

**From:** [Fred Brown](#)  
**To:** [City Council](#)  
**Cc:** [Dan Fernissee](#)  
**Subject:** RE: for the record 2/9/15 City Council meeting  
**Date:** Monday, February 23, 2015 4:25:32 PM  
**Attachments:** [Letter to Shoreline City Council re Development Agreements.pdf](#)  
[RCW Exhibit A.pdf](#)  
[City Language Exhibit B.pdf](#)  
[Proposed Language.pdf](#)

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Heidi,

After talking with staff, and by way of clarification, I would like to resubmit the following attachments to Council to be entered into the record at tonight's meeting.

Thank you,

Fred F. Brown

2008 Hoyt Avenue

Everett, WA 98201

206-992-4982

**From:** City Council [mailto:Council@shorelinewa.gov]  
**Sent:** Monday, February 9, 2015 3:43 PM  
**To:** Fred Brown  
**Subject:** RE: for the record 2/9/15 City Council meeting

Dear Mr. Brown:

We received your email on February 9.

Thank you for taking the time to write to the City of Shoreline. Your comments will be distributed to the City Council, appropriate staff, and posted on the City's website as public comment (\*please see disclosure notice below).

Please do not hesitate to contact the City Manager's Office at (206) 801-2214 if you have additional questions or concerns.

Sincerely,

Heidi Costello

City Manager's Office

City of Shoreline

(206) 801-2214

[hcostello@shorelinewa.gov](mailto:hcostello@shorelinewa.gov)

**\*NOTICE OF DISCLOSURE**

\*Please be aware that any comments submitted concerning Council agenda items will be shared on the Shoreline City Website. This site is a limited public forum and comments may be excluded if they are nontopical or inappropriate under Shoreline Social Media Policy CM 10-1. If not posted, comments are still subject to disclosure under the Public Records Act, Chapter 42.56, unless a claim of privilege is established by a private party.

**From:** Fred Brown [<mailto:fred@ffbrowndesign.com>]

**Sent:** Monday, February 09, 2015 3:38 PM

**To:** City Council

**Cc:** Steve Szafran

**Subject:** for the record 2/9/15 City Council meeting

Steve,

I have prepared this for tonight's meeting and as we discussed, due to the expected busy schedule, I will not give oral testimony tonight. Let me know if you find other avenues for accomplish the same thing.

Fred F. Brown

2008 Hoyt Avenue

Everett, WA 98201

206-992-4982

F r e d . F . B r o w n

2008 Hoyt Avenue  
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## Presentation for Shoreline City Council re Adoption of Development Agreements

To the City Council of Shoreline  
17500 Midvale Ave N  
Shoreline, Washington 98133  
Transmitted via email: council@shorelinewa.gov  
February 9, 2015

Re: Proposed Ordinance 20.30.355 Development Agreements  
Regular Council Meeting February 9, 2015  
Agenda Item: 8a-1 Development Code Amendment Discussion

Background: I have been hired by John Sims owner of Frank Lumber The Door Store to process a permit granting him Land Use Entitlement and Vested Phasing rights for his property located at 1535 NE 177th St. In informal meetings with staff, regarding the project, I was informed that the city didn't have a provision in their Municipal Code to allow such a permit.

Tonight's Agenda Item: 8a-1 Development Code Amendment Discussion was brought to my attention as a provision that would allow this type of permitting. After reading the proposed language my comments are as follows;

The proposed language would make **all** proposals for a Development Agreement to be routed through the Planning Commission. Generally speaking, Development Agreements are used for projects that are requesting modifications to a City Development Code and provide for some form of public hearings.

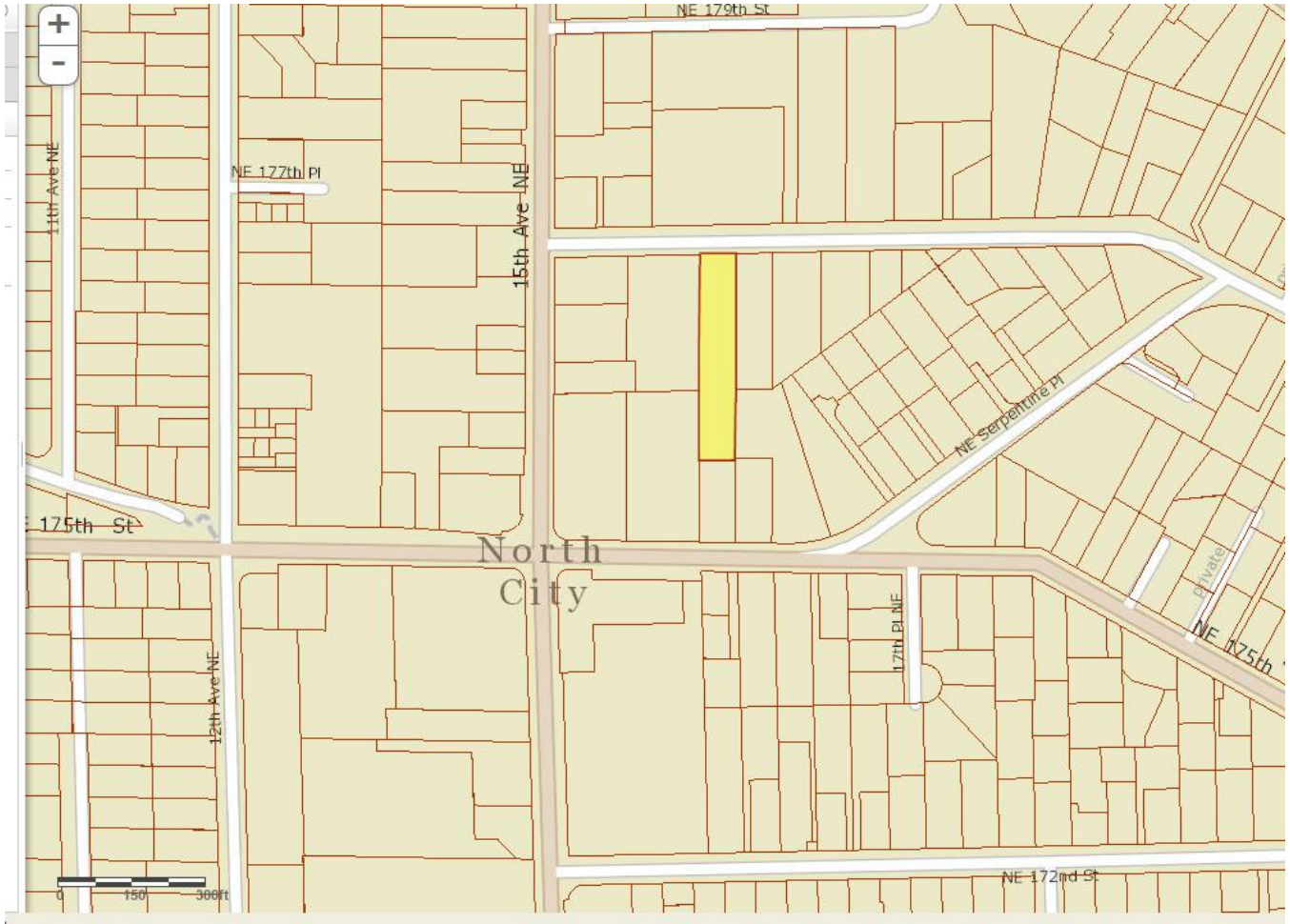
I would propose that additional language be incorporated into the ordinance that would allow for an Administrative Review process for cases that, regardless of property size, **do not** propose modifications to the Development Code. This would provide an expedited process for permits that comply with the current provisions of the Development Code and only want to add Vested Phasing to their application.

Vested Phasing, through a Development Agreement, assurances to the property owner that he may, as long as he keeps his agreed Vesting Schedule, complete his project.

Sincerely,



Fred Brown



John Sims Jr. property original site of Frank Lumber

# EXHIBIT A

RCW

36.70B.170

Development agreements – Authorized.

(1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

[1995 c 347 § 502.]

Notes:

Findings -- Intent -- 1995 c 347 §§ 502-506: "The legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development

project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements." [1995 c 347 § 501.]

#### 36.70B.180

Development agreements – Effect.

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. A permit or approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement.

[1995 c 347 § 503.]

Notes:

Findings -- Intent -- 1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

#### 36.70B.190

Development agreements – Recording – Parties and successors bound.

A development agreement shall be recorded with the real property records of the county in which the property is located. During the term of the development agreement, the agreement is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement.

[1995 c 347 § 504.]

Notes:

Findings -- Intent -- 1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

#### 36.70B.200

Development agreements – Public hearing.

A county or city shall only approve a development agreement by ordinance or resolution after a public hearing. The county or city legislative body or a planning commission, hearing examiner, or other body designated by the legislative body to conduct the public hearing may conduct the hearing. If the development agreement relates to a project permit application, the provisions of chapter 36.70C RCW shall apply to the appeal of the decision on the development agreement.

[1995 c 347 § 505.]

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**Notes:**

Findings -- Intent -- 1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

**36.70B.210**

**Development agreements – Authority to impose fees not extended.**

Nothing in RCW 36.70B.170 through 36.70B.200 and section 501, chapter 347, Laws of 1995 is intended to authorize local governments to impose impact fees, inspection fees, or dedications or to require any other financial contributions or mitigation measures except as expressly authorized by other applicable provisions of state law.

[1995 c 347 § 506.]

**Notes:**

Findings -- Intent -- 1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

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SEE PAGE 8 FOR PROPOSED LANGUAGE INSERTION

~~The City Council shall take legislative action on the proposal in accordance with State law.~~

~~There is no administrative appeal of legislative actions of the City Council but such actions may be appealed together with any SEPA threshold determination according to State law. (Ord. 581 § 1 (Exh. 1), 2010; Ord. 406 § 1, 2008; Ord. 339 § 5, 2003; Ord. 238 Ch. III § 3(d), 2000).~~

**20.30.355 Development Agreement (Type L).**

A. Purpose: To define the development of property in order to implement framework goals to achieve the City's adopted vision as stated in the Comprehensive Plan. A Development Agreement is permitted in all zones and may modify development standards contained in SMC 20.50. A Development Agreement in the MUR-85' zone may be approved to allow increase development potential above the zoning requirements in SMC 20.50.

B. Development Agreement Contents (General): A Development Agreement shall set forth the development standards and other provisions that shall apply to govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170). Each Development Agreement approved by the City Council shall contain the development standards applicable to the subject real property. For the purposes of this section, "development standards" includes, but is not limited to:

- 1. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
- 2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
- 3. Mitigation measures, development conditions, and other requirements under Chapter 43.21C RCW;
- 4. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
- 5. Affordable Housing Units.
- 6. Parks and open space preservation;
- 7. Phasing of development;

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8. Review procedures and standards for implementing decisions;

9. A build-out or vesting period for applicable standards;

10. Any other appropriate development requirement or procedure;

11. Preservation of significant trees; and

12. Connecting, establishing, and improving non-motorized access.

C. Decision Criteria. A Development Agreement (General Development Agreement and Development Agreements in order to increase height above 85 feet) may be granted by the City only if the applicant demonstrates that:

1. The project is consistent with goals and policies of the Comprehensive Plan. If the project is located within a Subarea Plan, then the project shall be consistent with the goals and policies of the Subarea Plan.

2. The proposed development uses innovative, aesthetic, energy efficient and environmentally sustainable architecture and site design.

3. There is either sufficient capacity and infrastructure (e.g., roads, sidewalks, bike lanes) in the transportation system (motorized and nonmotorized) to safely support the development proposed in all future phases or there will be adequate capacity and infrastructure by the time each phase of development is completed. If capacity or infrastructure must be increased to support the proposed development agreement, then the applicant must identify a plan for funding their proportionate share of the improvements.

4. There is either sufficient capacity within public services such as water, sewer and stormwater to adequately serve the development proposal in all future phases, or there will be adequate capacity available by the time each phase of development is completed. If capacity must be increased to support the proposed development agreement, then the applicant must identify a plan for funding their proportionate share of the improvements.

5. The Development Agreement proposal contains architectural design (including but not limited to building setbacks, insets, facade breaks, roofline variations) and site design standards, landscaping, provisions for open space and/or recreation areas, retention of significant trees, parking/traffic

management and multimodal transportation improvements and other features that minimize conflicts and create transitions between the proposal site and property zoned R-4, R-6, R-8 or MUR-35'.

D. Development Agreement Contents for Property Zoned MUR-85' in order to increase height above 85 feet: Each Development Agreement approved by the City Council for property zoned MUR-85' for increased development potential above the provision of the MUR-85' Zone shall contain the following:

1. Twenty percent (20%) of the housing units constructed onsite shall be affordable to those earning less than sixty percent (60%) of the median income for King County adjusted for household size. The units shall remain affordable for a period of no less than 50 years. The number of affordable housing units may be decreased to ten percent (10%) if the level of affordability is increased to fifty percent (50%) of the median income for King County adjusted for household size. A fee in lieu of constructing the units may be paid upon authorization of the City's affordable housing program instead of constructing affordable housing units onsite. The fee will be specified in SMC Title 3.

2. Entire development is built to LEED Gold standards.

3. Structured parking for at least ninety percent (90%) of the required parking spaces for a development. Structured parking includes underground parking, under-building parking and above-ground parking garage. Unstructured parking shall be located interior to the site.

4. An agreement to purchase Transfer of Development Rights (TDR) credits at a rate of \$5,000 per unit up to a maximum of 50 TDRs per development agreement as authorized by the City Council and not to exceed Shoreline's allocation of TDR credits.

5. Applicant shall dedicate park space sufficient to accommodate each projected resident, to be determined by a formula to be established by rule in consultation with the Parks Board. Dedicated space must be open and accessible to the public from a public street.

6. Development Agreements in MUR-85' shall include at least two (2) of the following components and may not be combined:

a. Entire site uses combined heat and power infrastructure or district energy as defined by....

b. Commercial space of at least 40,000 square feet.

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c. 30 percent (30%) of the ground floor area for neighborhood amenities that may include; areas open and accessible for the community, office space for non-profit organizations, an eating or drinking establishment, or other space that may be used for community functions.

d. Two percent (2%) of the building construction valuation shall be paid by the property owner/developer to the City to fund public parks, open space, art, or other recreational opportunities open and accessible to the public within the station subarea as defined in the City's Parks, Recreation, and Open Space Plan.

e. Provide additional off-site frontage improvements (as required by the Engineering Development Manual) that connect a proposed development to amenities near the subject project. Amenities may include transit stops, light rail station, commercial uses, etc.

f. Providing street-to-street dedicated public access. Examples include an alley, pedestrian/bicycle path, or other nonmotorized vehicle trail.

E. Development Agreement Approval Procedures: The City Council may approve Development Agreements through the following procedure:

1. A Development Agreement application incorporating the elements stated in subsection B of this section may be submitted by a property owner with any additional related information as determined by the Director. After staff review and SEPA compliance, the Planning Commission shall conduct a public hearing on the application. The Planning Commission shall then make a recommendation to the City Council ~~review the application~~ pursuant to the criteria set forth in SMC 20.30.355(D) and the applicable goals and policies of the Comprehensive Plan. The City Council shall approve, approve with additional conditions, or deny the Development Agreement. The City Council shall approve the Development Agreement by ordinance or resolution;

**2 SEE ATTACHED**

**3** 2: Recorded Development Agreement: Upon City Council approval of a Development Agreement under the procedure set forth in subsection E of this section, the property owner shall execute and record the Development Agreement with the King County Recorder's Office to run with the land and bind and govern development of the property.

## Proposed Language

### SMC 20.30.355 E (2) Approval Procedures

**2. Site Specific Phased Projects:** For those Applicants whose project is site specific and in complete compliance with all Development Standards of the City of Shoreline and wish to Build Out their project over time, the application, after staff review and recommendation, will be reviewed by the City Council directly and after a public hearing a Development Agreement may be granted under the provisions of this section.