

CITY COUNCIL WORK SESSION

October 1, 2012

5:30 p.m.

City Council Chamber

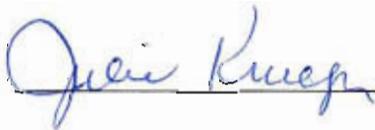
313 Court Street, The Dalles, Oregon

**AGENDA**

1. CALL TO ORDER
2. DISCUSSION REGARDING RESIDENTIAL INFILL DEVELOPMENT POLICIES AND PROCEDURES
3. ADJOURNMENT

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Prepared by/  
Julie Krueger, MMC  
City Clerk



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**AGENDA STAFF REPORT**  
**CITY OF THE DALLES**

<b>WORK SESSION DATE</b>	<b>AGENDA LOCATION</b>	<b>AGENDA REPORT #</b>
October 1, 2012		

**TO:** Honorable Mayor and City Council

**FROM:** Garrett Chrostek, Administrative Fellow

**THRU:** Nolan K. Young, City Manager

**DATE:** September 14, 2012

**ISSUE:** Residential Infill Development Policies and Procedures.

**BACKGROUND:** The City has large areas on the east and west ends of the community where infill development is taking place on under improved streets. As is stands right now, a property owner seeking approval to partition their residential lot or engage in additional development on an unimproved street must remit a pre-assessment for future improvements or construct such improvements if feasible. These pre-assessments or street improvement installation costs can be a deterrent to development and a financial hardship to the property owner. This Staff Report identifies potential alternatives to the current process and makes recommendations for Council action. For reference, this Staff Report also includes a summary of the recommendations from the 2007 Task Force (as Appendix I) and a survey of how other communities handle the issues raised by infill development (as Appendix II).

**BUDGET IMPLICATIONS:** Council action will have varying budget implications depending on the alternative selected. Analysis of budget implications is investigated in additional detail in the DISCUSSION section.

## **POLICY GOALS:**

1. Facilitate infill by minimizing the financial barriers to such development.
2. Ensure safe and well managed streets.
3. Develop a fair and uniform system for assessing and collecting payments for future street improvements.
4. Eliminate surprising future owners with large assessment obligations.

**DISCUSSION:** Staff considered all conceivable approaches for addressing infill development on under improved streets, recognizing that some may be impractical, for the purpose of providing Council a comprehensive view of the issues. Approaches examined include: 1.) establishing a prohibition (moratorium) on development on under improved streets, 2.) requiring installation of street improvements or payment in lieu as a condition to land use approvals and building permits, 3.) deferring installation of or the obligation to pay for street improvements until a later point in the development process, 4.) requiring nothing from developers and utilizing LIDs, or 5.) requiring nothing from developers and pursuing other approaches that encourage street improvements. This discussion evaluates these approaches, identifies similar practices in other communities, and examines some of the sub-issues raised by a specific alternative.

### **i. Prohibit all development on under improved streets**

- a. **Description:** This alternative calls for a moratorium on all development on unimproved streets. Land owners seeking to develop would thus incur obligations similar to a subdivider in that the improvements would need to be physically in place prior to the issuance of any approvals or permits. However, there is currently no mechanism for the developer to obtain reimbursement for street improvements from other benefiting property owners. The moratorium might be lifted by the formation of an LID, however formation of an LID would likely delay the development and can be difficult to initiate.
- b. **Analysis:** While this alternative would pose the greatest obstacle to development of any of the alternatives analyzed, particularly for property owners not experienced in real estate development matters, it offers the greatest assurance that improvements would be made or at least that no further strain is placed on under improved streets. However, this alternative may be susceptible to legal challenges and could create surprise for future owners who are unaware of the moratorium. None of the communities surveyed take this approach.

## II. Require installation of street improvements contemporaneously with development

a. **Description:** This alternative reflects the City's existing practices as the City currently requires that either the developer install street improvements equivalent to their fair share (1/2 street for entire frontage) contemporaneously with development or make a payment into an LID fund. This alternative differs from Alternative 1 in that development could proceed on an under improved street, but land use approvals and building permits would be conditioned on the installation of or payment for local improvements.

### b. Sub-Issues:

#### i. *Who installs the improvements?*

1. Developer—The City could allow developers to install the improvements subject to City standards and inspection.
2. City— The City could obligate the developer to pay the City to complete improvements or organize a bidding process.

#### ii. *What is the scope of the requirements?*

1. Half-street—The City could require the installation of a half street as a condition of development. This would include a sidewalk, curbing, gutter and one lane of travel for the entire frontage of the property. This sub-alternative has the advantage of guaranteeing that improvements are installed and that the owner pays a proportional share for street improvements. However, it is an inefficient means of completing street improvements and would create visual and maintenance problems associated with a non-uniform street.
2. Three quarter-street—This sub-alternative is the same as the half street except that the developer would be responsible for supplying two lanes to facilitate traffic flow. The other curb, gutter, and sidewalk would be the responsibility of the opposite property owner. The City could also set up a system for the opposite property owner to reimburse the developer for installing the extra travel lane when the entire street is improved.
3. Full block—The City could make the developer responsible for the entire block to promote efficiency and to ensure that street improvements are completed. The City could then amend the reimbursement district ordinance to allow the developer to obtain reimbursement for street improvements. This would create the largest obstacle to development amongst these three sub-alternatives.

#### iii. *How long can the City hold these funds before installing improvements?*

1. If the City does collect pre-assessments for future street improvements, the property owner seems entitled to some assurance that the money paid will actually result in street improvements.

The City could reestablish or reform its LID Priority Plan and LID ordinance to establish more definite determinations as to when street improvements will occur.

- c. **Analysis:** Requiring street improvements to be installed contemporaneously with development presents similar advantages and disadvantages as Alternative 1. Specifically, it would require an upfront investment from the developer, which may hinder development. Yet, it guarantees that at least some improvements are actually installed, offers the City the greatest amount of certainty that it will collect funds for future improvements, and avoids surprise to future buyers. It should be noted that installation at the time of development would not be efficient where the sewer and water lines have not yet been installed. This alternative best matches the approaches taken by La Grande, Madras, and Pendleton.

### **III. Defer installation of or the obligation to pay for street improvements until a later point in the development process**

- a. **Description:** Under this alternative, the property owner would be responsible for ensuring that improvements are at least paid for (through a pre-assessment) but that obligation would come later.

- b. **Sub Issues:**

- i. *When should the obligation to provide for future improvements be imposed?*

- 1. At time of partition application— The City could retain its policy of imposing the obligation of paying for or installing street improvements on the party filing for a partition or further development. If payment is due when the obligation attaches, this sub-alternative would likely deter the residential lot owner that simply wants to partition and sell the new lot to a party that will actually build the residence.
    - 2. At time of physical development/permit filing—This sub-alternative would place the obligation to install or pay for future street improvements on the party that engages in physical development (i.e. actually builds the residence or establishes a building pad). The person engaging in physical development may be in a better position to pay for improvements as they can incorporate the fee into their decision whether to acquire and develop the property. However, this sub-alternative may create issues of surprise as buyers may be unaware of the extra costs associated with obtaining building permits for that property. A records system and notification process beyond the City's existing recording system and lien docket might be developed to inform potential buyers that building permits for a specific property would be subject to payment of a pre-assessment.

3. Upon signing of a non-remonstrance agreement—The City Council has not expressly prohibited the City’s use of non-remonstrance agreements. Rather General Ordinance No. 07-1276 proscribes the City from obligating property owners to sign an agreement as a predicate to a permitting or land use approval. Under this sub-alternative the obligation would not attach until the City exercises its rights under the non-remonstrance agreements. Amongst these three sub-alternatives, non-remonstrance agreements offer the least resistance to development as the developer may avoid paying anything for street improvements. However, non-remonstrance agreements have proven unpopular amongst property owners because of an inability to predict if or when the City will exercise its rights under the agreement and the surprise experienced by some subsequent property owners.

ii. *When should payment be due?*

1. When obligation is imposed—This sub-alternative is basically Alternative 2 in that it would require the developer to put up the full pre-assessment at the time the obligation is imposed (i.e. partition approval or permit issuance). As identified above, requiring payment due at the time of partition would discourage property owners seeking to partition for the purpose of selling the lot to someone else for physical development. Having payment due at the time of filing for a building permit would not inhibit partitioning, but would present an obstacle to physical development as the developer would need sufficient financing to pay those fees up front. The greatest advantage for requiring payment due at the time of development is that the City is assured payment as otherwise development cannot proceed.

2. Upon sale of the property—Payment could be deferred until the sale of the new lot (or sale of either lot if the original landowner moves onto the new lot and sells the old lot) or the resulting structure. The seller would then be responsible for street improvement costs at the uniform rate in place at the time of sale. Requiring payment due upon the sale of the property presents less of a deterrent to partitioning and physical development than requiring payment due earlier in the development process as there is no upfront outlay. However, payment upon sale does create additional administrative work as the City would need to record a lien or otherwise document that a payment is owed. The City would then need to monitor the liens and potentially incur legal costs in collecting debts. Thus, this sub-alternative would better facilitate infill development, but has the disadvantage of potential

lower collection rates and consumption of greater municipal resources. Also, property owners could potentially defer payments for significant periods of time if they hold onto the lot, rent it out, or let relatives live there. Such delays may inhibit formation of an LID while adding demand to the under improved street. Therefore a time limit may need to be imposed otherwise the City does not gain any advantage out of the transaction as the owner would still be entitled to remonstrate against the formation of an LID.

3. Payment plan—The City could establish a payment plan that would allow the costs of improvements to be repaid over time with interest. The debt would be secured against the property and recorded as a lien. Or, payment might be due in a lump sum at some point within a deferred payment period (i.e. 10 years). This sub-alternative would present less of a barrier to development, but would require considerable administration, monitoring, and enforcement costs and would not guarantee full collection of debts.
4. When the City exercises its rights under a non-remonstrance agreement—If the City Council reversed its stance on non-remonstrance agreements, or if the City offered a remonstrance agreement as one method of satisfying a developer’s obligation, payments could also become due upon the City exercising its rights under a non-remonstrance agreement. As identified previously, the lack of predictability and potential for surprise has created public opposition to the use of non-remonstrance agreements.
5. By mutual agreement between the developer and the City—Payment could also be deferred until a date agreed upon by the City and the developer. This would allow the developer the ability to proceed without an upfront expenditure while still allowing for the flexibility of a deferred payment. However, it invites accusations of favoritism as developers may complain their project did not receive the same treatment as another project. The City might include a provision that payment is immediately due upon the sale of property held by the developer (i.e. newly created lot or remaining original lot), upon application for further development, or some other triggering event.
6. Upon formation of an LID—Finally, payment could be deferred until the formation of an LID. This option would essentially treat the developer as any other existing property owner as the developer or subsequent owner would be allowed to remonstrate against the LID unless an existing non-remonstrance agreement is recorded against the property.
- 7.

- iii. *How long can the City hold these funds before installing improvements?*
  - 1. As described above, the City could develop or reform its policies for determining when fees collected will result in actual street improvements.
- iv. *How should costs for future street improvements be allocated between the developer and the city?*
  - 1. Developer covers 100% of costs—Under this sub-alternative a property owner would be responsible for 100% of the costs with payment calculated based on the street frontage multiplied by the uniform cost per foot with multi-frontage relief. The City might also consider basing fees on trips generated as is the practice in some other jurisdictions.
  - 2. Shared between developer and City—The City always covers some portion of street improvements. Specifically, the City covers multi-frontage relief, intersections, and streets abutting public property. However, this alternative addresses whether the City should cover any portion of the costs normally attributable to the property owner (i.e. the frontage formula). As opposed to sewer and water lines, where the benefits are largely isolated to the property owner and more easily measured, the property owner shares in the benefits of street improvements with the community. Accordingly, this alternative recognizes this fact and would allow the Council to allocate the costs according to its determination of the land owner's respective share of the benefit (might also be addressed by switching to a trips generated pricing method). It should be noted, however, that full costs based on the frontage formula have traditionally been allocated to the property owner. Thus, the City would have to look elsewhere to cover its share of the improvements.
  - 3. City covers 100% of costs—This sub-alternative is essentially Alternative 5 as a 100% subsidy would nullify considerations of when the obligation should be imposed and when payment should be due. It would also require the City to identify other funding sources to pay for improvements as the budget does not currently support covering 100% of street improvements.

c. **Analysis:** Depending on its structure, Alternative 3 offers a good means to address the scenario presented to the Council at the July 9, 2012 Council meeting (a landowner wanting to partition and sell the lot without making payment for improvements) while meeting the City's goal of encouraging street improvements. Under this alternative, development is facilitated because developers can avoid large upfront investments. However, this alternative offers less assurance that the

City will recover costs for improvements than Alternative 1 and 2 as fees are collected at a later point in time and may come into default.

#### **IV. Require nothing and utilize LIDs to complete street improvements**

- a. **Description:** Under this alternative, infill partitions and developments would be granted without any requirement to install or pay for street improvements. As a substitute the City would pursue LIDs to complete street improvements.
- b. **Analysis:** This alternative offers less resistance to development than Alternatives 1, 2, or 3, but provides little to no assurance that street improvements would ever occur as LIDs can be difficult to initiate. It would also result in increased use of substandard streets, which are often already deteriorating.

#### **V. Require nothing and pursue other approaches that would encourage street improvements**

- a. **Description:** Similar to Alternative 4, this alternative imposes no requirement on developers to install or pay for future street improvements. Rather, the City would pursue other policies to complete or encourage street improvements. In effect, this alternative would shift the cost of street improvements to the community and would require the City to raise funds from other sources as the budget does not currently support this alternative. Other potential sources of funds include local sales taxes, franchise fees, ROW usage fees, and grants. Additional measures to encourage street improvements include eliminating or reducing the level of City provided maintenance to under improved streets, heightening building requirements on under improved streets, LID reform (offering pre-payment discounts, setting lower participation thresholds, etc.), and Reimbursement District reform (extending the opportunity to street improvements and making reimbursement more reliable for developers).
- b. **Analysis:** Also similar to Alternative 4, Alternative 5 offers the least resistance to development. However, this alternative provides little to no assurance that improvements will actually be completed and places the financial burden on the community at large instead of the benefiting property owners. This would likely lead to disproportionate allocations of payments and benefits as some property owners have already paid for improvements through either pre-assessments or LIDs. Finally, other sources of funding would be independent of the costs of improvements, which may lead to budgeting problems as other sources of funding are less reliable than direct assessments and grants for local improvements are limited and exceptionally competitive. Alternative 5 is the general approach taken by Astoria (no obligations for first three partitions on an under improved street) and Coos Bay (no obligation until a single owner owns four or more lots on a single unimproved street, but can establish a reimbursement district), but these communities report that it has been difficult to initiate LIDs or otherwise find funding for street improvements.

## **COUNCIL ALTERNATIVES:**

1. Establish a prohibition (moratorium) on development on under improved streets.
2. Require developers to install street improvements or make payment in lieu as a condition to land use approvals and building permits. (No action).
3. Defer the developer's obligation to pay for or install street improvement until later in the development process.
4. Require nothing upfront from developers and utilize LIDs to complete street improvements
5. Require nothing upfront from developers and pursue other approaches that encourage street improvements.

**STAFF RECOMMENDATION:** *Council should adopt a combination of Alternatives 2 and 3 whereby the obligation to install or pay for street improvements attaches upon a developer filing for a partition or any further development with payment due at the time of development, sometime before sale (in a lump sum), or upon the first occurrence of either sale of the property, formation of an LID, or 10 years. The developer would be responsible for 100% of the costs as determined by the frontage formula.*

## **DISCUSSION OF STAFF RECOMMENDATION:**

- I. **Considerations:** In making its recommendation Staff determined that a consistent approach to infill development is preferable for both developers and City Staff as opposed to adopting separate sets of procedures based on varying infill development scenarios. However, pursuing a consistent approach will likely not result in an ideal solution for everyone as developers and property owners have different intentions for their property, are operating from unique financial positions, and possess varying levels of development experience. Recognizing this fact, Staff crafted a recommendation that would work best overall for the affected population while still achieving the policy goals stated at the beginning of this report.
- II. **Combination of Alternatives 2 and 3:** Staff recommends a combination of Alternatives 2 and 3, which would impose an obligation to install or pay for street improvements upon application for partition or further development, while allowing for deferred payment. This alternative provides the greatest balance between the competing goals of ensuring street improvements are installed or financed while minimizing the financial burden on the property owner. Under this hybrid alternative, the City gains a relatively reliable funding source for making

future improvements and land owners avoid a major expenditure until there is a revenue producing event (sale of the property as discussed below) or adequate time to conduct financial planning. The other alternatives are inferior because they prohibit development (Alternative 1), deter development through upfront outlays (if Alternative 2 is selected exclusively) or provide little or no reliability that improvements will be paid for or actually occur (Alternatives 4 and 5). In general, this is the recommendation of the Task Force.

III. **Obligation Should Attach Upon Seeking a Partition Approval or Upon**

**Further Development:** The obligation to pay for or install future improvements should attach upon a developer's application for a partition or further development on existing lots and structures because that is when the increased demand on under developed street originates, it avoids problems of surprise that might arise by deferring imposition of the obligation, and the current property owner is in the best position to account for street improvement obligations. Although less so with a simple partition, the addition of new residences or the expansion of existing residences creates additional demand on substandard streets. Developers should therefore incur an obligation to install or pay for future street improvements to alleviate that additional strain. Delaying attachment until physical development creates potential problems of surprise as the buyer may not learn about the "enhanced building permit fee" until after acquiring the property. The developer is in the best position to consider street improvements because the developer's focus is development and they are in consultation with City staff whereas a future buyer is typically focused on acquiring a future home and not on investigating future street improvement obligations. The developer can thus more readily discover obligations for street improvements and account for them in development decisions. Accordingly, in order to evade developing some new notification system, refrain from utilizing non-remonstrance agreements, and avoid creating surprised purchasers, the City should attach the obligation to pay for future improvements upon application for partition.

IV. **Installation of Improvements:** The timeframe for installing improvements would go unchanged. If the developer elects to install improvements, those improvements would need to be installed contemporaneously with development consistent with current practice.

V. **Offer Multiple Payment Options:** If the property owner seeks to make a payment to an LID fund in lieu of installing improvements, the obligation would be recorded against the property and the developer would have the choice of paying prior to development, prior to sale (in a lump sum), or upon the first occurrence of sale of the property, formation of an LID, or 10 years. These options would avoid a mandatory upfront investment, would offer the developer flexibility in satisfying their obligation, and would keep the obligation on the developer thereby avoid surprise for future owners. A time limit is necessary because otherwise the developer that keeps their property would be able to withhold payment for a long

period of time and remonstrate against an LID thus inhibiting formation of an LID and contributing to the delay of improvements for those that have already paid. 10 years was selected as a time period because that is the timeframe associated with property owners satisfying other obligations to the City. The developer would then be responsible for a payment determined by the uniform rate in place at the time payment is due. Payment plans should be avoided because of the additional strain on City resources to administer. Deferring payment through a non-remonstrance agreement should also be avoided because of the City's past experience with enforcing these agreements, the potential for surprise, and because of the lack of predictability afforded the property owner.

- VI. **Developer Cover 100% of Costs Per Frontage Formula:** As it has been City practice, and the City has limited funds to subsidize street improvements, the City should continue to assess the full costs of street improvements to property owners based on the frontage formula with multi-frontage relief. The City might investigate whether a trips generated assessment method is a fairer means to assess street improvement costs, however it appears the current method is working and is more congruent with the City's method of estimating costs.

#### **ISSUES FOR FURTHER COUNCIL DIRECTION:**

- 1. Street Improvement Installation Policy:** Council might consider resuming annual reviews of an LID Prioritization Plan and uniform rate, even if either the plan or the annual rate should go unchanged from the previous year. The Capital Improvement Plan might also be reformed to provide a five year watch list that would put landowners on notice of under improved streets in need of improvements and a ten year horizon as to when the City anticipates initiating an LID. Further, the Plan could include current participation figures and discussion of the property owner's ability to lock in at the current uniform rate by pre-paying. The City might also establish a more firm policy for initiating LIDs upon reaching certain participation/approval thresholds (i.e 51% of owners of 51% of estimated costs collected) to provide assurance to owners that pre-pay that improvements will actually be installed. Property owners could be regularly notified when participation/approvals reach certain thresholds (i.e. 33% and 50%).
- 2. Partial Streets:** The City Council might consider prohibiting installation of partial streets as a means of satisfying local improvement obligations. While partial streets are an immediate means to capture an individual landowner's obligation for street improvements, partial streets are nonetheless an inefficient method of completing street improvements, are visually unappealing, and disrupt uniform street maintenance schedules. There are several existing half streets in The Dalles and Staff have noted that such streets can dictate the design for the remainder of the street, which often is not the ideal design for a fully completed street.

3. **Street Maintenance:** The City could investigate the costs of maintaining gravel streets vs. under improved streets vs. fully improved streets. Other jurisdictions/studies have revealed that paved streets can be less expensive to maintain depending on weather conditions and the level of use because paved roads are more resistant to problems of erosion, cracking, and wear. Depending on the results of a City specific study, the City might consider eliminating or reducing the level of maintenance for under improved streets as part of an effort to conserve resources and encourage street improvements.
  
4. **Develop a Consistent Policy as to Why Street Improvements Are Needed:** One of the first responses the City receives when assessments for street improvements are proposed is landowners questioning why the improvements are needed at all. The City does not have a clear and consistent policy statement on that question. The City might therefore draft a comprehensive policy statement addressing these concerns. Research into such issues as increases in property value, differences in maintenance costs, and emergency response access and response times might be required.

**APPENDIX I—SUMMARY OF 2007 TASK FORCE RECOMMENDATIONS:**

This appendix identifies the primary issues addressed by the Local Improvement District (LID) Task Force. By issue, it then summarizes the various policy alternatives considered and outlines the Task Force’s ultimate recommendations. Finally, each issue is concluded with a description of City Council actions taken on those recommendations and a status update on the issue with identification of new or remaining issues.

**1. Prioritizing Specific Street Improvements**

- Issue: The Task Force acknowledged that there was no widely recognized schedule for making public improvements. Such a schedule would help prioritize public improvement projects, provide notice of potential improvement, allow property owners and developers greater opportunity to conduct financial planning for potential assessments, and provide the City greater capacity to arrange financing for these projects.
- Alternatives: City staff proposed that Public Works draft, and annually update, a Capital Improvement Plan with a five year outlook that would cover street improvements. The plan would include an inventory of underdeveloped streets and a tentative priority schedule.
- Recommendation: The Task Force recommended that the City Council annually approve a Capital Improvement Plan identifying priority areas that need public improvements (streets, curbs, gutters, and sidewalks). Criteria for evaluating priorities would include the percentage of contributing properties in a local improvement district, logical extensions from existing improvements, current state of improvements, and health and

safety considerations. Additionally, the Task Force recommended that the City Council adopt uniform improvement rates per foot of frontage.

**Council Action:** Through Resolution No. 07-007, the Council adopted the creation of a Five Year Capital Improvement Plan based on the criteria identified by the Task Force. It also adopted Resolution No. 07-021, which established uniform improvement rates for future street improvements to be assessed when it is not feasible to complete improvements at the time of development.

**Current Status/Issues:** Following adoption of Resolution No. 07-007, staff presented annual street improvement priority schedules and updated uniform future improvement rates. In October of 2008, the Council decided not to adjust the rates because of economic challenges for property owners, but has indicated plans to readdress the issue in the future. Additionally, Council did not adopt a Capital Improvement Plan in 2008, or any year since, owing to dissatisfaction voiced by property owners when their street made the priority schedule. Currently, the only residential street identified on the schedule is Thompson Street, which the Council indicated would be done in the next two to five years. Property owner opposition to the fees associated with public improvements is the primary reason the priority schedule in the Capital Improvement plan is not working.

## **2. Non-Remonstrance Waivers**

**Issue:** Previously, City practice was to secure non-remonstrance agreements from developers and landowners when installing public improvements was not feasible at the time of development or was otherwise delayed. These agreements are recordable and thus enforceable against future owners when the City pursues public improvements that benefit the non-remonstrating property. Changes in state law complicated the recordation process and for a period of time newly issued non-remonstrance agreements went unrecorded. Further complicating matters, the agreements were not routinely disclosed between buyers and sellers of real property, creating problems of surprise. Consequently, the City experienced difficulty collecting assessments from properties with non-remonstrance agreements as property owners opposed enforcement of the agreement. Accordingly, the Task Force tackled three major sub-issues regarding residential non-remonstrance agreements; whether to continue the current practice (and what would take its place), how to handle existing agreements, and how to address opposition to the costs and affordability of fees assessed under a non-remonstrance agreement (or a substitute).

**Alternatives:** Sub-issue #1: In addressing whether to continue current practices, the Task Force demonstrated palpable dissatisfaction with residential non-remonstrance agreements and favored doing away with them entirely.

Yet, this raised the issue of what would substitute for these agreements. In evaluating this issue, the Task Force considered prohibiting all development until improvements are made, requiring assessments be paid at either time of development or time of sale by the developer, and allowing the developer to avoid assessments only through a signed agreement between the developer and a subsequent purchaser.

Sub-issue #2: In regards to existing residential non-remonstrance agreements, the Task Force considered whether to void all current agreements, to only enforce agreements signed by the current property owners, to only enforce those agreements that are recorded, and some combination of these three possibilities.

Sub-issue #3: The Task Force noted that assessments from public improvements can be a substantial financial burden, particularly when they are a surprise. To address surprise, the Task Force considered a notification scheme to alert property owners of anticipated future public improvement costs, establishing a uniform rate of public improvements (set annually) to afford better estimation of costs, and require that assessments be paid either at the time of development or sale. This final alternative would avoid property owners making large lump payments and would also allow for the developer or subsequent buyer to better evaluate affordability in making a decision to develop or acquire the property.

Recommendation:

Sub-issue #1: The Task Force recommended that the City no longer utilize residential non-remonstrance agreements. Rather, street improvements to new residential development should be assessed at the time of development. Fees for street, water, or sewer improvements to existing residential development should only be assessed after the initiation of a Reimbursement District, Street Public Infrastructure District (SPID), or Local Improvement District (LID).

Sub-issue #2: The Task Force recommended that in regards to residential non-remonstrance agreements, only those agreements still held by the signing property owner and those actually recorded should remain enforceable.

Sub-issue #3: In concert with the recommendation to sub-issue #1, the Task Force recommended that assessments for street improvements be levied at the time of development for new residential development and at either the time of additional development or sale for existing residential development. The Task Force did not include the mechanism for collecting these fees, but the minutes capture discussion of recording a lien against the property.

Fees for water and sewer improvements should come through Reimbursement Districts and be assessed at the time a new

development or self-reliant property connects to water and sewer infrastructure. These fees would be in addition to standard System Development Charges (SDCs). There is no mention of whether these fees would be collected through recordable liens.

Council Action:

Sub-issue #1: The City Council adopted the Task Force's recommendation through General Ordinance No. 07-1276 and Resolution No. 07-007. The City can no longer require an applicant to sign a non-remonstrance agreement as a condition to approval. However, the Council allowed the City to waive installation of sidewalks where appropriate, but have the developer pay the estimated costs to the LID fund based on street frontage and uniform footage rate.

Sub-issue #2: The City Council adopted the Task Force's recommendation through General Ordinance No. 07-1276 and Resolution No. 07-007, but added in General Ordinance No. 07-1277 that property owners can buyback any waiver recorded against their property.

Sub-issue #3: The City Council adopted the Task Force's recommendation through General Ordinance No. 07-1276 and Resolution No. 07-007, but added the option for property owners to prepay when applicable. The City Council adopted Reimbursement Districts through General Ordinance No. 06-1275.

Current Status/Issues:

As instructed by Resolution No. 07-007, staff recorded all unrecorded non-remonstrance agreements signed by property owners still in ownership of the burdened property at the date the resolution was adopted. All unrecorded non-remonstrance agreements to properties held by someone other than the signatory were declared void.

The two reimbursement districts established since 2007 (one initiated by the City and one by private developer) appear to be working fairly well overall. However, the function of the reimbursement district, where the developer is not reimbursed until subsequent development benefiting from the improvement occurs, may be hindering some development.

The same is true for the payment of street assessments. Since 2007 the City has collected two residential assessments for lot partitions on under improved streets. Staff feels there have been numerous minor land partitions that have not happened because of the fee. Timing of the payment of the fee seems to be the primary issue with developer/property owners trying to defer the payment until someone else builds on the property. This raises the same issues that existed before non-remonstrance agreements.

### 3. LID Implementation Process

- Issue:** The Task Force took issue with the City independently initiating improvements, particularly for properties with enforceable non-remonstrance agreements because of the property owner's inability to meaningfully participate in this process. Thus, the Task Force investigated processes that would balance the availability of public input and consent with the need to make necessary improvements.
- Alternatives:** Alternatives considered by the task force included no City initiated LIDs, limiting LIDs to emergencies, the adoption of ordinances authorizing local Reimbursement and Street Public Improvement Districts (SPIDs) as a substitute to LIDs, wholly developer financed improvements, and wholly City financed improvements.
- Recommendation:** The Task Force recommended that the City not initiate LIDs except in an emergency (septic or well failures, excessive dust, erosion, traffic problems, etc.) or upon voluntary request by property owners. As an alternative to the traditional LID process, the Task Force recommended that the City Council adopt ordinances authorizing local Reimbursement Districts and SPIDs. Local reimbursement districts would be limited to water and sewer improvements that are voluntarily installed by either the City or a developer. After a public hearing and adoption by the City Council, the City or the developer could then collect a reimbursement fee equal to a benefiting property's share of the total cost (calculated by street frontage as adjusted for multi-frontage relief (discussed below)). Such fees would be assessed at the time the property connects to the water or sewer improvements.
- The SPID ordinance would allow, after a public hearing, the City Council to initiate SPIDs based on the Capital Improvement Plan (discussed above) in geographic areas lacking adequate street improvements. Once a SPID is created, a fund would be established to collect assessments from property owners within that district based on a frontage/uniform footage cost formula. Property owners would be required to pay into these funds when they either engage in development as defined by the Land Use and Development Ordinance (LUDO) or they sell the property. There was some discussion of adjusting the assessment for time-value or imposing interest on those that delay payment, but that consideration was not incorporated into the recommendation. The Task Force noted that streets and sidewalks provide benefits to the community at large and therefore the City Council might consider requiring the City to cover some portion of the costs of street improvements. Finally, actual improvement projects would be undertaken by the City based on the Capital Improvement Plan.

**Council Action:** The Council did not restrict its ability to proceed with LIDs. Rather, it adopted Resolution No. 07-007, which dictates that if 51% of the property owners within the district—who are not subject to an enforceable non-remonstrance agreement—file written remonstrances, then the Council has four options: (1) the Council can decline to pursue the LID, (2) place the LID on hold for up to five years, (3) limit the LID to property owners with recorded non-remonstrance agreements, or (4) proceed with the LID and delay the assessment to remonstrating property owners for up to five years. No action was taken on SPIDs, but the Council adopted Reimbursement Districts through General Ordinance No. 06-1275.

**Current Status/Issues:** As stated above, only one residential LID has been initiated since 2007. In that instance over 51% of the property owners asked for it to be delayed and the Council resolved to delay the Thompson Street LID for a two to five year period. Additionally, the City did allow those with non-remonstrance or delayed improvement agreements to oppose the LID.

#### **4. Funding of Local Improvements**

**Issue:** The Task Force recognized that some aspects of local public improvements are uniquely beneficial to the property owner whereas other improvements provide benefits to the community at large. Accordingly, the Task Force identified several possible revenue sources that reflect how costs of public improvements should be allocated. Over the course of its deliberations, the Task Force identified gas taxes, franchise fees, street utility fees, “bathroom taxes,” storm water fees, SDCs, real estate transaction fees, local sales tax, reimbursement districts, SPIDs, and LIDs as potential funding sources.

**Alternatives:** Gas Taxes: By ordinance, local governments may impose per gallon taxes on gasoline sold within their jurisdiction. By state law, funds collected from local gas taxes can only be used for street construction and maintenance. The Task Force considered proposals of raising the local gas tax upwards of \$.05 per gallon.

Franchise Fees: The City imposes right-of-way usage fees for power, natural gas, and telecommunication franchises. The Task Force considered increasing these fees up to 5% per type of franchise.

Street Utility Fees: Staff presented the idea of a street utility fee, which would be an additional fee attached to utility bills earmarked for street improvements.

Bathroom Tax: A Task Force member proposed a “bathroom tax,” which would impose a charge on the number of bathrooms contained

within a property. The issues of when such a fee would be assessed, how frequently, and for how much were not developed.

Storm Water Fees: City staff presented the possibility of adding a storm water utility fee of \$5.00 per month to the approximately 5,200 water utility customers.

SDCs: Staff noted that SDCs for water and wastewater are substantially below the maximum fees identified in the Water Master Plan and Wastewater Facility Master Plan.

Real Estate Transfer Taxes: A Task Force member proposed the imposing a tax of up to 5% of the sale value of real estate when sold. The proposal did not specify how the funds collected would be allocated.

Local Sales Tax: Local taxes on hotels, guest houses, and restaurants were identified as potential funding sources.

Reimbursement Districts: An explanation of the function of a reimbursement district for water and sewer improvements is discussed above.

SPIDs: An explanation of the function of a reimbursement district for water and sewer improvements is discussed above.

LIDSs: As discussed above, LIDs allow for either the City to initiate or property owners to self-impose assessments for particular improvements. LIDs were also considered by the Task Force as a potential funding source.

Recommendation: Gas Taxes: The Task Force recommended the City Council pass an ordinance raising the local gas tax by \$.02 per gallon.

Franchise Fees: The Task Force recommended increasing the franchise fees for the PUD from 3% to 5%, solid waste from 3% to 5%, and natural gas from 3.25% to 5%. No recommendation was made on cable or telecommunications franchise fees.

Street Utility Fees: No recommendation was made on street utility fees.

Storm Water Fees: A recommendation was made to create a storm water utility fee of \$10.00 per equivalent residential unit to be used for storm water improvements.

Real Estate Transfer Taxes: The City Attorney determined that a real estate transfer tax was not permissible under state law.

Local Sales Tax: The Task Force recommended increasing the lodging tax and implementing a new restaurant tax, but did not recommend any specific numbers.

Reimbursement Districts: The Task Force recommended approval of an ordinance allowing for Reimbursement Districts. Under the recommendation, initial costs of improvements would be wholly covered by either the City or the developer and property owners that connect to water and sewers within Reimbursement Districts would cover 100% of their share of total costs.

SPIDs: The Task Force recommended that the City Council adopt a SPID ordinance. As described in the recommendation, the SPID would establish funds from which assessments would be collected and spent as provided for in an adopted Capital Improvement Plan. The Task Force noted that the City might cover some of the expenditures within SPIDs as street improvements provide benefits to the broader community.

LIDs: As described above, the Task Force recommended that the City Council only employ LIDs for emergencies or when approached by property owners.

Council Action: The Council took no action on funding sources besides the Reimbursement District Ordinance, General Ordinance No. 06-1275.

Current Status/Issues: Gas Taxes: The State Legislature enacted a five year moratorium on new local gas taxes effective September 28, 2009.

Storm Water Fee: In October of 2007, the City Council adopted a monthly storm water fee through General Ordinance No. 07-1284 to be paid by individual rate payers. Revenue generated is earmarked for development of main storm lines identified in the Storm Water master plan. Currently, the rate is set at \$2.00 per month.

Franchise Fees: Council did increase the franchise fee from 3.25% to 4.25% for natural gas to be used for multi-frontage relief for construction and installation of public improvements for residential LIDs. The City Council has also investigated increasing the PUD franchise fee for the purpose of funding street maintenance, but economic condition caused the Council to table the issue. However, the Council expressed an intent to reassess the PUD fee in the future.

## 5. Multi-Frontage Properties

- Issue:** As assessments in the Task Force recommendations are based on a lot's street frontage, lots with multiple frontages would be assessed a disproportionate amount for similar services as compared to single frontage lots. Therefore, the Task Force considered proposals to address this inequity.
- Alternatives:** The task force considered alternatives including no multi-frontage relief, averaging the frontage, or using the frontage where public improvements are being completed.
- Recommendation:** The Task Force determined that where assessments are based on street frontage, owners of multi-fronted properties should be assessed based on an average of all frontages.
- Council Action:** The City Council adopted this recommendation through Resolution No. 07-007.
- Current Status/Issues:** No further action.

### **APPENDIX II—SURVEY OF OTHER COMMUNITIES:**

This appendix reviews the infill development policies/ordinances of several Oregon communities relatively similar to The Dalles. Communities were selected based on similar populations, level of development, and geographical features (specifically hills/outcroppings/draws that inhibit traditional “block pattern” development and border communities). The survey places particular emphasis on the procedures utilized to initiate street improvements for minor land partitions and how costs are allocated between developers, property owners, and the municipal government. The following provides a summary of the responses furnished by the surveyed communities and identifies unique and innovative practices by individual communities. Full responses are attached as an appendix to this document.

**1. If someone undertakes a minor land partition on an unimproved street, how are costs of improvements or future improvements allocated between developer/property owner and the city?**

Astoria	No requirement to make street improvements for the first 3 partitions on any non-city maintained street.
Coos Bay	No requirement to install improvements unless a single owner owns four or more lots on a single unimproved street at which point he must make full improvements if he develops one of the lots. Can establish reimbursement district.
La Grande	Improvements must be installed as part of development, but owner may sign an LID agreement if they want to defer payment

Madras	Developer must install utilities and make ¾ street improvement contemporaneously with development.
Ontario	Long ago required full street improvements as part of lot creation. When infill on under improved streets comes up then handled through deferred development agreement.
Pendleton	Generally developer must install improvements, but City also liberally accepts consents to LIDs.

**2. If costs are assessed against the developer/property owner in question 1, when is payment due (i.e. at time of filing for partition, at time of sale of partitioned property, at time buyer develops, at time buyer sells, or obligatory recording of a non-remonstrance agreement)?**

Astoria	No assessments for partitions. If a subdivision then street improvements must be installed by developer contemporaneously with development.
Coos Bay	Assessed upon development of first lot for those with 4 or more lots on one street.
La Grande	Costs are due at time of development or under terms of LID agreement.
Madras	¾ street improvements must be installed at time of development or a payment in lieu (based on frontage) is required.
Ontario	Generally must be in place at time of development or per terms of deferred development agreement.
Pendleton	Developer incurs costs when installing improvements at time of development. For consents to LIDs, no financial obligation until project is complete.

**3. For improvements on unimproved streets within existing development, how often does your city use local improvement districts to make street/water/sewer improvements?**

Astoria	Not used at all on account of lack of funding for City's upfront costs.
Coos Bay	Not often on account of lack of funding for City's upfront costs.
La Grande	Rarely used on account of property owner objection, tend to use grant funding if available.
Madras	Regularly establishes street improvement funds, with funds supplied by payments in lieu of improvements.
Ontario	Rarely. Last instance was owner initiated on account of sewer emergency.
Pendleton	Commonly used to make improvements.

**4. Can the city initiate local improvement districts and if so what is the procedure?**

Astoria	City can initiate. Must first pass resolution of intent to form LID after approving staff report, then resolution to establish LID 60+ days after public hearing for remonstrances.
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Coos Bay	City can initiate. Must first pass resolution of intent to form LID after approving staff report, then resolution to establish LID 60 days after public hearing for remonstrances. Can be defeated by signed written remonstrances of property owners representing 2/3 of estimated assessments.
La Grande	City can initiate if more than 50% of property owners have signed an LID agreement.
Madras	City can initiate by passing resolution of intent and then a resolution to establish 90 days after public hearing for remonstrances.
Ontario	City can initiate, can be defeated by remonstrances by 2/3 of property owners.
Pendleton	City Council doesn't consider LID until 33% of property owners are in favor, and by custom won't approve an LID unless greater than 50% of property owners are in favor. Can be defeated by 2/3 of remonstrating property owners.

**5. Once an LID is established, how are costs allocated between the city and property owners and when is payment due?**

Astoria	Actual costs are assessed to property owners and owners have option of entering into payment plan for up to 20 years.
Coos Bay	City council determines costs and owner can set up payment plan.
La Grande	Costs are determined in pre-LID community meetings. Payments are due upon establishment of the LID, however owners can set up payment plan over 10 years with the City. If owner sells, then full payment is due.
Madras	Costs determined by City Council (streets are by trips generated), payments due upon establishment of LID or on payment plan up to 30 years.
Ontario	Payment due immediately or on installment plan for usually 10 years.
Pendleton	Actual costs are assessed to property owners. Payable upfront or on payments for a period of 10 to 30 years as specified by City Council.

**6. In any scenario, do you allow for half-streets?**

Astoria	Yes, but generally restricted to situations where additional development is limited and where road serves less than 3 units. Any additional development would require completion of the street.
Coos Bay	Permitted when conditions dictate, but rarely used.
La Grande	Yes, only on a Local Street if unimproved (gravel or substandard oil-mat). Half-street is defined as full improvement from the centerline, plus 7 feet of the adjacent travel lane.
Madras	No half streets.
Ontario	Nothing less than ¾ street (one completed sidewalk, curb, gutter, and two travel lanes).
Pendleton	Rarely, usually just to complete existing half streets.