



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: Appeal of PC Decision on Remand of Subdivision; File SUB 2020-001
Property Owner: NIETO TONY/TORI
Mailing Address: 34 S FOOTHILL RD Medford, OR 97504
Phone:
Street Address or Property Location: 201 Belmont Rd
Email Address: Agent: mike@csaplanning.net
Applicant/Consultant (if not owner): CSA Planning, Ltd.
Mailing Address: 4497 Brownridge Terrace Suite 101 Med, OR 97504
Phone: 541 779-0569

Table with 4 columns: Assessor's Map Number (Township, Range, Section, Quarter Section), Tax Lot Number, Acres, Zone. Row 1: 38-1W- 36, 1001, 26.58, RS-5. Row 2: 38-1W-

Subzone (if applicable) _____

Pre-Application Meeting Completed? [X] Yes [] No [] N/A Date Completed: Sep 21, 2107

APPLICATION TYPE (check all boxes that apply)

Grid of application types with checkboxes: Site Development Plan Review, Variance, Fence, Annexation, Accessory Dwelling Unit, Appeal (checked), 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.

Signature of Applicant

Applicant's Signature

Signature of Property Owner

Property owner's Signature (required)

Date: 8-7-20

Date

Date: 8-7-20

Date

APPLICATION FEES & DEPOSITS

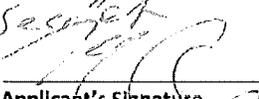
(Application fees are calculated by ACTUAL PROCESSING COSTS)

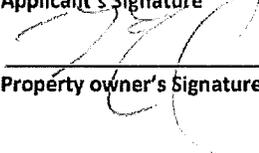
Fees and deposits are intended to cover the full cost for processing applications. Applicants seeking development which requires more than one type of review (such as site plans and conditional use permits) must pay all applicable fees and deposits.

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.

See p. 2


Applicant's Signature


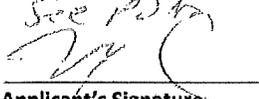
Property owner's Signature (required)

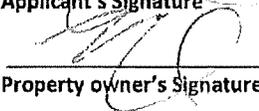
8-7-20

Date
 8-7-20

Date

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.

See p. 2


Applicant's Signature


Property owner's Signature (required)

8-7-20

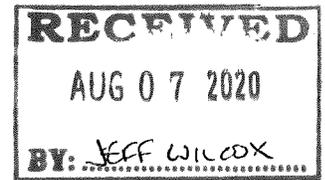
Date
 8-7-20

Date

| FOR OFFICE USE ONLY | | | |
|-----------------------|----------|-------------|--------------|
| Deposit Paid (Amount) | Date | Received by | File Number |
| \$257.00 | 8/7/2020 | JEFF WILCOX | APL 2020-002 |

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

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www.cablehuston.com

August 7, 2020

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

RE: Planning File SUB 2020-001 – Notice of Appeal

Dear Mr. Moody:

As you know, this firm represents the Applicant in the above-captioned matter. Pursuant to Section 8-3M.150 of the Zoning Code (“Code”) of the City of Talent (now codified as (18.190.050), this letter serves as the Applicant’s Notice of Appeal of the Planning Commission’s Order In The Matter Of Planning File No. SUB 2020-001 Located At 201 Belmont Road, dated July 31, 2020 (“Order”). Attached to this letter is a copy of the Notice of Decision (“Notice”) describing the Order.

Pursuant to the Notice, the Applicant provides the following:

1 - An identification of the decision being appealed, including the date of the decision:

As noted above, the Order is the decision being appealed. The date of the Order is July 31, 2020.

2 - A statement demonstrating the person filing the Notice of Appeal has standing to appeal:

Pursuant to the Notice and the applicable provisions of the Code, an applicant has standing to appeal a Type III decision. The Applicant is submitting this Notice of Appeal.

3 - A statement explaining the specific issues raised on appeal:

A – The Order is unlawful.

- i. In issuing the Order, the Planning Commission improperly mounted a collateral attack on the City’s own Transportation System Plan (“TSP”). The TSP calls for the construction of an improved railroad crossing on Belmont Street, but the Planning Commission determined, as a matter of law, such a crossing could not be developed. Further, over the objection of City Staff, the Planning Commission improperly imposed a burden on the

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Zac Moody
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Applicant (to make certain off-site improvements) that the Planning Commission acknowledged it would not impose on the City itself, thereby modifying provisions of the Code only as applied to the Applicant.

- ii. The Order 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 the Planning Commission’s misapplication of the Code provisions that may properly be applied to a subdivision under the needed housing statutes. The Order attempts to apply standards in the Code that are not clear and objective, in contravention to ORS 197.307(4). Further, the manner in which the Order applies City standards has resulted in unreasonable cost and delay in the development of needed housing, thereby discouraging needed housing, in contravention of ORS 197.307(4).
- iii. The Order misinterpreted various provisions of the City’s Code. For example, in determining that the Applicant had not met its burden of proof to demonstrate that a transportation impact study was not required, the Planning Commission concluded that existing trips already on the transportation system are “generated” by the proposed development.

B – The Order is not based on substantial evidence in the record.

- i. In issuing the Order, the Planning Commission relied, in part, on evidence not in the record. For example, the Planning Commission relied on undocumented assertions from individual Planning Commissioners of traffic counts from certain existing businesses in the area.
- ii. In issuing the Order, the Planning Commission relied, in part, on statements in the record that the Applicant had no “insurable” access to the Property as *prima facie* evidence that “no access” to the Property exists at all.

C- The Order was improperly based in part on undisclosed *ex parte* contacts.

- i. In her opening remarks during deliberations, the Chair of the Planning Commission noted she had a conversation with her neighbor, who she asserts is a fire fighter, and that, based on that conversation, she had concerns over the safety of the proposed development. The Chair never disclosed this contact when asked about *ex parte* contact, did not provide the specific substance of that contact, and did not give the Applicant or any other participant the opportunity to rebut the content of that contact.

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D - The basis for denial in the Order is unconstitutional.

- i. The Planning Commission's denial of the request in the application is based in part on the Planning Commission's belief, over the objection of City Staff, that the Applicant has an unfettered obligation to pay for any off-site improvements the Planning Commission finds to be required by the City's development regulations. This is in direct contravention to constitutional law on such matters. Further, Oregon law provides that the Applicant has the right to object to the constitutionality of land dedications or public improvement requirements as unconstitutional but accept the improvements as a condition of development approval. After objecting to the dedications or improvements, an Applicant may then contest the constitutionality of such conditions of approval in court at a later date. The Planning Commission failed to acknowledge the Applicant's rights in this regard and the record demonstrates these rights were exercised.
- ii. The Planning Commission's denial was based on the Applicant's objection to constructing certain street improvements without any analysis by the Planning Commission that the improvements have a rational nexus to the proposed development, nor that the improvements have the appropriate proportionality to the impacts of the development.

E – Pursuant to the Code, the Hearings Officer's review of this matter will be *de novo*. The Applicant therefore reserves the right to raise other issues and arguments relating to errors the Planning Commission made, as evidenced both by the Planning Commission's deliberations and by the Order itself.

4 - A \$250 deposit will be required as a filing fee to cover the cost of staff time to process the request for an appeal.

Included with this letter is the required \$250 deposit.

The Applicant will provide additional detail on these issues and others during the appeal process before the Hearings Officer.

Sincerely,



Tommy A. Brooks