

VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2016 - 09

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5 **AN ORDINANCE OF THE VILLAGE COUNCIL OF THE**  
6 **VILLAGE OF ESTERO, FLORIDA, (APPROVING)**  
7 **(DENYING) A REZONING FROM AGRICULTURAL**  
8 **DISTRICT (AG-2) AND COMMUNITY FACILITIES**  
9 **(CFD) TO ESTERO PLANNED DEVELOPMENT**  
10 **DISTRICT (EPD) TO ALLOW A MAXIMUM 297 UNIT**  
11 **MULTIFAMILY RESIDENTIAL UNITS AND 30,000**  
12 **SQUARE FEET OF COMMERCIAL USE WITH**  
13 **ASSOCIATED AMENITIES FOR PROPERTY LOCATED**  
14 **AT THE SOUTHWEST CORNER OF VIA COCONUT**  
15 **POINT AND CORKSCREW ROAD CONSISTING OF**  
16 **APPROXIMATELY 19.3 ACRES; DENYING THE**  
17 **APPLICATION FOR A REZONING TO RESIDENTIAL**  
18 **PLANNED DEVELOPMENT DISTRICT (RPD);**  
19 **(APPROVING) (DENYING) A MASTER CONCEPT**  
20 **PLAN, (CERTAIN DEVIATIONS AND CONDITIONS OF**  
21 **DEVELOPMENT); PROVIDING FINDINGS; DENYING**  
22 **THE APPLICATION FOR A COMPREHENSIVE PLAN**  
23 **AMENDMENT FROM PRIMARILY SUBURBAN LAND**  
24 **USE CATEGORY TO A NEW LAND USE CATEGORY TO**  
25 **BE KNOWN AS VIA COCONUT URBAN PLACE;**  
26 **PROVIDING FOR CONFLICTS; PROVIDING FOR**  
27 **SEVERABILITY; AND PROVIDING AN EFFECTIVE**  
28 **DATE.**

29  
30 **WHEREAS,** Focus Development Group, LLC (the “Applicant”) filed applications to  
31 amend the Transitional Comprehensive Plan Future Land Use designations and to amend the  
32 zoning districts for a property located at the southwest corner of Corkscrew Road and Via  
33 Coconut Point Estero, FL, consisting of approximately 19.3 acres (the “Property”); and  
34

35 **WHEREAS,** the Property is legally described in Exhibit A attached hereto; and  
36

37 **WHEREAS,** the Applicant requested an amendment to the Transitional  
38 Comprehensive Plan Future Land Use designation of the Property from the currently  
39 designated primarily Suburban Land Use category to a new Land Use category to be created  
40 and known as Via Coconut Urban Place; and  
41

42 **WHEREAS,** the Village has subsequently amended the Future Land Use designation  
43 of the Property to Village Center; and  
44

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45           **WHEREAS**, the Applicant requested rezonings from Agricultural District (AG-2) and  
46 Community Facilities District (CFD) to Residential Planned Development District (RPD); and  
47

48           **WHEREAS**, the Village Center Land Use Category provides that in order for the  
49 Property to develop at the requested density that it be rezoned to the Estero Planned  
50 Development District; and  
51

52           **WHEREAS**, the Applicant has requested certain deviations to the Estero Planned  
53 Development District regulations pursuant to the Estero Transitional Land Development Code,  
54 as amended; and  
55

56           **WHEREAS**, the public information meeting for the Comprehensive Plan Amendment  
57 and Rezoning was held at the Planning and Zoning Board on June 16, 2015; and a duly noticed  
58 public hearing was held on May 3, 2016 and continued to June 22, 2016, and the Planning and  
59 Zoning Board recommended (denial) (approval with conditions of the request); and  
60

61           **WHEREAS**, a duly noticed first reading was held before the Village Council on June  
62 29, 2016; and  
63

64           **WHEREAS**, a duly noticed second reading and public hearing was held before the  
65 Village Council on \_\_\_\_\_, 2016, at which time the Village Council gave consideration to the  
66 evidence presented by the Applicant and the Village staff, the recommendations of the  
67 Planning and Zoning Board and the comments of the public.  
68

69           **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,  
70 Florida:  
71

### 72           **Section 1.**       **Adoption of Recitals.**

73  
74           The Village Council hereby adopts the foregoing recitals and incorporates them as a  
75 part of this Ordinance.  
76

### 77           **Section 2.**       **Rezoning.**

78  
79           The Village Council (approves) (denies) the rezoning of the Property from Agricultural  
80 District (AG-2) and Community Facilities District (CFD) to Estero Planned Development, to  
81 allow a maximum 297 multi-family units and 30,000 square feet of commercial use with a  
82 maximum building height of 45 feet, subject to the following conditions and deviations.  
83

### 84           **Section 3.**       **Conditions. (if approved)**

#### 85 86           1.       Master Concept Plan/Development Parameters

87           The development of this project must be consistent with the one-page Master Concept  
88 Plan for Via Coconut, stamped received March 30, 2015 (Exhibit B), except as  
89 modified by the conditions below.

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90  
91 This development must comply with all requirements of the Land Development Code  
92 (LDC) at time of local Development Order Approval, except as may be granted by  
93 deviation as part of this planned development. If changes to the Master Concept Plan  
94 are subsequently pursued, appropriate approvals will be necessary.  
95

96 The project is approved for 297 multiple family residential units and 30,000 square feet  
97 of commercial use, with a maximum building height of 45 feet.  
98

### 99 2. Uses and Property Development Regulations

100 The following limits apply to the project and uses:  
101

102 a. Schedule of Uses – See Exhibit C  
103

104 b. Property Development Regulations – See Exhibit D  
105

### 106 3. Vehicular/Pedestrian Connection

107 Happy Hollow Lane:  
108

109 The future interconnections to the parcels along Happy Hollow Lane shown on the  
110 Master Concept Plan are approved conceptually. Specific connection to and the right  
111 to cross private property must be demonstrated at the time of local development order.  
112  
113

114 Property West of Railroad Right-of-Way:

115 Shown as a Future Potential Interconnection, the development must provide for future  
116 vehicular and pedestrian access connection to the property to the west as part of any  
117 residential development activity within this planned development.  
118

119 More specifically, the Applicant must construct the east-west connector road and oval  
120 as part of the residential development order. The road must be constructed to the west  
121 property line with the stub-out design subject to approval of Village Staff.  
122

123 Internal to the Planned Development:

124 The development must provide for both vehicular and pedestrian interconnection  
125 throughout the development. The internal pedestrian connection must be in the form  
126 of sidewalks internal to the project separate and distinct from vehicular roads, drives,  
127 and access ways.  
128

129 External to the Planned Development:

130 Except as provided elsewhere in the conditions of this planned development, pedestrian  
131 interconnection must be provided in accordance with the Master Concept Plan and  
132 Land Development Code.  
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### 4. Open Space

Prior to development order approval, the development order plans must show 0.65 acres of open space for the commercial portion and 6.60 acres of open space for the residential portion of the project.

### 5. Traffic

Connections shown on the Master Concept Plan to Via Coconut Point are subject to the review and approval by Lee County Department of Transportation, unless this road is turned over for maintenance to the Village of Estero. The southerly access point will be reviewed by the Village at the time of the development order for sight visibility issues to determine whether it is approvable.

### 6. Vehicular/Pedestrian Impacts

Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.

### 7. Transitional Comprehensive Plan

Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area.

### 8. Concurrency

Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in the Land Development Code. The developer is required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.

### 9. Agricultural Uses

Agricultural Uses: Existing bona fide agricultural uses on this site are allowed as follows:

- (a) Bona fide agricultural uses consisting of row crops, that were in existence when the application for this project was filed, may continue in the areas depicted on Exhibit E until a local development order is approved for the area containing the agricultural uses.

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179 (b) Clearing or injury of native trees or other native vegetation, including  
180 understory, in agricultural areas is prohibited. Existing areas of bona fide  
181 agricultural use that include existing grass pasture(s) may be mowed but those  
182 areas may not be cleared or expanded. Violations of this condition will require  
183 restoration in accordance with LDC Section 10-423. This prohibition of  
184 clearing or expansion of agricultural use is not intended to preclude approved  
185 requests for removal of invasive exotic vegetation.  
186

187 (c) Prior to issuance of a local development order for the portion that  
188 contains the agricultural use, the property owner must provide written proof,  
189 subject to approval by the Village Attorney of the following:  
190

191 (1) Termination of all agricultural use on the property included in  
192 the development order application/approval. Proof must include a sworn  
193 affidavit from the person or entity holding title to the property that  
194 specifically provides:  
195

196 (a) the date the agricultural uses ceased;  
197

198 (b) the legal description of the property subject to the development  
199 order approval;  
200

201 (c) an affirmative statement that the owner acknowledges and  
202 agrees that all agricultural uses are illegal and prohibited on the property  
203 and that the owner covenants with the county that they will not allow  
204 agricultural uses on the property until the property is re-zoned to permit  
205 agricultural uses; and  
206

207 (d) that the affidavit constitutes a covenant between the owner and  
208 the county that is binding on the owner, their assignees and successors  
209 in interest.  
210

211 The affidavit must be properly recorded in the public records of the  
212 county at the owner's expense.  
213

214 (2) Proof of termination of the agricultural tax exemption for the  
215 portion of the property included in the development order  
216 application/approval. Proof of termination must include a copy of the  
217 owner's request to terminate the tax exemption provided to the Property  
218 Appraiser.  
219

### 220 10. Solid Waste Management 221

222 As part of any local development order approval for vertical development, the  
223 development order plans must include facilities in compliance with LDC Section 10-

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224 261 and Solid Waste Ordinance #11-27 for the pick-up/disposal of solid waste and  
225 recyclables. The minimum area required for, and specific locations of, these facilities  
226 will be reviewed at the time of local development order application.  
227

227

### 228 11. Development Permits

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230 Issuance of a development permit does not in any way create any rights on the part of  
231 the Applicant to obtain a permit from a state or federal agency and does not create any  
232 liability on the part of the county for issuance of the permit if the Applicant fails to  
233 obtain requisite approvals or fulfill the obligations imposed by a state or federal agency  
234 or undertake actions that result in a violation of state or federal law.  
235

235

### 236 12. Pattern Book

237

238 The Pattern Book must be reviewed by the Design Review Board prior to Village  
239 Council hearing and may be required to be amended pursuant to that review. A Pattern  
240 Book must meet the requirements of the Estero Planned Development. It must contain  
241 additional detail regarding:

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### 13. Timing of Commercial Uses

The 8,000 square feet of commercial space at the traffic oval will be constructed during Phase I of the project.

### 14. Central Oval

The central oval must be constructed as at least a “Type C” road and shown on the development order, and platted as a public easement, and recorded in the official records of the county. The green space in the oval must be designed to include a focal feature such as a fountain, with appropriate seating, shade trees and other amenities.

### 15. Billboard

The billboard must be removed as part of the first development order for the site.

### 16. Gates

No gate is approved between the northerly commercial parcel and residential development. Gates, fences and walls must be designed to be obscured from view from any roadway.

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269 17. Commercial Uses  
270

271 The commercial uses in the northern 2 acre site are intended to be neighborhood  
272 commercial uses. There must be a variety and mixture of commercial uses. No one  
273 use can dominate the site. The site will contain multiple buildings as shown on the  
274 Master Concept Plan.  
275

276 18. Parking Spaces  
277

278 Parking spaces must be delineated on the development order plan and assigned to units,  
279 with adequate guest parking required per code.  
280

281 19. Property Development Regulations  
282

283 The property development regulations list townhomes as a potential use. If townhomes  
284 are developed, this will require an amendment to the zoning through the public hearing  
285 process as the site plan will be different.  
286

287 20. Incentive Offerings  
288

289 The Applicant's incentive offerings are incorporated into this zoning approval as  
290 Exhibit F. Location and details are shown on the Master Concept Plan and in the  
291 Pattern Book.  
292

293 21. Public Park Disclosure.  
294

295 The owner shall provide disclosure on sale or lease documents for unit owners or  
296 renters that the project is located near to a public park with potential for events that  
297 include noise and congestion.  
298

299 **Section 4. Deviations. (if approved)**  
300

301 Deviation (1) seeking relief from LDC Section 10-296(b) which specifies right-of-way  
302 standards for privately maintained access streets to allow the internal access drive to  
303 meet parking lot aisle standards, allowing vehicles to back out onto the access drive, is  
304 (approved)(denied).  
305

306 Deviation (2) seeking relief from the following:  
307

- 308 (a) Section 10-416(d)(6) which requires a solid wall or combination berm  
309 and solid wall not less than eight feet height to be constructed not less  
310 than 25 feet from abutting property and landscaped (between the wall  
311 and the abutting property) with a minimum five trees and 18 shrubs per  
312 100 lineal feet; or a 30-foot wide Type F buffer with the hedge planted  
313 a minimum of 20 feet from the abutting property line where roads,

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314 drives or parking areas are located less than 125 feet from existing single  
315 family residential lots; and

316

317 (b) Section 10-416(d)(7) which requires a Type C or F buffer for uses or  
318 activities that generate noise;

319

320 to allow a buffer consisting Type F buffer plantings in a 15 to 20 feet wide planting  
321 area, supplemented with an 8 foot wall as depicted on the MCP where commercial areas  
322 abut three single family residences, is (approved)(denied).

323

324 Deviation (3) seeking relief from Section 34-2020(a) which requires a minimum of 2  
325 parking spaces per multifamily unit to allow parking to be calculated at 1.5 spaces per  
326 one-bedroom multifamily unit, for up to a maximum of 160 one-bedroom units, is  
327 (approved)(denied).

328

### 329 **Section 5. Comprehensive Plan Amendment.**

330

331 Applicant's request to amend the Transitional Comprehensive Plan Future Land Use  
332 designation from the Suburban category to Intensive Development category is denied.

333

### 334 **Section 6. Rezoning.**

335

336 Applicant's request to rezone the property from Agricultural and Community Planned  
337 Development to Residential Planned Development, is denied.

338

### 339 **Section 7. Findings and Conclusions. (if approved)**

340

341 Based on the evidence in the record and its analysis of the relevant Transitional  
342 Comprehensive Plan goals, objectives and policies, Transitional Land Development  
343 Code regulations, and codes and regulations, the Village Council makes the following  
344 findings and conclusions.

345

346 1. The Applicant qualifies for rezoning by demonstrating compliance with the  
347 Transitional Comprehensive Plan for the Village Center, the Transitional Land  
348 Development Code, and other applicable codes and regulations.

349

350 2. The rezoning is consistent with the densities, intensities and general uses set  
351 forth in the Transitional Comprehensive Plan.

352

353 3. The application meets the standards for a Tier 3 density of up to 15.4 units per  
354 acre (including commercial land), based on the criteria for achieving the base density  
355 and the Applicant's incentive offers.

356

357 4. The request as conditioned, is compatible with existing or planned uses in the  
358 surrounding area.

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- 359 5. Approval of the request will increase traffic but not place an undue burden upon  
360 existing transportation or planned infrastructure facilities and will be served by streets  
361 with the capacity to carry traffic generated by the development.  
362
- 363 6. The request will not adversely affect environmentally critical area and natural  
364 resources.  
365
- 366 7. Urban services, as defined in the Transitional Comprehensive Plan, are, or will  
367 be, available and adequate to serve the proposed land use.  
368
- 369 8. The proposed use, as conditioned, is appropriate at the subject location.  
370
- 371 9. The recommended conditions to the Master Concept Plan and other applicable  
372 regulations provide sufficient safeguards to the public interest.  
373
- 374 10. The recommended conditions are reasonably related to the impacts on the  
375 public's interest created by or expected from the proposed development.  
376
- 377 11. The deviations recommended for approval:  
378
- 379 (a) Enhance the planned development; and  
380
- 381 (b) Preserve and promote the general intent of the LDC to protect the public  
382 health, safety and welfare.  
383

### **Section 8. Exhibits.**

384 The following exhibits are attached to this Ordinance and incorporated by reference:  
385

386	Exhibit A	Legal Description
387	Exhibit B	Master Concept Plan
388	Exhibit C	Schedule of Uses
389	Exhibit D	Property Development Regulations
390	Exhibit E	Agriculture Affidavit
391	Exhibit F	Incentive Offerings and Pattern Book
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393		

### **Section 9. Conflicts.**

394 All sections or part of Sections of the Code of Ordinances, all Ordinances or parts of  
395 Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance shall  
396 be repealed to the extent of such conflict upon the effective date of this Ordinance.  
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404 **Section 10. Severability.**

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406 Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance  
407 subsequent to its effective date be declared by a court of competent jurisdiction to be invalid,  
408 such decision shall not affect the validity of this Ordinance as a whole or any portion thereof,  
409 other than the part so declared to be invalid.

410

411 **Section 11. Effective Date.**

412

413 This Ordinance shall be effective on the date the Comprehensive Plan Amendment  
414 CPA2016-01 adopted by Ordinance 2016-04 becomes effective.

415

416 **PASSED** on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

417

418 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,  
419 Florida this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

420

421 Attest: **VILLAGE OF ESTERO, FLORIDA**

422

423

424 By: \_\_\_\_\_ By: \_\_\_\_\_  
425 Kathy Hall, MMC, Village Clerk Nicholas Batos, Mayor

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427

428 Reviewed for legal sufficiency:

429

430

431 By: \_\_\_\_\_  
432 Nancy E Stroud,  
433 Village Land Use Attorney

434

435	Vote:	AYE	NAY
436	Mayor Batos	_____	_____
437	Vice Mayor Levitan	_____	_____
438	Councilmember Boesch	_____	_____
439	Councilmember Brown	_____	_____
440	Councilmember Errington	_____	_____
441	Councilmember Ribble	_____	_____
442	Councilmember Wilson	_____	_____