

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

|                      |   |
|----------------------|---|
| <b>AGENDA TITLE:</b> | Adopt Ordinance No. 351 Providing for the Use of Eminent Domain to Acquire Certain Real Properties to Construct the North City Project. |
| <b>DEPARTMENT:</b>   | Public Works  |
| <b>PRESENTED BY:</b> | Jan Knudson, Project Lead/Economic Development Coordinator<br>Paul Haines, Public Works Director  |

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**PROBLEM/ISSUE STATEMENT:** The design for the North City Project is 100 % complete. Staff has been negotiating with property owners for the sidewalk and utility easements needed to construct the project. Five (5) of the 41 property owners in the North City Business District have indicated an unwillingness to sign these easements (See Attachment A). This presents the City with two options in proceeding with the project, both of which will result in delays and increased costs.

The amount of land included in the requested easements is approximately 1900 square feet. The total cost of acquisition for extended right of way and temporary construction easements could cost approximately \$40,000. This number could change depending upon the relative value of each particular property.

There are no buildings, signs, or other structures within these areas, and no owner's parking is affected. In all cases, a sidewalk already exists in or adjacent to the requested easement. The requested easement is to expand the sidewalk and place current overhead utilities below ground.

**ALTERNATIVES ANALYZED:** The alternatives analyzed for this report are:

1. redesign the project around the outstanding properties;
2. proceed with eminent domain as provided in RCW 8.12.030.

Attachment B – North City Project Property Options summarizes the advantages and disadvantages of each of these options, as well as the impacts to the schedule and budget. Financial impacts are discussed in more detail below.

Option 1 has the highest additional costs (professional services) with a construction delay into the 2005 construction season. Option 2 has the least additional costs and could provide for construction this year.

The option to suspend project construction indefinitely was not analyzed.

**FINANCIAL IMPACT:** The greatest financial impact to the North City Project would be to lose partner funding currently committed by Seattle City Light. City Light has agreed to fund approximately \$1.3M for utility undergrounding. This agreement was based on meeting the 2004 construction season. If construction is delayed until 2005, there is significant risk that City Light may receive pressure to reprogram these funds to a different, higher-priority project.

Not including the potential loss of City Light funding, Option 1 costs are estimated to be approximately \$170,000 - \$200,000 in professional design services. Option 2 costs range from approximately \$48,000 to \$130,000 depending upon acquisition and construction logistic costs.

Beginning in 2002, the available funds, including grant funds, for design and construction of the North City Project equaled \$5,960,000. Design costs to date total approximately \$1.1M, which includes signal warrant analyses, design of neighborhood traffic mitigation, SEPA and title reports.

Engineer estimates for construction of the North City Business District improvements are approximately \$3.3M. Remaining budget is for construction of neighborhood traffic mitigation, pedestrian safety improvements along 15<sup>th</sup> Ave NE and construction management services.

Additional costs will be difficult to accommodate in the existing budget for the project. Staff will make every effort to adjust the budget appropriately but may need to return to Council request additional budget authority.

### **RECOMMENDATION**

Staff recognizes that eminent domain requires judicious use. Given the very low impact to properties and the number of property owners who have already granted the City these easements in support of the project, it seems unreasonable to spend additional time and tax dollars redesigning around the few who are withholding easements.

Staff recommends that Council choose Option 2 and adopt proposed Ordinance No. 351 providing for the use of eminent domain to acquire certain real properties to construct the North City Project.

Approved By:

City Manager 

City Attorney 

## **INTRODUCTION**

Design for the North City Project began in July 2002. The design for the North City Business District portion of the project is 100 % complete and was scheduled to begin construction in March 2004. Staff has been negotiating with property owners for the sidewalk and utility easements needed to construct the project. Five (5) of the 41 property owners in the North City Business District have indicated an unwillingness to sign these easements (Attachment A).

## **BACKGROUND**

The NCBD/15<sup>th</sup> Avenue Project is identified in Goal No. 6 of Council's 2003 – 2004 Work Plan. Council adopted the North City Subarea Plan and Planned Action in July 2001. The purpose of the Plan and Planned Action is to re-establish North City's economic vitality through improvements to the business district itself and to 15<sup>th</sup> Ave NE. The City's goal is to encourage redevelopment of private properties in the business district through public improvements.

In February 2003, staff reviewed the 30% design drawings with Council and received authorization to complete design. During design, it was concluded that the original 71' cross-section of the Plan was not achievable due to challenges in placing numerous utilities underground in a confined physical space between the back of sidewalk and the street. On December 1, 2003 Council approved a maximum allowed cross-section of 77' to provide for the underground utilities.

## **DISCUSSION**

The North City Project design is 100 % complete. Staff has been negotiating with property owners for the sidewalk and utility easements needed to construct the project. The City has received easements for those properties identified in green on Attachment A. Owners of those properties identified in blue have verbally agreed to sign the easements and are processing the documents. Owners of properties indicated in red on Attachment A have indicated an unwillingness to sign the necessary easements.

Properties indicated in blue on attached map are included in proposed Ordinance No. 351. These property owners have expressed a willingness to sign but the City has not received their fully executed documents. It is the City's intent to settle these easements if possible before joining them in court proceedings, but they have been included in this proposed ordinance in case we do not receive these documents in time to complete all property transfers and award a contract for construction this construction season.

The properties indicated in red on the attached map are also included in the proposed ordinance. These property owners have expressed general opposition to the North City Project and indicated that there are no negotiable items that would precipitate their agreement to the easements.

## Options

There are two options for proceeding with the project, both of which will result in delays and increased costs. The alternatives analyzed for this report are:

1. redesign the project around the outstanding properties;
2. proceed with eminent domain as provided in RCW 8.12.030.

The greatest financial impact to the North City Project would be to lose partner funding currently committed by Seattle City Light. City Light has agreed to fund approximately \$1.3M for utility undergrounding. This agreement was based on meeting the 2004 construction season. If construction is delayed until 2005, there is significant risk that City Light may receive pressure to reprogram these funds to a different, higher-priority project.

Attachment B – North City Project Property Options provides a summary of the following discussion of advantages and disadvantages of each of these options.

### Option 1

Option 1 has the highest additional costs for professional design services. Not including the potential loss of City Light funding, Option 1 costs are estimated to be approximately \$170,000 - \$200,000. Additional design will delay construction award until December 2004, due to the time and complexity involved in redesigning the underground utilities around the outstanding properties. An added complication is that additional City Light design and approval will be required and staffing may not be available. This will push construction into the 2005 construction season.

### Option 2

Option 2 costs range from approximately \$48,000 to \$130,000. Additional costs include legal fees, acquisition and construction logistic costs.

Option 2 could provide for construction during eminent domain procedures. Under this scenario, construction award could occur in June or July 2004 (depending upon court date). Risks associated with this method could include a higher construction bid due to uncertainties or more complicated construction logistics building around the remaining properties. A high estimate of these increases could be approximately \$30,000.

Staff believes this risk can be managed and minimized by drafting supplemental specifications requiring the contractor to work around these gaps until the City acquires ownership. Since the courts provide for an expedited schedule to hear condemnation cases we will know the outside schedule for acquisition prior to proceeding with construction. Additionally, there is a legal mechanism and financial incentive to the owner to grant immediate possession to the City while the value is adjudicated.

The option to suspend the project indefinitely was not analyzed. While Council could consider this, it was not determined a viable option given Council direction to date.

## Project Budget

Beginning in 2002, the available funds, including grant funds, for design and construction of the North City Project equaled \$5,960,000. Design costs to date total approximately \$1.1M, which includes signal warrant analyses, design of neighborhood traffic mitigation, SEPA and title reports.

Engineer estimates for construction of the North City Business District improvements are approximately \$3.3M. Remaining budget is for construction of neighborhood traffic mitigation, pedestrian safety improvements along 15<sup>th</sup> Ave NE and construction management services.

Additional costs will be difficult accommodate in the existing budget for the project. Staff will make every effort to adjust the budget appropriately but may need to return to Council request additional budget authority.

Condemnation Procedure. Condemnation is a power granted to the State and political subdivisions through a judicial process in superior court to acquire private property for a public use. The court will decide, ordinarily in a pretrial order, whether there is public use and necessity by finding:

- 1) the use must be public;
- 2) the public interest must require it; and
- 3) the property appropriated is necessary for the purpose.

The Council's determination that the project is needed is almost conclusive. Usually the only issue at trial is the fair market value of the property.

The process is commenced with the passage of a resolution or ordinance by the condemning agency authorizing eminent domain. A Petition is then filed in superior court and served on persons with an interest in the property and a trial date assigned. Condemnation has the highest priority for trial dates of any civil case. State guidelines for acquisition in RCW 8.26.180 will be followed, and payment up to \$750 under RCW 8.25.020 to defray actual expenses of evaluating the city's offer will be available to the property owner. The City will pay or deposit with the court "just compensation" before the property is taken.

The City will offer to acquire the entire fee to simplify valuation questions, and to provide the maximum compensation to the owner without leaving a residual easement interest that has no present use for the owner. However, the City will continue to negotiate a voluntary transfer of property, including expansion of the existing right of way easement and temporary construction easements that have been dedicated by most of the other property owners in the Project area.

### **RECOMMENDATION**

Staff recognizes that eminent domain requires judicious use. Given the very low impact to properties and the number of property owners who have already granted the City these easements in support of the project, it seems unreasonable to spend additional time and tax dollars redesigning around the few who are withholding easements.

Staff recommends that Council choose Option 2 and adopt proposed Ordinance No. 351 providing for the use of eminent domain to acquire certain real properties to construct the North City Project.

## **ATTACHMENTS**

- Attachment A – North City Project Easements Map
- Attachment B – North City Project Property Options
- Attachment C – Proposed Ordinance No. 351
- Attachment D – March 25, 2004 Notice to Property Owners

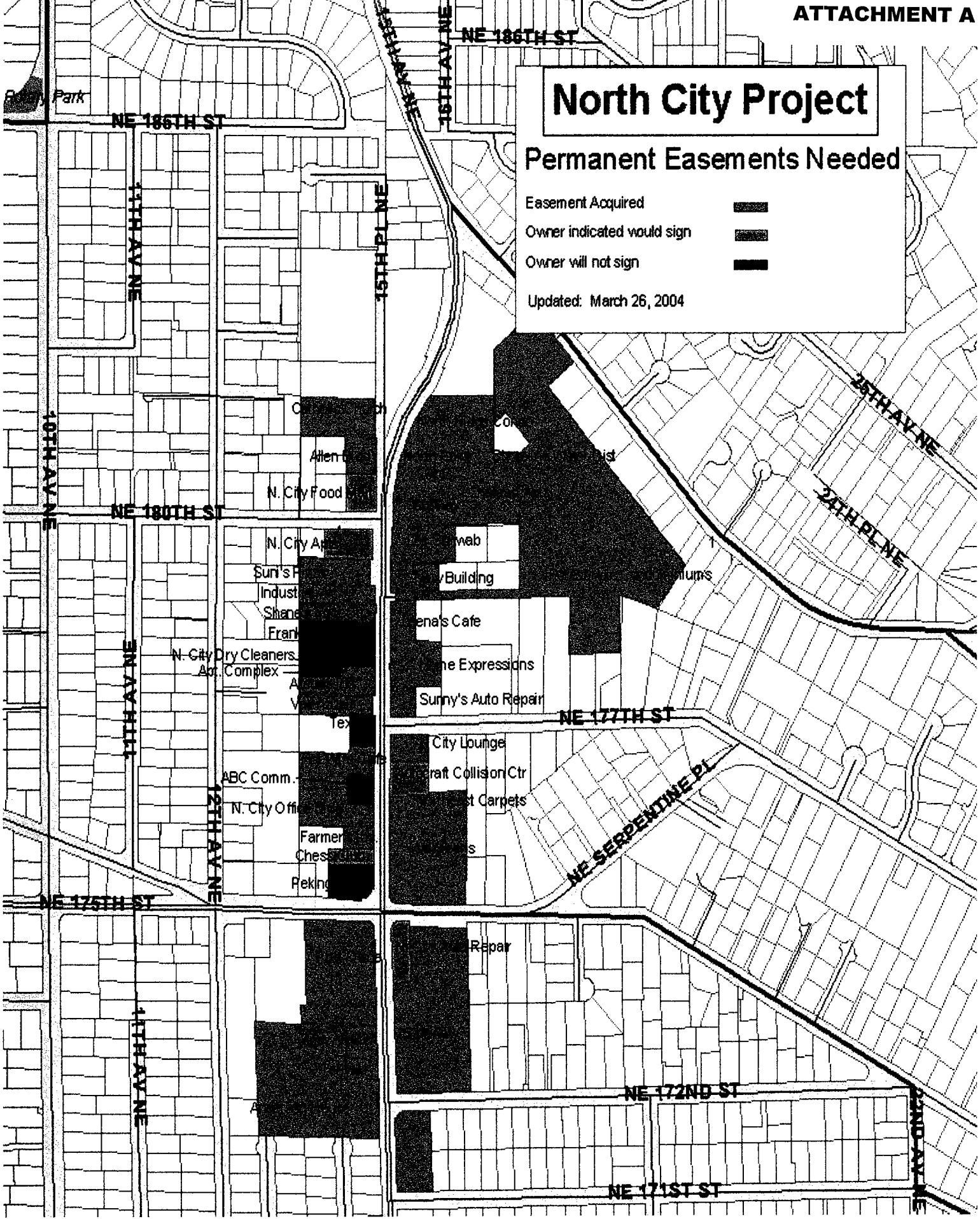
**ATTACHMENT A**  
**North City Project Easements Map**

# North City Project

## Permanent Easements Needed

- Easement Acquired
- Owner indicated would sign
- Owner will not sign

Updated: March 26, 2004





**ATTACHMENT B**  
**North City Project Property Options**

**North City Project**  
Property Options

March 26, 2004

| Option            | Estimated Budget Impact (approximate)  | Revised Schedule                     | Advantages  | Disadvantages  |
|-------------------|--|--------------------------------------|---|--|
| 1) Redesign       | \$170,000 - \$200,000 Professional services only. Does not include potential loss of City Light funding due to delay.  | December 2004 Notice to Proceed      | - No court proceedings  | - High budget impact<br>- Construction delay<br>- Seattle City Light approval and funding at risk.<br>- Unfinished look<br>- Owners must finish improvements @ redevelopment<br>- Seattle City Light approval and funding at risk. |
| 2) Eminent Domain | \$48,000 - \$130,000 Does not include potential loss of City Light funding due to delay. Other costs include acquisition costs, legal fees, construction logistics | Possible July 2004 Notice to Proceed | - Earlier construction start<br>- No additional design costs<br>- Lower budget impact<br>- Seattle City Light funding if 2004 start | - Additional costs in legal fees, row acquisition<br>- Potential increase in construction costs<br>- Possible issues with owners who have already signed for mutual benefits   |

**ATTACHMENT C**  
**Proposed Ordinance No. 351**

**ORDINANCE NO. 351**

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON PROVIDING FOR THE USE OF EMINENT DOMAIN TO ACQUIRE CERTAIN REAL PROPERTY AT 17505, 17517, 17529, 17544, 17550, 17563, 17721, 17727, 17750, 17763, 18005 15TH AVENUE NE, and 1505 NE 175<sup>th</sup> SHORELINE, WASHINGTON.**

WHEREAS, the Shoreline City Council adopted the North City Subarea Plan under provisions of the Growth Management Act, Chapter 36.70A RCW, and adopted a North City Business District special district in Ordinance No. 281 to implement the Subarea Plan; and

WHEREAS, to mitigate impacts, certain environmental elements of the Subarea Plan Ordinance 281 directed, among other measures, improvements to 15<sup>th</sup> Avenue NE including lighting, street trees, convenient and safe pedestrian crossings, undergrounding of utility lines, and restriping 15<sup>th</sup> Avenue NE to a two or three-lane roadway, with appropriate transitions, turn-pockets and two-way center left turn lanes; and

WHEREAS, the Shoreline City Council on December 1, 2003 approved design amendments to the right-of-way width to provide for the underground utilities; and

WHEREAS, the Shoreline City Council has determined that the property described in Exhibit A hereto is necessary to complete the North City Business District/ 15<sup>th</sup> Avenue Improvements including the construction of sidewalks and underground utilities; and

WHEREAS, the City of Shoreline has the power to acquire lands through eminent domain for the establishment, construction, enlargement, improvement, and maintenance of public streets; and

WHEREAS, acquisition of property is categorically exempt from SEPA review under WAC 197-11-800(5)(a); now, therefore

**THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1. Condemnation Authorized.** The City of Shoreline shall acquire by negotiation or by condemnation the real properties situated in the City of Shoreline, County of King, State of Washington, and legally described in Exhibit A, attached hereto and by this reference incorporated herein.

To the extent practicable, the City Manager or his designee shall adhere to acquisition guidelines of RCW Chapter 8.26 and is hereby authorized and directed to execute all documents



**EXHIBIT A**

**PROPERTIES TO BE ACQUIRED**

| <b>Owner(s)</b>                                      | <b>Property Address</b> | <b>Tax Parcel #</b> | <b>Easement Legal</b>              | <b>Property Legal Description</b>   |
|--|-------------------------|---------------------|------------------------------------|---|
| John Sims, Jr.                                       | 17727 15th Ave. NE      | 616390-0732-06      | The east 2.50 feet of the property | The south half of Lot 13, Block 4, Northend Country Estates according to the plat thereof recorded in Volume 28 of Plats, page 37, In King County, Washington   |
| Stekar L.L.C.  | 17550 15th Ave. NE      | 402410-1340-09      | The east 2.50 feet of the property | The south 118 feet of the north 216 feet of Lot 18, Block 30, Lake Forest Park 3rd Addition, according to the plat thereof recorded in Volume 22 of Plats, page 4, in King County, Washington               |
| Sims & Sims Partnership                              | 17727 15th Ave. NE      | 616390-0742-04      | The east 2.50 feet of the property | The east 134 feet of Lot 14, Block 4, Northend Country Estates, according to the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington; EXCEPT the south 70 feet thereof         |
| Donald Eric Van Der Giessen and Dora Van Der Giessen | 17721 15th Ave. NE      | 616390-0740-06      | The east 8.50 feet of the property | The north 30 feet of the south 70 feet of the east 134 feet of Lot 14, Block 4, Northend Country Estates, according to the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington |
| James H. Cotton and Rena E. Cotton                   | 17544 15th Ave. NE      | 616390-0771-08      | The east 2.50 feet of the property | The south 50 feet of the east 100 feet of Lot 17, Block 4, Northend Country Estates, according to the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington                      |
| James H. Cotton and Rena E. Cotton                   | 17544 15th Ave. NE      | 616390-0780-07      | The east 2.50 feet of the property | The north 50 feet of the east 100 feet of Lot 18, Block 4, Northend Country Estates, according to the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington                      |
| Stonegate Developing, A partnership, also            | 17563 15th Ave. NE      | 616390-0760-01      | The east 8.50 feet of the property | The north 105 feet of the east 100 feet, Lot 16, Block 4, Northend Country Estates, according to  |

| Owner(s)   | Property Address   | Tax Parcel #   | Easement Legal  | Property Legal Description  |
|--|--------------------|----------------|---|---|
| appearing of record as Stonegate Developing, a Washington Partnership  |                    |                |   | the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington  |
| North City Landing, LP   | 17763 15th Ave. NE | 616390-0710-02 | Beginning at a point measured at right angles 40.00 feet west of the centerline of 15th Avenue Northeast and 30.00 feet south of the centerline of Northeast 180th street, said point also known as the Northeast corner of said Lot 11; Thence south 1°19'57" west along the west margin 15th Avenue Northeast, a distance of 10.00 feet; Thence leaving said west margin north 43°18'07" west, a distance of 14.23 feet to the south margin of Northeast 180th street; Thence south 87°56'11" east along said south margin, a distance of 10.00 feet to the point of beginning. | THAT PORTION OF LOT 11, BLOCK 4, NORTHERND COUNTRY ESTATES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 28 OF PLATS, PAGE 37, IN KING COUNTY, WASHINGTON                                       |
| Rodney S. Madden and Marilyn J. Madden, who acquired title as Marilyn Madden (husband and wife), E. Gerald Teel, and Katherine G. Teel, who acquired title as Gerald Teel and Katherine O. Teel (husband and wife), Daryl Vander Pol and Claudia Vander Pol (Husband and Wife) | 17750 15th Ave. NE | 402410-0174-02 | The east 2.50 feet of the property  | The westerly 185 feet of the north 95 feet of Lot 46 in Block 22 of Lake Forest Park 3rd Addition, according to the plat thereof recorded in Volume 22 of Plats, page 4, in King County, Washington |

| Owner(s)          | Property Address   | Tax Parcel #   | Easement Legal   | Property Legal Description  |
|-------------------|--------------------|----------------|--|---|
| Time Oil Co.      | 18005 15th Ave. NE | 616390-0603-02 | Beginning at a point measured at right angles 30.00 feet west of the centerline of 15th Avenue Northeast and 30.00 north of the centerline of Northeast 180th street, said point also known as the southeast corner of said Lot 20; Thence north 87°56'11 west along the north margin of Northeast 180th street, a distance of 15.00 feet; Thence leaving said north margin north 42°36'55" east, a distance of 19.71 feet; Thence north 1°20'43" east parallel with the centerline of 15th Avenue Northeast, a distance of 45.00 feet; Thence at right angles with said centerline south 88°39'17" east, distance of 2.00 feet to the west margin of 15th Avenue Northeast; Thence south 1°20'43" west along said west margin, a distance of 60.00 feet to the point of beginning | That portion of Lot 20, Block 3, Northend Country Estates, according to the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington  |
| Gregg E. Paisley  | 17517 15th Ave. NE | 616390-0791-04 | The east 8.50 feet of the property   | Lot 2, King County Short Plat No. 278111, recorded under King County recording number 7805190759, being a portion of Lots 19 and 20, Block 4, Northend Country estates, according to the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington |
| Tab One, L.L.C.   | 17529 15th Ave. NE | 616390-0781-06 | The east 2.50 feet of the property   | Lot 18, Block 4, Northend Country Estates, according to the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington  |
| Chih-Kan Ding and | 17505 15th Ave. NE | 616390-0800-03 | The east 3.00 feet of the  | Lot 20, Block 4, Northend Country Estates,  |



| Owner(s)      | Property Address     | Tax Parcel #   | Easement Legal   | Property Legal Description  |
|---------------|----------------------|----------------|--|---|
| Helen Y. Ding |                      |                | property   | according to the plat thereof recorded in Volume 28 of Plats, page 37, in King County, Washington   |
| Safeway Inc.  | 1505 NE 175th Street | 402410-1141-00 | Beginning at a point measured at right angles 30.00 feet east of the centerline of 15th Avenue Northeast and 30.00 south of the centerline of Northeast 175th Street, Thence south 88°17'53" east along the south margin of Northeast 175th Street, a distance of 37.06 feet to the true point of beginning of this line description; Thence leaving said south margin south 1°42'07" west, a distance of 5 feet; Thence north 88°17'53" west parallel with said south margin, a distance of 5.09 feet to the beginning of a non-tangent curve concave to the northwest having a radial bearing of north 84°28'58" west and a radius of 25.00 feet; Thence south and west along said curve an arc distance of 36.57 feet through a central angle of 83°48'39"; Thence at right angles with the east margin of 15th Avenue Northeast, south 89°19'41" west, a distance of 0.89 feet to said east margin and the terminus of this line description | Lot 19, Block 29, Lake Forest Park 3rd Addition, according to the plat thereof recorded in Volume 22 of Plats, page 4, in King County, Washington; EXCEPT that portion deeded to King County for road under Recording Number 7111230296 |

**ATTACHMENT D**  
**March 25, 2004 Notice to Property Owners**



SHORELINE  
CITY COUNCIL

Ron Hansen  
Mayor

Scott Jepsen  
Deputy Mayor

John Chang

Maggie Fimia

Paul Grace

Rich Gustafson

Robert Ransom

March 25, 2004

**RE: North City Business District Street Improvement Project**

Dear :

The purpose of this letter is to provide you, as a property owner in the North City business district, another update on the North City Project. In my last letter to you dated March 12, 2004, I said that I would notify you when Council would be discussing how to proceed with construction of the North City Project.

Council will be discussing the options described below on Monday, April 5, 2004 at a special meeting. The meeting begins at 6:30 p.m. and is held in the Mt. Rainier Room at the Shoreline Conference Center located at 18560 1<sup>st</sup> Avenue NE.

As I mentioned before, in order for the City to expand and reconstruct the existing 6-foot sidewalk to a new 10.5-foot sidewalk with utilities underground, we have requested property owners sign permanent and temporary easements for these uses and for construction. Some of the property owners, representing about 13% of the parcels in the business district, have indicated an unwillingness to sign easements.

I want to personally thank every one of the property owners who have signed or indicated they will sign the necessary documents and provide the City these permissions. Given that some owners will not grant easements, Council will be considering the following two options for proceeding with the project:

1. redesign the project around the outstanding properties
2. proceed with eminent domain as provided in RCW 8.12.030

I described the advantages and disadvantages to each of these options in my previous letter. My recommendation to Council on April 5 will be to choose Option 2 and adopt an ordinance providing for the use of eminent domain to acquire the necessary right-of-way.

I recognize that eminent domain requires judicious use. The City is always reluctant to utilize its eminent domain authority but this option could provide for construction this year at a lower cost to the project than redesign. Given the very low impact to properties and the number of property owners who have already granted the City these easements in support of the project, it seems unreasonable to spend additional time and tax dollars redesigning around the few who are withholding their easements, only to have a project with an irregular configuration when completed.

As I mentioned before, construction of the North City Project is a high priority for the City Council. The City is investing as much as \$6M in the total project. Our goal is to proceed with the project as quickly and cost-effectively as possible. Constructing in 2004 will also be important to retain financial partners such as Seattle City Light who is also investing funds in the project. This investment will result in higher property values for each property owner and a more viable neighborhood business district for Shoreline as a whole.

Again, I want to thank those of you who have signed the sidewalk and utility easements. If you have not yet done so, please sign and notarize the documents and return them to the City by April 2. If the City has not received your executed documents, your property will be included in the proposed ordinance. However, the City will allow additional time for you to conclude your review before including you in any condemnation suit.

If you need replacement documents or have questions regarding the easements, please contact John Vicente, Capital Projects Manager, at (206) 546-8903. Executed documents can be sent to: John Vicente, City of Shoreline, 17544 Midvale Avenue North, Shoreline, WA 98133.

I look forward to working with you to make the North City Business District a successful place to live, work and shop.

Sincerely,



Steven C. Burkett  
City Manager

cc: Mayor and Council  
Ian Sievers, City Attorney