



**MINUTES OF THE BURLINGTON PLANNING  
AND ZONING COMMISSION MEETING**

**August 27, 2018 – 7:00 pm**

**Council Chamber, Burlington Municipal Building**

**CITY MEMBERS:**

Richard Parker, Chairman  
John Black, Vice-Chairman  
Ryan Kirk  
James Kirkpatrick  
Nicole Enoch  
Nancy Rosborough (Alternate)  
Matthew Dobson (Alternate)

**EXTRATERRITORIAL MEMBERS:**

Earl Jagers  
Bill Abplanalp

**STAFF PRESENT:**

Amy Nelson, Planning Director  
Joey Lea, Zoning Administrator  
Kelly Peele, Commission Secretary

**ITEM NO. 1:** Chairman Mr. Richard Parker called the meeting to order at 7:00 p.m.

**ITEM NO. 2:** Nomination and election of 2018-2019 Commission Chair and Co-Chair.

Commission Member Mr. Bill Abplanalp nominated Richard Parker as Chair.

Chairman Mr. Ryan Kirk second.

The nomination passed unanimously.

Commission Member Mr. Earl Jagers nominated John Black as Co-Chair.

Commission Member Mr. James Kirkpatrick second.

The nomination passed unanimously.

**ITEM NO. 3:** Approval of the minutes of the meeting held July 23, 2018.

Commission Member Mr. James Kirkpatrick made a motion to approve the minutes.

Commission Member Mr. Earl Jagers second.

The motion passed unanimously.

**ITEM NO. 4:** Staff to present a proposed amendment to the City of Burlington Code of Ordinances Chapter 33, Subdivision Regulations, as it pertains to Fee-in-lieu for Sidewalks, Greenways and Bikeways.

Director of Transportation Mr. Mike Nunn stated, the Fee-in-lieu concept is a way to fund things in order to get things built in a way that helps prevent wasting funds. This idea developed from a developer's request. Some developers have asked for a way to pay a fee for construction of improvements. Based on that, transportation, engineering, planning, legal, and finance staff members have gotten together and discussed this. We looked into other places such as Greensboro, Concord, Mebane, Graham, Highpoint etc. that have this type of Fee-in-lieu. These areas are using this for more than just sidewalks and greenways, they are using this for almost all infrastructure. So that is where a lot of this information comes from. These are for required improvements, these are not just for where staff can decide "I think we need a sidewalk here". These improvements are all based off of adopted plans. We adopted a Pedestrian Plan back in 2012 and in 2017 we approved a greenways and bikeways plan which calls out for where these bikeways and greenways are supposed to go. Fee-in-lieu is an option. This is not going to be applied to every development. I would like to mention that these things are already required. If a developer were to come in, they would be required to do these improvements. These are all things that are required and based off a plan. For example, the NCDOT is funding a project, we base these projects on a 5 year period. We will actually have a funded project through this Fee-in-Lieu that sets a plan for what is to be built and we will be able to say that "we will have this sidewalk, this greenway, this bike path in this area within the next 5 years". So if these changes were made, we would allow the developer to submit a fee for the total amount of design, planning, construction etc. and that would be through the City's engineering department. The Fee-in-lieu would be paid for because there is something coming behind it. If the City were to already know of a planned, city funded project coming in behind this development that would in turn remove the infrastructure that was built by the developer as improvement construction, the developer would pay a fee instead of installing an infrastructure that would just, in turn, be removed in the near future.

Chairman Mr. Richard Parker asked, so you say you have your TIP, you know what projects are funded, do you have drawings to know where the land is going to be?

Director of Transportation Mr. Mike Nunn stated, not yet. That is what I am saying. You have a fee and a cost of improvement. It will be put in place once it is designed. The project will be designed, like a sidewalk cross section, it will be designed to go on that property. Then during the DOT process and the planning process, then they would place that project in that line.

Chairman Mr. Richard Parker asked, so you are saying that you want money first to hold until the design comes out so that you know where to place this sidewalk? If the developer did it when they were doing their project, then you might have to tear it up and reposition or widen it once the design was finalized.

Director of Transportation Mr. Mike Nunn stated, yes sir. That is a perfect explanation. That is the concept. We allow them to do it because it is required. I would like to be clear about the fact that these improvements are required and comes from an adopted plan. Part of what this Fee-in-Lieu is saying, for example say another project is planned to come in the next five years; we allow that to be done, we allow the design to be done, and create the estimated costs. The money is placed in a restricted fund, with a restricted fund the money will gain interest, so there will be some improvement on that fund for when it does come time to use it. That is the tool we have, we do not have a way to combat inflation. The restricted fund can only be used for those purposes. Another question was how we located the vicinity for the location of the project. We added an additional phrase to this to, hopefully, further clarify, "it is a continuous extension for augmentation of the infrastructure network represented by the site requirement for which the fee is collected". It is a little wordy but we are hoping to imply that it is there, it is on that site, it is an extension of what is going on in that area and part of a network.

Chairman Mr. Richard Parker stated, one of our concerns was that you could collect the money on this parcel and if the money wasn't used there they could take it and use it somewhere else.

Director of Transportation Mr. Mike Nunn stated, that is not our intention, the money from these projects will be represented at these sites and in those networks. That is our intention with that. It is intended to continue the network that is already there. That is our intent and we hope to have written this in a way that reflects that.

Commission Member Mr. James Kirkpatrick asked, who is in control of that fund?

Director of Transportation Mr. Mike Nunn stated, the Finance Department of the City of Burlington.

Commission Member Mr. Bill Abplanalp asked, when will this fee be collected?

Director of Transportation Mr. Mike Nunn stated, at the time of the development when it is approved and goes through the TRC process. It will be before the project would be sealed or approved.

Commission Member Mr. Bill Abplanalp stated, okay good because my experience with developers is that you do not wait until the project is complete to collect.

Director of Transportation Mr. Mike Nunn stated, that is correct. Just to wrap up here, when there is an existing connection that is what we are going to do. The Fee-in-lieu is just going to enhance and expand what is in place and this is all based on what is required. Do be aware that all locations have existing infrastructure in place, there may be a sidewalk segment out there. Also, anything like a city greenway and bikeway is going to take some time. The Fee-in-lieu is not going to solve that problem and give us a continuous sidewalk and a continuous greenway; it is just giving us a tool to start building that plan. The last thing I would like to mention is that we would really like to avoid wasting project funds on infrastructure that we know is going to be removed or changed within that five year period.

Commission Member Mr. Earl Jagers asked, I had some questions about the last couple of bullet points and when you stated wasting funds. Whose funds would be wasted? How would they be wasted? Just because they would have to be torn out within the next five years?

Director of Transportation Mr. Mike Nunn stated, the developer would already be required to build these improvements based off of our plans. We would also acknowledge that there would be another project built within five years.

Commission Member Earl Jagers stated, we are not guaranteed that something is going to be built in five years. You also said "not on every development" who is going to require or request this?

Director of Transportation Mr. Mike Nunn stated, not every development is located on a street or a location that is part of our Sidewalk Plan or adopted Bikeway and Greenway Plan.

Commission Member Mr. Earl Jagers stated, they laugh at me because I want sidewalk and greenways, I am just concerned about having a restricted fund and I do not trust it.

Chairman Mr. Richard Parker asked, will the restricted fund show up in the City's budget?

Director of Transportation Mr. Mike Nunn stated, it will be a revenue account that will be set aside, so the finance report will show it but it will be its own individual thing.

Chairman Mr. Richard Parker stated, what I think Mr. Jagers is thinking is that the city will combine and mix all of these funds into one pot and at the end of the year and when you go to look at the improvement TIP plan and a project may not happen for another five years. So this pot of money is just going to keep accumulating money every year.

Director of Transportation Mr. Mike Nunn stated, I understand what you're saying. This is only going to be an option when warranted and when there is a project in that location. We do not have, although we would love to have, lots of DOT projects across the city. We have a small handful of projects coming and this is not going to be an everyday development situation of fee-in-lieu. This is just going to be a tool. For example, NC 62 is going to be widened, and that could be a situation where fee-in-lieu would be helpful. It is possible you could have several projects in a pot but our DOT projects are basically limited. They are not funded at a huge rate that would cause that confusion.

Chairman Mr. Richard Parker asked, so if a developer comes in and wants to put a Golden Coral on an established street and there is no improvement plan but he is required to put in a sidewalk, he would not be offered this Fee-in-lieu, he would have to build the sidewalk?

Director of Transportation Mr. Mike Nunn stated, that is correct.

Commission Member James Kirkpatrick asked, how many projects have there been in, let's say, the last five or ten years? What percentage would have been affected by this if it were to come before the Planning and Zoning?

Zoning Administrator Mr. Joey Lea stated, it would have been less than 10%.

Commission Member James Kirkpatrick asked, we are not trying to create this massive cash cow. Is the intent of this to put ease upon the developer in a certain sense?

Zoning Administrator Mr. Joey Lea stated, the actual intent is to make sure that these improvements are placed and situated, where you have the case of a DOT project, that it is placed where DOT has planned to put it.

Commission Member Mr. James Kirkpatrick stated, this is based upon an engineer's estimate. So this is essentially an attraction to a developer who may be looking at the City of Burlington.

Zoning Administrator Mr. Joey Lea stated, what this does for a developer is it keeps them from spending money upfront and then having to tear it out and put it back in. It is not real advantageous to developers unless, as Mike has said, that there is a DOT project that has been funded. Being funded is the important factor because then the developer knows that if it has been funded then it is coming.

Director of Transportation Mr. Mike Nunn stated, the individual prices will not be mixed. So if it is a Mebane Street project that goes into the fund as that.

Chairman Mr. Richard Parker asked, so it has to be a funded project on the TIP before you all can even offer this?

Director of Transportation Mr. Mike Nunn stated, or the city. Any funded project that we know is coming.

Commission Member Mr. Bill Abplanalp asked, if this is so rare why can't we cover it with a conditional rezoning?

Zoning Administrator Mr. Joey Lea stated, we cannot cover the cost of something in a conditional rezoning. I think what you are saying is to make it a condition where they could pay for the sidewalk at some other time. You could do that but this makes it easier in that we know the money is going to be there to get it done, and this is something that is common in other municipalities. I think it is better served this way.

City Engineer Mr. Todd Lambert stated, I would like to point out a couple of things. First, when you all had asked about how the projects were funded. If they were offered a fee-in-lieu, the fee would go into the balance as an individual journal entry. With each developer that paid this we would be able to track their individual amounts. There would be no combined pot. For example on Church Street, where there are some DOT projects, if a developer came in today in an area where we know DOT will be widening a corridor. There would be no reason for the developer to build a sidewalk. Building that sidewalk is a requirement now that we can't get away from legally regardless of the fact. The premise behind this proposal is, why make them build something when we don't know exactly where DOT's final line will be, but we do know that they will be widening the road. For example we could say, "We will be widening the road 20 feet, build your sidewalk". But we do not know where these DOT lines will be. What we have now is we require the developer to build that sidewalk; two years down the road DOT takes out that sidewalk and then the city has to pay to rebuild that sidewalk because of the DOT plan. So this gives both the city and developer the option to plan accordingly and save money. We will take these funds, set them aside attached to a name, and when the DOT is ready we can use that fund balance and give it to the DOT for the sidewalk. No one loses money, no one spends money on something twice, and no one is tearing up the developer's sidewalk that they paid for. This is for a project that we know is going to happen, it could be a city project, and that would allow staff to plan accordingly.

Chairman Mr. Richard Parker asked, is there any way you could take out the words "in the vicinity of the site"?

City Engineer Mr. Todd Lambert stated, well I will give a little bit of history as to why it is worded that way. If you think about Huffman Mill Road, you think about bits and pieces of sidewalk, if I have a developer come in and DOT also has a project, for example. DOT says, "We know we are going to be impacting Huffman Mill Road but we don't know exactly where yet but it is coming. We are in the process of design and we have the funding. We take fee-in-lieu so that the developer does not waste his money." Then let's say the developer gives us \$10,000 to build the sidewalk. When it comes time to build the sidewalk it only costs \$9,000. But if you look down Huffman Mill Road now, you have gaps of sidewalks. So essentially his \$10,000 dollars would pay for right in front of his development and then it might pay to get him connected to the next bit of sidewalk as well. It says vicinity because it is somewhat of an unknown of what that vicinity is, but it has to be continuous and it has to be linear because that was the intent. What we are looking at is if the developer built it today it would cost him \$10,000, we would not be asking for more money than would be necessary to build that sidewalk now. If construction prices come down, or whatever the case may be, and there would be funding left over, then it would fill those gaps right adjacent to the property.

Commission Member Mr. John Black asked, the term "continuous linear connection" then it is adjacent but has a fulfilled purpose?

City Engineer Mr. Todd Lambert stated, and that is why we put that in there. We looked at words that we thought would kind of meet our long term "what ifs".

Chairman Mr. Richard Parker stated, so the money is tied into that parcel.

City Engineer Mr. Todd Lambert stated, yes. It is hard to see until you really look at these conditions. This gives us the flexibility to have some common sense about development and applicability of this type of decision. It is never meant to be something that burdens city staff with extra construction projects.

Chairman Mr. Richard Parker asked, I would like to ask Joey, when we have a project come before us that this would be used will we know that when you present?

Zoning Administrator Mr. Joey Lea stated, through the development process and through the review process would be when Mr. Nunn would take a look and see if there was a funded project that would require the fee-in-lieu.

Chairman Mr. Richard Parker asked, and that would be relayed to us?

Zoning Administrator Mr. Joey Lea stated, I do not think it would be presented in these meetings but we would figure out a way to get it to you.

Chairman Mr. Richard Parker asked, just so that we and city council would know that there will be a special fund for this.

Zoning Administrator Mr. Joey Lea stated, I think one of the things we can do is to make sure that you are aware of it is that we could put it in the staff report.

Chairman Mr. Richard Parker stated, what sometimes happens is that we approve projects, council approves projects, and then they never get built and a month later there is a big "for sale" sign because they got the zoning they wanted so that they could sell it at a better price. But they come in here and show us their plans with all of the sidewalks and then it never gets built.

City Engineer Mr. Todd Lambert stated, the sidewalk would be part of conditional rezoning. This only covers whether they build it or whether they pay the city to build it. The sidewalk itself will always be a part of that conditional zoning.

Commission Member Mr. Bill Abplanalp stated, let me ask one quick question, this is only subdivision?

Zoning Administrator Mr. Joey Lea stated, no it is any development. It is in the subdivision regulations. Within your subdivision regulations you have requirements for streets, infrastructure, improvements etc. and that is where this lies. This has to do with road improvements and improvements to the development that is required by the ordinance. It could be a part of subdivision if it applied to particular area, but this lies within the subdivision regulations.

City Engineer Mr. Todd Lambert stated, so this could apply to a commercial development. If you have a large commercial development that was wishing to build and they may not need a conditional rezoning but they are still required to build sidewalks. So this could still be applicable because they are required in the subdivision section to do certain improvements.

Commission Member Mr. Earl Jagers asked, Joey, that restaurant that is being built on Church Street just past University, could they come back and say that they would like to have that retro because they are going to widen that road down through here. Could they come in and build that sidewalk now?

Zoning Administrator Mr. Joey Lea stated, if we know that there is going to be a project there and the development gets approved, then I am assuming they could probably take advantage of it. With that development in particular, there were some issues about putting sidewalk there anyways but I believe we did not require it.

Chairman Mr. Richard Parker stated, I think we did require it.

Zoning Administrator Mr. Joey Lea, well I think there were some issues with the topography. But whatever got approved, if there was a situation where there was something approved that we knew was going to be taken out they could probably take advantage of this in that context.

Commission Member Mr. Bill Abplanalp stated, the DOT plans are out for the widening of 70 and that includes the portion where that restaurant is being built.

Zoning Administrator Mr. Joey Lea stated, we will use that as an example, I am assuming that at this particular point that they could probably take advantage of the Fee-in-lieu especially if we know that the DOT project is going to wipe out their sidewalk if it was approved. It is not really retroactive; it is just applicable to their situation.

City Engineer Mr. Todd Lambert stated, I would concur that if this was approved that may be an option for that parcel. Now we would still want to look at it and see where that sidewalk was planned, and what are DOT's impacts? If we know, as staff, that your required sidewalk is not being impacted by DOT then we are not going to select this as an option for the developer. It is staff driven, not developer driven. He certainly could ask "does this apply to me?" but we are not looking to get into the business of taking money and building individual sidewalk projects. From the staff aspect, it is more convenient for the developer to build these improvements. It is not every project that you get to hand over money, it is only if the Fee-in-lieu is applicable to you as a developer. It will be on a case by case basis.

Commission Member Mr. Earl Jagers asked, in the past five years, how much has cement gone down?

Commission Member Mr. James Kirkpatrick stated, it hasn't.

Commission Member Mr. Earl Jagers stated, see that's what I am saying. This is not going to keep up with inflation. People build and cement doesn't get cheaper.

City Engineer Mr. Todd Lambert stated, generally speaking with finance, what little interest we would gather from the money over that short period of time allows for a low risk for when the escalating costs go up. That is another reason why we chose five years. Once we can identify funded projects, five years is a better time frame to estimate how much money we will need to take out for project compared to something like twenty years. Five years is a small risk and we found it to be more manageable.

Chairman Mr. Richard Parker asked, just one more question, if you knew the project was funded in the TIP for 2020, which would be two years out. Can you add inflation for two years? Because that's when the concrete is going to be poured.

City Engineer Mr. Todd Lambert stated, I would say from my staff standpoint since I will be the one coming up with the estimates, I would prefer not to. Because at the same time I would be asking the developer to pay more and the developer would then ask, "Well what kind of interest rate are you getting because we should be the same", so at cost, we are taking that inflation risk, but we are also going two years' worth of interest. So it should be fairly close.

Commission Member Mr. Ryan Kirk asked, I looked into several of these from around the state and one common phraseology that we do not have in here is a "refund mechanism". Some of these mechanisms say that if the money is not spent in ten years then it goes back to the developer. If there are cancellations or significant alterations to plans the developer gets a refund. Have you all talked about a refund? So that we don't just have money sitting there.

City Engineer Mr. Todd Lambert stated, no, because most of the ones I have dealt with that have had those refund policies also are not limiting it to a five year plan. So they might take money and say "The DOT

might put this bypass in the next thirty years, go ahead and give us money. We want to be much more defined in that we know the exact the timeframe in which it is going to get built and either it is our funded project or it is a DOT funded project so we know it is going to happen. And we are not looking at those “If it is not built in ten years” because if it is not built in ten years then we failed on our model to begin with upfront.

Commission Member Mr. Ryan Kirk asked, you do not foresee any awkward scenarios of having money in this fund that is not spent and you don’t know what to do with it?

City Engineer Mr. Todd Lambert stated, no. We have been through legal and finance and they felt the best option was through the restricted fund mechanism where they can have journal entries that are project specific.

Commission Member Mr. John Black asked, Mr. Chairman, let me see if I can wrap my head around one point. You have a builder that does the fee-in-lieu , you’ve tied that into five years because the DOT is going to come and widen the road. Let’s say the DOT, for some reason, did not widen the road. Somehow it fell off of the back burner, or the funding was messed up, then after that five year, do they build that sidewalk with that funding? And if they do, if the DOT comes in a year later and says “oops, we have the funding” then they would rip that sidewalk up right? What is the purpose of the sidewalk to begin with? Why are we asking for a sidewalk?

Chairman Mr. Richard Parker stated, transportation and safety.

Commission Member Mr. John Black stated, would every one agree to that? Public transportation and/or safety. If that is the case, if we go ahead and build the sidewalk, and it takes five years, for five years are we not providing public transportation and safety? We would not have been providing these things for five years and would have been holding the money. So are we saying that this money is more important than providing public safety and transportation for those five years? And it could go much further than five years.

Director of Transportation Mr. Mike Nunn stated, the DOT process has changed completely and when they commit to five years, it can fall off, but as Todd says, we would go ahead and build that improvement. These are cases that we are sure of and know that are coming. It seems wasteful and counterproductive to build, remove, and rebuild infrastructure.

Commission Member Mr. John Black stated, well for the person walking down the sidewalk for five years whether it is a waste or not.

Director of Transportation Mr. Mike Nunn stated, exactly. Just depends on what your viewpoint is but I agree 100%. I think it is a good point. Again, I do not know how many of these we will have and I do not think we will have many. Right now this is just a tool in the event that we have a case like this. We do have cases now where developers are required to build an improvement and it is going to be ripped out. I do have a second item to cover.

Chairman Mr. Richard Parker asked, are we going to vote on two items at the same time?

Director of Transportation Mr. Mike Nunn stated, however you would like to do that.

Chairman Mr. Richard Parker stated, go ahead and present your last item.

Director of Transportation Mr. Mike Nunn stated, at the bottom of your page we overlooked a point and possibly did not emphasize it enough. Currently, only the pedestrian plan for Burlington allows us to require sidewalks. We just adopted a greenway and bikeway Plan which is nowhere reflected in any of our



ordinances. The only way we are getting bike paths and multiuse greenways into developments now is through conditional rezoning or developer agreement. Those are the only tools that we have, as staff, to use. Sidewalks we can pull the plan out and it is required. What is being asked to also amend is to adopt the greenway and bikeway plan just as we have adopted the sidewalk plan so that it allows us to require these improvements through the development process just as we do sidewalks. Otherwise, the only other way we are able to do this now is through a conditional use because we have no other tool. So we have a plan and we have no mechanism to use. So I wanted to bring that up as well, that is a second request.

Chairman Mr. Richard Parker stated, we will vote on these items separately. Let's go ahead and vote on the first item, but first let's hear the staff recommendation.

Zoning Administrator Mr. Joey Lea stated, as Mike had previously stated, this is a tool that we currently do not have. There have been other avenues in which we have been able to implement this. This obviously supports our local infrastructure and I would equate this to any other subdivision requirements. Within your subdivision regulations you have requirements for streets as to how wide they are supposed to be, the size of a cul-de-sac, design etc. This is the same thing, it just applies to other infrastructure. It is just another tool for the sidewalks, bikeways, and greenways. Staff recommends it as written.

Commission Member Mr. James Kirkpatrick stated, I move we recommend approval for this request based upon consistency with the Comprehensive Plan. The action is reasonable and in the public interest in that the amendment is compatible with the existing land uses in the area.

Commission Member Ms. Nicole Enoch second.

The motion passed 4-3.

Commission Members Mr. Bill Abplanalp, Mr. Early Jagers and Mr. John Black were in opposition.

Chairman Mr. Richard Parker stated, I would like to see if there was any discussion for the item about greenways and bikeways.

Commission Member Mr. Ryan Kirk stated, we have a plan that needs some teeth.

Chairman Mr. Richard Parker stated, what is the staff recommendation on the second amendment?

Zoning Administrator Mr. Joey Lea stated, once again the staff recommends it as written.

Commission Member Mr. James Kirkpatrick stated, I move we recommend approval for this request based upon consistency with the Comprehensive Plan. The action is reasonable and in the public interest in that the amendment is compatible with the existing land uses in the area.

Commission Member Ryan Kirk second.

The motion passed unanimously.

**ITEM NO. 5:** Staff to present a proposed amendment to the City of Burlington Zoning Ordinance section 32.10.UU, Outdoor Storage, Display or Sales of New or Used Tires.

Zoning Administrator Mr. Joey Lea stated, as you know, we recently adopted an ordinance for outdoor storage and tires and implementation of that is going very well. During this process we have discovered that

the fencing requirements could have another element because vegetation could create an opaque type barrier. This is another avenue that gives a little more flexibility when it comes to fencing in their tires so we decided to add in vegetation. In our ordinance it has to be planted at a minimum of six feet tall, they have to be non-deciduous such as an evergreen or green giant. Again, this is another option to a property owner in order for screening.

Chairman Mr. Richard Parker asked, did this come up with a land owner who was using this kind of barrier to hide his tires?

Zoning Administrator Mr. Joey Lea stated, there were a couple of locations that were using vegetation that could actually be using it as opposed to putting up a fence.

Chairman Mr. Richard Parker asked, so were they opposed to putting in fences and asked if this could go in?

Zoning Administrator Mr. Joey Lea stated, not necessarily. If you already have a vegetated, opaque buffer then it doesn't make a whole lot of sense to put a fence in. That is why we decided to consider this.

Chairman Mr. Richard Parker asked, so there was no land owner or property owner that brought that up?

Zoning Administrator Mr. Joey Lea stated, no.

Chairman Mr. Richard Parker asked, this is just a language addition to include opaque trees.

Commission Member Mr. James Kirkpatrick stated, I move we recommend approval for this request based upon consistency with the Comprehensive Plan. The action is reasonable and in the public interest in that the amendment is compatible with the existing land uses in the area.

Chairman Mr. Richard Parker second.

The motion passed unanimously.

---

**Richard Parker, Chairman**

---

**John Black, Vice Chairman**

---

**Kelly Peele, Secretary**