



## STAFF REPORT

DATE: September 23, 2019

**REGULAR**

ITEM #:

**MOTION**

**TO:** Planning Commission  
**FROM:** Ken Roberts, Planning Director  
**AGENDA ITEM:** Lake Elmo Subdivision Code – Updates and Changes  
**REVIEWED BY:** Ben Prchal, City Planner

### **BACKGROUND:**

The Planning Commission work plan requires Staff to prepare code amendments as necessary to keep pace with the 2040 Comprehensive Plan. Furthermore, there are some aspects of the subdivision code that could be amended to encourage a functional and smoother development review process. The Parks Commission has reviewed the section of Subdivision code that pertains to park dedication and the Planning Commission had a chance to review the first proposed Staff amendments on July 22, 2019.

On August 12, 2019, the Planning Commission again reviewed several draft changes to the subdivision ordinance. These changes focused on the Park dedication requirements, credits for trails, reorganizing the filing requirements and removing the Planning Commission from reviewing final plats. The Planning Commission recommended approval of the proposed changes.

Since then, other departments have suggested to Planning staff additional changes to the Subdivision Ordinance. As such, we are bringing more proposed changes to the Subdivision Ordinance to the Planning Commission for review and consideration.

### **ISSUE BEFORE THE COMMISSION:**

Does the Commission have comments or changes about the proposed amendments to the subdivision code?

### **REVIEW AND ANALYSIS:**

Zoning and Subdivision regulations allow cities to ensure that a new development or redevelopment meets the standards of the City for a safe, functional and enjoyable community. Importantly, subdivision regulations can help the City preserve and protect vital natural resources.

The City subdivision ordinance must establish the process for review of subdivision applications. Most cities in Minnesota use a two part process for reviewing and approving subdivisions – preliminary plat and final plat. The preliminary plat approval stage establishes the nature, design and scope of a subdivision. It sets conditions or guidelines, in large part, under which the development may obtain final plat approval. After a city approves a preliminary plat, changes to the development should be limited to meeting the requirements set as conditions of approval and/or to meet legal requirements. Thus final plats are usually very similar to an approved preliminary plat except changes to meet the required conditions of approval.

### **City Review Process**

There have been concerns and questions raised about the City development review process – especially the length of time it may take for a new development to get approval. This review and approval process for a subdivision includes having a sketch plan review (and concept review for PUD's). It is not clear to staff that requiring the sketch plan review adds time to the subdivision review process. There are too many variables involved with each new development occurring in Lake Elmo including the complexity of a proposal and the need for a developer to design and install public improvements (including public street improvements) to make that determination. The availability of public utilities and storm water management are very large factors for developers and the City when considering new development or redevelopment in Lake Elmo.

There are cities in Minnesota that require an applicant to submit a sketch plan to the City for review and comment by staff (and sometimes the Planning Commission and City Council) before submitting an application for preliminary plat. This step in the review process gives an applicant a chance to get feedback (positive and negative) from City staff and policy makers about a proposal before spending significant time and money on the detailed plans necessary for a preliminary plat. Sketch plan review provides the City and an applicant a chance to identify issues and provides the applicant guidance and a “road map” for moving a project forward in a city. This is the requirement now in place for new subdivisions in Lake Elmo.

There are cities in the Metro area that only require city staff review of a subdivision sketch plan. There are other cities that do not have any pre-application submittal or review requirements before a developer submits an application for a preliminary plat. To use or not use the sketch plan (or concept plan) review process is a policy decision for the city.

The City should strive to ensure the development review and approval process is clear and fair for everyone involved. Land owners and developers appreciate and desire predictability in the development review process. A city that takes steps to reduce complex approvals, improve predictability and streamline the development review process will benefit internally and externally. The City should strive to provide transparency that clearly defines the development process and expectations. Developers look to partner with cities that are clear about redevelopment goals and processes. Early informational meetings signal to developers that the city is serious about partnering on its development sites.

As we know, time is money when comes to development and redevelopment. Development delays and inconsistency in policy direction and approvals can be very costly to developers. The Urban Land Institute of Minnesota (ULI) recently reported that local developers state that the biggest challenge in the development process is political risk. The ULI report also notes that “having a sketch/concept plan review process can allow developers to change the proposals based on dialogue with city staff and/or policy leaders.” A reliable and fair review process with developers can help form a positive working relationship between cities and developers. Most local developers want to work with cities as partners. Some believe that a good working relationship is “essential” for successful project.”

As noted above, it is the goal of City staff (and hopefully the Planning Commission and City Council) to provide clear information, direction and feedback to a developer with a sketch plan review. If the City stops requiring sketch plan review, applicants and developers will have less clarity and information from the City to work with when considering or preparing a preliminary plat. In the end, this could cost an applicant more time, money and frustration than if they went through a sketch plan review with the City. It is staff’s believe that the sketch plan review process for subdivisions in Lake Elmo is valuable for applicants, city staff, the Planning Commission and the City Council. As such, City staff is not proposing any changes to this part of the Subdivision Ordinance (See Section 153.08).

However, if the City did want to drop the requirement for sketch plan review of subdivisions by the Planning Commission and City Council, then at a minimum, the City should require an applicant or developer to submit to the City a sketch plan for any new subdivision for review and comment by City staff. This process also should include a requirement that an applicant for a subdivision meet with City staff after they have commented on the proposed sketch plan (in about 30 days) to get feedback and comments about the proposed subdivision before submitting a preliminary plat application.

### **Other Proposed Changes for the Subdivision Ordinance (since August):**

#### **Lot Split/Lot Division**

Many cities have language in their subdivision ordinance that allows for an administrative review and approval of a simple lot split or lot division. Such requests are usually limited to dividing one parcel into 2 or 3 lots with no new public rights-of-way or new public utilities required. The City would require the owner to prepare a certificate of survey that shows that all the new lots meet all City standards for lot size, lot width, building pads, setbacks and in an area where on-site septic is used, the applicant would need to provide proof that each of the lots would have adequate areas for new septic systems.

Adding such language to the Code would lessen the burden (and shorten the review and approval time) for a property owner to create new lots when compared to going through the minor subdivision/preliminary plat/final plat process

that is now in place in Lake Elmo. Staff is proposing to add such language after Section 153.06 in the Subdivision Ordinance.

### Recording of a Final Plat

Section 153.10 (4) of the Subdivision Code now requires developers to record their final plats within 120 days of City approval. Staff compared this requirement to the requirements of several other cities and found that 120 days is the shortest time period of all the cities for the recording a final plat. Many cities allow up to 180 days or even up to one year for a developer to record a final plat. By lengthening the time period for recording a final plat to 180 days, it will give a developer more time to close on the purchase of the property (if they do not already own it) and to work out all the necessary details (including finalizing all their project plans and all the documents) that go along with the recording of a final plat. Then extra 2 months also should lessen the number of time extension requests the City gets from developers to record their final plats.

### City Engineer Suggestions

The City Engineer recently provided Planning staff with several suggested changes to the subdivision ordinance. There are primarily for Sections 153.14 (Engineering Design Standards) and to 153.16 (Required Improvements). Most all of these changes are to make the Subdivision Ordinance consistence with City practices and with the City's Engineer Design Standards that the City Council recently approved. The proposed changes to Section 153.16 are to ensure the language in the Subdivision Ordinance is consistent with the City's standard development agreement and the financial requirements for developments.

## **PREVIOUSLY CONSIDERED CHANGES:**

### Review of Final Plat:

As was reviewed by the Planning Commission in August, staff is proposing a significant change in Section 154.10 Final Major Subdivisions, (B) Review of Final Plat. This is noteworthy because the Planning Commission would no longer review final plats, unless there is a significant change from the preliminary plat. The justification for this is that the City cannot apply more restrictive conditions or deny a phase of development if it matches what had been approved with the preliminary plat review. As long as the proposed final plat matches approval, Staff does not see a reason ask the Planning Commission to formally review the plan. City Staff would only ask the Commission to review Final Plats if there is a significant change to them but as previously stated, if the final plat matches the preliminary plat there is not a need for the Planning Commission to provide a review of a final plat. The proposed change is listed below:

(3) Planning Commission action. ~~After review of the final plat by the staff, the Planning Commission shall review the final plat for substantial compliance with the approved preliminary plat and make recommendation to Council. The Planning Commission shall review final plats if the applicant is proposing a substantial change(s) as determined by City Staff from the preliminary plat as approved by the City Council.~~

After a developer receives preliminary plat approval from the City they are granted development rights. The preliminary plat sets the design and scope of the development. At this point they are legally allowed to build their project as it was presented and established during the preliminary review, subject to the applied conditions. Once a developer submits for a final plat and as long as this plat is in line with the preliminary plat approval, the City cannot deny the request and is limited on applicable conditions that can be applied. This is why City Staff is recommending that the City remove language from the subdivision code requiring the Planning Commission to review final plats since the review is more or less a formality.

### Park Dedication:

The Parks Commission has reviewed the proposed code changes for all items pertaining to park dedication. Their recommended amendments are incorporated into Section 154.15 of the attached update to subdivision code. At this point many of the other proposed amendments are grammatical and not as significant in terms of function. The most impactful proposed change is to the table that outlines the park dedication fees.

The Parks Commission was asked to review the park dedication requirements for two new zoning classifications, which are Mixed Use Commercial (MU-C) and Mixed Use Business (MU-BP). Staff was uncertain of how to appropriately apply the existing fee structure for park dedication to these two districts. The table outlining the dedication requirements has been reduced from four sections to three. Staff was also recommending an increase in Commercial Park Land dedication. The Parks Commission recommended an increase and although Staff recommended a \$5,000 dedication requirement per acre for commercial development, which is up from current collection of \$4,500 per acre the Parks Commission felt that the amount could be increased further. Staff informed the Parks Commission a more detailed look into the collection amount would happen to see if a further increase could be justified. During the July 22<sup>nd</sup> meeting Staff asked the Planning Commission to also review the increase in fee structure. The Planning Commission agreed with the proposed park dedication fee structure.

#### Existing Fee Structure

<i>Zoning Districts</i>	<i>Minimum Required Land Dedication</i>
RS, V-LDR, GCC, LDR, MDR, HDR	10%
RE and OP Development	7%
RR and AG	4%
C, CC, LC, GP, BP, VMX	Fees as set by Council resolution

**\$4,500/acre**

#### Proposed Fee Structure

<i>Zoning Districts</i>	<i>Minimum Required Land Dedication</i>
V-LDR, GCC, LDR, MDR, HDR,	10%
RS, AG, RE, RR (Rural Districts)	5%
C, CC, LC, BP, VMX, MU-BP, MU-C Minor Subdivisions	Fees as set by Council resolution <sup>a</sup>

- a. A 10% land or cash charge is applied if a residential component is incorporated into the development/subdivision. However, the 10% charge does not apply to a minor subdivision.

#### Commercial Requirements:

As stated before the Parks Commission thought the commercial payment could increase further from the first suggestion. Additional criteria for the second review consisted of information from cities that share a border with a major highway such as Highway 36 or I-94. The thought behind this comparison is that values for commercial land would be more similar in value. Staff then calculated an average price per acre of undeveloped and platted land in Lake Elmo which was zoned or guided for commercial or mixed use development. The estimated price per acre was calculated by taking the tax value (determined by Washington County) of a property divided by the number of acres. Please understand that there are many factors that go into determining value but, the **estimated price** per acre is \$131,564.

**Stillwater:** Requires a 7.5% dedication rate per acre. (Value of \$9,867)

**Woodbury:** Requires a land dedication of 10% or \$6,000 per acre of the subdivision.

**Oak Park Heights:** Requires a dedication of 10% of the value, either land or cash. (Value of \$13,156.4)

**Maplewood:** Requires a 9% dedication of land or cash. (Value \$11,840)

**Average Collection: \$10,215.85**

---

Based on the collected average of the communities used above, Lake Elmo is collecting \$5,700 less than neighboring communities that also boarder a major highway. Because of the more specific criteria used Staff believes that an increase from \$5,000 (currently recommended) to \$10,000 per acre could be justified. This amount would be required for projects that do not have a residential component. Staff also should note that the City cannot collect park dedication funds more than once for any one parcel.

### Trails:

It also was important for the Park Commission to make sure they had an opportunity to improve upon the trail dedication language that is incorporated into the park dedication section of the subdivision code. The proposed amendment is outlined below in red.

(D) *Trails*. Trails constructed by a subdivider within dedicated public open space having at least 30 feet of width are eligible for park credit. The maximum amount of trail dedication credit shall not exceed 25% of the total required park dedication. To receive credit for a trail, there must be a through public trail connection to the larger Lake Elmo or Washington County trail network. If the proposed trails are not able to connect to existing trails, they must be installed in a way that would provide a connection to future planned trails as additional infrastructure is established.

### **FISCAL IMPACT:**

Staff does not foresee a negative fiscal impact with the proposed code change.

### **COMMENTS AND RECOMMENDATION:**

**Park Commission:** The Parks Commission recommended approval of the amended fee structure and the language as it pertains to trails (under the fee table). 4-0

**Planning Commission:** Staff has included the comments/amendments from the previous Planning Commission meeting in the amended subdivision code that is presented today. Staff is now asking the Planning Commission to review and comment on the latest proposed changes. After this comment and review, staff will prepare a formal code amendment for all the proposed changes and set a public hearing for this matter with the Planning Commission.

### **Options:**

Recommend approval of the amendments as proposed.

Recommend approval with amendments to the proposed language.

Recommend denial of the amended language.

### **Staff Recommendation:**

Staff believes the proposed changes to the Lake Elmo subdivision code will help aide in providing a clear and smooth development review and approval process. Furthermore, the research that had been gathered for trail connection(s) and park dedication seem to further benefit the City and the residents.

*“Motion to recommend to the City Council approval of the subdivision code amendments as proposed”*

### **ATTACHMENTS**

- Proposed Section 153.065 - Lot Divisions
- Lake Elmo Subdivision Code with proposed updates.

## Possible Additional Code Language

### New Section 153.065 Lot Divisions.

- A. The City Planning Director may approve administratively the subdivision of one lot or parcel into two or three lots where no public infrastructure, easements or rights-of-way are being dedicated. The following requirements must be met before the City may approve an administrative lot division:
  1. The submittal of the required land use application and fee.
  2. The submittal of proof of ownership.
  3. The submittal of a current certificate of survey, prepared and signed by a Minnesota licensed land surveyor, depicting the following:
    - a. Graphic scale of the survey (engineering scale only, not less than 1 inch equals 50 feet).
    - b. North arrow.
    - c. Date of the survey.
    - d. Existing legal description of the parcel of land to be subdivided.
    - e. Existing parcel boundaries shown with survey measurement data matching the legal description of the parcel of land.
    - f. Area in square feet and in acres of the parcel of land to be subdivided.
    - g. Existing site improvements within the subject property and those within 50 feet of the boundaries of the parcel to be subdivided.
    - h. All encroachments along the outside boundary of the parcel of land to be subdivided.
    - i. All easements of record affecting the parcel of land to be subdivided.
    - j. Basins, lakes, rivers, streams, creeks, wetlands and other waterways bordering on or running through the parcel of land to be subdivided. The ordinary high water elevation and the 100-year flood elevation shall be shown where applicable.
    - k. The location, right-of-way widths and names of public streets or other public ways, showing type, width and condition of improvements, if any, that pass through and/or adjacent to the parcel of land being subdivided.
    - l. Location, right-of-way widths and names of any railroad, if any, that pass through or are adjacent to the parcel of land being subdivided.
    - m. The location, type and size of any public infrastructure (sanitary sewer, water, storm sewer) that is located on or adjacent to the parcel of land being subdivided.
    - n. Identify all gaps and overlaps of the property being subdivided.
    - o. The outside boundary of the property being subdivided must be clearly marked survey monumentation.
    - p. The boundary shown with survey measurement data and proposed legal description for each of the lots as they are proposed to be subdivided.
    - q. The boundary and legal description of any proposed easements on the property. The owner must provide a 10-foot-wide drainage and utility easement along all property lines. The City also may require a drainage and utility easement over wetlands, wetland buffers, stormwater basins, lakes, drainage channels and tributaries.
    - r. The City also may require the dedication of easements or right-of-way for public streets consistent with the City's Comprehensive Plan.
    - s. If the owner is proposing residential lots that would use on-site septic systems, then the owner must provide documentation that each lot would enough area for a primary and secondary on-site septic system along with the proposed location of the houses, driveways and wells for each of those lots.
  4. A lot division shall not result in the creation of more than three lots.
  5. The Planning Director may approve or cause to be modified plans for a lot division. The Director must first determine, however, that the plans meet all city ordinances and policies and that the lot division proposal would not have an adverse impact on the subject property or surrounding properties. If the Director makes a negative

determination about the proposed lot division or if the applicant wishes to appeal the decision, the case shall be sent to the Planning Commission for a review and recommendation and to the City Council for action.

6. The City may require a letter of credit as a condition of lot divisions in order to guarantee the proper repair and patching of streets after the installation of or connection to utilities in the streets or in the public rights-of-way.
7. The City shall not approve more than three new lots from a parcel or tract in any single calendar year.
8. The owner must record the deeds for the lot division with Washington County within 180 days of City approval of a lot division.