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MEMORANDUM

TO: Howey-in-the-Hills Planning Board
CC: J. Brock, Town Clerk
FROM: Thomas Harowski, AICP, Planning Consultant
SUBJECT: Whispering Heights Rezoning Request
DATE: September 12, 2024

On July 5, 2024 the Town received an application from Red Jacket Development Group to rezone the Whispering Heights property from MDR-1 to MDR-2 based on a determination by the Town's legal staff that the same rezoning request considered in 2018 was never properly completed. The Whispering Heights (nee Whispering Hills) project has a long history with the Town stretching back to the early 2000s, and a brief history of the project's movement through the review process may be helpful in the Planning Board's effort to provide a recommendation to Town Council. Ultimately there are three options the Board may consider.

Whispering Heights History

The Original Project: The original project was approved (2007) for 107 lots under the MDR-1 zoning standards. The proposed subdivision would use private streets to allow for a gated community. The plan was to use Town water but allow septic tank use for sewer for the 107 lots. The project was on hold during the recession, but in 2013 the plan was revived with applications for preliminary subdivision approval and final subdivision plan approval as required by the Town land development code. The Town Council approved the final subdivision plan on December 9, 2013. At this point in time the development had the basic approval needed to proceed with construction of subdivision improvements.

The Rezoning: In 2018, the developers proposed an alternative plan to rezone the property from MDR-1 to MDR-2 which would allow for lots of 9,000 square feet rather than the 15,000 square foot lots required by MDR-1. The MDR-2 zoning would allow for a project expansion from 107 units to 156 units. The primary trade-off for the rezoning and increased unit total was an agreement to connect the entire project to the Town's sewer system. The applicant also committed to retaining larger lots along the lakefront. The rezoning request was considered by the Planning Board in August and September of 2018. The request was forwarded to the Town Council for consideration.



At this point, the proposed ordinance (2018-008) to effect the rezoning was considered by the Town Council for adoption at their November 13, 2018 meeting. The available Town records do not show a final action on the rezoning or a revised development agreement. However, the developer and the Town proceeded as if the rezoning had been fully completed. The official zoning map was updated to show the MDR-2 zoning as current and the applicant proceeded with both preliminary and final subdivision designs.

The records issue was discovered when the final subdivision plan was presented to the Town Council for approval, when the Town staff was asked to confirm the zoning. After a review of the records by the Town Clerk and the Town Attorney, a ruling was given that due to the lack of confirming documentation, the MDR-2 zoning was never properly completed and therefore the current zoning is MDR-1.

Subdivision Design: With the parties to the project believing the 2018 zoning request had been properly completed, the applicant proceeded with a preliminary subdivision plan based on the MDR-2 zoning. This plan was approved by Town Council in October

2020. A final subdivision plan was subsequently prepared for Planning Board consideration in June, 2024 and presented to the Town Council in July 2024. At this point the issues with final zoning actions arose and the final subdivision plan was placed on hold. Seeking to revisit the MDR-2 zoning change, the developer filed an application for rezoning on July 5, 2024.

The Rules Change: On August 26, 2024, the Town Council approved a package of zoning revisions that included changes to the MDR-2 zoning district. The minimum lot size for MDR-2 property was increased from 9,000 square feet to 10,890 square feet. Should the Town Council approve a rezoning to MDR-2, the change in lot size will require the preliminary and final subdivision plans to be redesigned to the larger lot size. The project will still be required to connect to the Town's sewer network.

Rezoning Options

The Planning Board has three options to recommend to the Town Council based on the history of the project, the previous MDR-2 zoning rules and the revised MDR-2 zoning rules.

- Option 1: Recommend denial of the rezoning and leave the MDR-1 zoning in place. This option will likely have the project revert to its original design.
- Option 2: Recommend rezoning to MDR-2 with the current lot size of 10,890 square feet. Option 2 will allow some increase in total lots above the original 107 lots but the total project size will be less than the 156 lot design.
- Option 3: The Board could recommend the Town Council rezone the property to MDR-2 under the old rules based on the application for rezoning having been submitted prior to the adoption of the current rules. This option would allow the 156 lot design to proceed.

All of these options would be consistent with the future land use designation of Medium Density Residential.