

Item 9 - Correspondence

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To: [MCE-Chair](#)
Cc: [Ansbacher, David](#); [Grave, Eric](#); [Sartori, Jason](#); [Kronenbera, Robert](#); [Mills, Matthew](#)
Subject: 2/17/22 Planning Board Meeting - Comments on Agenda Item 9 (Policy Guidance on Construction and Fee-in-Lieu for Frontage Improvements)
Date: Wednesday, February 16, 2022 10:35:39 AM
Attachments: [image001.png](#)
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[image006.png](#)

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Good morning Chair Anderson and Commissioners,

I am writing to support Planning staff's efforts to permit a waiver from constructing frontage improvements when it would be unreasonable to do so or disproportionate to the impact of a project (2/17/22 Planning Board Meeting, Agenda Item 9). This exercise is compatible with well-established legal precedent. See, e.g., *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 599 (2013) (affirming a government may not impose a condition on a land use approval without a "nexus" and "rough proportionality" between the condition and the effects of the proposed use). I also appreciate Planning staff's thoughtful formulation of its proposed waiver criteria by diligently reviewing approximately 20 projects since 2019 where payments in lieu of construction were approved. As Planning staff has recognized in its February 10, 2022 report, however, "no process can anticipate all reasons why payments in lieu of constructing frontage improvements might be appropriate."

Consistent with this important acknowledgment, I propose adding "good cause shown" to the listed criteria to authorize the approval of a complete or partial waiver from constructing frontage improvements "for any other good cause shown." This language, used in similar waiver provisions, would provide for suitable flexibility by allowing an applicant to establish the appropriateness of a waiver based on the specific circumstances of an individual project for approval. Including "for any other good cause shown" would also save the Planning Board from having to identify every situation in the stated criteria in which a waiver should apply when making decisions that conform to case law interpreting the legality of exactions.

I thank you for your consideration of my comments.

Best,
Phil

Phillip A. Hummel

Principal

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