

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

<b>AGENDA TITLE:</b>	Adoption of Ordinance No. 303, adopting a Voluntary Payment In-Lieu-Of Construction Program
<b>DEPARTMENT:</b>	Planning and Development Services
<b>PRESENTED BY:</b>	Tim Stewart, Director of Planning and Development Services Sarah Bohlen, Transportation Planner

**PROBLEM/ISSUE STATEMENT:**

A Development Code Amendment is proposed to Chapter 20.70.030 of the Shoreline Development Code. The proposed amendment would authorize the usage of a Voluntary Payment In-Lieu-Of Construction Program for certain frontage requirements, such as sidewalks, landscaping strips, and stormwater facilities that do not connect to other facilities. Adoption of this amendment will complete 2001 Council Goal #9, to develop a program to avoid piecemeal frontage improvements (sidewalks, storm, sewer, etc.).

**FINANCIAL IMPACT:**

This program will have a minimal effect on administrative costs: fund collection and tracking. Staff estimates that approximately \$30,000 will be collected annually; these funds must be spent on pedestrian amenities related to the development projects from which the funds are collected, within five years of collection.

**RECOMMENDATION**

Staff recommends that Council adopt Ordinance No. 303, amending the Development Code Chapter 20.70.030 zoning and use provisions to authorize the usage of a voluntary payment in-lieu-of construction program for certain frontage improvements that do not connect to other facilities.

Approved By:

City Manager

 City Attorney 

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## **INTRODUCTION**

The City Council, with 2001 Council Goal #9, has identified a need to develop a program to avoid piecemeal frontage improvements (sidewalks, curb and gutter, storm, sewer, etc.). Ordinance No. 303 (Attachment A), implementing a Voluntary Payment In-Lieu-Of Construction Program will complete this goal.

## **BACKGROUND**

In June 2000, Council adopted the Shoreline Development Code, which expanded the provisions requiring sidewalk and other frontage improvements for developments. These new requirements, as well as the previous requirements, have resulted in the construction of several small curb, gutter, and sidewalk strips on local streets throughout the City. While the community generally feels there is a need to build sidewalks, many feel that these requirements cause them to be built in an inefficient manner. There is a strong desire to consolidate the resources currently being used to construct these small sidewalk strips into larger capital projects that are more likely to be used.

Staff has been working on the development of a program to support coordinated design and installation of these kinds of improvements. After careful consideration, staff suggests that a Voluntary Payment In-Lieu of Construction program is the most appropriate action to implement Council Goal #9.

The Voluntary Payment In-Lieu-Of Construction Program is authorized under RCW 82.02. This section of State Law limits a city's ability to assess fees to developers, but allows an exception for developers who volunteer for the In-Lieu-Of payment. Any such voluntary agreement is subject to the following provisions:

- (1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact; and
- (2) The payment shall be expended in all cases within five years of collection; and
- (3) Any payment not so expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of the refund; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

It is this section of State Law that requires the program to be voluntary.

## **ALTERNATIVES ANALYSIS**

A Voluntary Payment In-Lieu-Of Construction Program allows the City and the Developer to enter into an agreement to use the funds the developer would otherwise spend on frontage improvements for supplementing a public improvement project, reasonably related to the development. The capital project to apply the funds to would be determined on a case-by-case basis.

Staff also considered implementing an Impact Fee Program. However, Impact Fees are required to be used to fund only improvements needed as a direct result of new growth. Because Shoreline has many existing infrastructure deficiencies, an Impact Fee would not be an appropriate solution to the identified problem.

The Development Code will be amended to provide the Director guidance on when the In-Lieu-Of Program would be suitable. The amendment excludes developments abutting other frontage improvements and developments serving priority sidewalk uses described in Comprehensive Plan Policy T25 (text below), and provides examples of site conditions where the in-lieu-of program would be appropriate. Additionally, the Engineering Development Guide would be amended to include a standard detail for a "thickened edge," a thickening of the pavement edge to control drainage. Developments participating in the In-Lieu-Of Program may still need to make this type of drainage improvement.

The proposed amendments are consistent with policies adopted in the Comprehensive Plan, specifically the following policies:

**T25:** Place high priority on sidewalk projects that abut or provide connections to schools, parks, bus stops, shopping, or large places of employment. Arterial streets should receive sidewalks prior to local streets. Utilize the project priority matrix to refine priorities for publicly funded sidewalk projects.

**T30:** Require all commercial, multifamily, and residential short and long plat developments to provide for sidewalks or separated trails.

**CF20:** Provide a program to allow developers to pay a fee (e.g. an impact fee) if appropriate in lieu of constructing required street frontage improvements, including sidewalk and stormwater facilities.

This proposed amendment is also consistent with State Law, specifically RCW 82.02. This section of State Law limits a city's ability to assess fees to developers, but allows an exception for developers who volunteer for the In-Lieu-Of payment.

Staff also recommends including a methodology for calculating the amount of money a Developer would contribute instead of constructing the frontage improvements eligible for the program in the Engineering Development Guide. The following formula is currently used to calculate the costs of constructing frontage improvements for financial guarantees. Staff proposes to use this calculation for In-Lieu-Of payments as well. Alternatively, a developer could request a different fee amount by submitting an estimate of the construction work that would be required. If the Director finds that amount more closely reflects the cost of the construction, the fee would be set at that amount.

Item	Linear Feet	Cost per LF of Frontage	Total
Frontage	LF	--	--
Curb & Gutter	--	\$10	\$
Sidewalks & Ramps	--	\$10	\$
Landscaping/Street Trees/Restoration	--	\$5	\$
Paving including Patching & Saw Cutting	--	\$10	\$
Grading & Erosion Control	--	\$25	\$
Drainage Improvements	--	\$25	\$
<b>SUBTOTAL</b>	--	--	\$
8% Design Overhead (Subtotal * 1.08)	--	--	\$
Other (Describe Below)	(Lump Sum)	--	\$
<b>FRONTAGE TOTAL</b>	--	--	\$

For example, if a typical 80-foot wide lot were to qualify for the program for curb, gutter and sidewalk, but not drainage, the chart would be filled out accordingly:

Item	Linear Feet	Cost per LF of Frontage	Total
Frontage	<b>80</b> LF	--	--
Curb & Gutter	--	\$10	\$ <b>800</b>
Sidewalks & Ramps	--	\$10	\$ <b>800</b>
Landscaping/Street Trees/Restoration	--	\$5	\$ <b>400</b>
Paving including Patching & Saw Cutting	--	\$10	\$ <b>800</b>
Grading & Erosion Control	--	\$25	\$ <b>n/a</b>
Drainage Improvements	--	\$25	\$ <b>n/a</b>
<b>SUBTOTAL</b>	--	--	\$ <b>2800</b>
8% Design Overhead (Subtotal * 1.08)	--	--	\$ <b>244</b>
Other (Describe Below)	(Lump Sum)	--	\$
<b>FRONTAGE TOTAL</b>	--	--	\$ <b>3024</b>

The P&DS Director (or designee) and the Developer would sign a form stating the amount of the In-Lieu-Of fee, the date of the transaction, and the capital fund to which the collected fee would be applied. The Finance and Public Works Departments would be consulted for this decision. Once the fee is collected, it would be earmarked for the designated capital fund, and the project manager of that fund would be notified of its collection and given the date by which the fee must be expended. Once it is expended, the financial tracking system will be updated with this information, and our legal requirements will have been met.

The project was reviewed under the State Environmental Policy Act (SEPA). The Responsible Official issued a Determination of Nonsignificance (DNS) on February 14, 2002, and a comment period ran from February 14 – 28, 2002. No comment letters on the DNS were received.

The Planning Commission held a public hearing on the proposed amendment on March 7, 2002. One comment letter on the proposal was received:

<b>Issue</b>	<b>Staff Response</b>
<b><i>Joan M. Eik, 14900 Burke Ave N</i></b>	
This amendment releases developers from important frontage requirements.	This program would not release developers from any requirements. Instead, it would allow the City to collect an equivalent amount of money to construct frontage improvements in a more logical location, which must be in the vicinity of the project.
Question of whether the City has closely examined the environmental impacts of this program.	Yes, the City has studied this program extensively. Because the funds will be used to construct frontage improvements in the neighborhood, there is no impact. In fact, it allows more flexibility in siting the frontage improvements so that environmentally sensitive areas could be avoided.
Question of overall impact to community.	Both citizens and developers have requested this program. The intent is to provide more efficient and attractive frontage improvements for the community.
Why are sidewalks less important than other public improvements?	Sidewalks continue to be a high priority for the City. This program allows for a more logical sidewalk system to be constructed.
The proposed amendment is too vague.	Additional information is located at City Hall, and the issue will be discussed in greater detail at the public hearing.

The Planning Commission unanimously recommended that City Council adopt this amendment to the Development Code with the following comments:

1. The funds collected from a development project should be used in the same neighborhood, or vicinity, of the project as a highest priority;
2. The funds collected should be eligible for all types of facilities serving non-motorized transportation: e.g. sidewalks, walkways, bikeways, paths, trails;
3. The City should be flexible in determining the amount to be collected on a case-by-case basis, to provide incentive for developers to participate in the program.

These comments are incorporated into the ordinance criteria. Attachment C is the Existing and Future Pedestrian Facilities Map adopted in the Comprehensive Plan, and Attachment D is the Existing and Future Bicycle System Map. These maps show the locations of the high priority pedestrian and bicycle facilities, to which the In-Lieu-Of funds could be applied.

The draft minutes of the Planning Commission Public Hearing and Deliberations are included as Attachment B.

### **RECOMMENDATION**

Staff recommends that Council adopt Ordinance No. 303, amending the Development Code Chapter 20.70.030 zoning and use provisions to authorize the usage of a

voluntary payment in-lieu-of construction program for certain frontage improvements that do not connect to other facilities.

## **ATTACHMENTS**

Attachment A: Ordinance No. 303

Attachment B: Draft Minutes from the March 7, 2002 Planning Commission Public Hearing

Attachment C: Existing and Future Pedestrian Facilities Map

Attachment D: Existing and Future Bicycle System Map

**ORDINANCE NO. 303**

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON  
AMENDING THE DEVELOPMENT CODE CHAPTER 20.70.030 ZONING  
AND USE PROVISIONS TO AUTHORIZE THE USAGE OF A  
VOLUNTARY PAYMENT IN-LIEU-OF CONSTRUCTION PROGRAM  
FOR CERTAIN FRONTAGE IMPROVEMENTS THAT DO NOT  
CONNECT TO OTHER FACILITIES**

WHEREAS, the City adopted Shoreline Municipal Code Title 20, the Development Code, on June 12, 2000;

WHEREAS, the Shoreline City Council, with 2001 Council Goal #9, has identified a need to develop a program to avoid piecemeal frontage improvements (sidewalks, storm, sewer, etc.); and

WHEREAS, City staff drafted an amendment to the Development Code; and

WHEREAS, the Planning Commission conducted a public hearing and developed a recommendation on the amendment; and

WHEREAS, a SEPA Determination of Nonsignificance was issued on February 14, 2002 in reference to the proposed amendment to the Development Code; and

WHEREAS, the proposed draft amendment was submitted to the State Department of Community Development for comment pursuant WAC 365-195-820; and

WHEREAS, the Council finds that the amendment adopted by this ordinance is consistent with and implements the Shoreline Comprehensive Plan and complies with the adoption requirements of the Growth Management Act, RCW Chapter 36.70A; and

WHEREAS, the Council finds that the amendment adopted by this ordinance meets the criteria in Title 20 for adoption of an amendment to the Development Code;

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

**Section 1. Amendment.** Shoreline Municipal Code Chapter 20.70.030 as amended as set forth in Exhibit A, which is attached hereto and incorporated herein.

**Section 2. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.



**Section 3. Effective Date and Publication.** A summary of this ordinance consisting of the title shall be published in the official newspaper and the ordinance shall take effect five days after publication.

**PASSED BY THE CITY COUNCIL ON MAY 13, 2002.**

\_\_\_\_\_  
Mayor Scott Jepsen

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Sharon Mattioli, CMC  
City Clerk

\_\_\_\_\_  
Ian Sievers  
City Attorney

Date of Publication: May 16, 2002  
Effective Date: May 21, 2002

**20.70.030 Required improvements.**

The purpose of this section is to identify the types of development proposals to apply the provision of the engineering section.

- A. Street improvements shall, as a minimum, include half of all streets abutting the property. Additional improvements may be required to insure safe movement of traffic, including pedestrians, bicycles, nonmotorized vehicles, and other modes of travel. This may include tapering of centerline improvements into the other half of the street, traffic signalization, channeling, etc.
- B. Development proposals that do not require City-approved plans or a permit still must meet the requirements specified in this section.
- C. It shall be a condition of approval for development permits that required improvements shall be installed by the applicant prior to final approval or occupancy as follows: The provisions of the engineering section shall apply to:
  1. All new multifamily, nonresidential, and mixed-use construction and remodeling or additions to these types of buildings or conversions to these uses that increase floor area by 20 percent or greater, or any alterations or repairs which exceed 50 percent of the value of the existing structure;
  2. Subdivisions;
  3. Single-family new constructions and remodels.

Exception 20.70.030(C)(3)(1):

- i. Single-family remodel projects where the value of the project does not exceed 50 percent or more of the assessed valuation of the property at the time of application may be exempted from some or all of the provisions of this section at the request of the applicant, if approved by the Director.
- ii. New single-family construction of a single house may be exempted from some or all of the provisions of this section, except sidewalks and necessary drainage facilities, at the request of the applicant, if approved by the Director.

Exception 20.70.030(1): Exemptions to some or all of these requirements may be allowed if:

A. ~~The~~ The street will be improved as a whole through a Local Improvement District (LID) or City-financed project scheduled to be completed within ~~six~~ five years of approval. In such a case, a contribution shall ~~may~~ be made to an in-lieu-of fund. The fee shall be ~~and~~ calculated based on the improvements that would be required of the development. Contributed funds shall ~~be~~ directed to the City's capital project fund and shall be used for the capital project and offset future assessments on the property resulting from a ~~local improvement district~~ LID. An LID "no-protest" ~~covenant~~ commitment shall also be recorded. Adequate interim levels of improvements for public safety shall still be required.

B. A payment in-lieu of construction of required frontage improvements including curb, gutter, and sidewalk may be allowed to replace these improvements for single family developments

located on local streets if the development does not abut or provide connections to existing or planned frontage improvements, schools, parks, bus stops, shopping, or large places of employment and:

1. The Director and the Applicant agree that a payment in-lieu-of construction is appropriate.
2. The Director and the Applicant agree on the amount of the in-lieu-of payment and the Capital Project to which the payment shall be applied. The Director shall give priority to Capital Projects in the vicinity of the proposed development, and the fund shall be used for pedestrian improvements.
3. At least one of the following conditions exists. The required improvements:
  - a. Would not be of sufficient length for reasonable use;
  - b. Would conflict with existing public facilities or a planned public capital project; or
  - c. Would negatively impact critical areas.
4. Adequate drainage control is maintained.
5. The payment in-lieu of construction shall be calculated based on the construction costs of the improvements that would be required.

**DRAFT**

These Minutes Subject to  
April 4 Approval

## **CITY OF SHORELINE**

### **SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING**

March 7, 2002  
7:00 P.M.

Shoreline Conference Center  
Board Room

#### **PRESENT**

Chair Gabbert  
Commissioner Maloney  
Commissioner Marx  
Commissioner Doering  
Commissioner Harris  
Commissioner Monroe  
Commissioner McClelland

#### **STAFF PRESENT**

Tim Stewart, Director, Planning & Development Services  
Rachael Markle, Senior Planner, Planning & Development Services  
Sarah Bohlen, Transportation Planner, Planning & Development Services  
Lanie Curry, Planning Commission Clerk

#### **ABSENT**

Commissioner McAuliffe  
Vice Chair Doennebrink

#### **1. CALL TO ORDER**

The regular meeting was called to order at 7:00 p.m. by Chair Gabbert, who presided.

#### **2. ROLL CALL**

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Gabbert, Commissioners Doering, Monroe, Marx, Maloney, Harris and McClelland. Commissioner McAuliffe was excused. Vice Chair Doennebrink was absent.

#### **3. APPROVAL OF AGENDA**

COMMISSIONER MONROE MOVED TO APPROVE THE AGENDA AS PROPOSED.  
COMMISSIONER MARX ONLY SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

#### **4. APPROVAL OF MINUTES**

COMMISSIONER MONROE MOVED TO ACCEPT THE MINUTES OF MARCH 7, 2002, AS AMENDED. COMMISSIONER M. PONEY SECONDED THE MOTION. MONROE CARRIED UNANIMOUSLY.

#### **5. PUBLIC COMMENT**

There was no one in the audience who desired to address the Commission during this portion of the meeting.

#### **6. REPORTS OF COMMISSIONERS**

Commissioner McClelland referred to the recent Chamber of Commerce Newsletter announcing that the City would be doing a review of the sign code. She noted that the facts were not totally accurate, and perhaps staff should write a letter to the Chamber clarifying that this issue has not been scheduled on the Commission's agenda yet. The letter could also emphasize that when the issue is discussed, there will be significant public involvement opportunities. Chair Gabbert noted that the Commission has gone on record stating that they will be reviewing the sign code in the near future. Commissioner McClelland agreed, but said that she feels it is important to keep the public informed of this process well in advance.

#### **7. STAFF REPORTS**

##### **a. Type L Public Hearing on Proposed Amendment to the Development Code for a Payment In-Lieu-Of Construction Program**

Ms. Bohlen said the proposed amendment to the Development Code would establish a new program for the City called the "Voluntary Payment In-Lieu-Of Construction Program." This program would allow the City to be more flexible in frontage requirements. Both the Comprehensive Plan and the Development Code have provisions for pedestrian facilities and sidewalks, which have resulted in a number of very small sidewalk sections being built throughout Shoreline in the single-family residential areas. The City has received numerous comments from citizens and developers suggesting that they take the resources being used to build the "spot sidewalks" and pool them to build some sidewalks in the higher priority areas. The City Council decided this was a good idea, and tasked the staff with putting together a program for the Commission and City Council's consideration.

Mr. Bohlen said the staff selected the voluntary payment in-lieu-of construction program because of its flexibility in use. The other choice would be a type of impact fee program that would assess an additional charge to developers to build facilities. The problem with the impact fee program is that the money can only be used to fund improvements that will specifically serve new development. Because Shoreline is predominantly built out, it is too difficult to sort out who would be served by a project. The in-lieu-of program allows more flexibility in that it can be used in places where there are existing deficiencies. She

advised that the program is easy to administer, and there would be very little overhead costs to the City—just a matter of tracking the finances.

Ms. Bohlen explained that if a project is determined to be eligible for the in-lieu-of program, the City and developer would determine what the cost of the frontage improvements would be if the developer were to build the sidewalk on site. Then, instead of building the sidewalk, the developer would give the City the money. The City would direct the money towards a capital project in the area, and the project would have to be completed within five years or the City would lose the money. In determining what criteria should be used to determine whether or not a project would be eligible for the program, staff has concluded that it would make the most sense to put it in the Engineering Development Guide because this is a subjective sort of determination. She referred to the list of criteria (Page 2 of the Staff Report), which matches some of the policies on priority locations for sidewalks.

Ms. Bohlen briefly reviewed the proposed criteria, and noted that a project would not be eligible for the program if it is located on an arterial street, because these are priority locations for sidewalks. Also, if the sidewalk would not connect to a proposed or existing sidewalk or if the required frontage improvements are not of a length suitable for reasonable use of the facility, the project would also be eligible. Ms. Bohlen concluded that the proposed criteria is consistent with the Comprehensive Plan and allows for common sense to be used in the review of applications. The program is simple and easy to administer. Staff recommends the Commission accept public comments tonight and then formulate a recommendation for adoption of the amendment to the City Council.

Commissioner Monroe inquired if the proposed amendment is applicable to sidewalks, only. Ms. Bohlen said the program focuses on sidewalks, but does allow some flexibility to address curbs and gutters, as well. Commissioner Monroe expressed his concern regarding what the in-lieu-of money would be used for. Ms. Bohlen explained that there are some State law requirements that the money must be used for a similar type of improvement and in a location that the development is likely to use.

Commissioner Maloney inquired why there is a provision that the money be returned to the developer if it is not used within five years. Ms. Bohlen answered that State law requires that the City enter into an agreement with the applicant that identifies what the money would be spent on.

Ms. Bohlen expressed her belief that the Interurban Trail project is something that would provide a city-wide benefit. Therefore, the in-lieu-of money could be used for the Interurban Trail. Commissioner McClelland and Harris suggested that it is a stretch to say that the Interurban Trail Project could be related to a proposed new development. He said the justification of collecting the money in the first place is to address the impacts caused by the project. The felt it would be inappropriate for the City to use the in-lieu-of funds for the Interurban Trail instead of for projects that are located in the area surrounding the proposed development. Ms. Bohlen pointed out that the in-lieu-of program would be voluntary on both ends, and the City cannot require a developer to participate. However, if they choose not to participate, they will be required to build the sidewalks on site.

Commissioner Monroe inquired if the staff would object to a restriction that the money be used for projects within the neighborhood where it is collected instead of being used to construct sidewalks along

arterials streets. Ms. Bohlen said that would not be a problem, but the City may run into a problem with the five-year rule if they limit themselves to that specific requirement. Commissioner Monroe suggested that perhaps it would be appropriate to establish some parameters as to how the money can be used. Commissioner McClelland stated that if the money from the in-lieu-of program were placed in an escrow account labeled "neighborhood sidewalks" and allowed to accrue over several years time, the City's CIP program could be done in conjunction with that account, and sidewalks could be extended as the money is available. This would allow the City to see the result of the money.

Ms. Bohlen inquired if the Commission wants to limit the funds collected so that they cannot be used for sidewalks on arterials. Commissioner McClelland agreed with Commissioner Monroe's concern about using the neighborhood in-lieu-of money for arterial improvements that are underfunded. Ms. Bohlen explained that when she met with the City Council to discuss this issue, they were clear that they would like the money from this program included in the capital improvement program as a line item called the "pedestrian improvement fund." The amount collected for this fund is expected to be about \$30,000 per year, and would be used to develop new pedestrian projects along schools, arterials, etc.

Commissioner Doering suggested that perhaps the City could establish some type of grant program for neighborhoods to apply for the sidewalk funds. Ms. Bohlen agreed and said that this would also provide an opportunity for the City to partner with the school district to provide pedestrian walkways near schools.

Commissioner Monroe said he has a problem with the proposed program if the money would be collected from development that occurs in one area and then used to provide sidewalks in another area. Ms. Bohlen said that one requirement of the State law is that when money is collected for the program, the City must specify where the money would be spent. Both the City and the developer must agree. Commissioner Monroe said that helps alleviate his concern, but there needs to be some type of provision for the neighborhood projects to have priority for these funds.

Commissioner Harris said he does not feel it is right to collect money from a developer in one neighborhood to use for a capital project that is somewhere else. If there is a need in that neighborhood, the money should be used for that purpose rather than for projects elsewhere.

Commissioner Marx inquired if the in-lieu-of money could be used for a walkway or bikeway trail or path rather than for a sidewalk. Ms. Bohlen answered affirmatively.

Commissioner McClelland said that perhaps the developer could be provided with a menu of projects that the money could be used for. On-going projects could be identified to provide ideas for appropriate choices.

Mr. Stewart said he would anticipate that the money collected in the in-lieu-of fund could be used for projects that are identified within the City's capital improvement plan. There would be a list of sidewalk and pedestrian improvements that are already approved. Developers of projects that qualify for the in-lieu-of program would be asked if they would be willing to pay into the pedestrian improvement fund in lieu of constructing a sidewalk in front of their development. He referred to the question of whether the

in-lieu-of fund would be replacing funds that would have otherwise been available for pedestrian improvements, and said that is a possibility.

However, it may be that they are able to build projects sooner as a result of the in-lieu-of contributions. The intent is to best utilize the available resources and provide the greatest benefit to the community.

Chair Gabbert said his understanding is that the money from the program would go into a separate fund, and this money could not be spent on general fund items. This should allay any fears that the money would end up in the general fund. Chair Gabbert reiterated that the public hearing is regarding the proposed amendment to the Development Code for the Payment In-Lieu-Of Construction Program. He said the Commission has been given the responsibility of conducting the hearing and forwarding a recommendation to the City Council. He reviewed the rules and procedures and then opened the public hearing.

Commissioner Harris inquired how the City would determine the amount that a developer should contribute to the program. Ms. Bohlen answered that there is a Standard Building Construction Practices Manual ~~talks about that~~ includes the average costs of preparing and developing sidewalks, and the City will use this to determine the amount of contribution necessary. Commissioner Harris noted that if a developer feels that he can build the sidewalks for less than the cost identified by staff, it would be to his benefit to build the piece of sidewalk instead of participating in the program. Ms. Bohlen said the developer would be able to submit an engineering variance. If he can document that his costs would be less, the City would likely agree to that amount. Mr. Stewart added that the same method that is used for establishing bonds for current development ~~projects would be used for the in-lieu-of project, as well.~~

Commissioner Harris pointed out that a property owner who is doing more than a 51 percent remodel of an existing home would be required to either do the street frontage improvements at front of his property or contribute to the in-lieu-of fund. He suggested that perhaps these people would build the sidewalk rather than provide funding for a project elsewhere.

Commissioner McClelland said she feels the program is a good idea, and the issue of sidewalk value should be established. She said it sounds like the program has potential for being promoted as a beneficial neighborhood investment. While there is no reason for the developer to be committed to the neighborhood, there is a reason for the neighbors to be notified of the available program. Perhaps if projects that would benefit the neighborhood are identified they could obtain more support. Perhaps this program could be used as an incentive to give back to the community. The Commission needs to feel comfortable with how the money is used and the public benefit must be identified.

Mr. Stewart advised that if the determined value is too high, the developer would probably not agree to participate in the program. However, many developers like to cash out a liability. For example, the value of the sidewalk might be \$1,500 until a waterline is hit. If the developer chooses to participate in the in-lieu-of program, the risk associated with that improvement goes away, and it becomes a much more certain element of their project. It is hoped that good judgment will prevail on the side of both the City and the developers.



THERE WAS NO ONE IN THE AUDIENCE WHO DESIRED TO PARTICIPATE IN THE PUBLIC HEARING. THEREFORE, THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

COMMISSIONER HARRIS MOVED TO RECOMMEND APPROVAL OF THE PROPOSED AMENDMENT TO THE DEVELOPMENT CODE FOR A PAYMENT IN-LIEU-OF CONSTRUCTION PROGRAM. COMMISSIONER MONROE SECONDED THE MOTION.

Commissioner Marx said she thinks the program is a good idea, but it needs to explicitly require that the funds be used for walkways or bikeways and not just raised sidewalks. This would go along with the already approved capital improvement program.

Commissioner Harris said that while he is not opposed to the program, he does not like the open-ended fee schedule. However, he is more opposed to going off any of the national charts. If the City could work with a developer to arrive at a fair price, the program could work. Otherwise, the developer would build the sidewalk, instead.

Commissioner Monroe said that while he does not know if there is a published schedule for sidewalk construction costs, there is a published schedule for auto repair. Traditionally, this book is about double the time that a good mechanic can accomplish the project. If this is the same case with the sidewalk construction, many developers will choose to construct the sidewalks instead of participate in the in-lieu-of construction program. He said he wants to make sure that the neighborhood from which the money is collected will have priority as to what the money will be spent on. Also, he wants to be sure this is not just another source of funding for the school system. He does not want the in-lieu-of funds used exclusively for sidewalks around the schools.

Commissioner Maloney said he agrees with the previous Commissioners. He pointed out that the \$30,000 that will be collected through the program per year is not really significant.

Commissioner Doering said she is in favor of the proposed program. She agrees with Commissioner Marx that the funding should also be used for bicycle paths and with Commissioner Monroe that the money be used in the neighborhoods that are located near the property being developed. She questioned if it would be possible to provide a report to the neighborhoods identifying how much money is available for projects. Her only worry would be that if the neighborhood is significantly involved in determining where the money is spent, it could cause a delay in sidewalk construction beyond the five years allowed.

Commissioner McClelland said she is in favor of the program, as well. But she would like to see it put in the context of a neighborhood improvement opportunity.

Chair Gabbert said he also supports the proposed program. He said that in projects he has been involved with, they have been required to build these sidewalks to nowhere instead of providing in-lieu-of funds. The issue of a developer being able to build a sidewalk for less than what the City determines the cost would be is not really a concern. The cost would be based on the City design standards that are already in place for curbs, sidewalks and gutters. There are published books that identify this value, so this issue is a

mute point from his perspective. He said he feels that the Commission's recommendation to the Council should include the concept of giving priority to the neighborhoods where the money was collected.

Commissioner Marx suggested that this does not have to necessarily be done using the City's recognized neighborhoods because the development could be close to the next neighborhood boundary. A developer may want money for a project to go to an adjacent neighborhood, instead. Commissioner McClelland suggested that rather than using the word "neighborhood," they should use the phrase "projects within a specific radius of the proposed development."

Chair Gabbert said that rather than discussing all of the specifics of this program, they should make their recommendation, note their concerns and issues and allow the Council to make the final decision.

Commissioner Monroe asked that the modifications identified by the Commission throughout their discussion be included in the recommendation for approval to the City Council. Chair Gabbert said these issues would be brought to the Council as part of the minutes from this hearing.

MOTION CARRIED UNANIMOUSLY.

## **8. ADDITIONAL PUBLIC COMMENT**

Les Nelson, 15340 Stone Avenue North, requested clarification of Ordinance 82, which relates to underground utilities and requires that all above ground new installations be submitted to the Planning Commission for approval of site screening prior to the issuance of a permit. He questioned if this is still a requirement for above ground installation in commercial areas.

Mr. Stewart said part of this ordinance was repealed with the adoption of the Development Code. He referred to the letters that Mr. Nelson has presented to the City Council regarding this issue and noted that Mr. Nelson has also addressed the City Council at their last two meetings. Staff is preparing a response to this issue.

Mr. Nelson said that since the City's intent is to require underground utilities for all new development—particularly in the commercial areas that abut residential zones—it would be appropriate for the Commission to review any variance requests to this ordinance.

Mr. Stewart advised that the case Mr. Nelson is referring to is the expansion of the Safeway Store at 155<sup>th</sup> and Aurora. This expansion to the northeast corner of the building is small in nature, and involves the relocation of an overhead power line. Mr. Nelson alleges that the engineering design standard variance that was granted by the City staff in November should not have been approved, and this is a subject of judicial appeal. The City granted a variance from the design standards so that this particular project was not required to underground the portion of the utility line that runs along the east side of the property. There were four or five criteria standards that had to be met, all of which were found by staff to be true. Mr. Nelson is disputing these facts.

Commissioner McClelland inquired if anyone appealed the staff's decision. Mr. Nelson said he did not appeal the staff's decision because he did not know the project existed until after the appeal period had expired. This project was not sufficient in size to trigger public comment.

Chair Gabbert clarified that it appears the time limits have expired and there is no other recourse other than to change the code to prevent this from happening in the future. Mr. Stewart agreed, and said Mr. Stewart is proposing that public notice be required for Type A building permits, too. Mr. Stewart explained that an engineering variance is a Type A activity, and does not require a public notice or allow for an administrative appeal. He said he would see that the Commission receives a copy of the staff's memorandum to the Council regarding this issue.

Commissioner Harris requested clarification regarding the utility lines that are in question. Mr. Stewart said the line in question serves seven residential customers. If the City had required underground utilities, not only would the main line on the easement have to be undergrounded across 155<sup>th</sup>, which is expensive, but there would be local service connections required of the residential lines. These were some of the findings that led staff to the conclusion that a variance should be granted. The utility service to the store is underground. Mr. Stewart further stated that this is a very significant issue because the City's Development Code requires undergrounding in most cases. But there are very serious implications for the customers being served by the lines that would be underground. For example, if a main line going up is changed to an underground line, all of the service connections to the individual homes have to be placed underground, as well. This cost would be born by private residential owners.

Commissioner Monroe inquired why the City has a requirement that lines have to be underground if it is not going to be enforced. He also inquired why the City has chosen not to allow appeals to these decisions. Mr. Stewart recalled that the notice requirements for Type A permits were significantly debated by the Planning Commission as part of the Development Code review. The ultimate decision was that these would not receive public notice and that there would not be any administrative appeal.

Commissioner McClelland said at some point, the policy to require underground utilities is no longer an engineering issue, but a design and aesthetic issue. If the City desires to get these underground, then the engineering decisions should be consistent with that overriding policy. It is unfortunate because everyone wants to have underground utilities, but they do not want to pay the cost of doing it. Maybe the residents in the area would have been in favor of paying to have the utilities placed underground.

Mr. Stewart advised that requiring individual property owners to pay for undergrounding gets to be a contentious issue. Commissioner Monroe said that, if that is the case, the Commission should review the policy. Mr. Stewart explained that the existing ordinance is structured to make undergrounding a condition established in the engineering design standards. There is a review process, criteria and appeal process established for an engineering variance. If the Commission wants to change this, they could do so during the annual review of the Development Code.

Commissioner Harris suggested that one of the significant problems is that the City's power provider, Seattle City Light, is not very supportive of underground utilities. Underground utilities cost a lot to install and maintain. Commissioner Marx agreed that undergrounding utilities is extremely expensive. If

the street in front of her were to be undergrounded, a lot of people would face a hardship in having to provide an underground connection to their home.

Commissioner Monroe said he likes the idea of underground utilities, but recognizes that it is very expensive. However, he said he is concerned about having a policy and then allowing variances so readily. He emphasized that the City needs to be consistent in regard to this requirement.

Commissioner Doering said that she likes the appearance of underground wire. The assumption is that it is more expensive, but they need to take into consideration the problems associated with storms, etc. She suggested that they contact other jurisdictions that require underground wiring to compare the costs.

Commissioner McClelland inquired if Mr. Nelson feels the service should have been required to be underground because the City has a policy stating that they prefer underground utilities. Mr. Nelson answered affirmatively, and noted that Seattle City Light was surprised that undergrounding was not required. He said the ordinance also says that utilities must be underground within 15 years of the date the ordinance was approved, which is eight to ten years from today. Mr. Nelson said there is no service to houses in that stretch.

Commissioner McClelland inquired if the people in Mr. Nelson's neighborhood that are affected by the utility pole would pony up the cost to help put the utility lines underground. Mr. Nelson said that some would, but some would not be able to do so. Commissioner McClelland said that if the City covets underground utilities as an aesthetic value, they need to be firm about making it happen or admit that they are not going to do that.

Commissioner Monroe said that when the original debate regarding this issue took place, it was determined that undergrounding should be undertaken when it can be paid for by a utility, but there was no consensus in regards to requiring individual homeowners to pay for undergrounding. Chair Gabbert agreed. He suggested that now that they have some experience, they should revisit the issue again. The Commission agreed that staff should propose an amendment when the Development Code is reviewed next fall. Commissioner Monroe suggested that this amendment should include some sort of appeal process.

Mr. Nelson suggested that if underground utilities were required, the property values would be increased, and this would increase the tax revenue to the City.

## **9. UNFINISHED BUSINESS**

Commissioner Marx suggested that the Commission address the concerns raised by Commissioner McClelland at the start of the meeting regarding the misinformation being published about the sign code review. She agreed that this could cause a lot of problems before the Commission even starts their review. Putting the public in a defensive position could make it difficult for the Commission to negotiate any changes, and the Commission needs to do something to address the misinformation. Perhaps the

staff, Commission or a committee of the Commission could draft a letter of response to this misinformation to let the businesses know the Commission wants to work with them.

Commissioner McClelland said that the letter provided in the Chamber of Commerce Newsletter seemed to imply that the Commission would be making changes in the immediate future. She suggested that the Commission write a letter to the Chamber President, clarifying that the Commission has not scheduled the issue on their agenda yet, but that they would involve the business community in the process. The letter could ask that when the Chamber has an issue regarding Planning Commission action, they should double check with the Planning Director before publishing it to their membership.

Chair Gabbert said that he would talk to the Chamber President about this issue. He noted that at the City Council meeting at which the issue was discussed it was made clear that this was going to be on the work program for the next Development Code review, which is almost a year away.

Mr. Stewart said this item needs to be placed on the staff's work program this year, and this includes the process for establishing for the work program, public involvement, staff management, etc.

Commissioner Monroe said he feels it is appropriate to write a letter to the Chamber, but he also questioned whether or not that letter should be placed in the *SHORELINE ENTERPRISE*, as well. Commissioner Marx suggested that when the Commission is ready to seek public input on the issue, it could be placed in the newspaper. But until then, no advertisement regarding the issue needs to be published. The remainder of the Commission agreed.

Mr. Stewart said his recollection of the City Council meeting is that there were about eight to ten upset City businessmen who were under the impression that the City Council would be adopting wide spread amendments to the sign code, including the provision regarding rooftop signs, etc. When staff addressed the issue, they made it very clear that the Planning Commission believes the major changes should not be done without an extensive process involving the broader community, including the Chamber of Commerce. These businessmen felt this would be an appropriate course of action. Mr. Stewart said that the timing and scope of this effort have not been decided to date. The Commission must decide how broad the scope of this project will be.

#### **10. NEW BUSINESS**

There was no new business scheduled on the agenda.

#### **11. AGENDA FOR NEXT MEETING**

The Commissioners had no additional comments to make regarding the agenda for the next meeting.

#### **12. ADJOURNMENT**

The meeting was adjourned at 8:30 p.m.

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Marlin J. Gabbert  
Chair, Planning Commission

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Lanie Curry  
Clerk, Planning Commission

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Figure T-6: Future Bicycle System

