CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

Hon. Senator Arnie Roblan
900 Court Street NE
Suite S-417
Salem, OR 97301

May 22, 2012

Senator Roblan,

Thank you for the opportunity to testify before the Senate Committee on Rural Communities and Economic Development in regards to HB 3479. I hope I was successful in conveying the City's concerns with how this legislation infringes upon local policy decisions, how our local solution meets the needs of the residential partitioner proponents of the bill in a more narrowly tailored fashion, and how the latent ambiguities and internal inconsistencies in the bill will create more questions than answers for not only the City of The Dalles, but other communities addressing the complicated issue of how property owners satisfy their local improvement obligations. With this letter I hope to expand upon my testimony and restate the City's position in opposition to this legislation.

As I identified yesterday, the general rule throughout the state is that property owners are responsible for local improvements, which includes bringing sub-standard streets up to City standards. This is a health and safety issue as it is the City's obligation to make sure properties are habitable (have sewer and water), address their run-off issues (via stormwater drains), can be safely traversed by pedestrians (sidewalks), and that emergency responders can access the property (streets of width and quality meeting City code).

In our community, there are several miles of sub-standard streets where property owners are either engaging in or contemplating development. When property is developed (partition, sub-division, new construction, etc.) on a sub-standard street, our current land use and development ordinance ("LUDO") requires the developer to bring the entire frontage of the property up to standards if an approved engineering design is in place or make a payment in lieu based on uniform estimated improvement rates per lineal foot of frontage (currently set at $176/ft. for streets and sidewalk—a breakdown of local improvement charges in lieu and sample charges are attached to this memo). This upfront requirement and the charge in lieu of a future assessment approach, was adopted by our Council at the recommendation of a citizen task force in 2007.

The rationale for limiting a developer's options to these two avenues is that alternatives, such as Local Improvement Districts ("LID"), have not proven to be a predictable or reliable means to finance local improvements in our community (many other communities report similar issues). More specifically, the City (and other communities) has not been successful in forming LIDs, even if the City had the requisite number of non-remonstrance agreements (what the City required for development prior to 2007), because property owners subject to non-remonstrance agreements would nonetheless voice opposition to the LID project. As an alternative to the non-remonstrance/LID approach, our council preferred the certainty of addressing improvements on the front end and felt that developers are in a better position to account for local improvements than are property owners who may be carrying a sizeable mortgage, or, as Senator Close noted, are elderly residents without the means to pay their assessment.

Because the City has limited resources, there are large portions of our community without an approved engineering design in place. An engineering design has to be in place before any improvements occur because if pipes, streets, and gutters do not line up, it is extraordinarily more expensive to correct the problem than to do it right in the first place. Accordingly, some developers are effectively limited to the payment in lieu option, which sparked the controversy at the center of this legislation. Prior to the introduction of this legislation, the City initiated the process of amending our LUDO to address the issue of the proponents—allowing for residential partitions to be approved without charges for local improvements.

The proposed LUDO amendment ("the local solution") requires the residential partitioner to sign a non-remonstrance agreement and makes the obligation for local improvements due upon the first occurrence of either construction of a dwelling unit or formation of an LID—limited to the portion of the property subject to development. Under this LUDO proposal, the residential partitioner can complete a partition and sell the property without expending any money on local improvements. This is consistent with Section 2(1)(b) of the A-engrossed version of this bill and Section 2(2) of the A5 version. Because our local solution also removes the large mandatory expenditure for residential partitions, the primary objective of this bill, we do not see the need for this legislation. Further, the proponents proffered no testimony as to how the local solution does not meet their needs or as to what this legislation offers that our local solution does not in regards to residential partitions.

Not only does the bill duplicate a local solution, its ambiguities and additional language will create problems for property development in our city and in other communities across the state. As our letter to Senator Ferrioli identified, Section 2(1)(b) of the A-Engrossed version places the accompanying restrictions of Section 2(1)(b)(A) and (C) on all forms of partitions and not just residential partitions. Commercial, industrial, and mixed use partitions ("non-residential partitions") have immediate health and safety concerns from storage and public parking on those lots and thus should not be subject to these limitations. The applicability to non-residential partitions still exists in Section 2(2) of the proposed A5 version of the text. It would take us years to revise the provisions of our LUDO referencing non-residential partitions to comply with this legislation. This would inhibit our ability to make land use decisions in the interim.

Section 2(1)(b)(C) of the A-Engrossed version and Section 2(2)(c) of the proposed A-5 also micromanages a city's fiscal management practices. I do need to clarify my testimony on the management of funds in our City. When funds are collected via charges in lieu, we track who has paid for what improvements through our "Special Assessments Log." This log ensures that properties and LID projects are properly credited with payments. The funds are then placed in the "Capital Projects Fund, where we create a line item for each LID project. Thus, the monies are intermingled with monies dedicated to other capital projects. Yet, as I testified, the bottom line is that these funds are tracked, are not placed in the general fund for use on extraneous purposes, and still tied to specific LIDs. As we interpret the legislation, the separate fund requirement would require creation and management of a separate fund for each LID project. As projects can be as small a City block, and we already have collections from multiple LID projects under management, the requirement of creating separate funds for each LID project would be burdensome.

Finally, the latent ambiguities of Section 2(3) of the A-Engrossed version the Section 2(5) of the A5 version, and its inconsistencies with other provisions of the legislation, make it difficult to determine which set of rules apply to residential partitions vs. residential constructions vs. non-residential partitions vs. non-residential constructions. We believe it will likely take litigation to sort out these ambiguities and inconsistencies. In summary, this legislation should not move forward because it tries to address in a few paragraphs what we have dedicate entire chapters to in our LUDO. Accordingly, the unintended consequence of this legislation is that it raises more questions than it does answers and provides both property owners and the City less certainty.

However, just because the City is resistant to this legislation does not mean the City is resistant to facilitating in-fill development and satisfying the objectives of the proponents of this legislation. As I testified, the City

has been diligently working on residential partitions (the issue HR 3479 seeks to address) and other related issues pertaining to infill-development on sub-standard streets since August of 2012, long before the introduction of this legislation, and we are currently a majority of the way through the process of enacting a local solution, described above and attached to the materials presented yesterday. The following list identifies the public processes taken thus far to develop and implement our local solution:

- On October 1 of 2012, the City had our first public work session where Staff described the issue, identified potential approaches, took public comment, and Council provided direction to Staff on a general approach to pursue.
- On November 14 of 2012, the City had a second public work session in which Staff reviewed the issue, the potential approaches, and presented draft LUDO amendment language based on Council's preferred direction. Alternative language was discussed and public comment was taken before Council indicated they would like Staff to move forward with the proposed language as an amendment to the LUDO.
- On February 11 of 2013, after a new Council was seated, Staff brought the proposed amendment back to Council to confirm their approval of the language. Council again directed staff to move forward with proposed LUDO amendment.
- On February 25 of 2013, staff sent the required 35 day notice of intent to amend our LUDO to the Department of Land Conservation and Development
- On April 2 of 2013, HR 3479 was introduced in the House.
- On April 4 of 2013, the City moved forward with a public hearing on the amendment at our Planning Commission. The amendment was then slated for a public hearing at the May 13th City Council meeting (the second to last step in this process).
- Between April 11th and April 25th, HR 3479 went through four rounds of amendments. Some of the proposed language would have preempted our local solution and accordingly we tabled the City Council public hearing until the Legislature's final action on this legislation. If our local solution is still permissible under applicable law at that time, we will schedule the LUDO amendment for a public hearing at the next City Council meeting subject to public notice requirements.
- On May 6, City Council held a town hall on the costs of local improvements. We plan to continue this discussion at either a work session or regularly scheduled Council meeting, likely in July.

Once again, I thank you for the opportunity to testify on HR 3479. I hope my testimony and this follow-up letter make it clear why the City cannot support this legislation. If you should have any questions, please feel free to contact me at any time.

Respectfully,

Garrett Chrostek
Administrative Fellow
City of The Dalles
313 Court St.
The Dalles, Oregon 97058
541-296-5481 x. 4448
gchrostek@ci.the-dalles.or.us

CC: Hon. Sens. Herman Baertschiger Jr., Ginny Burdick, Betsy Close, & Floyd Prozanski, Committee Administrator Racquel Rancier & Committee Assistant Shelley Raszka

Cost Estimates

The standard lot spacing on a fully developed street in our community is 50' of frontage. As indicated, where our current ordinance is most problematic is with larger lots on the periphery of town. The following two tables depict the charges in lieu of a future assessment that would apply to lots of assorted frontages. The upper set of estimates depicts the worst case scenario, while the bottom set reflects the more typical situation—where a property has water and sewer, but is located on a sub-standard street without stormwater drains.

Lot Frontage	Street	Storm	Sewer	Water	Total
50'	$8,792.50	$2,957.50	$3,267.50	$2,535.00	$17,552.50
100'	$17,585.00	$5,915.00	$6,535.00	$5,070.00	$35,105.00
200'	$35,170.00	$11,830.00	$13,070.00	$10,140.00	$70,210.00
300'	$52,755.00	$17,745.00	$19,605.00	$15,210.00	$105,315.00
400'	$70,340.00	$23,660.00	$26,140.00	$20,280.00	$140,420.00
500'	$87,925.00	$29,575.00	$32,675.00	$25,350.00	$175,525.00
600'	$105,510.00	$35,490.00	$39,210.00	$30,420.00	$210,630.00
700'	$123,095.00	$41,405.00	$45,745.00	$35,490.00	$245,735.00
800'	$140,680.00	$47,320.00	$52,280.00	$40,560.00	$280,840.00
50'	$8,792.50	$2,957.50	$0.00	$0.00	$11,750.00
100'	$17,585.00	$5,915.00	$0.00	$0.00	$23,500.00
200'	$35,170.00	$11,830.00	$0.00	$0.00	$47,000.00
300'	$52,755.00	$17,745.00	$0.00	$0.00	$70,500.00
400'	$70,340.00	$23,660.00	$0.00	$0.00	$94,000.00
500'	$87,925.00	$29,575.00	$0.00	$0.00	$117,500.00
600'	$105,510.00	$35,490.00	$0.00	$0.00	$141,000.00
700'	$123,095.00	$41,405.00	$0.00	$0.00	$164,500.00
800'	$140,680.00	$47,320.00	$0.00	$0.00	$188,000.00

As is addressed in the letter, our current ordinance requires the entire frontage of the property to be developed upon application approval for development. Under our proposed local solution, the property owner would just be responsible for the frontage of the property subject to the development.

For example, if a property owner had 500' of frontage and needed street and sewer:

Under the older system, they would be charged $117,500 to complete the partition.

Under our new system they would not be charged anything to complete the partition.

If the partition resulted in one lot of 450' and a second lot of 50' of frontage, the property owner would be charged $11,750 to build a dwelling on the 50' lot.