

September 11, 2024

City of Killeen Planning Department
Attn: Wallis W. Meshier,
Asst. Director of Development Services
101 N. College Street
Killeen, TX 76541

Via Email: wmeshier@killeentexas.gov

Re: Request for Use of City Condemnation Authority

Dear Ms. Meshier:

This law firm represents Bunny Trail Real Estate, LP (the “*Applicant*”). Please accept this correspondence as the Applicant’s petition for the City of Killeen to utilize its condemnation authority, as provided in Section 26.93 of the City of Killeen Code of Ordinances (the “*Code*”). The reasons for this petition are detailed below.

I. INTRODUCTION

In 2022, the Applicant acquired an approximately 221-acre tract of land as described in the Special Warranty Deed with Vendor’s Lien recorded under Document No. 2022043505 of the Official Public Records of Bell County, Texas (the “*Parent Tract*”). The Parent Tract was acquired for development as a mixed use project. The planned project will include single-family, multi-family, parkland, and neighborhood business district uses. The development plan will create diversity of housing, business growth, increased access in west Killeen, and additional greenspace for the community. The Parent Tract has over 1,600 feet of frontage along Bunny Trail on the eastern boundary, and to facilitate the development, a roadway must be constructed through the Parent Tract from Bunny Trail to Mohawk Drive. Mohawk Drive abuts the Parent Tract near the northwest corner of the tract.

Although Applicant believed it acquired land up to Mohawk Drive as part of the acquisition of the Parent Tract in 2022, a discrepancy in the surveyed acreage was discovered after closing. The discrepancy resulted from a surveyor issue that was perpetuated in different land surveys over many years. The surveyor who prepared the survey for the purchase of the Parent Tract is not the same surveyor who prepared the proposed plat, and the surveyors came to different conclusions about the western boundary of the Parent Tract.

Applicant’s plat was not approved by the Planning Department due to a “gap” in ownership of a strip of land between the Parent Tract and Mohawk Drive. The property that comprises the strip of land is a 0.352 acre tract (the “*Subject Property*”). Despite Applicant’s steadfast efforts to

resolve this issue, including attempts to acquire the Subject Property or a portion thereof from its purported owner, WBW Development, Ltd. (“**WBW**”), WBW has refused to negotiate in good faith or respond to financial offers of purchase that well-exceed market value. The portion of the Subject Property necessary to facilitate Applicant’s development plan is 1,287 square feet (the “**Proposed Acquisition Tract**”).

As a result of the foregoing facts, Applicant requests the City of Killeen utilize its condemnation authority with regard to the Proposed Acquisition Tract, as is necessary to connect Mohawk Drive to the Parent Tract. This will enable Applicant to continue with its development plans for the benefit of the public. The requirements of Section 26.93 of the Code have been met, as set forth below.

II. EVIDENCE OF CODE REQUIREMENTS

A. CLEAR EVIDENCE OF PUBLIC NEED EXISTS

A clear public need exists for the condemnation of the Proposed Acquisition Tract to extend Mohawk Drive east to connect with Bunny Trail, which is a primary neighborhood roadway. The Proposed Acquisition Tract is also necessary to ensure optimal use of other planned roadways within the Parent Tract, such Bridgewood Drive, which extends north and south from the Parent Tract. The roadway extensions will benefit the future owners and occupants in the planned development and in neighboring developments. The addition of residential, commercial and parkland space to the Parent Tract will aid the public by providing additional housing, commerce, and outdoor opportunities; however, that cannot occur without acquisition of the Proposed Acquisition Tract. Further, extending Mohawk Drive and Bridgewood Drive serves a public purpose by improving traffic and infrastructure and easing congestion as population density increases.

As noted in the Appraisal Report by National Appraisal Partners, LLP dated July 18, 2024 (the “**Appraisal**”) attached as Exhibit A, the highest and best use of the Subject Property is for use in conjunction with a larger, adjacent parcel, and is not functional to be developed independently. Accordingly, condemnation of the Proposed Acquisition Tract is necessary for public use and convenience. Please refer to page 16 of the Appraisal for a depiction of the planned roadway extensions within the Parent Tract.

B. PROPOSED EXTENSION IS IN ACCORDANCE WITH CURRENT ADOPTED MASTER UTILITY PLANS

The proposed extension of Mohawk Drive to connect with Bunny Trail is in accordance with the City’s Master Utility Plan. The proposed extension comports with the public infrastructure plans of the City.

C. PROPOSED EXTENSION WILL SERVE OTHER DEVELOPMENT

The proposed extension of Mohawk Drive to connect with Bunny Trail will serve other developments, including adjacent neighborhoods. The Proposed Acquisition Tract is necessary to connect Mohawk Drive with Bunny Trail, resulting in roadway extensions through the Parent

Tract. The neighboring property includes a mixture of retail, commercial, industrial, and residential development. The retail and commercial development in the neighborhood includes hotels, retail centers, restaurants, and freestanding retail buildings. The retail and commercial development is concentrated along the primary roadways, so an additional roadways will serve the other developments and enhance access and traffic flow through the City.

D. APPLICANT AGREES TO PAY ALL COSTS OF THE CONDEMNATION

The Applicant agrees to pay all costs associated with the condemnation by the City.

E. WRITTEN EVIDENCE HAS BEEN SUBMITTED

Applicant has made every practical attempt to secure the Subject Property, which includes the Proposed Acquisition Tract. Despite these attempts, WDW has not only refused to sell the Subject Property, but it has failed to provide a counteroffer or engage in negotiations with Applicant. Follow-up phone calls and emails to WDW have gone unanswered.

The attached Appraisal was made by an independent appraiser as to the current market value and damages of acquiring the Subject Property (Exhibit "A"). An Unimproved Property Contract offering to purchase the Subject Property for \$20,000.00 plus payment of all closing costs was submitted to WBW by the Applicant in February 2024. (Exhibit B.) WBW's counsel responded in March 2024 that WBW was not inclined to accept the offer, and that it was too low. (Exhibit C.) We note that Applicant's offer was approximately 45% above the appraised value of the Subject Property as stated in the Appraisal.

III. CONCLUSION

The requirements of Section 26.93 of the Code have been met as detailed above. Applicant respectfully requests the City of Killeen utilize its condemnation authority with regard to the Proposed Acquisition Tract so Applicant can continue with its development of the Parent Tract for the benefit of the public.

Please contact me at your convenience with any questions or if additional information is needed.

Best regards,

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC



JANE W. JANECEK

Enclosures
cc: Andy Wallander
Assistant City Attorney
City of Killeen

Via Email: awallander@killeentexas.gov