employment in Estero coming from the Research Triangle area, and we need to get this north-south corridor finished all the way to Fort Myers. It is on the 2035 plan; however it appears to be a funding and political issue.

Next Meeting is on February 18, 2013 at 5:00 p.m. at Estero Community Park.  
Meeting was adjourned at 7:40 p.m.

Respectfully submitted,

Howard Levitan, Secretary