



CITY OF TALENT • COMMUNITY DEVELOPMENT

PO Box 445, Talent, Oregon 97540

Phone: (541) 535-7401 Fax: (541) 535-7423 www.cityoftalent.org

GENERAL LAND USE APPLICATION

Project Description: SUB 2018-001 Appeal
Property Owner: Tony Nieto
Street Address: See SUB 2018-001
Applicant/Consultant: CSA Planning Ltd
Mailing Address: 4497 Brownsridge Terrace Sunfield, Medford, OR 97504
Assessor's Map Number: 38-1W- (See SUB 2018-001)
Tax Lot Number:
Acres:
Zone:

Subzone (if applicable) _____

Pre-Application Meeting Completed? [X] Yes [] No [] N/A Date Completed: _____

APPLICATION TYPE (check all boxes that apply)

Site Development Plan Review []
Variance []
Fence []
Annexation []
Accessory Dwelling Unit []
Appeal [X]
Conditional Use Permit []
Home Occupation []
Code Interpretation []
Comprehensive Plan Amendment (text) []
Comprehensive Plan Map/Zoning Map Change []
Development Code Amendment []

ACCURACY STATEMENT

I hereby certify that the statements and information contained in this application, including the enclosed drawings and the required findings of fact, are in all respects, true and correct. I understand that all property pins must be shown on the drawings and visible upon the site inspection. In the event the pins are not shown or their location is found to be incorrect, the owner assumes full responsibility.

Applicant's Signature: [Signature] see PDA on record
Property owner's Signature (required): [Signature] on behalf of applicant/owner (see PDA in file SUB 2018-001)

Date: 7-20-18
Date: 7-20-18

APPLICATION FEES & DEPOSITS

(Application fees are calculated by ACTUAL PROCESSING COSTS)

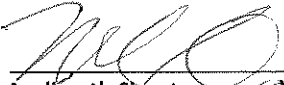

Fees and deposits are intended to cover the full cost for processing applications. Applicants seeking development which requires more than one type of review (such as site plans and conditional use permits) must pay all applicable fees and deposits.

Application Deposits: Certain application fees are represented by a deposit amount. Applicants shall be charged for actual processing costs incurred by the City. The actual costs charged to the City for technical review of land use applications, including but not limited to City's planning, public works, engineering, administration, legal, wetland specialists, geologists, biologists, arborist, and any other services provided in processing applications, shall be charged to Applicant, at the rate(s) charged to the City. In addition, the actual costs of preparing and mailing notices to abutting property owners or others required to be notified, the costs of publishing notices in newspapers, and any other mandated costs shall be charged to applicant. Any additional costs incurred beyond the deposit amount shall be charged to and paid by the applicant on a monthly basis. The applicant agrees that any deficiencies shall be collected from applicant, and that applicant's failure to pay these amounts triggers the City's option to pursue any or all remedies, as listed below.

Fixed Fee Applications: Fees are non-refundable and are based on average application processing costs rounded to the nearest dollar.


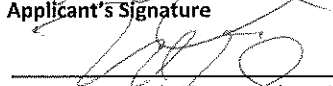
Applicant acknowledges and agrees that Applicant's failure to pay City costs over the deposit fee amounts, as charged monthly by the City, may result in the City pursuing any or all legal remedies available, including but not limited to liening property in the amount owed; prosecution for violation of the City's current fee resolution and City land development or division ordinances; issuance of a stop work order, non-issuance of building permits for property, or cessation of related proceedings; set-off against any reimbursement owed; and turning amounts owed over to a collection agency.

(Appeal SUB 2018-001)


 Applicant's Signature _____ Date 7-20-18

 Property owner's Signature (required) _____ Date 7-20-18

on behalf of Applicant/owner
see not in SUB 2018-001

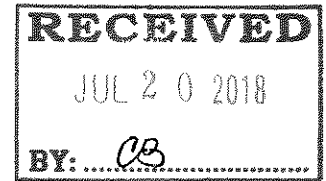
I hereby acknowledge that my applications may be consolidated. When an applicant applies for more than one type of land use or development permit (e.g., Type-II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: (1) City Planner, (2) the Planning Commission, and (3) the City Council. Joint meetings between governing bodies may be held to streamline the decision process.


 Applicant's Signature _____ Date 7-20-18

 Property owner's Signature (required) _____ Date 7-20-18
on behalf of Applicant/owner
see not in SUB 2018-001

FOR OFFICE USE ONLY			
Deposit Paid (Amount) <i>\$ 300.00</i>	Date <i>7-20-18</i>	Received by <i>Beady</i>	File Number <i>APL #18-001</i>

In compliance with the Americans with Disabilities Act, if you need special assistance, please contact TTY phone number 1-800-735-2900 for English and for Spanish please contact TTY phone number 1-800-735-3896.

The City of Talent is an Equal Opportunity Provider



TOMMY A. BROOKS
ADMITTED IN OREGON AND WASHINGTON

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cablehuston.com

July 20, 2018

Zac Moody
City of Talent, Community Development
Department
110 East Main Street
Talent, OR 97540

RE: Planning File SUB 2018-001 – Notice of Appeal

Dear Mr. Moody:

As you know, this firm represents the Applicant in the above-captioned matter. Pursuant to Section 8-3M.190(A)(3) of the Zoning Code (“Code”) of the City of Talent and ORS 197.375, this letter serves as the Applicant’s appeal of the Staff Report and Decision (“Decision”), dated July 6, 2018, in this proceeding.

I. Appeal Requirements and Standing

The City processed the application as an expedited land division. ORS 197.375(1) sets forth the requirements for an appeal of an expedited land division.

Pursuant to ORS 197.375(1)(a), an appeal must be filed with the local government within 14 days of mailing of the notice of decision and be accompanied by a \$300.00 deposit for costs. The City issued the Decision, denying the application, on July 6 and mailed the Decision on or after that date. This appeal is therefore timely filed. Enclosed with this appeal is a check in the amount of \$300.00 as required.

Pursuant to ORS 197.375(1)(b), an appeal may be filed only by the applicant or a person who filed written comments during the comment period established under ORS 197.365. The Applicant is filing this appeal.

Pursuant to ORS 197.375(1)(c), the appeal must be based solely on certain allegations set forth in the statute. Although the statute does not appear to require an appellant to state the specific basis for the appeal in an appeal filing, the multiple bases for Applicant’s appeal, consistent with ORS 197.375(1)(c), are set forth below. The Applicant has described several specific objections to the Decision, some of which are based on more than one of the allowed reasons for bringing an appeal.

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II. Bases for the Appeal

Pursuant to ORS 197.375(1)(c), an appeal of an expedited land division must be based on allegations of: (1) a violation of the substantive provisions of the applicable land use regulations; (2) the unconstitutionality of the decision; (3) that the application is not eligible for review as an expedited land division; or (4) that the party's substantive rights have been substantially prejudiced by an error in procedure. Each of Applicant's following objections to the Decision are based on one or more of the above allegations, except that the Applicant does not dispute the application is eligible for review as an expedited land division. The Applicant is providing only a brief description of each objection in this filing and reserves the right to raise other specific objections and to provide additional detail with respect to these objections as part of the appeal process.

1 – The Decision fails to acknowledge, much less address, the fact that the application is for “needed housing” as that term is used in ORS 197.303 *et seq.* This error resulted in Staff's misapplication of the substantive provisions of the City's Code throughout the Decision. Among other errors, the Decision attempts to apply standards that are outside the scope of those standards authorized in the needed housing statutes. Similarly, the Decision attempts to apply standards in the City Code that are not clear and objective, in contravention to ORS 197.307(4). This error is applicable to almost every basis of the City's denial. Further, the manner in which the Decision applies City standards will result in unreasonable cost and delay in the development of needed housing, thereby discouraging needed housing, in contravention of ORS 197.307(4).

2 – The Decision erred by applying Implementation Strategy 10.2.1 of the Talent Comprehensive Plan (Element F – Public Facilities) as a mandatory approval standard and as a basis for denial. The requirements for street layouts and access applicable to a subdivision proposal are set forth in 8-2.250 and 260 of the City's subdivision code. Although it is possible for a comprehensive plan provision to serve as a mandatory approval criterion, that is not the default role of any plan provision and, in fact, the presumption is that comprehensive plan provisions are not mandatory. The Decision fails to establish that Strategy 10.2.1 is mandatory, and also fails to explain why that comprehensive plan provision applies to the application when the City has not applied that same provision to other land divisions. Even if that provision were applicable, the Decision fails to establish that the provision has not been satisfied.

3 – The Decision improperly relied on the absence of approval from various agencies as a basis for denial. In most instances, the Decision relies on the expressed opinion of an agency and fails to establish that such agency approval (whether such approval is through a permit or simply consent) is required to meet any particular approval standard. In other instances, the Decision improperly denies the application based on an assertion that the Applicant did not satisfy various requirements of those agencies that are not at issue in this proceeding. Those include scenarios where the Decision purports to require development-stage approvals to the initial subdivision requirements, such as a 1200-C erosion control permit or review by the City Engineer. The Decision is a stark departure from traditional land use practice, which conditions applications on obtaining such approvals from other agencies before actual development commences. In particular, a tentative plan for a land division is for the purpose of showing the general design of the proposed subdivision or partition. A final plat would then be prepared to incorporate any

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changes necessary for compliance with the terms to the approved tentative plan as per ORS 92.040.

4 – The Decision improperly requires the Applicant to analyze potential neighborhood impacts that may arise from construction of public streets that are within public rights of way and that are identified and adopted in the City’s plans as planned higher order streets. The Decision uses the alleged lack of such analyses as a basis for denying various standards that do not require any level of impacts analysis. For example, the City claims a failure to analyze potential neighborhood impacts as a basis to deny the application under a standard that encourages drainage structures to be placed to encourage drainage in established drainage ways. Such broad-scale analyses already occurred with the adoption of the City’s Railroad District Management Plan when that plan was adopted as a refinement plan to the City’s comprehensive plan. It is an improper collateral attack on the adoption of that plan to force the Applicant to revisit those impacts, and counter to statutory provisions to allow such subjective standards to be used when addressing needed housing within a refinement plan area.

5 – The City prejudiced Applicant’s substantial rights by preventing Applicant from having a full and fair hearing of the issues. In response to evidence and comments provided by others during the public comment period, the Applicant submitted additional detail and argument as rebuttal. Prior to issuing the Decision, City Staff excluded the Applicant’s supplemental materials from the record. This exclusion had a real impact on the outcome. For example, Staff determined the application was complete and did not ask the Applicant to provide any information on Implementation Strategy 10.2.1. When that issue was raised by others, however, the Applicant attempted to respond. After rejecting the response from the record, Staff concluded in the Decision that the Applicant had not addressed Implementation Strategy 10.2.1. Staff’s approach essentially set a trap for the Applicant, initially agreeing through the completeness response that Implementation Strategy 10.2.1 did not need to be addressed, but then reversing course and not letting the Applicant address that provision.

6 – The Decision fails to acknowledge, much less address, the incremental implementation of the City’s own Comprehensive Plan through construction of individual developments. Incremental Comprehensive Plan implementation through individual developments is the approach presented by the Applicant and is consistent with the approach taken for urban development in the City and around the state. As a result, the City improperly attempts to use the Decision to address development that is neither part of the Application nor necessary to occur before the proposed development occurs. For example, the City’s Railroad District Management Plan calls for closure of other rail crossings after a new connection at Belmont is established. Yet, the Decision relied on the lack of such closures currently as the basis for denying the application, even though the proposal in the application will include construction of the public crossing required in the City’s adopted master plan that the plan calls to be completed prior to closing or converting (e.g., public to private) pre-existing substandard crossings located elsewhere.

7 – The Decision flatly ignores evidence in the record, causing the City to unnecessarily deny the Applicant’s request. For example, the Decision concludes in part that the proposed width of a segment of Belmont Road does not meet the City’s standards for collectors. As relevant to the application, however, the portion of that street described in the Decision is proposed as a local

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street consistent with the City's adopted plans and not as a collector as suggested in the Decision. In one instance, addressing the requirement to locate streets parallel to railroad rights-of-way, the City concludes in one paragraph that the criterion is satisfied, but then in the next paragraph concludes the Code provisions are not met because it does not approve new rail crossings, even though new crossings are not regulated by that portion of the Code.

8 – The Decision, in more than one respect, is unconstitutional. The City's denial of the application is based in major part on the City's assertion that the application cannot be approved without substantial additional off-site improvements to be paid for by the Applicant, or which the Applicant has no control over, beyond the improvements already agreed upon by the Applicant as part of the Application. The City's attempt to exact such improvements from the Applicant was done without any analysis by the City that the improvements have a rational nexus to the proposed development, nor any analysis that the improvements have the appropriate proportionality to the impacts of the development. United States Supreme Court precedence prohibits the City from denying the application as a means of avoiding such an analysis. Further, the City has, through the Decision, improperly delegated its authority under the Code to other agencies and entities in violation of the Oregon Constitution.

9 – Even if the City's criteria concerning off-site connectivity and facility improvements could somehow be read to apply and also be found constitutional, the City's denial is nevertheless inconsistent with the requirements of ORS 197.522, which require the City to either approve the application or to impose conditions of approval to make it consistent with local law.

In summary, the City's decision is flawed for multiple reasons, all of which are founded on the misapplication of the Code and state law, procedural mis-steps, or unconstitutional approaches to the City's decision-making.

III. Proposed Process for the Appeal

The expedited land use statutes do not prescribe a specific process for this appeal. The statutes do, however, require that the City appoint a referee to hear this case, and that the referee make a final decision within 42 days of the filing of the appeal. In order to accommodate those requirements, the Applicant proposes the following procedures:

- 1 – That the City appoints the referee as soon as is reasonably possible
- 2 – That the referee schedules a hearing sometime after August 3, but not later than August 9
- 3 – That the referee allows anyone with standing to submit information and argument to the referee through the date of the hearing
- 4 – That the referee allows the Applicant to provide any rebuttal evidence or argument after the hearing until August 17
- 5 – That the referee makes a final decision by August 31

The above schedule allows any party with standing to fully participate in the appeal process. Further, the schedule allows the Applicant, as the party that bears the burden of proof, to ensure that the record is complete and that the Applicant has had a full opportunity to address the errors

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in the Decision. Finally, the schedule provides the referee with an extended period of time after the hearing to consider the appeal to and to make a final decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Brooks', with a long horizontal flourish extending to the right.

Tommy A. Brooks