



MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development

MEETING DATE: April 1, 2021

SUBJECT: **PC 21-09; Text Amendment to the Subdivisions and Development Ordinance, Public Improvements**

Please find the following items for Village Board consideration as part of the April 1, 2021, Board meeting:

1. Plan Commission referral letter;
2. IDRC report for PC 21-09; and
3. An Ordinance granting approval of text amendments to Chapter 154, Subdivisions and Development Ordinance. of the Lombard Village Code as it relates to public improvements.

The Plan Commission recommended approval of this petition by a vote of 5-0. Please place this petition on the April 1, 2021 Board of Trustees agenda.

March 15, 2021

Title

PC 21-09

Petitioner

Village of Lombard

Property Location

Village-wide

Approval Sought

The petitioner, the Village of Lombard, requests text amendments to Chapter 154 of the Village Code as it relates to provisions for fees in lieu of public improvements, and public improvements in rights-of-way not controlled by the Village.

Prepared By

Anna Papke, AICP
Senior Planner

DESCRIPTION

The petitioner, the Village of Lombard, is requesting text amendments to Section 154.308 and (proposed) Section 154.309 of the Lombard Code of Ordinances, and any other relevant sections for clarity, to amend provisions for required improvements in public rights-of-way.

This text amendment is related to provisions in the Subdivisions and Development Ordinance for fees in lieu of public improvements and public improvements in rights-of-way not controlled by the Village. This item was previously considered by the Public Works and Environmental Concerns Committee, which recommended support for the proposed amendments.

INTER-DEPARTMENTAL REVIEW

Building Division:

The Building Division has no comments regarding the proposed text amendments to the Village Code.

Fire Department:

The Fire Department has no comments regarding the proposed text amendments to the Village Code.

Private Engineering Services:

Private Engineering Services has no comments regarding the proposed text amendments to the Village Code.

Public Works:

The Department of Public Works supports the proposed amendments to the Village Code.

Planning Services Division:

Lombard adopted Chapter 154 of Village Code, commonly known as the Subdivision and Development Ordinance. Among other things, the Code sets forth development regulations pertaining to:

1. The platting process used to divide tracts of land;
2. The public and private development improvements and specifications for Major, Minor and Administrative Plats of Subdivision; and
3. The public and private development improvements and specifications for Major and Minor Developments.

In review of various code provisions within this Chapter, there are a few amendments that are being contemplated by staff to address developer-constructed improvement requirements and obligations within public rights-of-way (ROWs). In response to issues that have arisen during permit review and inspection of ongoing development projects, staff undertook a review of such requirements, currently set forth as follows:

1. Fee-In-Lieu of Improvements

Section 154.308 currently allows a monetary contribution in lieu of the provision of any public improvements under terms and conditions. This approach has been utilized in cases where other work within the public ROW is anticipated in the near future or in cases in which the Village may undertake a project and deferring work and utilizing collected funds would be more practical or more cost effective. The proposed amendments set forth below are intended to clarify the process by which the Village collects fee-in-lieu payments from developers. As currently adopted, the requirements imply that payments will be approved by and submitted directly to the Village Board. Proposed amendments will clarify that Village staff is responsible for approving and accepting fee-in-lieu payments and an appeals process is offered. The amendments will also include a provision to return such payments to the developer in the event that the related public improvements are not constructed within a 20-year period. Other edits are offered for clarity.

2. Required Improvements Within Rights-of-Way Not Controlled by the Village of Lombard

Currently, there is no formal mechanism by which the Village can formally waive requirements to install any public improvements in non-Village ROWs. However, there may be cases where certain public improvements are unnecessary or undesirable based on existing conditions or planned future improvements within non-Village-maintained ROWs. One such example would be requiring a street light or even a whole roadway reconstruction with full public improvements in front of a major development that would be inconsistent with an IDOT lighting policy. The proposed new Section to Code (Chapter 154.309) will formalize a process for staff to waive requirements for public improvements in ROWs not controlled by the Village, if so warranted.

EXISTING & PROPOSED REGULATIONS

Staff recommends the following text amendments to Chapter 154 as set forth below. The amendments have been reviewed by Village Counsel (edits are shown in red bold or strikeout):

§ 154.308 - Acceptance of contribution in lieu of public improvements.

A monetary contribution in lieu of the provision of any public improvements (contribution for public improvements) required by this Chapter may be accepted under the following terms and conditions. All such requests shall follow these guidelines.

(A) Intent. Under certain circumstances, it may be determined that the public interest is best served by delaying the construction of specific public improvements. In order to ensure that public improvements are provided when appropriate, the Village **Board** may accept monetary contributions for said public improvements in lieu of **the construction thereof**.

(B) Initiation. A request for a contribution ~~in lieu of for~~ a public improvement can be made by the property owner, an authorized representative of the property owner, the Director of Community Development, or initiated by the Board of Trustees.

(C) Authority. The ~~Board of Trustees~~ **Director of Community Development** shall have the ~~sole~~ authority to determine the appropriateness and amount of a contribution for public improvements. **A party subject to such a contribution shall have the right to file an appeal of the anticipated appropriateness of the fee or the calculated contribution request. In the event that an appeal is made, the Director of Community Development shall forward the appeal request to the Village Board for final consideration.**

(D) Procedures. Requests for ~~a contribution~~s for public improvements may be submitted directly to the ~~Board of Trustees through the Director of~~ Community Development **Department** at any time prior to ~~recording a final plat or approval of building permits.~~

(E) Appropriateness of contribution. The appropriateness of accepting a contribution for public improvements shall be based on the following criteria:

- (1) The impact of the proposed subdivision or development does not immediately necessitate the construction of the public improvements prior to occupancy of the development;
- (2) Existing conditions in the area are such that immediate construction of the public improvements would be inefficient;
- (3) Immediate construction of the public improvements may be detrimental to the public health or general welfare of the community;

(F) Determination of contribution. The amount of a contribution for public improvements shall be based on the following criteria:

- (1) An estimate of the design and construction costs of the public improvements prepared by an Illinois Certified Professional Engineer and approved by the Director of Community Development.
- (2) Inclusion of a contingency cost equal to 15 percent of the estimated cost of the public improvements for the purpose of future increases in costs and unforeseen costs.
- (3) The impact of the development as determined by a traffic impact analysis, anticipated water usage, population equivalents, impervious surfaces, and other measures of impact on public facilities.

(G) Use of contribution **for public improvements:-** ~~All-A~~ contributions for public improvements shall be used for the specific public improvements ~~of which it was intended to which it relates.~~ **If in the event that the improvements covered by a contribution for public improvements are not constructed in their entirety within twenty (20) years of the date the contribution for public improvements is made, the Village shall deem the covered public improvements, or the unconstructed portion thereof, are hereby deemed unnecessary, and the balance of the contribution of public improvements shall be returned to the person or entity that provided the contribution for public improvements to the Village. It is the obligation of the person or entity making the contribution for public improvements to provide the Village with updated contact information at all times, so that any potential refund can be processed efficiently.**

New Section 154.309

§ 154.309 – Required Public Improvements for Public Rights-of-Way not Controlled by the Village of Lombard

Public improvements as referenced in Chapter 154 of Village Code shall be required for all publicly dedicated rights-of-way, irrespective of the jurisdictional entity that has regulatory control of said right-of-way. However, for rights-of-way that are controlled by an entity other than the Village, said public improvement requirements can be waived under the Village in the following circumstances:

1. The Director of Community Development finds that constructing the required public improvement would be inconsistent with adopted plans and polices of the Village; or
2. The jurisdiction entity having control over the right-of-way provides the Village with documentation stating that the Village required public improvements are not desired or deemed necessary, based upon existing or proposed conditions within the applicable right-of-way.

STANDARDS FOR TEXT AMENDMENTS

For any change to the Village Code, the standards for text amendments must be affirmed. The standards are noted below:

1. *The degree to which the proposed amendment has general applicability within the Village at large and not intended to benefit specific property;*
These text amendments will be applicable to all future development within the Village.
2. *The consistency of the proposed amendment with the objectives of this ordinance and the intent of the applicable zoning district regulations;*
The proposed text amendments are consistent with the objectives of the Village Code.
3. *The degree to which the proposed amendment would create nonconformity;*
Staff does not believe any nonconformity would be created as a result of these amendments.
4. *The degree to which the proposed amendment would make this ordinance more permissive;*
The proposed amendments will make the ordinance neither more nor less permissive. Rather, the amendments will clarify policies and procedures related to required public improvements.
5. *The consistency of the proposed amendment with the Comprehensive Plan; and*
Staff finds that the proposed amendments would be consistent with the Comprehensive Plan.
6. *The degree to which the proposed amendment is consistent with village policy as established in previous rulings on petitions involving similar circumstances.*
The Village has a history of amending the Village Code to provide clarity or to address policy priorities. The proposed amendments are consistent with established Village policy in this regard.

FINDING & RECOMMENDATIONS

Based on the above findings, the Inter-Departmental Review Committee has reviewed the petition and finds that it meets the standards required by the Village Code. As such, the Inter-Departmental Review Committee recommends that the Plan Commission make the following motion recommending approval of this petition:

Based on the submitted petition and the testimony presented, the requested text amendments **comply** with the standards required by the Village of Lombard Village Code; and, therefore, I move that the Plan Commission accept the findings and recommendations of the Inter-Departmental Report as the findings of the Plan Commission and I recommend to the Corporate Authorities **approval** of PC 21-09.

Inter-Departmental Review Committee Report approved by:



William J. Heniff, AICP
Director of Community Development

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ORDINANCE _____

AN ORDINANCE APPROVING A TEXT AMENDMENT
TO THE LOMBARD SUBDIVISIONS AND DEVELOPMENT ORDINANCE
TITLE 15, CHAPTER 154
OF THE LOMBARD VILLAGE CODE

PC 21-09: Text Amendments to the Subdivisions and Development Ordinance: Public Improvements

WHEREAS, the Village of Lombard maintains a Subdivisions and Development Ordinance which is found in Title 15, Chapter 154 of the Lombard Code; and,

WHEREAS, the Board of Trustees deem it reasonable to periodically review said Subdivisions and Development Ordinance and make necessary changes; and,

WHEREAS, a public hearing to consider text amendments to the Subdivisions and Development Ordinance has been conducted by the Village of Lombard Plan Commission on March 15, 2021, pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the text amendments described herein; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That Title 15, Chapter 154, Section 154.308 of the Lombard Zoning Ordinance shall be amended to read as follows:

§ 154.308 - Acceptance of contribution in lieu of public improvements.

A monetary contribution in lieu of the provision of any public improvements (contribution for public improvements) required by this Chapter may be accepted under the following terms and conditions. All such requests shall follow these guidelines.

(A) Intent. Under certain circumstances, it may be determined that the public interest is best served by delaying the construction of specific public improvements. In order to ensure that public improvements are provided when appropriate, the Village Board

may accept monetary contributions for said public improvements in lieu of the construction thereof.

(B) Initiation. A request for a contribution ~~in lieu of~~ for a public improvement can be made by the property owner, an authorized representative of the property owner, the Director of Community Development, or initiated by the Board of Trustees.

(C) Authority. The ~~Board of Trustees~~ Director of Community Development shall have the ~~sole~~ authority to determine the appropriateness and amount of a contribution for public improvements. A party subject to such a contribution shall have the right to file an appeal of the anticipated appropriateness of the fee or the calculated contribution request. In the event that an appeal is made, the Director of Community Development shall forward the appeal request to the Village Board for final consideration.

(D) Procedures. Requests for a contributions for public improvements may be submitted directly to the ~~Board of Trustees through the Director of~~ Community Development Department at any time prior to ~~recording a final plat or~~ approval of building permits.

(E) Appropriateness of contribution. The appropriateness of accepting a contribution for public improvements shall be based on the following criteria:

- (1) The impact of the proposed subdivision or development does not immediately necessitate the construction of the public improvements prior to occupancy of the development;
- (2) Existing conditions in the area are such that immediate construction of the public improvements would be inefficient;
- (3) Immediate construction of the public improvements may be detrimental to the public health or general welfare of the community;

(F) Determination of contribution. The amount of a contribution for public improvements shall be based on the following criteria:

- (1) An estimate of the design and construction costs of the public improvements prepared by an Illinois Certified Professional Engineer and approved by the Director of Community Development.
- (2) Inclusion of a contingency cost equal to 15 percent of the estimated cost of the public improvements for the purpose of future increases in costs and unforeseen costs.
- (3) The impact of the development as determined by a traffic impact analysis, anticipated water usage, population equivalents, impervious surfaces, and other measures of impact on public facilities.

(G) Use of contribution for public improvements: ~~All A~~ contributions for public improvements shall be used for the specific public improvements ~~of which it was intended to which it relates~~. In the event that the improvements covered by a contribution for public improvements are not constructed in their entirety

within twenty (20) years of the date the contribution for public improvements is made, the Village shall deem the covered public improvements, or the unconstructed portion thereof, are hereby deemed unnecessary, and the balance of the contribution of public improvements shall be returned to the person or entity that provided the contribution for public improvements to the Village. It is the obligation of the person or entity making the contribution for public improvements to provide the Village with updated contact information at all times, so that any potential refund can be processed efficiently.

SECTION 2: That Title 15, Chapter 154, Section 154.309 of the Lombard Zoning Ordinance shall be created, to read as follows:

§ 154.309 – Required Public Improvements for Public Rights-of-Way not Controlled by the Village of Lombard

Public improvements as referenced in Chapter 154 of Village Code shall be required for all publicly dedicated rights-of-way, irrespective of the jurisdictional entity that has regulatory control of said right-of-way. However, for rights-of-way that are controlled by an entity other than the Village, said public improvement requirements can be waived under the Village in the following circumstances:

1. The Director of Community Development finds that constructing the required public improvement would be inconsistent with adopted plans and polices of the Village; or
2. The jurisdiction entity having control over the right-of-way provides the Village with documentation stating that the Village required public improvements are not desired or deemed necessary, based upon existing or proposed conditions within the applicable right-of-way.

SECTION 3: That this ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of _____, 2021.

First reading waived by action of the Board of Trustees this ____ day of _____, 2021.

Passed on second reading this ____ day of _____, 2021.

Ayes: _____

Ordinance No. _____
Re: PC 21-09
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Nays: _____

Absent: _____

Approved this _____ day of _____, 2021.

Keith T. Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published in pamphlet from this _____ day of _____, 2021.

Sharon Kuderna, Village Clerk