



## MAYOR AND COUNCIL COMMUNICATION

DATE: 09/06/2016

**REGULAR**

ITEM #: 16

**AGENDA ITEM:** Exemption from Platting for Subdivision of Property Resulting from Acquisition by Governmental Agencies

**SUBMITTED BY:** Emily Becker, City Planner

**THROUGH:** Kristina Handt, City Administrator

**REVIEWED BY:** Stephen Wensman, Planning Director  
Sarah Sonsalla, City Attorney

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### **BACKGROUND:**

Recent agreement between the City and a property owner was made to have property owners convey fee title to a portion of their property to the City for a recently constructed roadway, instead of the property owners granting the City an easement. The City Attorney advised Staff to approve the lot split (following whatever process is required) and record the deed. Upon review of Chapter 153: Subdivision Regulations, Staff was unable to determine the process that is required, as the foregoing situation does not fit neatly in to the situations described where platting is required, nor does it meet the definitions or conditions of any exceptions to platting, as outlined in this Chapter. Because the Ordinance was unclear, Staff consulted the City Attorney to determine the correct process.

After review of Section 153.09: Exceptions to Platting, of Chapter 153: Subdivision Regulations, of the City Code, the City Attorney determined that the subdivision of property resulting from acquisition by governmental agencies for public improvement or uses does not apply to any exceptions set forth in the aforementioned Section, as it does not meet the definitions or conditions set forth for a minor subdivision or lot line adjustment. She suggested this Ordinance be brought forth to amend the City's subdivisions regulations to allow this type of situation as an exception and to then follow the process set forth by this exception so this lot split can be processed.

The subdivision ordinance is not within the zoning code and therefore, the amendment does not require a public hearing.

### **ISSUE BEFORE COUNCIL:**

In order to expedite the aforementioned subdivision of a property for public purpose, the Council is respectfully requested to consider, as part of tonight's consent agenda, whether or not an amendment to Section 153.09 should be made that would add this exemption from the platting process.

### **PROPOSAL DETAILS/ANALYSIS:**

The current exceptions to platting, as provided forth in Section 153.09, are as follows:

(A) Minor subdivision. A minor subdivision is a division of land which results in no more than 4 parcels wherein each resultant parcel complies with the city's minimum lot dimension and public road frontage requirements for the zoning district in which the land is located.

(B) Lot line adjustment. A lot line adjustment is a division of land which results in no more than 4 parcels wherein each resultant parcel does not comply with the city's minimum lot dimension and/or public road frontage requirements for the zoning district in which the land is located. The City Council hereby waives compliance with the city's platting regulations for lot line adjustments which satisfy 1 of the following conditions:

(1) Each resultant parcel, when combined with an abutting parcel through a Tax Parcel Consolidation Procedure approved by Washington County, equals or exceeds the minimum lot dimension requirements and public road frontage requirements for the zoning district in which the property is located;

(2) In those cases where the City Administrator determines that it is not reasonably possible for each resultant parcel to comply with the provisions of division (B)(1) above, each resultant parcel, when combined with an abutting parcel through a Tax Parcel Consolidation Procedure approved by Washington County, is less non-conforming after the lot consolidation than it was before the lot consolidation; or

(3) In those cases where, in regard to property which is zoned agricultural or rural residential, the City Administrator determines that each resultant parcel will equal or exceed minimum lot dimensions for the zoning district in which the property is located, but that 1 of the resultant parcels cannot satisfy the minimum public road frontage requirements for the zoning district in which the property is located, access to the noncomplying parcel is protected by a restrictive covenant approved by the City Attorney which includes the city as a beneficiary.

As previously mentioned, subdivision of property resulting from the acquisition of land by governmental agencies for the purpose of public use or acquisition does not apply to any definition or condition listed above.

Because the subdivision of property resulting from the acquisition of land by governmental agencies for the purpose of public use or acquisition does not meet the definitions or conditions of neither a minor subdivision nor a lot line adjustment, and because platting is only required for the subdivision of a tract of land which is to be divided into 3 or more lots or parcels, there is no clear direction on what process to follow for such a subdivision.

Minor subdivisions and platting require a public hearing and Council approval. Generally, when land is being acquired for public acquisition or use, it is for the purpose of a project, like a street improvement project, which has already been approved by Council. Therefore, it would be redundant for Council to hear and approve such a subdivision of property. Furthermore, the platting process takes a significant amount of time and Staff resources, and would delay public projects.

Due to the aforementioned, Staff is recommending that property that is being subdivided due to governmental agency acquisition for public improvement or uses be added as an exception to the platting

process as a separate item and be approved administratively. This would greatly facilitate and speed up the acquisition process.

**FISCAL IMPACT:**

Less Staff time would be spent in preparing reports and going before Planning Commission and Council to go through the platting process for such lot splits. Additionally, clearly outlining this exception to platting would ensure that such process is being done legally and correctly.

**OPTIONS:**

The Council may either approve or deny the proposed amendment to Section 153.09 of Chapter 153: Subdivision Regulations.

**RECOMMENDATION:**

Staff recommends that Council approve the proposed amendments to Section 153.09: Exceptions to Platting by adding “a subdivision of property resulting from acquisition by governmental agencies for public improvements or uses” as an exception to platting and the summary publication of the ordinance with the following motion:

***“Move to approve Ordinance Amendment 08-153 amending Chapter 153: Subdivision Regulations; Section 153.09: Exceptions to Platting, by inserting, as an additional exception to platting, a subdivision of property resulting from acquisition by governmental agencies for public improvements or uses, and Resolution 2016-76 for its summary publication.”***

**ATTACHMENTS:**

- Draft Ord. 08-153 (redlined version and edited version)
- Resolution 2016-76 approving summary publication of Ord. 08-153
- Email from City Attorney Sonsalla

**CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**RESOLUTION NO. 2016-76**

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-\_\_\_ BY TITLE  
AND SUMMARY**

**WHEREAS**, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-\_\_\_ amending the City's subdivision regulations by adding subdivision of property resulting from acquisition by governmental agencies for public improvement or uses as an exception to platting; and

**WHEREAS**, the ordinance is lengthy; and

**WHEREAS**, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

**WHEREAS**, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Lake Elmo, that the City Clerk shall cause the following summary of Ordinance No. 08-\_\_\_ to be published in the official newspaper in lieu of the entire ordinance:

**Public Notice**

The City Council of the City of Lake Elmo has adopted Ordinance No. 08-\_\_\_, which amends Section 153.09: Exceptions to Platting, of Chapter 153: Subdivision Regulations, by inserting subdivision of property for public purposes as an exception to platting. The ordinance amendment allows such a subdivision of property to be approved administratively by the City Administrator.

The full text of Ordinance No. 08-\_\_\_ is available for inspection at Lake Elmo City Hall during regular business hours.

**BE IT FURTHER RESOLVED** by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance at City Hall for public inspection and that a full copy of the ordinance be placed in a public location within the City.

Dated: September 6, 2016

\_\_\_\_\_  
Mayor Mike Pearson

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member \_\_\_\_\_ and upon vote being taken thereon, the following voted in favor thereof: \_\_\_\_\_ and the following voted against same: \_\_\_\_\_

Whereupon said resolution was declared duly passed and adopted.

CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. 08-153

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY EXEMPTING SUBDIVISION OF PROPERTY RESULTING FROM ACQUISITION BY GOVERNMENTAL AGENCIES FOR PUBLIC IMPROVEMENTS OR USES FROM THE PLATTING PROCESS.

**SECTION 1.** The City Council of the City of Lake Elmo hereby amends Chapter 153: Subdivision Regulations, Section 153.09: Exceptions to Platting, by inserting the following:

(A) *Minor subdivision.* A minor subdivision is a division of land which results in no more than 4 parcels wherein each resultant parcel complies with the city's minimum lot dimension and public road frontage requirements for the zoning district in which the land is located.

(B) *Lot line adjustment.* A lot line adjustment is a division of land which results in no more than 4 parcels wherein each resultant parcel does not comply with the city's minimum lot dimension and/or public road frontage requirements for the zoning district in which the land is located. The City Council hereby waives compliance with the city's platting regulations for lot line adjustments which satisfy 1 of the following conditions:

(1) Each resultant parcel, when combined with an abutting parcel through a Tax Parcel Consolidation Procedure approved by Washington County, equals or exceeds the minimum lot dimension requirements and public road frontage requirements for the zoning district in which the property is located;

(2) In those cases where the City Administrator determines that it is not reasonably possible for each resultant parcel to comply with the provisions of division (B)(1) above, each resultant parcel, when combined with an abutting parcel through a Tax Parcel Consolidation Procedure approved by Washington County, is less non-conforming after the lot consolidation than it was before the lot consolidation; or

(3) In those cases where, in regard to property which is zoned agricultural or rural residential, the City Administrator determines that each resultant parcel will equal or exceed minimum lot dimensions for the zoning district in which the property is located, but that 1 of the resultant parcels cannot satisfy the minimum public road frontage requirements for the zoning district in which the property is located, access to the noncomplying parcel is protected by a restrictive covenant approved by the City Attorney which includes the city as a beneficiary.

(C) *Subdivision of Property for Public Purpose.* The subdivision of property resulting from acquisition by governmental agencies for public improvements or uses.

(D) *Application for minor subdivision/lot line adjustment.* An application for a minor subdivision or a lot line adjustment shall be submitted on forms provided by the City

Administrator. The applicant will be responsible for all expenses incurred in obtaining the required information, which includes the following:

(1) Name, address, and telephone number of the property owner/applicant and evidence of title;

(2) A legal description of the parcel which is being subdivided and legal descriptions for each of the resulting parcels; and, in regard to lot line adjustments, legal descriptions for the consolidated parcels;

(3) A written description stating the reason for the request; and

(4) A land survey prepared by and signed by a registered land surveyor describing the minor subdivision and/or lot line adjustment and showing all buildings, driveways, easements, setbacks, and other pertinent information including the legal descriptions herein required.

(E) *Review of minor subdivision.*

(1) A completed application shall be submitted to the Planning Commission for its review and recommendation to the City Council.

(2) The City Council may attach reasonable conditions to its approval and shall require the conveyance of necessary street, utility, and drainage easements on forms approved by the City Attorney; and shall require the payment of a public use dedication fee.

(F) *Review of lot line adjustment.* A completed application shall be reviewed administratively by the City Administrator who shall make a written finding in regard to the provisions of division (B) above. The City Administrator's approval shall be conditioned upon tax parcel consolidation. Prior to the issuance of any development permits, and no later than 60 days after administrative review and approval, the applicant shall provide the City Administrator with the verifications listed below. Failure to provide the required verifications shall invalidate the City Administrator's approval:

(1) Recorded documents or recorded document numbers for the deeds of conveyance which effectuate the lot line adjustment; and/or

(2) Proof that the Washington County Assessor has approved a Tax Parcel Consolidation and has assigned a new tax parcel number for the consolidated parcel or parcels.

(G) *Review of Subdivision of Property for Public Purpose.* A completed application, accompanied by a fully executed deed that designates a governmental agency as a grantee, shall be reviewed administratively by the City Administrator who shall make a written finding in regard to the provisions of paragraph (C) above and if the conveyance falls within the definition of paragraph (C), the City Administrator shall approve the subdivision. The City Administrator's approval shall be conditioned upon receipt of a copy of the recorded deed. Failure to provide a copy of the recorded deed shall invalidate the City Administrator's approval.

**SECTION 2. Effective Date.** This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance 08-\_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_\_, 2016, by a vote of \_\_\_\_ Ayes and \_\_\_\_ Nays.

LAKE ELMO CITY COUNCIL

\_\_\_\_\_  
Mike Pearson, Mayor

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

This Ordinance 08-\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_, 2016.



## Emily Becker

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**From:** Sonsalla, Sarah J. <SSonsalla@Kennedy-Graven.com>  
**Sent:** Thursday, August 04, 2016 2:48 PM  
**To:** Emily Becker  
**Cc:** Stephen Wensman; Chad Isakson; Kristina Handt; Sonsalla, Sarah J.  
**Subject:** RE: 3592 Kelvin - Lot Split

Dear Emily,

I reviewed this issue. First, I reviewed the City's subdivision regulations and it appears that all subdivision of property (with a few minor exceptions, none of which apply here) must either be done by plat or meet the definition of a "minor subdivision" or a "lot line adjustment" under the code (and approved as such). From my review of the definitions of "lot line adjustment" and "minor subdivision," (Section 153.09 of the Code), I don't think that this particular situation would meet either definition.

Cities are authorized by Minnesota Statutes Chapter 505 to file what is called a "right-of-way plat," that shows the locations of rights-of-way within the city as you had suggested, however, this plat is just for informational purposes (see Minnesota Statutes Section 505.1792) and does not have any legal significance in terms of subdividing the property or conveying it to the city. These things need to happen regardless of whether or not there is a right-of-way plat filed.

Therefore, I think that the best option would probably be for the City to amend its ordinance to allow this as an exception. I would suggest that the City either include this type of situation in the definition of a lot line adjustment or minor subdivision (and then that process would need to be followed), or that it just be made a general exception that does not require there to be plat, lot line adjustment or minor subdivision approval by the City. The exception would be something similar to "a subdivision of property resulting from acquisition by governmental agencies for public improvements or uses." In most cases, the City will be aware of when it happens, because it will be the City that would be causing it to happen for its projects, but I suppose there could be situations that involve the County or another governmental agency and the City may want to be made aware of it or be required to approve it. If that is the case, the City could require administrative approval (and not have it go to Council). Even though we would be changing the code for this circumstance, it is my opinion that this may come up again in the future.

Assuming that the City changes the code and makes this an exception that does not require there to be approval of a minor subdivision application or lot line adjustment, then once the ordinance is adopted, the deed could be recorded. If the City decides to include this exception in either the minor subdivision or lot line adjustment, then that process would need to be filed (an application would need to be submitted and the Council would need to approve it).

Let me know if you have any questions.

Thanks!

Sarah

**Sarah J. Sonsalla | Attorney | Kennedy & Graven, Chartered** | 470 U.S. Bank Plaza | 200 South Sixth Street | Minneapolis, MN 55402 | direct: 612.337.9284 | fax: 612.337.9310 | e-mail: [ssonsalla@kennedy-graven.com](mailto:ssonsalla@kennedy-graven.com)

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**From:** Emily Becker [mailto:EBecker@lakeelmo.org]  
**Sent:** Thursday, August 04, 2016 10:24 AM  
**To:** Sonsalla, Sarah J.  
**Cc:** Stephen Wensman; Chad Isakson  
**Subject:** RE: 3592 Kelvin - Lot Split

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Let me know if you have any questions.

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CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. 08-\_\_\_\_

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY  
EXEMPTING SUBDIVISION OF PROPERTY RESULTING FROM ACQUISITION BY  
GOVERNMENTAL AGENCIES FOR PUBLIC IMPROVEMENTS OR USES FROM THE  
PLATTING PROCESS.

**SECTION 1.** The City Council of the City of Lake Elmo hereby amends Chapter 153: Subdivision Regulations, Section 153.09: Exceptions to Platting, by inserting the following:

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(B) *Lot line adjustment.* A lot line adjustment is a division of land which results in no more than 4 parcels wherein each resultant parcel does not comply with the city's minimum lot dimension and/or public road frontage requirements for the zoning district in which the land is located. The City Council hereby waives compliance with the city's platting regulations for lot line adjustments which satisfy 1 of the following conditions:

(1) Each resultant parcel, when combined with an abutting parcel through a Tax Parcel Consolidation Procedure approved by Washington County, equals or exceeds the minimum lot dimension requirements and public road frontage requirements for the zoning district in which the property is located;

(2) In those cases where the City Administrator determines that it is not reasonably possible for each resultant parcel to comply with the provisions of division (B)(1) above, each resultant parcel, when combined with an abutting parcel through a Tax Parcel Consolidation Procedure approved by Washington County, is less non-conforming after the lot consolidation than it was before the lot consolidation; or

(3) In those cases where, in regard to property which is zoned agricultural or rural residential, the City Administrator determines that each resultant parcel will equal or exceed minimum lot dimensions for the zoning district in which the property is located, but that 1 of the resultant parcels cannot satisfy the minimum public road frontage requirements for the zoning district in which the property is located, access to the noncomplying parcel is protected by a restrictive covenant approved by the City Attorney which includes the city as a beneficiary.

(C) *Subdivision of Property for Public Purpose.* The subdivision of property resulting from acquisition by governmental agencies for public improvements or uses.

(D) *Application for minor subdivision/lot line adjustment.* An application for a minor subdivision or a lot line adjustment shall be submitted on forms provided by the City

Administrator. The applicant will be responsible for all expenses incurred in obtaining the required information, which includes the following:

(1) Name, address, and telephone number of the property owner/applicant and evidence of title;

(2) A legal description of the parcel which is being subdivided and legal descriptions for each of the resulting parcels; and, in regard to lot line adjustments, legal descriptions for the consolidated parcels;

(3) A written description stating the reason for the request; and

(4) A land survey prepared by and signed by a registered land surveyor describing the minor subdivision and/or lot line adjustment and showing all buildings, driveways, easements, setbacks, and other pertinent information including the legal descriptions herein required.

(E) *Review of minor subdivision.*

(1) A completed application shall be submitted to the Planning Commission for its review and recommendation to the City Council.

(2) The City Council may attach reasonable conditions to its approval and shall require the conveyance of necessary street, utility, and drainage easements on forms approved by the City Attorney; and shall require the payment of a public use dedication fee.

(F) *Review of lot line adjustment.* A completed application shall be reviewed administratively by the City Administrator who shall make a written finding in regard to the provisions of division (B) above. The City Administrator's approval shall be conditioned upon tax parcel consolidation. Prior to the issuance of any development permits, and no later than 60 days after administrative review and approval, the applicant shall provide the City Administrator with the verifications listed below. Failure to provide the required verifications shall invalidate the City Administrator's approval:

(1) Recorded documents or recorded document numbers for the deeds of conveyance which effectuate the lot line adjustment; and/or

(2) Proof that the Washington County Assessor has approved a Tax Parcel Consolidation and has assigned a new tax parcel number for the consolidated parcel or parcels.

(G) *Review of Subdivision of Property for Public Purpose.* A completed application, accompanied by a fully executed deed that designates a governmental agency as a grantee, shall be reviewed administratively by the City Administrator who shall make a written finding in regard to the provisions of paragraph (C) above and if the conveyance falls within the definition of paragraph (C), the City Administrator shall approve the subdivision. The City Administrator's approval shall be conditioned upon receipt of a copy of the recorded deed. Failure to provide a copy of the recorded deed shall invalidate the City Administrator's approval.

**SECTION 2. Effective Date.** This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance 08-\_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_\_, 2016, by a vote of \_\_\_\_ Ayes and \_\_\_\_ Nays.

LAKE ELMO CITY COUNCIL

\_\_\_\_\_  
Mike Pearson, Mayor

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

This Ordinance 08-\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF LAKE ELMO  
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STATE OF MINNESOTA

ORDINANCE NO. 08-\_\_\_

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**SECTION 2. Effective Date.** This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

**SECTION 3. Adoption Date.** This Ordinance 08-\_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_\_, 2016, by a vote of \_\_\_\_ Ayes and \_\_\_\_ Nays.

**LAKE ELMO CITY COUNCIL**

\_\_\_\_\_  
Mike Pearson, Mayor

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

This Ordinance 08-\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_, 2016.



**CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**RESOLUTION NO. 2016-\_\_**

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-\_\_ BY TITLE  
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**WHEREAS**, the ordinance is lengthy; and

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**WHEREAS**, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

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**BE IT FURTHER RESOLVED** by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance at City Hall for public inspection and that a full copy of the ordinance be placed in a public location within the City.

Dated: September 6, 2016

\_\_\_\_\_  
Mayor Mike Pearson

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member \_\_\_\_\_ and upon vote being taken thereon, the following voted in favor thereof: \_\_\_\_\_ and the following voted against same: \_\_\_\_\_

Whereupon said resolution was declared duly passed and adopted.