

MEMORANDUM OF UNDERSTANDING

This memorandum of understanding (MOU) provides the general, non-binding terms of engagement between the Town of Chapel Hill (the Town), a North Carolina municipality, and Belmont Sayre, LLC, a company based in Carrboro, North Carolina with expertise in mixed use, brownfields redevelopment projects (Belmont)(collectively the “Parties”), regarding the potential redevelopment of the 10.9-acre Town-owned property located at 828 Martin Luther King Jr. Boulevard (the Property). The Parties anticipate entering into a binding Economic Development Agreement (the “EDA”) later this year for redevelopment of the Property promptly after completing the concept review process before the Town, and further discussions with brownfields program representatives with the North Carolina Department of Environmental Quality (DEQ), pursuant to the schedule provided in Exhibit A to this MOU.

Overview

The Property is currently improved with Chapel Hill’s main police station headquarters and associated surface parking, and a portion of the Bolin Creek Trail right-of-way, a Town-maintained multipurpose recreational greenway trail that transects the southern portion of the Property along Bolin Creek. In October 2019, the Property was deemed by DEQ to be provisionally eligible for redevelopment under the North Carolina brownfields program administered by DEQ. In addition to a brownfields agreement with DEQ, redevelopment of the Property would require a conditional zoning permit (CZP) under the conditional zoning provisions in the Town’s Land Use Management Ordinance (Ordinance). It would also require the Town securing bond or other financing for a desired new municipal service center (MSC) to be constructed on the Property.

The Preferred Project

The preferred public-private redevelopment plan (the Preferred Project), which is supported in principle by the Parties and that has been presented to the public, is a continuous phase, mixed-use project, consisting of construction of a new Town MSC, a complementary private development by Belmont that would provide additional community benefit, and a common parking deck. As reflected in the current Concept Plan, a copy of which is attached as Exhibit B, the preference is for the private development to primarily if not wholly consist of multi-family residential housing. The greenway trail along Bolin creek would be maintained.

More specifically, subject to obtaining the necessary entitlements and municipal financing, the Preferred Project would generally consist of:

- a) demolition of the existing police station building and improvements, after temporary offsite relocation of the police department operations;
- b) construction of a retaining wall and any other environmental remedial measures required pursuant to a brownfields agreement and management plan, stormwater management design and construction, and other site-wide redevelopment tasks;
- c) subdivision of the Property into one or more Town-owned parcels for the MSC and Bolin Creek Trail right-of-way, and one or more privately-owned parcels for the private development component by Belmont;
- d) sale of the parcel(s) designated for private development from the Town to Belmont or a Belmont affiliate company;
- e) construction of the new MSC;
- f) construction of the private development component that may include apartment complex (preferred), offices, retail or a mix of uses; and
- g) construction of a parking deck that would serve both the MSC and the private development; and
- h) preservation of the greenway trail.

Belmont would serve as the Preferred Project's overall development and construction manager, including the MSC, private development and brownfields remediation and risk mitigation. The Town development staff, attorneys and consultants would provide assistance as described herein.

Certain costs of common site development, including brownfields remediation and risk mitigation, will be apportioned between the parties in a manner to be set forth in the EDA. In arriving at that apportionment, the parties will account for, among other relevant factors, the Town's environmental and other costs incurred to date that will aid in redevelopment of the Property, and the proportion of the Property that will be used for private redevelopment versus the MSC.

The Town would fund all costs associated with the development of the MSC. The Town would also pay Belmont a management fee based on a to-be determined percentage of the costs for both the design and construction of the MSC, in exchange for Belmont's services related to the design and construction of the MSC described below. Belmont would

fund its private development component of the Preferred Project. As reflected in the current concept plan, the preference is for the parking deck to be located on the privately-developed land.

The MCS-Only, Alternate Project

In the event that a private development is not allowed for in the CZP or brownfields agreement, the redevelopment would be limited to required remediation and risk-mitigation, construction of the MSC and related parking, with retention of the greenway trail. In such a case, Belmont would still serve in the project management role for the redevelopment project on behalf of the Town as described herein, for the to-be-determined fee based upon the costs of design and construction of the MSC.

Due Diligence Prior to Entry of an EDA

A high level sequence and initial-stage schedule for pursuing a project to redevelop the Property is attached as Exhibit A to this MOU.

The Parties recognize the viability of the Preferred Project will be influenced by the conditions ultimately imposed by the Town Council in the required CZP, and the remedial and other requirements imposed by DEQ in a brownfields agreement. Accordingly, as reflected in the schedule in Exhibit A, the Parties agree that two things should happen in the short term and prior to entry of a binding EDA. First, Belmont will formally submit the Concept Plan (attached as Exhibit B) for the Preferred Project for review under the Ordinance within thirty (30) days of entry of this MOU. The Parties will work to finalize and execute an EDA within forty-five (45) days after the Concept Plan review process is completed. Also no later than thirty (30) days after entry of this MOU, with Belmont taking the lead, the Parties will commence discussions with representatives of DEQ's brownfields program regarding the Preferred Project, what if any further assessment is necessary, and the possible scope of remedial and risk-mitigation measures that may be required in a brownfields agreement.

Prior to execution of the EDA, Belmont agrees to provide the Town with any and all financial information necessary for a third party financial analysis.

Anticipated Terms for the EDA

I. Regarding the necessary entitlements – a CZP and Brownfields Agreement.

- A. Belmont as the developer will take the lead in seeking a CZP and satisfactory brownfields agreement, with the Town's development staff, its environmental consultants and counsel providing support, pursuant to the schedule in Exhibit A. Belmont thus will retain at its sole expense any planning, design, engineering, environmental consulting and other professionals needed for seeking the CZP and a brownfields agreement, with the exception of any design services for the MSC and the Town's environmental consultants and counsel, who shall be retained by the Town.
- B. The parties will designate liaisons for these efforts who will consult on a regular basis through the entitlement (CZP and brownfields) processes.

Regarding the brownfields agreement:

- C. As noted above, the Parties will commence discussions immediately with representatives of DEQ Brownfields Program, and diligently pursue a brownfields agreement and preparation of a brownfields Environmental Management Plan.
- D. Per the schedule in Exhibit A, no later than 30 days after an EDA is executed, Belmont will pay the \$30,000 Redevelopment Now enrollment fee for expedited consideration of the brownfields agreement by DEQ. That fee will be treated as one of the common site development costs to be allocated between the Parties.
- E. Both parties will be signatories to the brownfields agreement, provided the Project includes a private development component. The Town would be the sole signatory to the agreement in the event that development is solely for the MSC.
- F. The brownfields agreement must allow for the following future land uses: (a) institutional, including the MSC, (b) a private development component, (c) structured parking, and (d) continued recreational use of the Bolin Creek Trail.
- G. Belmont at its expense will be responsible for preparation of a development environmental management plan ("EMP") under the brownfields agreement, per DEQ's requirements, with input from the Town's environmental consultants and counsel.
- H. The Town at its expense will continue to implement the current, DEQ-required interim remedial measures until those measures are replaced or the EMP is implemented for site development.

Regarding the CZP:

- I. The Town development staff will seek to have Town planning retain a planner assigned to review entitlement and permit applications to make the process quicker.
- J. A CZP shall be sought for the preferred Project shall include the MSC and a private development component, as described above and in the Concept Plan, a copy of which is attached as Exhibit B to this MOU.
- K. A CZP shall be sought for a private development component that seeks to provide additional community benefit, which is technically and economically feasible. The current preferred private development component is multifamily residential consisting, on a preliminary basis, of at least 150 apartment units. This is consistent with the Chapel Hill 2020 Plan's goal to help create a range of housing options and enhances community value through improved connectivity for bicycles, pedestrians and use of the future Bus Rapid Transit (BRT) line along south MLK Jr. Blvd.
- L. Belmont acknowledges the Town staff and council will review and process the Concept Plan (Exhibit B), followed by a CZP application, in accord with the Town's Land Use Management Ordinance. The Town Council retains the authority to impose the terms and conditions in a CZP, upon completion of those processes, that it deems to be in the public interest.

II. Town Financing for New Municipal Service Center.

The Town anticipates financing the design and construction of the MSC, and possibly it's portion of common site development costs, through issuance of limited obligation bonds.

- A. Per the schedule in Exhibit A (Step 7), the Town will commence the financing process, which will take approximately four months, so that it is completed at or about the same time that the CZP is issued and a brownfields agreement is entered.
- B. This financing will require approval from the North Carolina Local Government Commission ("LGC"). While the Town fully anticipates receiving that approval, if that does not occur, the Town will use best efforts to secure alternative sources of financing.

Assuming a CZP is issued, a brownfields agreement is entered, and the Town's bond financing is approved, the parties will commence the actual redevelopment of the Property, as reflected in Steps 8-12 of the schedule in Exhibit A.

III. Site-Wide Redevelopment and Remedial Tasks.

- A. Belmont will assist the Town in relocating the police headquarters in accordance with Step 8 in the Schedule in Exhibit A.
- B. Belmont as the developer will manage and have primary responsibility to contract for and oversee the necessary site-wide redevelopment activities, which shall include:
 - 1. Demolition. Demolishing the current police station building and parking lots and proper disposal of the resulting construction debris at a permitted facility, by a deadline to be agreed upon.
 - 2. General site grading, stormwater management design and construction, and other common site improvements.
 - 3. Retaining Wall. A planned component of the response action to address the historical use of coal combustion residuals as fill on the Property is the design, engineering and construction of a retaining wall, which will separate the upper portion of the Property, which will be redeveloped, from the lower portion along the Bolin Creek Trail right-of-way, by a deadline to be agreed upon. The Town will approve the final design of the retaining wall, which will not be unreasonably withheld. Under the current concept plan, the retaining wall will be located on the private portion of the redeveloped Property.
- C. The Town development staff will provide assistance with site-wide development activities as reasonably needed. The Town will provide access to the Property for redevelopment purposes. Insurance and other requirements applicable to third-parties conducting work on Town property shall be applied.
- D. The Parties' liaisons will continue to meet periodically during the redevelopment of the Property, with periodic reports from Belmont to the Town's development liaison, and to Town management and council as needed.
- E. In the EDA, the Parties will agree to an allocation of site-wide development costs, and a mechanism for the Town to pay Belmont for the Town's portion of such costs. That allocation will be based primarily on the acreage of land to be conveyed by the Town to Belmont for private development in relation to the acreage to be retained by the Town for the MSC (excluding acreage of the trail). Other factors may be considered, however, including the Town's environmental assessment and remedial costs incurred to date on the Property. Prior to entry of the EDA, Belmont will provide the Town with an updated, line item pro forma of projected site-wide development costs that will be subject to this allocation.

IV. Subdividing the Property, and Sale of New Parcel(s) to Belmont.

- A. Provided the CZP and brownfields agreement allow for the Preferred Project, including the private development component, the Property will be subdivided, creating two or more separate parcels consisting of the following:
 - 1. Private Parcel(s) for private development, including an apartment complex (preferred), offices, retail or a mix of uses, and a parking deck, to be owned by Belmont or an affiliate; and
 - 2. Public Parcel(s) for the MSC, the Bolin Creek Trail right-of-way, and any other public space to be owned by the Town.
- B. The Town anticipates that it will convey fee simple title to Private Parcel(s) “as is” to Belmont, via a general warranty deed.
- C. In the EDA, the Parties will agree upon and document the approximate acreage and dimensions of the Private Parcel(s), and a price per acreage that Belmont will pay for the land, subject to the reopener described below.
- D. In arriving at a purchase price per acre, the Parties shall give due consideration to the market value of the land (unimpaired), the site-wide development costs and the Parties’ allocation of those costs, the value of brownfields tax credits accruing to Belmont, the present value of future property taxes on the land accruing to the Town, the benefit to the community the Preferred Project offers, and similar considerations.
- E. The purchase price per acreage will also be based upon specific assumptions regarding what private development will be permitted in a CZP (such as a minimum number of units of multi-family), and other requirements in a CZP (such as any affordable housing requirements). If the terms of the CZP do not corollate with these assumptions, then the purchase price for the Private Parcel(s) shall be renegotiated and adjusted to account for the financial impact to Belmont of the variance from these assumptions.
- F. Closing on conveying the Private Parcel(s) is anticipated to take place at an appropriate point, to be determined, in relation to the site-wide redevelopment activities.
- G. Payment for the Private Parcel(s) shall be made at Closing.

V. Design and Construction of New Municipal Building.

- A. The Town will select, contract directly with and be solely responsible to pay the invoices of the architect, general contractor, engineers and other professionals needed for the MSC design and construction.
- B. Belmont will serve as the Town's outside project manager and agent in the design and construction. of the MSC. In that capacity, Belmont will:
 - 1. Handle day-to-day communications with the architect, general contractor and other professionals;
 - 2. Coordinate and oversee all schedules;
 - 3. Make weekly reports to the Town's designated development liaison, including regarding progress in relation to schedules, and costs in relation to budget;
 - 4. Make initial review and comments on all draw and payment requests, forwarding them to the Town for payment; and
 - 5. Such other similar project management tasks to be mutually agreed upon by the parties.
- C. Belmont will be paid a project management fee based on a "to-be determined" percentage of the total hard cost for the design, engineering and construction of the MSC that will be agreed upon in the EDA (excluding soft costs like interests).

VI. Parking Deck Access. Assuming as currently contemplated per the concept plan that a parking deck will be constructed by Belmont on the Private Parcel(s), the Parties will enter a 100-year lease, by which Belmont will lease a to-be-determined number of parking spaces on the lowest floors of the deck to the Town for its exclusive use.

VII. Miscellaneous.

- A. Insurance. Through completion of the new municipal building, Belmont will maintain insurance per the terms below:
 - 1. Commercial General Liability (CGL) with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The CGL policy, with Products and Completed Operations coverage, must be continued for a period of 36 months after completion of the new municipal building. The Town named as an additional insured.

2. Business Auto Liability with limits of at least \$1,000,000 for each accident. The Town named as an additional insured.
 3. Workers Compensation for the statutory limits.
- B. Indemnities. Belmont will agree to indemnify and hold harmless the Town, its council members and employees from all loss, liability, claims or expenses (including reasonable attorneys' and expert fees) arising from bodily injury or property damage to any person or persons proximately caused in whole or in part by the negligence or willful misconduct of Belmont, its employees or agents. To the extent allowed by law, the Town will give an identical indemnity to Belmont.
- C. Force majeure. The EDA will contain a common force majeure provision that a party is not deemed to be in material default of the EDA if they are unable to meet a deadline due to circumstances beyond their control (e.g., Acts of God, vandalism), and any such deadline will be extended for the time necessary to remedy the force majeure conditions.
- D. Dispute Resolution.
1. The parties recognize that not all challenges and circumstances that may be faced in a redevelopment project like this one can be identified in advance at the time the EDA is entered, and will work in good faith to address any unforeseen challenges or circumstances, in a way that is consistent with the parties' respective obligations under the EDA.
 2. In the event a dispute arises over a material term of the EDA, the parties' respective, designated project managers will first confer to try to resolve the issue, within five business days of when either project manager invokes the dispute resolution process in writing, describing the issue to be addressed. Unless the project managers agree to an extended period to try to resolve the issue between themselves, any dispute the project managers are not able to resolve will be elevated to the attention of the parties' designated senior managers within 14 business days of when either project manager invoked the dispute resolution process. Due to any urgent circumstances, either project manager may request this schedule to meet and confer for dispute resolution be shortened.
 3. The parties may, but will not be required to, mediate any unresolved dispute prior to the initiation of any civil action between the parties.
- E. Assignment. Belmont may not assign any of its rights or obligations under an MOU or EDA to any third-party without the Town's prior consent. The Town's

consent is not needed, however, for any such assignment to a newly-created entity, subsidiary or affiliate of Belmont, or that has common ownership to Belmont.

- F. E-Verify. Belmont will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
- G. Non-Discrimination. Belmont will fulfill its obligations under the EDA without discrimination because of race, creed, sex, national origin, age, economic status, sexual orientation, gender identity or gender expression.
- H. Limitation of liability of Town officers or employees. No Town officer or employ will be subject to any personal liability by their execution of the EDA on the Town's behalf, who will do so solely in their official capacities.
- I. No Partnership. The parties do not intend to form a legal partnership in pursuing redevelopment of the Property.

By the signatures of their duly-appointed representatives, the Parties endorse the contents of this MOU.

FOR THE TOWN OF CHAPEL HILL:

By: _____

Maurice Jones,

Town Manager

FOR BELMONT SAYRE, LLC:

By: _____

Kenneth Reiter

Manager

EXHIBIT A – High Level Project Steps

Through Obtaining CZP (Conditional Zoning), Brownfields Agreement and Public Financing:

Step 1 – Memorandum of Understanding (MOU) entered – early March 2022

Step 2 – Concept Plan Submitted for Town Review – by late March 2022

Step 3 – Commencement of joint discussions with DEQ brownfields program representatives – by late March 2022

Step 4 - Economic Development Agreement (EDA) entered – 45 days from completion of Concept Plan Review – *circa* June 2022

Step 5 – Conditional Zoning Permit (CZP) application submitted – 60 days from entry of the EDA – *circa* August 2022

Step 6 –Payment of fee and begin negotiations for Brownfield Agreement (BFA) under Redevelopment Now option – 60days from entry of the EDA – *circa* August 2022

Step 7- Town seeks and obtains bond financing for the MSC building – by the time the CZP is obtained and the brownfields agreement is entered.

After Issuance of CZP, Entry of Brownfields Agreement and Securing Public Financing:

Step 8 – Temporary Relocation of Police Operations and Demolition

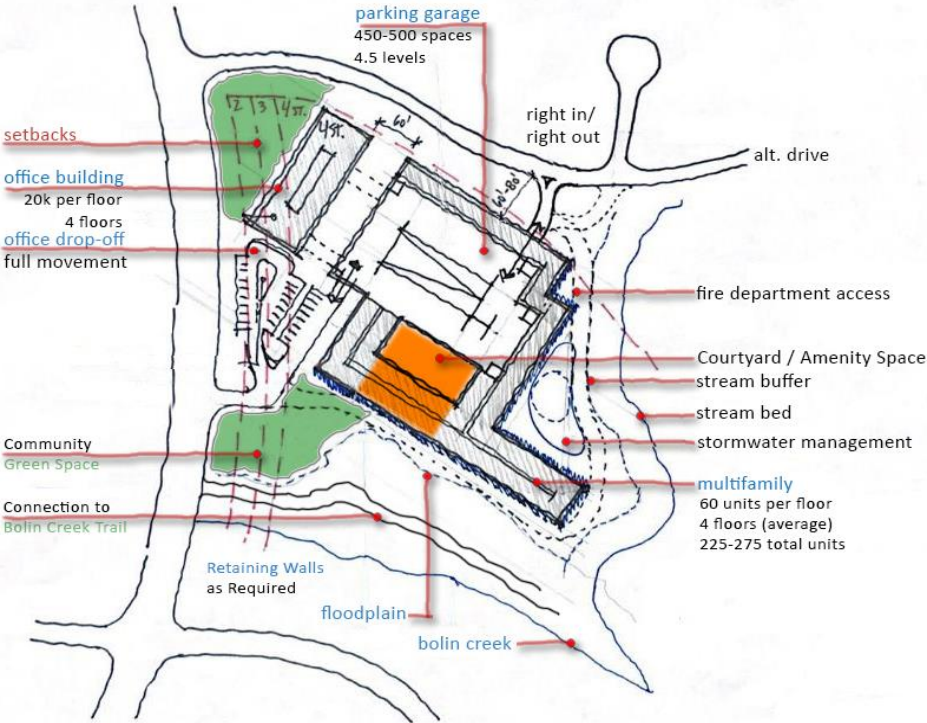
Step 9 – Site-wide Redevelopment and Remedial Tasks

Step 10 – Subdivision of the Property and Conveyance of Land from the Town to Belmont for Private Development Component (assuming Preferred Project is entitled and pursued)

Step 11 - Construction Completion

Step 12 – Permanent Locations of Future Police/MSO Operations

EXHIBIT B – Concept Plan



828 MLK JR. BOULEVARD
PROPOSED SITE PLAN

Market-rate Office Program
 Up to 80,000sf
 Market, workforce housing
 ~225 - 275 units
 ~450 parking spaces
 Stormwater controls
 Expand buildable area