

September 18, 2017

## **CITY COUNCIL AGENDA MEMORANDUM**

### **SUBJECT**

Resolution authorizing the City Manager to formally terminate Concomitant Zoning Agreement No. 4033, which has been rendered void and unenforceable by operation of law.

### **FISCAL IMPACT**

There is no fiscal impact resulting from the proposed Resolution.

### **STAFF CONTACTS**

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*Development Services Department*

### **POLICY CONSIDERATION**

Should the City adopt the Resolution authorizing the City Manager to formally terminate Concomitant Zoning Agreement No. 4033, which is void and unenforceable by operation of law?

### **BACKGROUND**

Concomitant Zoning Agreement No. 4033 (the Concomitant) was adopted on January 7, 1977. The Concomitant provided conditions affecting the development of the southern portion of 13133 Bel-Red Road NE (the Property) in exchange for the City's rezoning of that southern portion from R-13.5 (Residential, minimum lot size 13,500 square feet) to OL (Office District). Consistent with the Concomitant, an office building and associated parking were constructed in or around 1978, and this development exists today, housing the Washington State Department of Licensing.

However, the Concomitant did not restrict the City's power to rezone the Property in future years (see Attachment A). Between 1978 and 2009, the City adopted multiple legislations that changed the Property's zoning designation and superseded the Concomitant, including the following significant reclassifications:

#### *Ordinance No. 2629B*

Adopted in 1978, Ordinance No. 2629B created new land use classifications and districts, a new land use map, new standards and regulations, and "repeal[ed] Ordinance No. 68 and Ordinance No. 1282, and all Ordinances amending Ordinance No. 68 and Ordinance No. 1282." Ordinance No. 2629B effectively repealed the Concomitant, which was an amendment to Ordinance Nos. 68 and 1282.

#### *Ordinance No. 4897*

Adopted in 1997, Ordinance No. 4897 reclassified the southern portion of the Property, along with eight other partial parcels, from zoning designation PO to O for conformity with the Bel-Red/Northup Subarea Plan. As a result, this Ordinance reclassified the portion of the Property covered by the Concomitant.

*Ordinance Nos. 5858, 5874, 5875, and 5876*

Adopted in 2009, Ordinance No. 5858 amended the Comprehensive Plan to adopt a new Bel-Red Subarea Plan, and the corresponding Ordinance Nos. 5874, 5875, and 5876 amended the Land Use Code to add a new Part 20.25D for the Bel-Red Subarea and amended the land use designations for all properties within the Bel-Red Subarea. The record on adoption of these Ordinances specifically noted that the legislative rezone would eliminate all site specific conditions and previous concomitant agreements in the Bel-Red Subarea.

These legislative actions invalidated the Concomitant by operation of law. For instance, the City does not have the land use designations created by the Concomitant, R-13.5 and OL, in its zoning map or code. It is impossible for the owner to utilize the Property or for the City to administer regulations consistent with these non-existent designations. Furthermore, the landscaping and lighting conditions imposed by the Concomitant are similarly outdated, and any new development proposal would be required to comply with current code and development standards.

Despite the fact that the Concomitant is now void and unenforceable by operation of law, the Concomitant has not been expressly repealed. Therefore, the title report for the Property incorrectly shows the Concomitant as an exception. The current property owner, 13133 Bel-Red Road LLC, wishes to remove this cloud from title and has requested the City participate in accomplishing a formal termination of the Concomitant. The proposed Resolution would authorize the City Manager to execute a termination of the Concomitant, thereby removing this cloud from the Property's title report. The proposed Resolution is also consistent with the City's practice of repealing outdated, unenforceable concomitant agreements when they are superseded and invalidated by subsequent rezones.

**EFFECTIVE DATE**

If approved, this Resolution becomes effective immediately upon Council adoption.

**OPTIONS**

1. Adopt the Resolution authorizing the City Manager to formally terminate Concomitant Zoning Agreement No. 4033, which has been rendered void and unenforceable by operation of law.
2. Do not adopt the Resolution and provide alternative direction to staff.

**RECOMMENDATION**

Option 1

**MOTION**

Move to adopt Resolution No. 9310 authorizing the City Manager to formally terminate Concomitant Zoning Agreement No. 4033, which has been rendered void and unenforceable by operation of law.

**ATTACHMENTS**

A. Concomitant Zoning Agreement No. 4033  
Proposed Resolution No. 9310

**AVAILABLE IN COUNCIL DOCUMENT LIBRARY**

Proposed Termination of Concomitant Agreement