



Staff Report

Meeting Date: May 18, 2020

From Jordan Wheeler, City Manager

SUBJECT: Development Agreement with Geo Development LLC

Background:

Since late last year, the City and the applicant for the proposed Bailey Meadows subdivision development (Geo Development LLC dba Allied Homes and Development) have been negotiating a non-statutory development agreement. The development agreement was proposed as a unique and creative solution to making an arterial connection to highway 211 as envisioned in the city's Transportation System Plan and reducing the impact of the new subdivision on the existing the Nicholas Glen neighborhood. With this connection, the existing Nicholas Glen residents would have less traffic in their neighborhood and the road would provide more connectivity options to the future residents of Bailey Meadows and other potential developments in the area.

Ideally, the developer would pay to construct the Gunderson Road and Highway 211 connection to adequately provide public facilities to serve the subdivision. But despite the city's strong desire and the appellant's arguments, as advised by the city attorney there is a real risk that the development could ultimately be built without the second access if it was appealed to the Land Use Board of Appeals. Given the reality of the situation, the development agreement was proposed as a way for the developer to contribute to this infrastructure project and reduce the direct cost of the project to the city while addressing some concerns from the public regarding the subdivision.

The development agreement identifies the commitments from the development and the city to accomplish the construction of Gunderson Road including the connection to highway 211. The key commitments are:

- The developer would build Gunderson Road. The city would provide transportation system development charges (SDCs) credits and surplus SDC credits in exchange for the road construction. In addition, the city would set the building plan review fee at \$300 for the subdivision which provides an estimated savings to the developer of \$70,000.
- The developer would dedicate 2.38 acres for future parkland. The property is located between the new Gunderson Road and southeast portion of the proposed subdivision. This amount is approximately one acre more than the city's code requires.
- The developer would apply to ODOT to use Gunderson Road as the construction access for building the new subdivision.

- The developer would pay the city \$500,000 as a cash contribution towards the Highway 211 improvements and intersection with Gunderson road.

Costs for Gunderson Road/TSDC Credits

The developer's estimate for Gunderson Road is approximately \$700,000. The city will reimburse the developer \$382,485 in transportation SDCs. In addition, the city will provide excess credits that the developer may transfer to another developer or builder to use towards other street improvement projects. The city council will need to amend Sandy Municipal Code chapter 15.28 to allow surplus credits to be issued and transferred. Other Oregon cities allow this practice and it is a method in which qualified public infrastructure projects can be accomplished during the time of development.

In addition to the credits, the developer will offset the costs of constructing the road via a fee discount on the plan review charges for the new homes in the development. The plan review fee will be set at \$300 for the subdivision, rather than a percentage of the permitted value. The estimated value of this plan review fee discount is \$70,000.

The developer must submit a report of the final costs to construct the road, without any markup, and the credits the city issues will not exceed the final costs.

The credits and fee discount represent future revenue that will be foregone and not an expense to the city. The SDC credits will expire ten years after they are issued.

Gunderson Road Construction Access

Gunderson Road would be constructed by the developer and accepted by the city prior to the city issuing the 30th certificate of occupancy for the subdivision. The developer committed to pursuing all necessary permits from ODOT in order to use the new right of way as the construction access for all construction activity. Construction access and traffic was another issue that the Nicholas Glen neighborhood expressed. Taking the construction traffic off Melissa will reduce the impact to the neighborhood as the subdivision is built.

Highway 211 Improvements and Gunderson Road Intersection Project

Per the developer's final proposed condition, the developer would contribute up to \$500,000 towards the highway 211 improvements and intersection with Gunderson Road. The payment will be due no later than the recording of the final plat for the subdivision. The city's and developer's cost estimates range between \$1.5 million and \$1.8 million for the project. The cost estimate in the development agreement splits the difference at \$1.7 million.

If the cost for the project is less than the estimate, the developer will be reimbursed up to \$100,000. After the first \$100,000, the developer will receive 25% of the savings. As

an example, if the final project cost is \$1.5 million, the developer would receive \$125,000 (the first 100,000 plus 25% of the savings below \$1.6 million).

The high cost of the project reflects the extent of the improvements that are needed to highway 211 to ensure the intersection is safe and meets the appropriate standards. For example, a portion of the highway will need to be re-graded to reduce the slope at the adjoining intersection, turn lanes will need to be added, and guardrails will need to be installed for some portion of the highway. The city will seek to reduce the posted speed of that stretch of highway to 45 mph. This could lower the costs of the improvements. The economic conditions as a result of the COVID-19 pandemic, while very unfortunate broadly speaking, are also anticipated to result in lower construction costs.

The city and ODOT have negotiated the transfer of jurisdiction highway 211 to the city for this portion of the highway to Proctor Blvd. This gives the city local control over the design and permitting for this project as well as future improvements that need to be made along this important stretch of highway.

Budget Impact and Street Fund Projection

The city has available resources for the highway 211 improvement project. The street fund's beginning balance for the biennium was \$3.6 million. Given the estimated project cost and the developer's contribution, the estimated total cost to the city would be \$1.2 million. The other projects planned for 2019-21 include the 362nd and Bell Street extension and Ten Eyck to Vista Loop sidewalk project. Even with the anticipated decrease in gas tax revenue from the impact of the coronavirus pandemic, the street fund has the available resources for the project.

The proposed jurisdiction transfer of highway 211 includes a one-time \$500,000 payment from ODOT to the city for maintenance and accessibility improvements. All or a portion of those funds could be used as a resource for the highway and intersection improvement project.

Parkland Dedication

The developer has offered to dedicate 2.38 acres to the city for parkland rather than pay the fee in lieu. The parkland is located between the SE portion of the subdivision and the proposed route of Gunderson Road. A local park was another issue that was brought up by residents as an amenity that was needed in the area.

Conditions and Next Steps

The agreement is contingent upon several conditions.

- The developer must receive final approval to expand the City's urban growth boundary. The City Council approved the UGB expansion on March 2. The

Clackamas County Board of Commissioners are scheduled to hear the application on June 3.

- The developer must receive final approval from the City Council to annex the UGB property to the city. This is planned for June 15.
- The city must obtain jurisdiction over highway 211 within the first six months of the date of the agreement. The draft transfer agreement is currently under legal review by the State.
- The city must amend its street capital improvement plan to add Gunderson Road as a project. This is planned for June 15.
- The city must amend the Sandy Municipal Code chapter 15.28 to allow for surplus TSDC credits and for credits to be transferred. These changes are also planned to come before the City Council on June 15.

Recommendation:

The development agreement was the best path for funding and constructing a second access to the new development that would reduce the impact to our existing residents in Nicholas Glen. Gunderson Road accomplishes a city goal of having an arterial connection to Highway 211 in that area and it improves safety and connectivity for the new and existing neighborhoods.

The road will be built through SDC credits and fee discount and not a direct cost to the city, and at least a portion of the cost of the highway improvements will be paid by the developer. without a direct cost At least part of the road and connection to highway 211 will be built without a direct cost to the city and in a less expensive manner than as a public works project, where prevailing wages would apply. It would also ensure that the existing Nicholas Glen residents would have less traffic in their neighborhood as heard in much of the public testimony.

The alternative is the likely scenario that the developer would gain an approval via an appeal and construct the development without Gunderson Road. Consequently, the city would need to expand the urban growth boundary and build the road someday in the future and Melissa Ave would absorb all the traffic from the neighborhood until Gunderson or another southern access to highway 211 is constructed. If the developer is successful on appeal, the city would likely be obligated to pay for the developer's legal fees (in addition to the city's own costs), as was true in the recent case involving the City of Silverton.

The agreement is a fair compromise to a complex and contested development. It is important to note that the public's impassioned involvement in the land use application and appeal and the Council's careful consideration of the development had a significant positive effect on the application and the provisions in the development agreement for the city. We believe the community's interests are represented well in this agreement as a direct reflection of the public's testimonies and engagement.

Going forward, staff intends to bring forward amendments to the development code to address the issues that were present with this application.

Staff recommends the City Council approve the development agreement with Geo Development dba Allied Homes and Development and authorize the city manager to sign the agreement on behalf of the city.