LEAGUE OF MINNESOTA CITIES

CONNECTING & INNOVATING
SINCE 1913

RISK MANAGEMENT INFORMATION

SUBDIVISIONS, PLATS, AND DEVELOPMENT AGREEMENTS—OH MY!

Regulating the division of land can be a powerful tool in implementing any municipal comprehensive land use plan. This memo summarizes some of the basic law associated with subdivisions, plats, and development agreements. It is by no means a complete discussion of all the issues that may be involved with subdivision regulation.

Definitions

- A "subdivision" is the division or separation of a large tract of typically unimproved land under single ownership into smaller units, lots or parcels.
- A "plat" is a technical drawing or map that shows the lot lines or parcel boundaries, as well as the location of road right-of-way and utility easements.
- A "development agreement" is a contract that a city may enter into with a landowner or developer upon subdivision that details how associated infrastructure will be accomplished.

Chapter 505 Plats

Plats are technical drawings delineating one or more parcels of land drawn to scale depicting the location and boundaries of lots, blocks, outlots, parks, and public way. Plats are prepared and recorded in conformance with Minnesota Statute Chapter 505, and must contain a certification by a land surveyor and be approved by the county surveyor. The 2007 Legislature rewrote Chapter 505 to reflect changes in platting and surveying standards, technologies, and processes. Sometimes a subdivision is said to be the same as a plat, but that is not always true, and the differences between the two can be important in some scenarios as noted below.

Plats shall be presented for approval to the city in which the land is located pursuant to Minn. Stat. 505.03. Plats that document a subdivision of land are subject to the approval of the city council exercising its authority over the subdivision of the land. The 2007 Legislature provided that plats that only delineate existing parcels or comply with a minor subdivision procedure may be approved by a local government official designated by the city council. If a city does not have subdivision regulations under its 462.358 authority, it may nonetheless be presented with plats for approval under 505.03. Without a subdivision ordinance, a city's authority is limited to technical review of plats, and authority to withhold approval to such plats would seem somewhat limited.

Subdivision Ordinance Authority

Minnesota Statute Section 462.358 authorizes cities to regulate subdivision of land within the municipality. The subdivision ordinance generally can extend its application to unincorporated land within two miles of city limits if the township has not adopted subdivision regulations. Although the subdivision ordinance is sometimes viewed as secondary to the zoning ordinance, in communities that are not fully developed and have open land, the subdivision ordinance is arguably more important than the zoning ordinance in affecting future land use patterns.

More Information

Learn more about cities' authority to regulate land in:

- *The Land Use Cook Book: It's Not All Cookie Cutter*

It's available in the Land Use area of the League website at www.lmc.org.

Minnesota cities have a considerable amount of latitude in the regulation of subdivisions. But that latitude must be exercised through the subdivision ordinance by laying out specific standards and requirements that must be met for subdivision approval. The statute explains that:

> The standards and requirements in the regulations may address without limitation: the size, location, grading, and improvement of lots, structures, public areas, streets, roads, trails, walkways, curbs and gutters, water supply, storm drainage, lighting, sewers, electricity, gas, and other utilities; the planning and design of sites; access to solar energy; and the protection and conservation of flood plains, shore lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features.

Minimum Internal Development Standards

Because the statutory power provided is wide in scope, subdivision ordinances can vary greatly from city to city. The goal of the subdivision standards is to help the city envision the "look and function" of the new development when it reviews an application for the division of land. At a minimum, most subdivision ordinances have standards and require information about:

- The layout and width of proposed road rights-of-way and utility easements;
- Road grades and drainage plans;
- Plans for water supply, sanitary sewer or sewage handling and treatment; and
- Stormwater management.

Many subdivision ordinances also have standards and requirements related to such things as:

- Lot size and front footage;
- Block or cul-de-sac design;
- Alleys, sidewalks, and trails;
- Erosion and sediment control;
- Tree preservation; and
- Protection of wetlands and environmentally sensitive areas.

Minimum External Development Standards

An important consideration to include in the ordinance is how a proposed subdivision will relate to adjoining land uses, such as the connection of one neighborhood to another via roads, trails and open space, and how they relate to shared community services such as schools, parks, and public

safety stations. Cities should require compliance with the external standards of the ordinance. There are at least two ways to approach these requirements.

- *Premature subdivision*. Some ordinances provide that a subdivision may be deemed premature and therefore denied. The ordinance should detail conditions that could make a subdivision premature such as lack of adequate drainage, water supply, roads or highways, waste disposal systems, inconsistency with the comprehensive plan, and lack of city service capacity.
- *Conditional approval.* Other ordinance provisions may condition approval on the construction and installation of streets, sewer and water facilities, and other utility infrastructure.

There are some emerging issues cities should consider when drafting, reviewing, and amending subdivision ordinances, and that mean cities should work closely with planners and attorneys to address these issues, including:

- Wastewater treatment systems—the capacity of current wastewater systems may limit future subdivision, and the permitting of new treatment facilities can be a challenge under environmental laws.
- Stormwater management—large rain events combined with increases in impervious surfaces can overwhelm retention ponds and other stormwater handling systems; and subdivision ordinances may look to the on-site handling of stormwater to help out.
- Conservation design—subdivision ordinances may provide density bonuses and other incentives to cluster housing and development in order to preserve natural and agricultural lands.

Dedication of Land

Subdivisions require infrastructure such as streets, utilities, parks, and drainage systems to support those subdivisions. As part of subdivision approval, a city may require land be "dedicated" to the public for public purposes, such as for roads, utilities, and parks. Through the dedication, a city typically acquires the public easement or right-of-way over the land for the dedicated purpose, with the underlying landowner retaining ownership of fee title to the land. However, when the land dedication is for a park, the 2007 legislation amending Chapter 505 provides that the dedication transfers fee title and not just public easement rights.

If cities require dedication of land for park purposes, the statute sets some further specific restrictions.

- The city must first establish these requirements by ordinance or resolution under Minn. Stat. 462.353 subd. 4a.
- The city must also adopt a capital improvement budget and have a parks and open space plan component in its comprehensive plan.
- The portion of land to be dedicated must be calculated based solely upon the "buildable" land as defined by municipal ordinance.
- The municipality must reasonably determine it will need to acquire that portion of land for recreational and environmental purposes as a result of approval of the subdivision.

- In establishing what portion of land must be dedicated or preserved, city regulations must also give due consideration to the public open space and recreational areas and facilities the developer proposes for the subdivision.
- A city cannot deny subdivision approval based solely on an inadequate supply of parks, playgrounds, trails, wetlands, or open space within the municipality.

Park Dedication Fees

As part of its park dedication requirements, as an alternative to accepting dedicated land, a city may accept an equivalent value of money. Known as "park dedication fees" these fees have received considerable attention during the last several years.

How to Set Fees

Case law and the statute require an "essential nexus" between the fees or dedication imposed and the municipal purpose sought to be achieved by the fee or dedication. The fee or dedication must bear a rough proportionality to the need created by the proposed subdivision or development. If cities require park dedication fees in their subdivision regulations it must be done by ordinance or, depending on the amount of fees collected, by a fee schedule. In 2004, 2006 and 2007, the legislature amended the state statute provisions relating to park dedication fees.

More Information

Learn more about establishing fees in:

- *Establishing Building and Development Fees*

It's available at www.lmc.org.

The park dedication fee now must be based on fair market value of the *unplatted* land for which park fees have not already been paid. If the land in question is subject to a comprehensive plan - eventually scheduled to be served by municipal sanitary sewer, water service or community septic and private well - then the city may include that fact in determining the fair market value. Cities must collect the fee at the time of final plat approval. For purposes of redevelopment on developed land, the municipality may choose to accept a fee based on fair market value of the land no later than the time of final approval.

What Can We Do With Fees?

Fees received must be placed by the municipality in a special fund to be used only for the purposes for which the money was obtained. Park dedication fees received must be used only for the acquisition and development or improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open space based on the approved park systems plan. Fees must not be used for ongoing operation or maintenance of parks, recreational facilities, playgrounds, trails, wetlands, or open space.

Disputes Regarding Fees

If a city is given written notice of a dispute related to a proposed park dedication fee before the municipality's final decision on an application, a municipality must not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee in lieu of dedication. An application may proceed as if the fee had been paid, pending a decision on the appeal of a dispute over a proposed fee in lieu of dedication, if

(1) The person aggrieved by the fee puts the municipality on written notice of a dispute over a proposed fee in lieu of dedication,
(2) Prior to the municipality's final decision on the application, the fee in lieu of dedication is deposited in escrow, and
(3) The person aggrieved by the fee appeals under section 462.361, within 60 days of the approval of the application. If such an appeal is not filed by the deadline, or if the person aggrieved by the fee does not prevail on the appeal, then the funds paid into escrow must be transferred to the municipality.

Because of statutory changes and recent scrutiny of the use of park dedication fees, a city that relies on such fees should carefully examine -- in consultation with the city attorney -- its ordinance provisions and make any changes necessary to comply with current law. Review parkland dedication requirements to make sure there is a logical connection between the amount of the dedication requirement and the purpose for which it is used. For example, the city should be able to demonstrate that each new lot that is approved necessitates X amount of new parkland. (See appended Sample Park Dedication Methodology.) Also, the city should take steps to separately account for parkland dedication fees and make sure they are not used for ongoing park "operation or maintenance."

Subdivision Approval Process

The subdivision statute generally requires cities to follow a two-step process in the administration of city subdivision regulations. First, the landowner applies for preliminary plat approval, and then subsequently for final plat approval.

Preliminary Plat Approval

During the preliminary approval stage it is important to note that a city has the most discretion in evaluating the application against its ordinance, as a city cannot generally require significant changes after preliminary approval. The city must hold a public hearing on all subdivision applications prior to preliminary approval, following publication of notice at least 10 days before the hearing. A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension. If no action is taken, the application will be deemed approved after this time period. (Note that this 120 day period differs from the usual 60-day rule).

Sample Resolutions

View sample resolutions in:

- *Sample Resolution to Deny a Preliminary Plat: City of Shakopee*
- *Sample Resolution to Approve a Conditional Use Permit: City of Shakopee*

They're available in the Land Use area of the League website at www.lmc.org.

Review of an application for a preliminary plat is a quasi-judicial determination, in which the city is tasked with determining whether the proposed subdivision meets the standards and the requirements of the city ordinance.

An applicant must submit a plat that shows everything required by city ordinance. Because of the quasi-judicial standard, a city cannot generally deny an otherwise acceptable preliminary plat application for subdivision simply because the city council does not approve of the underlying

proposed permitted use. **If the application adequately addresses all of the ordinance standards and requirements, then the preliminary plat generally should be approved.** If the application is denied, the municipality must adopt written findings based on a record from the public proceedings stating why the application was not be approved.

Conditional Approval
A city may approve a preliminary plat along with conditions that must be satisfied for final plat approval. Conditions for how the final subdivision design will meet ordinance provisions often are quite specific. For example:

- Variances to subdivision regulations may be allowed where an unusual hardship on the land exits, but only on the grounds specifically identified in the subdivision regulations.
- If any public improvements are to be installed, an important condition may be entering into a development agreement between the city and the applicant, as discussed below.

This is the time to impose conditions and address any and all concerns the application may generate. The term "preliminary" approval can be misleading because preliminary plat approval establishes the nature, design, and scope of a development project. After a plat is preliminarily approved, the city generally cannot require further significant changes. Once the conditions and requirements of the preliminary plat approval are satisfied, the applicant is generally entitled to approval of the final plat.

Final Plat Approval
After preliminary plat approval, the statute allows the applicant to seek final approval. If the applicant has complied with the conditions and requirements set out in the preliminary approval, the municipality typically must grant final approval within 60 days. Unlike preliminary plat approval, there is no required public hearing on the final plat. The final plat application must demonstrate conformance with the conditions and requirements of preliminary approval. An applicant may demand the execution of a certificate of final approval where the requirement and conditions have been satisfied. If the municipality fails to act within 60 days, the final plat application may automatically be deemed approved.

After final approval has been received, a subdivision may be filed or recorded. After a subdivision has been approved, for one year after preliminary approval and two years after final approval, an amendment to the comprehensive plan or to the zoning ordinances will not apply to or affect the subdivision with regard to use, density, lot size, lot layout, or dedication or platting -- unless the municipality and the applicant agree otherwise. A municipality may require that an applicant establish an escrow account or financial security for the purpose of reimbursing the municipality for direct costs relating to professional services a city provides during the review, approval, and inspection of the project.

Development Agreements
In many cases, a condition of preliminary plat approval requires the city and applicant to enter into a development agreement. This is particularly important for the city if new public improvements such as roads, water and sewer, and stormwater systems are to be installed as part of the subdivision. The statute specifically authorizes the city in its ordinance to condition subdivision

approval on the execution of a development agreement embodying terms and conditions reasonably related to the ordinance requirements.

A development agreement is a contract between a landowner or developer and the city that sets the understanding between the developer and the city regarding the design and construction of the particular project. It establishes the parameters under which the development will proceed, as well as the rights and the responsibilities of the developer and the city. Issues resolved in a development agreement include:

- The design, installation and financing of public improvements;
- Security for completion of improvements installed by developer, a cash deposit, certified Check, irrevocable letter of credit, bond, or other financial security;
- Design of lighting, landscaping, sidewalks, underground utilities and other site plans issues; and
- Coordination of construction with the installation of various utility improvements.

Development agreements also typically detail who will build, pay for and own the improvements; provide the timeline for the construction or installation; and describe who is liable for any defects or claims.

The agreement will detail how the infrastructure will meet city specifications, and document all of the required right-of-ways and land dedications, including agreement regarding park dedication fees if any. While a city cannot condition approval on agreement to waive the right to challenge the validity of a fee, it may condition the approval on a waiver agreement regarding costs associated with improvements to be installed.

As part of the development agreement, cities should require the developer to provide financial security including a letter of credit from a reputable institution in order to cover costs were the installation of improvements to go awry or payments unmet. Finally, development agreements should contain provisions dealing with liability and indemnification, requiring the developer to have liability coverage and ideally to defend and indemnify the city for related claims. Because the agreement can be a sophisticated legally binding contract, it is extremely important for the city attorney to be involved before it is entered into.

Exceptions and Alternatives

Not all divisions of land are subject to a city's subdivision authority. Excepted under state statute are:

- Separations where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;
- Cemetery lots,
- Court ordered divisions or adjustments; and
- Lot consolidation, since subdivision refers only to separation of land.

Although such divisions may nonetheless go through the city's regulatory subdivision process, it appears cities are without authority to require them do so.

Not all subdivisions necessarily require the preparation of a plat. The state subdivision statute mandates that municipal subdivision ordinances require that all subdivisions should be platted which create five or more lots or parcels which are 2-1/2 acres or less in size. Subdivision ordinances may or may not require other subdivisions be platted. Further, not all subdivisions that require platting must necessarily require both a preliminary and then a final plat. The subdivision statute provides that the city ordinance may provide for the consolidation of the preliminary and final review and approval or disapproval of subdivisions.

Some city subdivision ordinances will provide alternative procedures for certain types of "minor" subdivisions. When the city ordinance consolidates preliminary and final approval, it is sometimes called a simple plat. Often this is allowed if subdivision creates a minimum number of lots of a certain size and the plat does require creation of new roads. A different alternative procedure for minor subdivisions is for divisions of land for which the city is not requiring plats. Often called administrative subdivisions or lot splits, such subdivisions are typically accomplished with metes and bounds descriptions.

Conclusion

City staff and officials should carefully evaluate every application for preliminary plat approval for compliance with the subdivision ordinance. Once the preliminary plat has been approved, the city has limited ability to revisit the issue of adequate compliance. If new public improvements or infrastructure are to be installed, then it is important to enter into a development agreement so the improvements will meet city standards and be completed in a timely fashion. Cities should periodically review their subdivision ordinances for consistency with comprehensive plan and current vision of future land use, particularly with regard to the city's capacity for wastewater, stormwater, and traffic.

Jed Burkett 4/08

Sample Park Dedication Methodology

(This is a sample of one methodology; a city is not required to take it into account.)

Step 1.
The city should conduct a parks study to generally determine what it would like to see in the community regarding parks, recreation, trails, and open space. That study should consider whether current facilities are sufficient to meet the needs of current residents. If there is a deficiency, the city should calculate what additional expenditures would be necessary to meet that city's desired parks plan.

Step 2.
The city should calculate the total amount of city parks, recreation, trails and open space, plus any additional amount to meet current, but unmet park goals.

Step 3.
The city should evaluate usage of city parks, recreation, trails, and open space with a goal of estimating the percentage of facilities that exist to serve residential landowners and percentage that exists to serve the needs of commercial development. In arriving at these percentages, it is helpful to consider the use of park facilities by businesses and their workers and the use by sports teams that may be sponsored by businesses. From this analysis, the city will be able to identify the percentage of its parks needs that should be met by residential development and what percentage should be met by commercial/industrial development.

Step 4.
The city then will use the results of step 2 and step 3 to calculate parkland acreage, per resident or per employee. The following examples may be helpful:

Per Capita Residential Share/Per Capita Commercial Share

Existing Park Lane and Trail Acreage
500 acres

Residential Share
90% X 300 = 270 Acres

Per Capita Residential Share
270 acreas/15,000 residents (population) = .018 acres per Resident

Commercial Share
10% X 300 = 30 acres

Per Capita Commercial Share
30 acres/1000 employees in city = .03 acres per Employee

Step 5.
Establish park dedications by ordinance. The amount of land to be dedicated as part of residential subdivision or plat will be equal to the per acre residential share (determined in Step 4) times the number of residents expected in the development or subdivision. To arrive at an amount in lieu of land dedication, take the per acre value of undeveloped land times the amount of land the city could have required to be dedicated.

Step 6.
To calculate the amount to be dedicated as part of a commercial development, multiply the per acre commercial share (determined in Step 4) by the number of employees expected in the development. To arrive at a cash payment in lieu of land dedication, take the per acre value of undeveloped commercial land times the amount of land the city could have required to be dedicated.

Step 7.
Make provisions in your ordinance to provide that these are the maximum amounts the city can charge and give the council discretion to vary from these requirements as a result of unique attributes of the development or to account for parks or open space that may already be included the development. (Note: The city is not required to take any of these considerations into account when arriving at the park dedication amount.)