

DATE: 06 July 2015
TO: Bill Hoffman
FROM: Terry Moore and Nick Popenuk, with Deb Meihoff
SUBJECT: PBOT LTIC PHASE I – TECH MEMO: PROJECT OVERVIEW FOR THE STAKEHOLDER WORK GROUP

The scope of work for this project stipulated a Phase I in which the consultant team and PBOT staff would assess and clarify the problem that this project is to address. Phase I provides a context and work plan for the creation of a Local Transportation Infrastructure Charge (LTIC) in Phase II.

A separate memorandum provides more information about the scope of the problem with unpaved and under-improved streets in the City. This memorandum summarizes the conclusions about the Phase II scope of work from a meeting of consultants, City staff, decisionmakers, and advisors on 22 May 2015. The conclusions were to focus on the development of an LTIC, acknowledging that though it is only a partial solution to the full extent of the problem of unpaved and under-improved streets, it solves an important problem and is a step in the right direction.

1 Background

ECONorthwest (ECO) has a contract with the Portland Bureau of Transportation (PBOT) to assist with implementation of a Local Transportation Infrastructure Charge (LTIC) that can “assess development projects on unimproved streets for transportation infrastructure improvements.” PBOT sees the LTIC as part of the solution to the City’s longstanding problem of not collecting fees or requiring infrastructure improvements from new development on unimproved streets.

The contract stipulates two phases. *Phase I*, Base Data Collection, is completed. It included several tasks related to getting a clear sense of the components and scope of the problem. Phase I concluded with a meeting of the ECONorthwest consultant team, and representatives of the City of Portland, including City Commissioner Steve Novick and PBOT’s Director, Leah Treat. At this meeting, we received clear direction on the scope of the problem, and our scope of work for Phase II. For a more detailed assessment of the scope of the broader problem of unpaved or under-improved streets, see a related Phase I memorandum, *Assessment of the scope of the Problem*.

Phase II, LTIC Adoption, is scheduled for the second half of 2015. It includes multiple tasks to identify, and evaluate potential fee mechanisms, select the preferred mechanism, determine the appropriate rate, and implement the fee. Phase II will require significant involvement from a Stakeholder Work Group, to advise the City on key decisions.

This memorandum is part of our final deliverables for Phase I. It is intended to summarize the scope of the problem, and describe our approach to solving the problem in Phase II. A companion document is a *Revised Phase II Scope of Work*, which provides more specific detail on each task. The memorandum is specifically intended for members of the Stakeholder Work

Group to get them up to speed on the project without bogging them down in the details of the Scope of Work. It has three additional sections:

- Section 2, **Scope of the problem**
- Section 3, **Approach to solving the problem**
- Section 4, **Role of the Stakeholder Work Group**

2 Scope of the problem

2.1 How infrastructure is built

When development occurs, developers are typically responsible for providing infrastructure along the frontage of that development. In suburban, greenfield settings, this approach works well, with developers extending infrastructure (roads, pipes, and other utilities) into undeveloped land, and concurrently developing the adjacent properties. Within an existing urban environment, however, this approach to the provision of infrastructure faces some practical constraints.

In the City of Portland, there are many miles of unpaved or under-improved roads in poor condition. Collectively, we refer to these roads as problem streets that essentially require completely new transportation infrastructure. We have identified over 200 miles of problem streets in Portland, nearly 10% of the total road miles in the City. But, unlike in a suburban setting these problem streets in Portland are located in existing residential neighborhoods, with existing development spanning the majority of the street frontage.

Some development may still occur along these roads, but that infill development is scattered throughout the City, with only a few lots developing on any given street. If the City relied only on new development to improve these streets, it would result in a patchwork of half-street improvements throughout the City. We would end up with 50-foot long segments of streets and sidewalks on one half of a street, located in the middle of a block, surrounded on all sides by gravel roads. This piecemeal approach to infrastructure provision is inefficient, unattractive, and hard to maintain. The City of Portland decided decades ago that this is a bad approach to providing infrastructure, and that a different policy was needed.

2.2 Waivers of remonstrance

Decades ago, the City made what seemed to be a reasonable decision: it did not make sense to have developers do piecemeal half-street improvements, and the City did not have a system for collecting fees, so it let developers build new dwelling units without doing the associated street improvement or paying any fee as long as they signed a legally binding agreement to participate in any potential future Local Improvement District (LID). Those agreements are known as “waivers of remonstrance,” and they transferred from the developers to the homeowners at the time of sale.

LIDs provide property owners the opportunity to willingly increase their property taxes for a period of time to finance the cost of an infrastructure improvement that provides benefits to them that they value. With an LID, the amount that property owners pay is (in theory) proportional to the benefits they receive from the improvement. LIDs, however, cannot be used if a majority of the affected property owners object to the creation of the LID.

LIDs were used relatively frequently in the past (over a decade ago). Their popularity at the time was boosted by the City's willingness to invest Federal Community Development Block Grant (CDBG) dollars as matching funds for street improvements, effectively reducing the cost of LIDs by half or more. As the City found other uses for CDBG funds, and as street standards continued to evolve, the effective cost of street improvements increased to a level where LIDs for local street improvements are no longer popular in residential neighborhoods. The high cost of street paving projects, and the feeling by many property owners that the benefits of paving (to them) are small or even negative, has led to very few LID projects for residential street improvements in Portland in recent years.

We now have a system where developers on problem streets do not make street improvements, do not pay a fee, and receive a waiver of remonstrance for future LIDs that are likely never to materialize. Thus, the strategy of providing developers with waivers of remonstrance did not effectively solve the problem, but instead kicked the can down the road.

As infill development has become more popular in recent years, the failure of the waiver approach has become more pronounced. The City has now accumulated on the order of 12,500 waivers for street improvements. Many of these waivers have been handed down from multiple rounds of homeowners. Many (maybe most) property owners do not know that they have this liability; those that do probably do not expect that they will ever actually have to pay. Anecdotally, City staff have said that there are certain segments of unpaved City streets where the majority of homes on both sides of the street have waivers of remonstrance, meaning that no challenge to an LID in these areas could legally succeed.

This phase of this project does not attempt to address existing waivers that were granted for historical development. Instead, this phase of the project is focused on stopping the bleeding, so that all new development is required to make a meaningful contribution to local transportation infrastructure.

2.3 Legal challenges

In theory, this problem could easily be solved by just charging a fee on new infill development. But, there are legal challenges that make it difficult for the City to adopt a fee for this purpose. Ultimately it will be the Office of the City Attorney that makes a determination on the legality of the funding solution. Below, we note a couple of issues that any legal analysis should consider.

Nexus and proportionality

A fee in what we tentatively define as “the reasonable range” (\$5,000 to \$50,000 per unit) will not generate enough money to pave an entire street. Everyone we asked during our interviews agrees that it does not make sense to do piecemeal, lot-by-lot, half-street improvements. That suggests that the fees paid would accumulate in a fund until there is enough to do something useful somewhere. That means that the fees paid by many developers might be used for improvements elsewhere in the City.

Exactions from developers (including some types of fees) must be proportional to the impacts of that development on the infrastructure, and there must be a clear nexus between the impacts of development and the fee or exaction being imposed. These are potential legal issues that, while not insurmountable, must be addressed as part of a comprehensive strategy.

Growth-related projects

One potential way to structure the LTIC is as a Systems Development Charge (SDC), which is a common method of charging developers for infrastructure at the time of development. Oregon statutes that govern the creation and use of SDCs, however, require that the revenue be used for projects to mitigate the demand on infrastructure from *new development* (as opposed to simply addressing *existing* infrastructure deficiencies). For many infrastructure projects, there is a gray area where both existing residents and future development benefit from the project. If an SDC were the mechanism used for the LTIC, the list of projects funded by the LTIC would need to be evaluated to ensure that those projects are an eligible use of SDC revenue.

3 Approach to solving the problem

Our approach to solving the problem recognizes that this Phase of the project has a narrow focus on implementing a new fee on infill development (the LTIC). The intent is to work closely with a Stakeholder Work Group to identify and evaluate potential mechanisms for collecting the fee, determining the appropriate rate of the fee, and implementing the fee as soon as is practical. By keeping a narrow focus, we will streamline the process, expediting the final adoption of the fee to stop the bleeding from infill development that (in the absence of the LTIC) contributes nothing to the improvement of local street infrastructure.

3.1 Scope of work

In this section, we describe the general tasks that will be completed in Phase II. More detailed information on these tasks can be found in the Revised Phase II Scope of Work.

Task 2.1. Conceptual Models

The ECONorthwest Team, in collaboration with PBOT staff, will identify three conceptual models for an LTIC. For each model, we will identify the mechanics for assessing the fee, and legal restrictions on who can be charged, the rate that can be charged, and the types and locations of projects that could be funded. This task will require close collaboration with the

Office of the City Attorney to ensure that all legal considerations have been adequately addressed, and that the proposed conceptual models are legal.

After identifying and defining the three conceptual models, we will evaluate each of the models using a set of criteria that will be agreed upon by the ECONorthwest Team and PBOT staff. The results of this evaluation will be documented in a technical memorandum on the Evaluation of Potential LTIC Concepts. This information will be presented to the Stakeholder Work Group, where we would discuss the relative merits of each model, and ultimately recommend one preferred alternative. The preferred alternative will receive additional refinement in Task 2.2.

Task 2.2. Refine the LTIC Model and Recommendations

Once a preferred concept has been identified, we will conduct a more refined analysis, resulting in a fully-developed concept that is ready for implementation. This refinement process will be both political and technical, and will rely heavily on input from the Stakeholder Work Group. Through this process, we will write one final report on the Recommended LTIC Strategy, building off of the information contained in the Task 2.1 Evaluation of Potential LTIC Concepts tech memo.

The Recommended LTIC Strategy will not provide detailed information on how the LTIC funds should be spent, or guidelines for prioritizing potential projects. Decisions on how to use the LTIC funds will need to be addressed later, through a separate process. One exception, is if the preferred concept has legal restrictions on the use of funds, with limits on the location or type of projects that are eligible for funding. If there are legal restrictions on the use of funds, those restrictions will be clearly delineated in the Recommended LTIC Strategy.

Task 2.3. Stakeholder Involvement

Stakeholder and public involvement will be coordinated with all aspects of the technical analysis. The stakeholder and public involvement will include one-on-one interactions, stakeholder interviews, presentations, up-to-date website content, timely project materials, briefings, e-updates, and project meetings. At a few key points in the technical process we propose a series of stakeholder touch points with the Executive Steering Committee, Technical Advisors, Stakeholder Work Group, and General / Interested Public.

The public involvement strategy seeks to be transparent and inclusive, but at a scale appropriate with the nature of the project and its budget. There are a limited number of stakeholders who will be directly affected by the new LTIC and, therefore, directly involved. For Portlanders not affected, but generally interested in good governance and development, we propose additional strategies to ensure open access to information and decision-making and to lay the groundwork for the work on problem streets that will continue beyond the LTIC project.

More information on the role of the Stakeholder Work Group is provided letter in this memo. For additional details, refer to the PBOT LTIC Phase II Public Involvement Plan.

Task 2.4. City Council Adoption

The Consultant Team will help City staff prepare the LTIC Strategy for City Council adoption. This will include writing new Code language for implementation of the LTIC. The Consultant Team will provide a 90% complete version of the Code language; City staff will review (including legal review) and make adjustments to the Code language during the adoption process. This task will also include one presentation to City Council. If additional presentation to City Council or other committees and commissions are needed, we assume those additional presentations would be done by City staff.

Task 2.5. Planning for a Neighborhood Streets Program

The final task in Phase II looks beyond the adoption of the LTIC to future phases of implementation. The City's newly created Residential Streets Program is responsible for paving unimproved City streets. This program has limited funding, and a short-term focus on implementing a demonstration project in FYE 2016. The Consultant Team will provide financial analysis to support the implementation of the demonstration project. Additionally, we will collaborate with City staff on the creation of a multi-year work program for a Neighborhood Streets Program, which is intended to guide the efforts of the Residential Street Program in future years.

3.2 Schedule

Task 2.1, Conceptual Models, will occur in July and August. At the completion of Task 2.1, we will convene the Stakeholder Work Group for the first time, to provide an overview of the project, and to review the conceptual models under consideration. During the fall, we will refine the preferred concept, and prepare the LTIC for City Council adoption, convening the Stakeholder Work Group to provide feedback at key decision points. The schedule calls for completing all tasks by December 2015, with the final LTIC package ready for City Council adoption at that time. Refer to the Revised Phase II Scope of Work for a detailed project schedule, including tentative dates for meetings and deliverables.

3.3 Neighborhood Streets Program – Future Phases

As stated earlier in this memo, the purpose of Phase II of this project is simply to stop the bleeding from infill development that, under existing policy, contributes nothing to the provision of local street infrastructure. During this phase of the project we will not solve the many other related issues (e.g., what street standards should apply where? what specific projects should LTIC funds be spent on? what to do with existing waivers of remonstrance? Etc.). These are all important questions, but beyond the scope of work for Phase II of this project.

To fully address these issues will require a larger process for a Neighborhood Streets Program. The City has recently established a Residential Street Program for the purpose of improving (paving) dirt and gravel streets. The Mayor's proposed budget \$1.1 million in funding for a local street improvement demonstration project in FYE 2016, and ongoing funding of \$1.1

million for local street improvements in future years. Now that a program has been established, and funding has been allocated, the City will be under pressure to address the multiple questions related to paving Portland's problem streets. This is true regardless of the LTIC, though successful adoption of the LTIC applies additional pressure to solve these larger problems as well as providing additional resources to leverage.

Therefore, our work in Phase II, focuses almost exclusively on implementing an LTIC, is based on the assumption that the City of Portland, through the newly created Residential Street Program, will work to create a Neighborhood Streets Program in the near future that tackles these related implementation issues citywide. Adoption of the LTIC is intended to occur prior to the creation of a comprehensive program. However, the final task in Phase II (described above) will include planning work for the Neighborhood Streets Program. This work will include providing financial analysis on a local street improvement demonstration project that is occurring in FYE 2016, as well as the creation of a multi-year work program for the creation of a Neighborhood Streets Program.

4 Role of the Stakeholder Work Group

A Stakeholder Work Group will play a critical role in the success of the LTIC. The group will be composed on leaders and representatives from each of the geographic areas that have single-family residential neighborhoods with problem streets, City staff (including representatives from PBOT, BES, BDS, BPS, and the Office of the City Attorney), development leaders, and infill homebuilders small and large.

The Stakeholder Work Group will provide a voice for individuals and representatives of groups that have the most at stake in establishment of the LTIC. The Group will be the central vehicle for community involvement and collaboration. The meetings will be formal, facilitated by the ECONorthwest team. The meetings will be held at project decision-points, with the purpose of testing possible solutions and gaining understanding of the varied perspectives and common interests. Work Group members are also expected to share project information and provide two-way communication with the organizations and neighborhoods they represent. Feedback gained from the Work Group will guide the efforts of the ECONorthwest consultant team and will be disseminated to senior City staff and, ultimately, to the City Council.

The scope of work for Phase II assumes four meetings of the Stakeholder Work Group. Though the actual number of meetings may vary, depending on the number of key issues that we encounter on Phase II that require input from the Work Group. Although work on Phase II will begin in July, the first meeting of the Stakeholder Work Group is not anticipated to occur until August, after the ECONorthwest Team and City staff have made significant progress on Task 2.1, Conceptual Models. Subsequent meetings of the Stakeholder Work Group would occur roughly once a month, with the final meeting likely to occur in November or December.