CITY OF BOARDMAN
ORDINANCE NO. 1-2024

AN ORDINANCE AMENDING THE BOARDMAN DEVELOPMENT CODE CHAPTER 3.4 PUBLIC FACILITIES STANDARDS SECTION 3.4.000 PURPOSE AND APPLICABILITY ITEM B. APPLICABILITY TO ALLOW THE CITY TO DEFER CERTAIN PUBLIC IMPROVEMENTS

WHEREAS, the City of Boardman ("City") has land use planning authority granted by Oregon Revised Statute (ORS) Chapter 227; and

WHEREAS, the City has an acknowledged Comprehensive Plan, Transportation System Plan, and Development Code; and

WHEREAS, the City has identified a need to amend provisions of the Boardman Development Code, Chapter 3.4, Public Facility Standards, for certain public improvement projects; and

WHEREAS, a Notice of Proposed Change was submitted electronically to the Oregon Department of Land Conservation and Development on October 22, 2023; and

WHEREAS, notice for the public hearing before the Planning Commission was published on November 28, 2023, and the notice for the public hearing before the City Council was published on December 19, 2023, both in the East Oregonian; and

WHEREAS, the Planning Commission held a public hearing on December 20, 2023, and, after hearing testimony from interested parties, recommended the City Council adopt the proposed changes; and

WHEREAS, the Boardman City Council held a public hearing on January 2, 2024, at which it received the recommendation of the Boardman Planning Commission and heard testimony from the public; and

WHEREAS, after considering the amendment, the Planning Commission's recommendation and public testimony, the Boardman City Council decided to approve the amendment to Section 3.4.100.B of the Boardman Development Code and directed staff to prepare the adoption documents.

NOW THEREFORE, THE PEOPLE OF BOARDMAN DO ORDAIN AS FOLLOWS:

Section 1 Affected Document. Based on the evidence and information in the record, the findings attached as Exhibit A, and after full consideration of the matter, the City Council of the City of Boardman adopts the amendment to Section 3.4.100.B of the Boardman Development Code attached as Exhibit B.

Section 2 Readings. The first reading of this Ordinance shall be on February 6, 2024.

Section 3 Effective Date; Emergency. Because of the permitting requirements for a public improvement project that is subject to this code amendment, the City Council declares there to be an emergency affecting public health and safety. Therefore, this ordinance shall take effect immediately upon its final reading and passage.

Section 4 Attached Document. Attached as Exhibit B to this Ordinance is the approved changes to the Boardman Development Code Chapter 3.4 Public Facilities Standards Section 3.4.100.B Applicability.

Passed by the Council and approved by the Mayor, this 6th day of February, 2024.

____
Paul Keefer, Mayor

ATTEST:

____
City Clerk – Amanda Mickles

EXHIBIT A
MEMORANDUM

TO: Boardman City Council

CC: Carla McLane, City Planner

FROM: Christopher D. Crean, City Attorney CDC

SUBJECT: Tallman/Kellington Letter

DATE: February 5, 2024

*******Confidential Attorney-Client Privileged Communication*******

Introduction

This memorandum responds to the letter submitted into the record by Kellington Law Group on behalf of Jonathan Tallman and 1st John 2:17, LLC ("Tallman"). The letter raises numerous objections to the proposed text amendment to Boardman Development Code ("BDC" or the "development code"), section 3.4.000. In many cases, the basis for the objections is not particularly clear. To the extent we understand them, we address Tallman's central arguments below. Ultimately, we conclude that none of the objections have merit, the proposed amendment is consistent with the applicable laws, and the City Council therefore may approve the amendment.

Analysis

Tallman first argues that the City cannot defer construction of *any* improvements that would otherwise be required by the development code, because there is no timeline for full completion. This argument ignores that implementation of the City's Transportation System Plan ("TSP"), including the POM Interchange Area Management Plan ("IAMP") and Downtown IAMP, has always been sequential, occurring over a period of years, and there is no requirement for a specific timeline. Further, the City may only defer compliance with a "development standard," such as the requirement for sidewalks, bike lanes and planter strips in BDC 3.4.100.J, when the City concludes it is "likely" that the sidewalks will be installed when the adjacent property develops. Thus, although there is no specific timeline, the City may defer installation only when it concludes, based on evidence in the record, that the sidewalks are "likely." Contrary to Tallman's objection, it is not an infinite time horizon for the improvements.

Second, Tallman objects that the decision to defer an improvement will be a "backroom process" without an opportunity for public notice and a hearing. This argument is contrary to Tallman's

own experience appealing the prior permit for Devin Loop (also referred to as the "Loop Road"), which led to hearings before the Planning Commission and City Council. The City provided notice of the initial decision and both public hearings, at which Tallman testified. Thus, the argument that a decision to defer compliance with a development standard will be a "backroom process" without an opportunity for public notice or a hearing is baseless, not made in good faith, and therefore is rejected.

Tallman then objects that a decision to defer compliance with an approval standard will be "unlawful" because there is no "assurance" that the related improvement will ever be built. This is effectively the same argument as above – that all required improvements must be built at, or near, the same time. There is no such legal requirement and Tallman does not identify one.

Ultimately, the central issue in these objections is when the adjacent facilities will be built. It is often the case that public roads (or other public improvement projects such as sewer lines or water lines, *see* BDC 3.4.300) are built without simultaneously installing adjacent facilities such as sidewalks and landscaping. Indeed, the discussion at the planning commission highlighted roads in existing residential neighborhoods that were built without sidewalks. Therein lies the problem – the onus is on the City to ensure that the facilities are installed when the adjacent property develops. Apparently that did not happen with the residential areas that were discussed by the planning commission. (We are not aware when those areas were permitted and constructed, or what standards applied at the time.) Tallman's concerns are thus misplaced. The burden will be on the city to ensure that the additional improvements will actually be installed when the adjacent property develops or redevelops.

Which leads to a second issue: Tallman objects that because some of the properties are already developed, they cannot be relied on to provide the improvements. This misses the point of the residential neighborhoods without sidewalks that were discussed by the Planning Commission. Rather than spending scarce public resources to build sidewalks in front of unimproved property where they are unlikely to be used, the City may conclude that it is far more prudent and publicly responsible to use limited tax dollars to install sidewalks areas that are already developed but lack sidewalks – particularly residential areas – and rely on new development of undeveloped property to install the sidewalks when that development occurs.

Further, where a property is already developed, the city can either install the sidewalks (again, using the example of the existing residential neighborhoods without sidewalks, where the city can use the money that would otherwise be spent installing sidewalks on the Loop Road), or the sidewalks can be installed as a condition of redevelopment. Either way, using taxpayer money to install sidewalks in a largely undeveloped area, rather than using the same money to install sidewalks where they are unquestionably needed, would be irresponsible, and nothing in state law, the City comprehensive plan, or development code requires that outcome.

Tallman claims the amendment will "significantly affect" a transportation facility under OAR 660-012-0060(1)(a). That rule says a code amendment significantly affects a transportation facility if it will "change the functional classification of an existing or planned transportation

facility." In his case, the proposed amendment does not change the functional classification of a transportation facility. Therefore, this portion of the rule does not apply.

Tallman further argues that the amendment will "degrade the performance of an existing or planned transportation facility." Other than the Loop Road, Tallman does not identify what transportation facility will be degraded. With respect to the Loop Road, Tallman cannot explain how actually building the road can possibly degrade its performance. This argument makes no sense and is rejected.

Tallman then claims the proposed amendment will violate the City's TSP, the POM and Downtown IAMPs, and the City comprehensive plan (the IAMPs are part of the comprehensive plan). This argument ignores the text of the proposed amendment, which allows the City to defer compliance with certain "development standards" for a public improvement project. The City interprets this language to allow the City to defer compliance only with standards in the City *development code*, not the applicable standards, if any, in the comprehensive plan or TSP. Applicable standards in those planning documents will continue to apply. Accordingly, this argument is rejected.

Tallman argues that the proposed amendment violates Goal 12 and the Transportation Planning Rule ("TPR," OAR 660, Division 12). For the reasons described above, the TPR does not apply to the proposed amendment. Further, the amendment only allows the City to defer certain development standards, not the standards in the comprehensive plan or TSP. Moreover, nothing in Goal 12 requires all elements of a transportation project to be constructed simultaneously. More to the point, the proposed amendment only allows the City to defer improvements such as sidewalks when the City determines the improvements are "likely" to be constructed by development of the adjacent property. Where such a finding cannot be made, the development standards cannot be deferred. Thus, contrary to Tallman's testimony, it is not the case that the amendment allows the City to defer the improvements forever.

Finally, Tallman takes issue with a statement in the staff report, where staff notes that if sidewalks and street lights are installed adjacent to unimproved property, "at least some of the amenities are likely to be removed to accommodate the developer's site plan." According to Tallman, there is "zero" evidence that "any developer in their right mind" would ever tear out sidewalks or streetlights. This argument is utterly baseless and ignores reality (and physics). If sidewalks are installed across the entire frontage of a property, there is no way to install a driveway *without* tearing out at least some of the sidewalks, and probably also landscaping. And if the driveway must be located where a streetlight was installed, the streetlight, at a minimum, will also have to be relocated. Theoretically, a developer could build a bridge over the sidewalk to allow vehicular access to the property, but we believe this is unlikely. Accordingly, we conclude that staff's finding that "at least some" of the amenities would need to be removed is reasonable and correct, and avoiding that outcome by deferring the improvements until the adjacent property develops is a responsible use of public resources.

In sum, we conclude that Tallman's objections lack merit and the proposed amendment complies with all applicable laws.

Ordinance 1-2024
EXHIBIT B

BDC 3.4.000 Purpose and Applicability

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B. Applicability. Unless otherwise provided, the standard specifications for construction, reconstruction or repair of transportation facilities, utilities and other public improvements within the City shall occur in accordance with the standards of this Chapter. No development may occur unless the public facilities related to development comply with the public facility requirements established in this Chapter; except that the City may defer compliance with one or more of the development standards for a public improvement project constructed by the City or other public agency if the City finds that the improvements required by the standard(s) are likely to be provided by development of the adjacent property.

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