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To: Comprehensive Planning Committee

From: Allan Torstenson

Subject: Parkland Dedication Amendments Study Initiation

Background and Analysis.

Sec. 69.511, Parkland dedication requirements, was adopted in 2007 as part of Saint Paul's subdivision regulations, based on the enabling legislation for municipal subdivision regulations in Minnesota Statutes 462.358. It 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.

1. Lots for New Development: Amendment to § 69.511(b), *Parkland dedication at the time of platting.*

There have been eight plats approved by the City Council since the parkland dedication requirements went into effect in 2007. All eight plats were for residential, commercial, or industrial development and required the standard base percentage of the land dedicated for parkland at the time of platting in **§ 69.511(b)**, *Parkland dedication at the time of platting.*

The City Council found that basing the parkland dedication requirement on the total acreage of the *entire* plat would have been unreasonable for two of the eight plats because use of some the new lots would be unchanged or for something other than new residential, commercial, or industrial development, and therefore would not create a need for additional parkland.

- In the case of Update Addition at 2340 Capp Road, the new plat subdivided a large industrial parcel in order to create three smaller new lots for new industrial development, with the existing industrial use on the larger parcel remaining unchanged. The unchanged existing industrial use on the larger parcel would not create a need for additional parkland.
- In the case of Carondelet Village at the southwest corner of Fairview and Randolph, the new plat subdivided a large institutional parcel to create two new institutional lots and an outlot. New senior housing development was proposed on one of the lots, with the existing use of the other lot and the outlot remaining unchanged. The outlot and the unchanged institutional use on one of the new lots would not create a need for additional parkland.

Accordingly, the City Council granted variances to base the amount of required parkland dedication at the time of platting just on the total acreage of the 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. The City Council variance decisions provide direction to amend the parkland dedication requirement to avoid the need for a variance every time this situation comes up.

It is a fairly common situation that new plats in a fully developed city like St. Paul may include lots for which the use would be unchanged, would therefore not create a need for additional parkland, and consequently for which the city does not have the authority to require parkland dedication. The City Council decisions in these two cases are consistent with provisions in state law that do not allow municipalities to require dedication of parkland beyond "a reasonable portion of the buildable land" that is proportionate to a need for additional parkland created by the subdivision itself.

The Fifth Amendment to the Constitution of the United States provides that private property shall not be taken for public use without just compensation. This is reflected in Article I, Bill of Rights, of the Constitution of the State of Minnesota, Sec. 13, *Private property for public use*, which states, "Private property shall not be taken, destroyed or damaged for public use without just compensation therefore, first paid or secured."

The enabling legislation for municipal parkland dedication requirements in Minnesota Statutes 462.358, Subd. 2b is narrowly written for conformance with the Fifth Amendment and Article I, Sec. 13 of the state constitution. It does not provide municipalities with general authority to require dedication of parkland for public use without just compensation. Rather, it provides municipalities with authority to require dedication, under a very limited set of circumstances, of "a reasonable portion of the buildable land" in a subdivision "for public use as streets, roads, sewers, . . . water facilities, storm water drainage . . ., parks, playgrounds, trails, wetlands, or open space" only to the extent that the municipality reasonably determines "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" itself. In such circumstances, the "just compensation" is the value added to the buildable land from use of the dedicated land. Beyond that, some other form of just compensation must be paid or secured for private property taken for public use.

The enabling legislation gives municipalities authority to require dedication of land for public streets only if the subdivision itself creates a need for new public streets to serve the subdivision. Likewise, it gives municipalities authority to require dedication of land (or cash in lieu of land) for public parks only if the subdivision itself creates a need for new public parks to serve the subdivision. If the subdivision itself does not create a need to acquire land for public streets or parks, then MN Stat. 462.358, Subd. 2b does not give the municipality the authority to require dedication of land for public streets or parks. Accordingly, if use of new lots created by a subdivision is unchanged or the new use does not create a need for additional parkland, then the city would not have the authority to require dedication of parkland. The City Council decisions to grant variances to require parkland dedication based just on the total acreage of the new lots that are being created for new residential, commercial, or industrial development, and not on lots that would be unchanged or for some other use, is consistent with the requirements of state and federal law.

2. Decouple from parking: Amendments to § 69.511(d), *Parkland dedication at the time of building permits.*

§ 69.511(d), *Parkland dedication at the time of building permits*, responds to the requirement in Minn. Stat. 462.358, Subd. 2c, part of the state enabling legislation for municipal parkland dedication requirements as part of municipal subdivision regulations, that required parkland "dedication must bear a rough proportionality to the need created by the proposed subdivision or development." This depends on the type, intensity and density of the use of the land, which not only may not be known at the time of platting, but also changes over time.

§ 69.511(d), *Parkland dedication at the time of building permits*, uses parking as a proxy measure of density and intensity of use because it is always known and is relatively easy to track. Since it was adopted there has been concern about the possibility of new development that may increase the need for parkland even though the new development has little or no parking. This is a particular concern for areas such as Downtown and the Central Corridor that may need less parking because of good transit service.

Central Corridor LRT Station Area Plans adopted by the City Council on October 22, 2008, as addenda to the Central Corridor Development Strategy note the importance of additional park and recreational spaces for attaining the full potential of station areas, particularly with respect to residential development. The *Moving Forward* chapter notes that the parkland dedication ordinance links the amount of parkland dedication required to the amount of new parking provided in a project, while the Central Corridor Development Strategy and station area plans encourage a reduction in parking in order to promote density and transit use, and therefore recommends decoupling the parkland dedication requirement at the time of building permits from parking.

Staff Recommendation.

Staff recommends Planning Commission initiation of a zoning study to consider the following amendments to Sec. 69.511, Parkland dedication requirements, of the Subdivision Regulations:

1. An amendment to Sec. 69.511(b) to base the amount of required parkland dedication at the time of platting just on the total acreage of the 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.