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Via Email
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Talent City Council
c/o Mayor Ayers-Flood
P.O. Box 445
Talent, OR 97540

RE: June 15, 2022 City Council Meeting – Agenda Item 11.1: Request for Agreement to Draft Application for Belmont Railroad Crossing Improvements

Dear Mayor and City Council Members:

This firm represents Tony Nieto and Eric Artner, the owners of approximately 26 acres of land located at 201 Belmont Road in southwest Talent, that is the subject of your June 15, 2022 City Council meeting, agenda item 11.1, which is a Request for an Agreement to Draft an Application for the Belmont Railroad Crossing Improvements. Because Mr. Nieto's and Mr. Artner's attorney is unavailable to participate in the City Council meeting tonight, we request that the City defer its consideration of this item to a future time when the owners' attorney is available to participate in the discussion. In the interim, we provide the following preliminary responses to an email from City staff that Mr. Nieto received late last night revealing that her recommendation to the City Council is that the City decline to enter into the agreement, and to a staff report on this agenda item posted today on the City's website making that same recommendation.

As you may recall, the development of this particular property with the 49-lot Talent View Estates (aka Belmont) residential subdivision has been in the works since 2018. In March of 2021, LUBA reversed the City's denial of Mr. Nieto's and Mr. Artner's subdivision application and ordered the City to approve it. LUBA based its decision on the "Needed Housing Statutes" at ORS 197.295 to 197.314, and on ORS 197.307(1) in particular, which provides that the City may apply only "clear and objective" standards, conditions and procedures regulating the development of housing. LUBA concluded that the City's application of its discretionary requirements about access – which was the sole basis for the City's denial – was erroneous and could not be applied to deny the application.

In May of 2021, the City's hearings officer approved the subdivision to comply with LUBA's decision. The request that is before you now is the result of the owners' efforts to work with the City to acquire the access needed for the approved subdivision. The City is well-aware that it is the only one that can apply to ODOT to convert the private rail crossing at Belmont Rd.

to a public one. There is no basis for the City not to do so and that is why the development agreement proposal has been placed before you. The property owners have hired an expert rail engineer out of their own pockets to prepare the application for the rail crossing to be submitted to ODOT and are willing to work with the City to draft a development agreement between the City and them for the submittal of the rail crossing application, so there are no misunderstandings or disclarities. Toward this end, there have been countless meetings between the City and Mr. Nieto and Mr. Artner with various staff clearly understanding that the City has an obligation to cooperate in making the application to the railroad under various authorities, including the 1977 agreement¹ that expressly so requires the City's cooperation:

(4) Railroad Crossing. In order to enable the proper development of the area, City shall at the request of Arndt or his successors support, or join in or make application for a grade crossing for an extension of Belmont Street across the Southern Pacific tracks to serve the area; provided that the cost of the construction of the grade crossing and installation of any protective devices as required by law shall be underwritten or provided by someone other than the City. If a grade crossing other than Belmont is concurred in by Arndt in order to serve the area, the City shall, subject to limitations imposed by planning and zoning, make, or join in the application for such grade crossing, on like terms.

As well as the fact that this requirement is now underscored by LUBA's March 2021 decision, and the Needed Housing Statutes, which require that the housing to be developed in the subdivision must be easy and swift to deliver under the legislature's program to meet the state's housing needs. So far, that easy and swift approval of this project for the development of housing has been illusory. Approving the proposal before you for staff to work with the owners to establish a development agreement for the crossing will go a long way to rectify that problem.

Agreeing to have the owners' railroad expert draft the crossing application, which the owners have agreed to pay for themselves at no expense to the City, costs the City nothing. There is simply no justification for the City to refuse to allow the expert to prepare the application. The costs of constructing the crossing are not known and cannot be known until and unless the application is approved. And the City has the ability to easily spread the costs of

¹ It is worth noting that the 1977 agreement also imposes an obligation on the City to make physical storm drainage improvements that, to date, the City has not completed. In this regard, staff's understanding, communicated in last night's email, that the City has fulfilled its end of the contract, is in error.

construction via system development charges, the formation of a local improvement district, or any other type of cost-sharing agreement among affected property owners.

The City Council declining at this stage to even enter into the requested agreement puts not only the owners' subdivision at stake, but the City's entire Railroad District Master Plan area that the City would abandon if it does not allow the modest step of allowing the submission of the rail crossing application to occur. The Comprehensive Plan's Housing Element, adopted in 2017, envisions that to meet the City's housing needs, the City will address the barriers to access in the Railroad District, including that the City will work with property owners to secure permission for the rail crossing at Belmont Rd. within 1-2 years of the element's adoption (i.e., this should have been implemented by 2019):

Implementation Strategy 1.2b: Work with affected property owners to consider a plan for infrastructure development in the Railroad District Master Plan area including securing permission for necessary rail crossings to allow for infrastructure development.

Implementation Steps: Work with ODOT, private rail company, affected landowners, and other stakeholders to secure permission for a rail crossing at Belmont Rd.

Implementation Steps:

When: within 1 to 2 years of the Element's adoption

Partners: City staff, ODOT, private rail company and affected land owners

The plan's Housing Element goes on to state that the City will enter into development agreements for the development of Belmont Rd. within 3 to 5 years (i.e., by 2022):

Implementation Strategy 1.2c: Develop plans for infrastructure in the Railroad District Master Plan area through public-private partnerships with landowners in the area and including the development of Belmont Rd. from Talent Ave. in conjunction with development.

Implementation Steps: (1) Develop public-private partnerships and development agreements for the development of Belmont Rd. and (2) coordinate with the City's Capital Improvement and Transportation System Plan.

When: within 3 to 5 years of the Element's adoption

Partners: City Staff

Staff has indicated that it recommends postponing any negotiations until at least 2024. In this regard, in addition to its "clear and objective" standards requirement, ORS 197.307(1) provides that the standards, conditions and *procedures* that the City applies cannot "have the effect of discouraging needed housing through unreasonable cost or delay." Punting *any*

negotiations on this matter to 2024 would unreasonably delay the project and risk expiration of the preliminary plat approval (3 years from May 17, 2021²) through no fault of the owners.

Moreover, declining to even begin negotiations with the owners puts the City at risk of adopting a de facto moratorium on construction or development without following the proper procedures as required by ORS 197.520, a decision that would be challengeable at LUBA.

In sum, we request that the City Council either approve this agenda item or defer its consideration to a future date and time when the owners' attorney is available to participate in the discussion. Thank you for your anticipated courtesies.

Sincerely,



Sarah C. Mitchell

SCM:scm

CC: Clients
Jordan Rooklyn
Kristen Maze

² The owners applied for a one-year extension back in May 2022, but to date have not received a decision from the City.