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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 389

02/07/2011 Authored by Beard, Quam, Nelson and Sanders

The bill was read for the first time and referred to the Committee on Government Operations and Elections

02/27/2012 Adoption of Report: Pass as Amended and Read Second Time

1.1 A bill for an act
1.2 relating to local government; providing for interim zoning; providing for
1.3 municipal development land dedication and fees; amending Minnesota Statutes
1.4 2010, sections 394.25, subdivision 7; 394.34; 462.355, subdivision 4; 462.358,
1.5 subdivisions 2a, 2c, by adding subdivisions; repealing Minnesota Statutes 2010,
1.6 section 462.358, subdivision 2b.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2010, section 394.25, subdivision 7, is amended to read:

1.9 Subd. 7. **Specific controls; other subjects.** (a) Specific controls pertaining to other
1.10 subjects incorporated in the comprehensive plan or establishing standards and procedures
1.11 to be employed in land development including, but not limited to, subdividing of land and
1.12 the approval of land plats and the preservation and dedication of streets and land for other
1.13 public purposes and the general design of physical improvement.

1.14 (b) A county must approve a preliminary plat that meets the applicable standards
1.15 and criteria contained in the county's zoning and subdivision regulations unless the
1.16 county adopts written findings based on a record from the public proceedings why the
1.17 application shall not be approved.

1.18 (c) The controls may require that a portion of any proposed subdivision be dedicated
1.19 to the public or preserved for public use as parks, recreational facilities, playgrounds,
1.20 trails, wetlands, or open space. The requirement must be imposed by ordinance.

1.21 (d) If a county adopts the ordinance required by paragraph (c), the county must
1.22 adopt a capital improvement program and adopt a parks and open space plan or have a
1.23 parks, trails, and open space component in its comprehensive plan subject to the terms and
1.24 conditions in this paragraph and in paragraphs (e) through (p).

2.1 (e) The county may choose to accept a per lot cash fee as set by ordinance from the
2.2 applicant for some or all of the new lots created in the subdivision.

2.3 (f) In establishing the portion to be dedicated or preserved or the per lot cash fee, the
2.4 controls must consider the open space, park, recreational, or common areas and facilities
2.5 that the applicant proposes to reserve for the subdivision.

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

2.8 (h) The fees or dedication must be fair, reasonable, and proportionate to the need
2.9 created.

2.10 (i) Any cash payments received must be placed by the county in a special fund to be
2.11 used only for the purposes for which the money was obtained.

2.12 (j) Any cash payments received must be used only for the acquisition and
2.13 development or improvement of parks, recreational facilities, playgrounds, trails,
2.14 wetlands, or open space. Cash payments must not be used for ongoing operation,
2.15 maintenance, or redevelopment of parks, recreational facilities, playgrounds, trails,
2.16 wetlands, or open space.

2.17 (k) The county must not deny the approval of a subdivision based on an inadequate
2.18 supply of parks, open spaces, trails, or recreational areas within the county.

2.19 (l) The county must not condition the approval of any proposed subdivision or
2.20 development on an agreement to waive the right to challenge the validity of a fee or
2.21 dedication.

2.22 (m) The county must use at least 75 percent of the funds collected under this
2.23 subdivision according to the plan required in paragraph (d) in the township or city where
2.24 the collection of funds occurs. However, the township board or city council may agree to
2.25 allow the county to use these funds outside of the township or city in a manner consistent
2.26 with the county parks, trails, and open space capital improvement plan or the county parks
2.27 and open space component in its comprehensive plan. The remainder of the funds may be
2.28 used by the county only for parks and trails connectivity and accessibility purposes. The
2.29 county must annually report to cities and townships on where funds were collected and
2.30 where funds were expended in the past year.

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

2.35 (o) A county must not require a dedication of a portion of a proposed subdivision or
2.36 a payment in lieu of dedication in a town or city that has adopted a requirement to dedicate

3.1 or a payment in place of dedication as a provision of the town or city's subdivision
 3.2 regulations under section 462.358, ~~subdivision 2b~~ subdivisions 2d and 2e, or chapter 366.

3.3 (p) A county may negotiate an agreement with a town or city to share the revenue
 3.4 generated by dedicating a portion of a proposed subdivision or a payment in place of
 3.5 dedication.

3.6 Sec. 2. Minnesota Statutes 2010, section 394.34, is amended to read:

3.7 **394.34 INTERIM ZONING.**

3.8 (a) If a county is conducting or in good faith intends to conduct studies within
 3.9 a reasonable time, or has held or is holding a hearing for the purpose of considering
 3.10 a comprehensive plan or official controls or an amendment, extension, or addition to
 3.11 either, or in the event new territory for which no zoning may have been adopted, may be
 3.12 annexed to a municipality, the board, in order to protect the public health, safety, and
 3.13 general welfare, may adopt as an emergency measure, after public notice and hearing
 3.14 and by a two-thirds vote, a temporary interim zoning map or temporary interim zoning
 3.15 ordinance. The purpose of ~~which shall be the ordinance or map~~ is to classify and regulate
 3.16 uses and related matters as constitutes the emergency. ~~Such The interim resolution shall~~
 3.17 ~~be ordinance or map~~ is limited to one year from the date it becomes effective ~~and to~~
 3.18 ~~one year to renewal thereafter.~~

3.19 (b) Before adopting an interim zoning ordinance or map, the county board must hold
 3.20 a public hearing. Notice of the public hearing must be published in the county's official
 3.21 newspaper at least ten days before the hearing.

3.22 (c) An interim ordinance or map must not halt, delay, or impede consideration of a
 3.23 use, development, or subdivision for which a complete application is pending before the
 3.24 county as of the date that notice of the public hearing is published pursuant to paragraph
 3.25 (b). This paragraph does not apply to (1) adult-use businesses or sexually oriented
 3.26 businesses, as defined by ordinance; (2) proposed uses deemed by the governing body
 3.27 to constitute a nuisance as defined by section 561.01; or (3) an application for which the
 3.28 governing body adopts an interim ordinance within 30 days following its first meeting
 3.29 following receipt of an application deemed complete.

3.30 Sec. 3. Minnesota Statutes 2010, section 462.355, subdivision 4, is amended to read:

3.31 Subd. 4. **Interim ordinance.** (a) If a municipality is conducting studies or has
 3.32 authorized a study to be conducted or has held or has scheduled a hearing for the purpose of
 3.33 considering adoption or amendment of a comprehensive plan or official controls as defined
 3.34 in section 462.352, subdivision 15, or if new territory for which plans or controls have not

4.1 been adopted is annexed to a municipality, the governing body of the municipality may
4.2 adopt, by a two-thirds vote, an interim ordinance applicable to all or part of its jurisdiction
4.3 for the purpose of protecting the planning process and the health, safety and welfare of its
4.4 citizens. The interim ordinance may regulate, restrict, or prohibit any use, development, or
4.5 subdivision within the jurisdiction or a portion thereof for a period not to exceed one year
4.6 from the date it is effective except as otherwise provided by this subdivision.

4.7 (b) An interim ordinance must not halt, delay, or impede consideration of a use,
4.8 development, or subdivision for which a complete application is pending before the
4.9 municipality as of the date that notice of the public hearing is published pursuant to
4.10 paragraph (c). This paragraph does not apply to: (1) adult-use businesses or sexually
4.11 oriented businesses, as defined by ordinance; (2) proposed uses deemed by the governing
4.12 body to constitute a nuisance as defined by section 561.01; or (3) an application for which
4.13 the governing body adopts an interim ordinance within 30 days following its first meeting
4.14 following receipt of an application deemed complete.

4.15 ~~(b) If a proposed interim ordinance purports to regulate, restrict, or prohibit activities~~
4.16 ~~relating to livestock production~~ (c) For purposes of notice and public hearing required
4.17 by this section, a public hearing must be held following a ten-day notice given by
4.18 publication in a newspaper of general circulation in the municipality before the interim
4.19 ordinance takes effect.

4.20 ~~(e)~~ (d) The period of an interim ordinance applicable to an area that is affected by
4.21 a city's master plan for a municipal airport may be extended for such additional periods
4.22 as the municipality may deem appropriate, not exceeding a total additional period of 18
4.23 months. In all other cases, no interim ordinance may halt, delay, or impede a subdivision
4.24 that has been given preliminary approval, nor may any interim ordinance extend the
4.25 time deadline for agency action set forth in section 15.99 with respect to any application
4.26 filed prior to the effective date of the interim ordinance. The governing body of the
4.27 municipality may extend the interim ordinance after a public hearing and written findings
4.28 have been adopted based upon one or more of the conditions in clause (1), (2), or (3).
4.29 The public hearing must be held at least 15 days but not more than 30 days before the
4.30 expiration of the interim ordinance, and notice of the hearing must be published at least
4.31 ten days before the hearing. The interim ordinance may be extended for the following
4.32 conditions and durations, but, except as provided in clause (3), an interim ordinance may
4.33 not be extended more than an additional 18 months:

4.34 (1) up to an additional 120 days following the receipt of the final approval or review
4.35 by a federal, state, or metropolitan agency when the approval is required by law and the

5.1 review or approval has not been completed and received by the municipality at least 30
5.2 days before the expiration of the interim ordinance;

5.3 (2) up to an additional 120 days following the completion of any other process
5.4 required by a state statute, federal law, or court order, when the process is not completed at
5.5 least 30 days before the expiration of the interim ordinance; or

5.6 (3) up to an additional one year if the municipality has not adopted a comprehensive
5.7 plan under this section at the time the interim ordinance is enacted.

5.8 Sec. 4. Minnesota Statutes 2010, section 462.358, subdivision 2a, is amended to read:

5.9 Subd. 2a. **Terms of regulations.** (a) The standards and requirements in the
5.10 regulations may address without limitation: the size, location, grading, and improvement
5.11 of lots, structures, public areas, streets, roads, trails, walkways, curbs and gutters,
5.12 water supply, storm drainage, lighting, sewers, electricity, gas, and other utilities; the
5.13 planning and design of sites; access to solar energy; and the protection and conservation
5.14 of flood plains, shore lands, soils, water, vegetation, energy, air quality, and geologic
5.15 and ecologic features. The regulations shall require that subdivisions be consistent with
5.16 the municipality's official map if one exists and its zoning ordinance, and may require
5.17 consistency with other official controls and the comprehensive plan. The regulations may
5.18 prohibit certain classes or kinds of subdivisions in areas where prohibition is consistent
5.19 with the comprehensive plan and the purposes of this section, particularly the preservation
5.20 of agricultural lands. The regulations may prohibit, restrict or control development for
5.21 the purpose of protecting and assuring access to direct sunlight for solar energy systems.
5.22 The regulations may prohibit the issuance of permits or approvals for any tracts, lots, or
5.23 parcels for which required subdivision approval has not been obtained.

5.24 (b) The regulations may permit the municipality to condition its approval on
5.25 the construction and installation of sewers, streets, electric, gas, drainage, and water
5.26 facilities, and similar utilities and improvements or, in lieu thereof, on the receipt by the
5.27 municipality of a cash deposit, certified check, irrevocable letter of credit, bond, or other
5.28 financial security in an amount and with surety and conditions sufficient to assure the
5.29 municipality that the utilities and improvements will be constructed or installed according
5.30 to the specifications of the municipality. Sections 471.345 and 574.26 do not apply to
5.31 improvements made by a subdivider or a subdivider's contractor.

5.32 (c) A municipality may require that an applicant establish an escrow account or
5.33 other financial security for the purpose of reimbursing the municipality for direct costs
5.34 relating to professional services provided during the review, approval and inspection of
5.35 the project. A municipality may only charge the applicant a rate equal to the value of the

6.1 service to the municipality. Services provided by municipal staff or contract professionals
6.2 must be billed at an established rate.

6.3 (d) When the applicant vouches, by certified letter to the municipality, that the
6.4 conditions required by the municipality for approval under this subdivision have been
6.5 satisfied, the municipality has 30 days to release and return to the applicant any and all
6.6 financial securities tied to the requirements. If the municipality fails to release and return
6.7 the letters of credit within the 30-day period, any interest accrued will be paid to the
6.8 applicant. If the municipality determines that the conditions required for approval under
6.9 this subdivision have not been satisfied, the municipality must send written notice within
6.10 seven business days upon receipt of the certified letter indicating to the applicant which
6.11 specific conditions have not been met. The municipality shall require a maintenance
6.12 or performance bond from any subcontractor that has not yet completed all remaining
6.13 requirements of the municipality.

6.14 (e) The regulations may permit the municipality to condition its approval on
6.15 compliance with other requirements reasonably related to the provisions of the regulations
6.16 and to execute development contracts embodying the terms and conditions of approval.
6.17 The municipality may not require land dedications or fees in the development contract that
6.18 are not authorized by statute or mutually agreed upon by all parties to the development
6.19 contract. In addition, the amount of financial security for work authorized under the
6.20 development contract must have a rough proportionality to the work to be completed by
6.21 either the municipality or the applicant. Unless otherwise agreed, at least three days before
6.22 approval, the municipality must provide a copy of the complete development contract,
6.23 including all exhibits, to the applicant. The municipality may enforce such agreements
6.24 and conditions by appropriate legal and equitable remedies.

6.25 Sec. 5. Minnesota Statutes 2010, section 462.358, subdivision 2c, is amended to read:

6.26 Subd. 2c. **Nexus.** (a) There must be an essential nexus between ~~the~~ any fees
6.27 or dedication ~~imposed~~ authorized under ~~subdivision 2b~~ this section and the municipal
6.28 purpose sought to be achieved by the fee or dedication. The fee or dedication must bear a
6.29 rough proportionality to the need created by the proposed subdivision or development.

6.30 (b) If a municipality is given written notice of a dispute over a proposed fee ~~in lieu of~~
6.31 ~~dedication~~ before the municipality's final decision on an application, a municipality must
6.32 not condition the approval of any proposed subdivision or development on an agreement
6.33 to waive the right to challenge the validity of a fee ~~in lieu of dedication~~.

6.34 (c) An application may proceed as if the fee had been paid, pending a decision on the
6.35 appeal of a dispute over a proposed fee ~~in lieu of dedication~~, if (1) the person aggrieved by

7.1 the fee puts the municipality on written notice of a dispute over a proposed fee ~~in lieu of~~
7.2 ~~dedication~~, (2) prior to the municipality's final decision on the application, the fee ~~in lieu~~
7.3 ~~of dedication~~ is deposited in escrow, and (3) the person aggrieved by the fee appeals under
7.4 section 462.361, within 60 days of the approval of the application. If such an appeal is not
7.5 filed by the deadline, or if the person aggrieved by the fee does not prevail on the appeal,
7.6 then the funds paid into escrow must be transferred to the municipality.

7.7 Sec. 6. Minnesota Statutes 2010, section 462.358, is amended by adding a subdivision
7.8 to read:

7.9 Subd. 2d. **Dedication.** The regulations may require that a reasonable portion of
7.10 the buildable land, as defined by municipal ordinance, of any proposed subdivision be
7.11 dedicated to the public or preserved for public use as streets; roads; sewers; electric, gas,
7.12 and water facilities; storm water drainage and hold areas or ponds; and similar utilities and
7.13 improvements. The requirement must be imposed by ordinance or under the procedures
7.14 established in section 462.353, subdivision 4a.

7.15 Sec. 7. Minnesota Statutes 2010, section 462.358, is amended by adding a subdivision
7.16 to read:

7.17 Subd. 2e. **Park dedication and fees.** (a) For purposes of this subdivision, "fair
7.18 market value" means the value negotiated between the municipality and the applicant,
7.19 or the market value of the property as determined by the municipality based on an
7.20 independent appraisal for land in the same or similar land use category.

7.21 (b) The municipality may, by ordinance, require that a reasonable portion of the
7.22 buildable land, as defined in the ordinance, of any proposed subdivision be dedicated to
7.23 the public or preserved for public use as parks, recreational facilities as defined in section
7.24 471.191, playgrounds, trails, wetlands, or open space.

7.25 (c) If a municipality adopts the ordinance as required by paragraph (b), the
7.26 municipality must adopt a capital improvement budget and have a parks and open space
7.27 plan or have a parks, trails, and open space component in its comprehensive plan subject
7.28 to the terms and conditions in this paragraph and paragraphs (d) to (i).

7.29 (d) The municipality may choose to accept a cash fee as set by ordinance from the
7.30 applicant for some or all of the new lots created in the subdivision, based on the average
7.31 fair market value of the unplatted land for which park fees have not already been paid.

7.32 (e) For purposes of redevelopment on developed land, the municipality may choose
7.33 to accept a cash fee based on fair market value of the land. However, if the land proposed
7.34 to be redeveloped has already contributed park dedication or a cash fee, the municipality

8.1 may only charge a cash fee as to new value arising from the redevelopment. Previously
8.2 subdivided property from which a park dedication has been received, being resubdivided
8.3 with the same number of lots, is exempt from park dedication requirements. If, as a result
8.4 of subdividing the property, the number of lots is increased, then the park dedication or
8.5 in-lieu fee must apply only to the net increase in lots.

8.6 (f) In establishing the portion to be dedicated as parks, trails, or open space or the
8.7 cash fee, the regulations shall give due consideration to the open space, recreational, or
8.8 common areas and facilities that the applicant proposes to reserve for the subdivision.
8.9 The municipality must provide evidence that it will need to acquire that portion of land
8.10 or the in-lieu fee for the purposes of parks, trails, or open space as a result of approval
8.11 of the subdivision.

8.12 (g) If a municipality chooses to accept a cash fee in lieu of dedicated land, the
8.13 municipality may collect the fee at any time after the applicant has submitted building
8.14 permits for development of the approved subdivision and before completion of
8.15 development. Cash payments received must be placed by the municipality in a special
8.16 fund to be used only for the purposes for which the money was obtained.

8.17 (h) Cash payments received must be used only for the acquisition and development
8.18 or improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open
8.19 space based on the approved park systems plan. Cash payments must not be used for
8.20 ongoing operation or maintenance of parks, recreational facilities, playgrounds, trails,
8.21 wetlands, or open space.

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

8.25 **Sec. 8. REPEALER.**

8.26 Minnesota Statutes 2010, section 462.358, subdivision 2b, is repealed.

462.358 OFFICIAL CONTROLS: SUBDIVISION REGULATION; DEDICATION.

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 the average fair market value of the unplatted land for which park fees have not already been paid that is, no later than at the time of final approval or under the city's adopted comprehensive plan, to be served by municipal sanitary sewer and water service or community septic and private well as authorized by state law. For purposes of redevelopment on developed land, the municipality may choose to accept a cash fee based on fair market value of the land no later than 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. 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.