



CITY OF SAINT PAUL
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Date: December 31, 2013
To: Comprehensive Planning Committee
From: Jamie Radel/Allan Torstenson
Subject: Initiation of Broader Parkland Dedication and Park Impact Fee Study

This memorandum summarizes the steps that were taken as part of the 2011/2012 study of amendments to the parkland dedication ordinance, describes recent legislation and court actions that have impacted the previous work, and recommends the initiation a new, broader parkland dedication and park impact fee study.

Ordinance Background and 2011/2012 Study Summary

In 2007, the City adopted §69.511, Parkland dedication requirements, as part of Saint Paul's subdivision regulations, which remains in place today. This ordinance was based on the enabling legislation for municipal subdivision regulations in Minnesota Statutes 462.358 and has a two-part parkland dedication requirement:

- §69.511(b), *Parkland dedication at the time of platting*, a standard base percentage of the land at the time of platting that applies to all platting of land for residential, commercial, or industrial development; plus
- §69.511(d), *Parkland dedication at the time of building permits*, additional parkland dedication that applies to residential, commercial, or industrial development at the time of building permits based on the type, intensity and density of the use of the land.

On November 18, 2011, the Planning Commission initiated a zoning study to consider the following amendments to §69.511, Parkland dedication requirements, of the Subdivision Regulations:

1. An amendment to §69.511(b) to base the amount of required parkland dedication at the time of platting just on the total acreage of new lots being created for new residential, commercial, or industrial development that would create a need for additional parkland, and not on lots for which the use would be unchanged or for something that would not create a need for additional parkland, bringing the text of this code requirement into greater conformance with state and federal law, consistent with City Council variance decisions; and
2. Amendments to §69.511(d) to decouple the parkland dedication requirement at the time of building permits from parking, and replace it with different measures of density and intensity of use that are always known, easy to track, and would result in a roughly similar amount of parkland dedication so that even if a development has no

parking there would still be a parkland dedication requirement, and so that the requirement is proportionate to the need for parkland created by the development as required by state law.

On February 10, 2012, the Planning Commission held a public hearing on the draft amendments. Two people spoke at the public hearing and staff received three letters related to the proposed revisions. The amendment to base parkland dedication at the time of platting on the area of new lots for new development did not receive any comment by the public either at the public hearing or in the letters submitted. However, the amendment to decouple parkland dedication at the time of building permit from parking received significant comment and raised questions about the legal basis of the practice itself.

Since the public hearing, staff has been working to address the key issue raised at the public hearing, which was the legality of requiring parkland dedication fees at the time of building permit. This work culminated in new legislation that gives the City an explicit ability to collect parkland dedication fees at the time a developer applies for building permits.

Authority for Parkland Dedication or Fee at Time of Building Permits

In 2013 Legislative Session, the State of Minnesota enacted special legislation (Minnesota Session Laws 2013, chapter 85, article 5, section 44) allowing the City of Saint Paul to require the dedication of land or a fee for parks at the time of building permits. This new law states:

The city of St. Paul may require that a reasonable portion of land be dedicated to the public or impose a dedication fee in conjunction with the construction permit required for new housing units and new commercial and industrial development in the city, wherever located, for public parks, playgrounds, recreational facilities, wetlands, trails, or open space. The dedication of land or dedication fee must be imposed by an ordinance enacted by the city council. The cash fee may be set at a flat fee rate per net new residential unit. The ordinance may exclude senior housing and affordable housing from paying the fee or the dedication of land. The provisions of Minnesota Statutes, section 462.358, subdivisions 2b, paragraph (b); and 2c, apply to the application and use of the dedication of land or the dedication fee.

EFFECTIVE DATE. This section is effective January 1, 2014, and applies to dedication fee ordinances adopted or amended by the city of St. Paul before, on, or after that date.

Essential Nexus & Rough Proportionality Requirements for Parkland Dedication

On June 25, 2013, the U.S. Supreme Court issued its ruling on *Kootz vs. St John Water Management District*. This case focused on how a government agency applied exactions related to or as part of conditions on development approval. The case sought to clarify several outstanding legal questions related to the concepts of “essential nexus” established in the *Nollan* case in 1987 and “rough proportionality” established in the *Dolan* case in 1994. In short, these cases require that land dedication requirements have both a direct relationship between the land dedication and the government objective to be

achieved and that the land dedication be roughly proportionate to the impact of the project on the public. Left unanswered in both these cases was whether or not rough proportionality and rational nexus tests extended to monetary exaction and at what point to the nexus and proportionality tests need to be used during a negotiation between governmental staff and a developer. In the *Kootz* case, the majority found that *Nollan* and *Dolan* tests apply even in permit denials and that both apply even if the demand is for money and not land.

Implications of New Authority and Court Rulings on City's Current Parkland Dedication Practice

As described in the Background section, the City currently has a two-part parkland dedication ordinance that collects parkland dedication at both the time of platting and at the time of building permits. With explicit authority for collection of dedication fees at the time of building permitting granted to the City by the State, the two parts of the ordinance should be separated and a reconfigured dedication process developed. The amount of land required for dedication and the fee structure need to be analyzed in light of the *Kootz* ruling and State law to ensure that they meet the rational nexus and rough proportionality tests.

Requirements for parkland dedication or park impact fees at the time building permits that have nothing to do with a new subdivision do not belong in the Subdivision ordinance, but will still need to be compliant with the enabling legislation, including referenced State planning law, and U.S. Supreme Court case law. The Planning Commission is the City advisory body most familiar with the issue of dedication fees and the greater planning context within which they fit. As such, it is the most appropriate group to review and take public comment on the policy framework around these issues. PED planners will be working closely with the Parks and Recreation Department staff on the development of this policy and fee framework and expects that the Parks and Recreation Commission will also be providing significant input into the process.

Staff Recommendation

Staff recommends the Planning Commission initiate a study to consider the following:

1. An amendment to §69.511(b) to base land dedication requirements on the total acreage of new lots being created instead of on entire area undergoing replatting;
2. Amendments to §69.511 to remove language pertaining to parkland dedication at the time of building permits from the subdivision ordinance; and
3. Draft language on collection of park impact fees or land dedication at the time of building permit and develop the associated fee schedule to incorporate into the appropriate section of the City Legislative Code.