
C Analysis of 2006 Minnesota Park Dedication Statutes

This Appendix summarizes 2006 Minnesota State Law governing the ability of cities to collect and use park dedication. The effects of these statutes go beyond the efforts of cities to create park dedication regulations. The statutes have implications for every park system plan and comprehensive plan. For reference, the related pieces of statute follow the comments.

Summary

The authority to receive land and cash payments for the creation of a park system comes from the sections of State Law related to the subdivision of land (Minnesota Statutes, Section 462.358). Subdivision 2b of this statute provides the framework for the dedication of land for parks. This statute was amended in 2004 and 2006 to place new restrictions on the use of park dedication.

Amount of Dedication

The statute allows cities to require dedication of a reasonable portion of the buildable land of any proposed subdivision to be dedicated to the public or preserved for public use for park purposes.

- The statute does not define “reasonable portion” or “buildable land”. In such cases, the courts typically give cities reasonable latitude in defining such terms. The need to define buildable land was added in 2006.
- In determining the dedication, the City is required to give “due consideration to the open space, recreational, or common areas and facilities open to the public (*emphasis added*) that the applicant proposes to reserve for the subdivision.” The statute does not define criteria for public use.
- The city must find that it will need to “acquire that portion of land” as a result of approving the subdivision.
- Property that has been previously platted and has made park dedication is only subject to additional dedication for the net increase in lots. It is not clear what happens in redevelopment projects where the intensity of use increases without an increase in total lots.
- As an alternative to dedication of land, the city may chose to accept a cash fee for some or all of the lots in the subdivision. This fee is based on the fair market value of the land no later than at the time of final approval of the subdivision.

Use of Dedication

This statute is the basis of dedication for all public purposes. The park related uses include parks, recreational facilities, playgrounds, trails, wetlands, or open space. Recreational facilities are limited to those defined in M.S. 471.191. The statute contains several provisions related to the use of any cash fees received in lieu of dedication:

- The cash payments can be used only for acquisition and development. These monies cannot be used for ongoing operation or maintenance.
- Use of this money for acquisition and development must be based on the approved park system plan.
- The statute requires that monies received from park dedication be placed in a special fund. These monies may only be used “only for the purposes for which the money was obtained”. This last provision suggests care in defining the use of these funds.

Procedural Requirements

Park dedication regulations must be imposed by ordinance. The statute is not completely clear on the required contents of the ordinance. The only items specifically stated in the statute are defining “buildable

land” and setting the cash fee. The fee may also be controlled by the requirements of M.S. 462.353, Subd. 4 that require fees to be prescribe by ordinance.

The ordinance may be adopted under M.S. 462.358, Subd. 2b (subdivision regulations – dedication) or M.S. 462.353, Subd. 4 (fees). If the city adopts a park dedication ordinance, several other procedural requirements apply:

- The city must adopt (1) a capital improvement plan and a parks and open space plan or (2) a parks, trails and open space component as part of its comprehensive plan. Either option must subject to the terms and conditions discussed in this memo (M.S. 462.358, Subd. 2b, paragraphs (c) through (i).
- The city cannot deny approval based solely on an inadequate supply of parks, open spaces, trails, and recreational facilities within the city.
- M.S. 462.358, Subd. 2c contains procedures for an applicant to dispute the amount of a fee in lieu of dedication.

It is also important to remember that cities in the metropolitan area cannot adopt any official controls (i.e. – subdivision regulations) that are in conflict with the comprehensive plan.

Relevant Statutes

Minnesota Statutes, 462.358 - Procedure for plan effectuation; subdivision regulations.

Subd. 2b. Dedication

(a) The regulations may require that a reasonable portion of the buildable land, as defined by municipal ordinance, of any proposed subdivision be dedicated to the public or preserved for public use as streets, roads, sewers, electric, gas, and water facilities, storm water drainage and holding areas or ponds and similar utilities and improvements, parks, recreational facilities as defined in section 471.191, playgrounds, trails, wetlands, or open space. The requirement must be imposed by ordinance or under the procedures established in section 462.353, subdivision 4a.

(b) If a municipality adopts the ordinance or proceeds under section 462.353, subdivision 4a, as required by paragraph (a), the municipality must adopt a capital improvement budget and have a parks and open space plan or have a parks, trails, and open space component in its comprehensive plan subject to the terms and conditions in this paragraph and paragraphs (c) to (i).

(c) The municipality may choose to accept a cash fee as set by ordinance from the applicant for some or all of the new lots created in the subdivision, based on fair market value of the land, no later than at the time of final approval.

(d) In establishing the portion to be dedicated or preserved or the cash fee, the regulations shall give due consideration to the open space, recreational, or common areas and facilities open to the public that the applicant proposes to reserve for the subdivision.

(e) The municipality must reasonably determine that it will need to acquire that portion of land for the purposes stated in this subdivision as a result of approval of the subdivision.

(f) Cash payments received must be placed by the municipality in a special fund to be used only for the purposes for which the money was obtained.

(g) Cash payments 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.

Analysis of 2006 Minnesota Park Dedication Statutes

Cash payments must not be used for ongoing operation or maintenance of parks, recreational facilities, playgrounds, trails, wetlands, or open space.

(h) The municipality must not deny the approval of a subdivision based solely on an inadequate supply of parks, open spaces, trails, or recreational facilities within the municipality.

(i) Previously subdivided property from which a park dedication has been received, being resubdivided with the same number of lots, is exempt from park dedication requirements. If, as a result of resubdividing the property, the number of lots is increased, then the park dedication or per-lot cash fee must apply only to the net increase of lots.

Subd. 2c. Nexus

(a) There must be an essential nexus between the fees or dedication imposed under subdivision 2b 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.

(b) If a municipality is given written notice of a dispute over a proposed fee in lieu of dedication 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.

(c) 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.

Minnesota Statutes, Section 462.353

Subd. 4. Fees

(a) A municipality may prescribe fees sufficient to defray the costs incurred by it in reviewing, investigating, and administering an application for an amendment to an official control established pursuant to sections 462.351 to 462.364¹ or an application for a permit or other approval required under an official control established pursuant to those sections. Except as provided in subdivision 4a, fees as prescribed must be by ordinance. Fees must be fair, reasonable, and proportionate and have a nexus to the actual cost of the service for which the fee is imposed.

(b) A municipality must adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected. Upon request, a municipality must explain the basis of its fees.

(c) Except as provided in this paragraph, a fee ordinance or amendment to a fee ordinance is effective January 1 after its adoption. A municipality may adopt a fee ordinance or an amendment to a fee ordinance with an effective date other than the next January 1, but the ordinance or amendment does not apply if an application for final approval has been submitted to the municipality.

¹ Minnesota Statutes, Sections 462.351 to 462.364 include the municipal powers to create and implement plans, including zoning and subdivision regulations.

(d) If a dispute arises over a specific fee imposed by a municipality related to a specific application, and the person aggrieved by the fee may appeal under section 462.361, provided that the appeal must be brought within 60 days after approval of an application under this section and deposit of the fee into escrow. 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. An approved application may proceed as if the fee had been paid, pending a decision on the appeal. This paragraph must not be construed to preclude the municipality from conditioning approval of any proposed subdivision or development on an agreement to waive a challenge to the cost associated with municipally installed improvements of the type described in section 429.021.