

**CITY COUNCIL AGENDA TOPIC**

Ordinance both authorizing the City Manager to terminate Concomitant Zoning Agreement No. 4441 and repealing a related Ordinance No. 2486 that rezoned the subject property and incorporated Concomitant Zoning Agreement No. 4441 by reference; and establishing an effective date.

Kathy Gerla, City Attorney, 452-7220  
Robbie Sepler, Assistant City Attorney, 229-6506  
*City Attorney's Office*

**EXECUTIVE SUMMARY****ACTION**

A developer, Pulte Homes of Washington, Inc., desires to construct 19 townhome units on a site in BelRed. Under current zoning, this project is a type of multifamily residential housing envisioned for the site. However, in 1977, the City and a prior owner of the site executed and recorded a Concomitant Zoning Agreement (CZA) that placed several restrictions on future development of the site, one of which prohibits the site from being used for residential use. In 1977, the City also adopted Ordinance No. 2486, which rezoned the site and incorporated the CZA by reference. In order for this townhome project to proceed, the CZA needs to be terminated and Ordinance No. 2486 needs to be repealed. Tonight, staff will provide Council with the opportunity to take action to repeal Ordinance No. 2486 and to authorize the City Manager to terminate the CZA.

**RECOMMENDATION**

Move to adopt Ordinance No. 6780.

**BACKGROUND/ANALYSIS****What is the proposed project?**

Demolition of an existing office building and construction of 19 townhomes. The office building is approximately 28,400 square feet and has been on the site since 1979. The developer has submitted, and the Development Services Department is currently reviewing, a Design Review application for the project.

**Where is the proposed project located?**

The property is located at 12951 NE Bellevue-Redmond Road. See Attachments C and D for base and aerial maps showing the vicinity of the proposed site for the project.

**What is the current zoning of the property?**

The property is in the BelRed-Office Residential Transition zone (BelRed-ORT). Under LUC 20.10.375(A)(12), the purpose of the BelRed-ORT zone is to provide an area for low-intensity offices and uses and low density multifamily residential dwellings, developed in such a manner as to provide a buffer between residential and more intensively developed properties. See Attachment E for a zoning

map showing the zoning in the vicinity of the proposed site for the project.

**Is the proposed project allowed under current zoning?**

Yes. Absent the Concomitant Zoning Agreement and assuming all requirements of the BCC and LUC are met, current zoning would allow 19 townhome units to be constructed on the site. See Chart 20.25D.070, Residential Uses in BelRed Land Use Districts.

The developer wants to develop the property under current zoning and, therefore, desires that the Concomitant Zoning Agreement be terminated in its entirety.

**What is a Concomitant Zoning Agreement (CZA)?**

A CZA is, essentially, the equivalent of a modern-day Development Agreement. In the past, when rezoning property, the City regularly used CZAs to attach site-specific restrictions to govern development of the property. Once executed and recorded, CZAs are binding on the City and any owner of the property until the CZA is terminated. This means that in the event of a conflict between current zoning and the terms of a CZA, the CZA will control.

**Why was a CZA recorded on this site?**

Prior to 1977, the property was zoned R-10. In 1977, a prior owner of the property applied to rezone the property from R-10 to Office to, presumably, allow the construction of the current office building on the property.

A public hearing was held, the Planning Commission recommended approval of the rezone, and in 1977 the City Council adopted Ordinance No. 2486, which approved the rezone subject to the restrictions contained in the CZA.

**What restrictions are contained in the CZA?**

The CZA contains five restrictions governing development of the property, which are summarized as follows:

1. Vehicular access to the property shall be only from 130<sup>th</sup> Ave NE
2. No residential uses shall be permitted on the property.
3. Requires an 18-foot landscape buffer on the southern property lines of the site.
4. Restricts development of the property to the configuration and location of the structures reviewed by the Planning Commission on August 4, 1977 (presumably, the office building that currently exists on the property).
5. All required landscaping must be maintained in a healthy condition.

**What is the value of keeping the CZA restrictions in place?**

None. As summarized below, application of current zoning to the property would meet or exceed the value of each restriction contained in the CZA.

1. *Vehicular access to the property shall be only from 130<sup>th</sup> Ave NE*

The property is currently accessed from Bel-Red Road. 130<sup>th</sup> Ave NE terminates north of the site at NE Bel-Red Road. The property does not abut 130<sup>th</sup> Avenue NE, nor was the road ever constructed at this location. Moreover, the City has neither existing right-of-way nor plans to extend 130<sup>th</sup> Avenue NE at this location. Since 130<sup>th</sup> Ave NE does not exist adjacent to this property and there are no plans to extend it at this location, this restriction does not provide any value.

*2. No residential uses shall be permitted on the property.*

As the property is zoned BelRed-ORT, current zoning envisions either low-intensity offices and uses (e.g., the current use of the property) or low density multifamily residential dwellings (e.g., the proposed townhome project) on the property. The current office use of the property could continue under current zoning. However, unless the CZA is terminated, the proposed townhomes cannot be constructed on the site. Therefore, retaining the CZA would preclude the development of the property as current zoning would otherwise allow.

*3. Requires an 18-foot landscape buffer on the southern property lines of the site.*

The BelRed-ORT zone is subject to the landscape standards listed in LUC 20.25D.110. As the southern property line of this site abuts a single-family (R-3.5) zone, LUC 20.25D.110 would require a 20-foot landscape buffer, while the CZA only requires an 18-foot landscape buffer. Applying current zoning standards would provide a wider landscape buffer. In addition, the required buffer would also be more dense because understory planting is required in addition to trees per LUC 20.25D.110.C, which this CZA does not require. Therefore, termination of the CZA and application of current code would provide a greater value by requiring a denser 20-foot landscape buffer instead of the 18-foot landscape buffer that would otherwise be required under the CZA.

*4. Restricts development of the property to the configuration and location of the structures reviewed by the Planning Commission on August 4, 1977 (presumably, the office building that currently exists on the property).*

This condition does not allow the redevelopment of the site, which does not provide an opportunity for the site to meet the intent of the BelRed-ORT zone. Additionally, the BelRed-ORT zone is a design district, so any exterior modifications are subject to review and approval through the Design Review process to ensure the proposal will meet Bel Red zoning standards, including the Bel Red design guidelines. Taken together, termination of the CZA would allow the site to be developed as intended for property zoned BelRed-ORT and any new development on the site would be subject to current design standards, rather than the 1977 design standards required under the CZA. For these reasons, this restriction in the CZA does not provide a value that couldn't be achieved by applying current zoning standards.

*5. All required landscaping must be maintained in a healthy condition.*

Current code authorizes the Development Services Department to require assurance devices, which are legal agreements through which a developer guarantees or "assures" the City that money will be available to pay for the installation or maintenance of required improvements. A landscape installation and maintenance assurance device is a standard condition of approval for design review project applications with required landscaping to ensure that all landscaping will be planted and remain healthy. Additionally, removal of landscaping required under current code would be a code violation. For these reasons, current code has strong protections to ensure that required landscaping is maintained in a healthy condition, so this restriction in the CZA does not provide a value that couldn't be achieved by applying current zoning standards.

**Why does Ordinance No. 2486 need to be repealed?**

Section 1 of Ordinance No. 2486 adopted by reference the terms and restrictions of the CZA.

Therefore, to fully and unambiguously terminate the CZA, the City Council will also need to repeal Ordinance No. 2486.

The repeal of Ordinance No. 2486 will have no effect on current zoning, which will remain in effect. The only effect of the repeal will be that the site can be developed as allowed under current zoning, rather than as would otherwise be allowed under the CZA.

**What happens if Council takes no action to terminate the CZA or repeal Ordinance No. 2486?**

The restrictions contained in the CZA will control and the developer will not be able to construct the proposed project—or any project with residential uses—on the property.

## **POLICY & FISCAL IMPACTS**

### **Policy Impact**

Termination of the CZA and adoption of the Ordinance would support the following policies of the BelRed Subarea Plan:

- **S-BR-12.** Develop and implement landscaping standards that promote sustainable design, and encourage natural drainage practices where both appropriate and feasible.
- **S-BR-13.** Provide graceful edges and transitions between new land uses and established light industrial areas, and between new development and neighborhoods in adjacent subareas.
- **S-BR-40.** Encourage a diversity of housing types, from high density, multi-story housing in transit nodes, to medium density housing outside nodes, to other innovative housing forms, such as live/work and work/live units.
- **S-BR-93.** For the area south of Bel-Red Road, provide for a mix of office and housing in this area, with low intensity buildings of one or two stories serving as an appropriate buffer between the uses north of Bel-Red Road and the single-family residential neighborhoods to the south. While office should remain a focus, housing in this area is also a suitable transition use.

The full BelRed Subarea Plan is available in the Council Library.

### **Fiscal Impact**

There is no fiscal impact associated with implementing these changes.

## **OPTIONS**

1. Move to adopt the Ordinance both authorizing the City Manager to terminate Concomitant Zoning Agreement No. 4441 and repealing a related Ordinance No. 2486 that rezoned the subject property and incorporated Concomitant Zoning Agreement No. 4441 by reference; and establishing an effective date.
2. Do not adopt the Ordinance and provide alternative direction to staff.

## **ATTACHMENTS**

- A. Concomitant Zoning Agreement No. 4441
- B. Ordinance No. 2486 (1977)
- C. Vicinity Map (Base)
- D. Vicinity Map (Aerial)

E. Vicinity Map (Zoning)  
Proposed Ordinance No. 6780

**AVAILABLE IN COUNCIL LIBRARY**

Bel-Red Subarea Plan  
Proposed Termination of Concomitant Zoning Agreement