



## MEMORANDUM

**TO:** Trustee William Ware, Chair  
Public Works and Environmental Concerns Committee

**FROM:** William J. Heniff, AICP *WJH by DRH*  
Director of Community Development

**DATE:** February 3, 2021

**SUBJECT:** **Text Amendment to Chapter 154 of Village Code – Fees in lieu of public improvements and public improvements in ROWs not controlled by the Village of Lombard**

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.

Authority is given to the Community Development Department to administer the code provisions and the Lombard Plan Commission considers any requests for variations or code amendments to the chapter through the statutory public hearing process.

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:

### **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.

**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.

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~~ 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~~. ~~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.**

**ACTION REQUESTED**

Staff recommends that Committee vote to recommend this Code amendment to the Plan Commission and Board of Trustees. The Plan Commission is scheduled to hold a public hearing on the proposed text amendments at its meeting on March 15, 2021. A recommendation from the Plan Commission will be forwarded to the Village Board for final decision. If the PWECC desires to offer comments relative to the request, they will be shared accordingly.