

WINTERGREEN TOWNHOME PROJECT (PLN 51836)

DESCRIPTION OF PROPOSED CHANGE TO EXISTING SITE PLAN

Executive Summary: This project is a major adjustment of the Visconsi Master Plan (VMP) under BIMC 2.16.040.H.2. Per a 2020 Hearing Examiner decision, the VMP approved only commercial development, and thus in order to process a change of use to residential, a major adjustment to the VMP is required. The City's Planning Director determined that the major adjustment would be effectuated by way of a new, stand-alone residential project application. The consequence of this is that the commercial development standards of the VMP are not applicable to the project; rather, the residential subdivision standards of BIMC 17.12 govern the project.

Background: In 2019, the project applicant, Central Highlands, Inc. (CHI), submitted an Administrative Code Interpretation to the City, arguing that the VMP encompassed residential development and that, consequently, a change of use to residential could be processed within the confines of the VMP. The City disagreed with CHI's position. In an April 30, 2020 e-mail to CHI's attorney, City attorney Jim Haney wrote the following: "As I see it, your client has two choices: (1) amend the site plan and CUP to delete the two parcels from it and then proceed to apply for the necessary permits to develop the site as your client desires, or (2) amend the site plan and CUP to provide for this use." CHI appealed the issue to the Hearing Examiner (HE). In an August 21, 2020 written decision, after an appeal hearing with witnesses and written closing arguments, the HE ruled that a change of use from commercial to residential required a major adjustment of the VMP under BIMC 2.16.040.H.2, which provides as follows:

Adjustments other than minor adjustments to an approved site plan and design review require a new or amended application as determined by the director. Major adjustments are those that change the basic design, intensity, density, or character of the use.

The City's Planning Director, Heather Wright, determined that the change of use from commercial to residential would be effectuated by way of a new, stand-alone residential project application. Thus, this project was submitted, and is being processed, as a new, stand-alone residential project application, separate from the VMP. Consequently, this project is not subject to the development standards of the VMP, including those relating to setbacks/buffers and natural area/community space, which makes sense because the VMP, per the HE's August 21, 2020 decision, encompasses only commercial development, and therefore the development standards in the VMP are, by definition, not pertinent to residential development. Stated another way, it would be incongruous and unfair, and also inconsistent with the City's unwavering position and the HE's August 21, 2020 decision, to deny change of use to residential within the confines of the VMP and instead require a new, stand-alone residential project application to effectuate the change of use, and then impose the commercial development standards of the VMP on the new residential project. Accordingly, from the inception of this project, the City has correctly processed this project under the residential subdivision standards of BIMC 17.12.

A detailed analysis of how this project complies with the decision criteria under BIMC 2.16.040.F is submitted separately.