Town of Frederick
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AM 2010-067

Acknowledgement of Real Property Transfer and Assignment of Public Improvement Obligations for Raspberry Hill Subdivision, Phases III and IV

Agenda Date: Town Board Meeting - July 27, 2010

Attachments: a. Resolution 10-R-_____- Acknowledging Transfer of Property and Assignment of Public Improvement Obligations
b. Vicinity Map

Fiscal Note: None noted or provided.
Administrative Services Director

Submitted by: Brian Frank
Staff Title

Approved for Presentation:
Town Administrator

AV Use Anticipated Projector _____ Laptop _____

Certification of Board Approval: _____ _____
Town Clerk Date

Summary Statement:
DR Horton, the original owner and now successor in interest to Phases III and IV of the Raspberry Hill Subdivision, has requested that the Town recognize DR Horton's full assumption of the outstanding public improvement obligations under the MOAPI on the property. Currently Capital Real Estate Services ("CRES"), the interim owner of an interest in the subject phases, and DR Horton are jointly obligated under the MOAPI. DR Horton has maintained at all times and still has an improvement security in place for this Subdivision.

Detail of Issue/Request:
Pursuant to the Subdivision regulations of the Town of Frederick Land Use Code, 2004, DR Horton was required to enter into a Memorandum of Agreement for Public Improvements (MOAPI) contemporaneous with receiving final approval from the Town of the Final Plat for the Raspberry Hill

Subdivision. The MOAPI was executed and recorded in December, 2004. Since that time, DR Horton has posted an initial letter of credit for the development and commenced development of Phases I and II. Final acceptance of the public improvements in Phases I and II has been given by the Town, and as of October, 2007, the Town has retained improvement security in an amount equal to 10% of the remaining public improvements in the MOAPI for Phases III and IV.

Pursuant to Section 14.8 of the MOAPI, upon transfer of any real property burdened by the MOAPI, other than an individual improved residential lot, the original developer and its successor shall become joint and severally liable for performance of the improvements set forth in the MOAPI. CRES became an owner in 2009 of Phases III and IV of the Raspberry Hill Subdivision and accordingly became jointly responsible with DR Horton for the remaining developer obligations of the MOAPI under Resolution 09-R-028. DR Horton's letter of credit did renew in February of 2010 and is set to renew or expire in February of 2011. The transfer of all MOAPI responsibilities was ineffective as CRES never posted replacement improvement security. DR Horton has since begun the process of reacquiring the property and assuming all development obligations. Section 7 of the MOAPI will need to be updated prior to releasing any building permits. Approval of the attached Resolution No. 10-R-_____, would authorize the return of the remaining public improvement obligations solely to DR Horton, subject to the conditions included in the resolution. CRES did not replace DR Horton's letter of credit for improvement guarantee/security, thus there is no security for the Town to release.

Legal/Political Considerations:
The transfer or assignment of MOAPI obligations contemplated in Resolution 09-R-028 never actually occurred, as CRES never satisfied the condition precedent to the transfer: posting of replacement improvement security. At all times, it was DR Horton's letter of credit that secured the property. Since CRES never satisfied this condition, and DR Horton has now reacquired the property, the 2009 transfer is unnecessary and DR Horton may resume full responsibility for the MOAPI obligations. A resolution to clear up the record is appropriate, even though the terms of the MOAPI would automatically make DR Horton or any developer successor in interest automatically liable for those improvements.

Alternatives/Options:
In lieu of assigning the remaining public improvement obligations under the MOAPI, the Town could hold both developers joint and severally liable for the full development cycle, retaining improvement security from one or both in the amount required under the LUC-- 10% of estimated cost for remaining improvements.

Financial Considerations:
Not Applicable.

Staff Recommendation:
Staff recommends that the Board approve the attached Resolution No. 10-R-_____, authorizing the return of all public improvement obligations for Raspberry Hill subdivision to DR Horton.