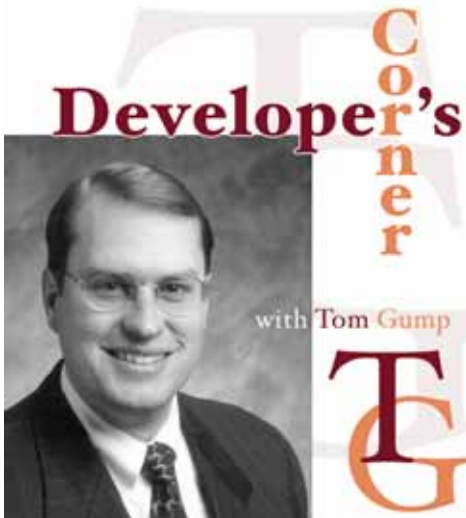




## Developers, cities both benefit from park dedication

**But be aware of changes in the law**

by Thomas Gump and Joseph Sedarski



MREJ FILE PHOTO

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Amendments to the statute

Prior to 2004, *Minnesota Statute section 462.358, subd. 2b*, provided, among other things, that municipalities may require a reasonable portion of any proposed subdivision, based on fair market value, to be dedicated to the public for utilities and related improvements, conservation purposes, or as parks, recreational facilities, playgrounds, trails, wetlands or open space. If the municipality takes cash in lieu of land dedication, it must be placed in a special fund, which cannot be used for ongoing operation and maintenance of parkland.

The 2004 amendment rewrote the dedication requirements in section 462.358, subd. 2b, and added constitutional requirements in a new subdivision 2c. The revisions provided that

the municipality must establish by ordinance or fee schedule the basis for calculating the amount to be dedicated. It also required an “essential nexus” between the fees or dedication imposed by the municipality and the purpose to be achieved by the fee or dedication, as well as a “rough proportionality” to the need created by the proposed subdivision or development.

In 2006, subdivision 2b was again rewritten to include several new obligations before a municipality exacts park dedication. If the municipality adopts a dedication ordinance or fee schedule, it must then either 1) adopt a capital improvement plan (CIP) budget and have a parks and open space plan, or 2) include a parks, trails and open space component in its comprehensive plan. In either case, the municipality must comply with the terms and conditions of section 462.358, subd. 2b, subparts (c) through (i), summarized below.

- (c) - the municipality may accept a cash fee as set by ordinance 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 (revised in 2007).

- (d) - regulations establishing the dedication requirement shall give due consideration to open space, recreational, or common areas and facilities open to the public proposed for the subdivision.

- (e) - the municipality must reasonably determine its needs to acquire land for the purposes of the subdivision as a result of approving the subdivision.

Since 1965, park dedication has been an important tool for Minnesota municipalities, requiring developers to set aside a portion of their property for public purposes or pay cash in lieu of dedication. Both municipalities and developers can benefit from a complete understanding of the park dedication statute.

Given the importance of park dedication and the number of recent statutory changes, municipalities should understand their limits of authority, as prescribed by the park dedication statute. Likewise, developers should understand the amendments in order to oppose impermissible municipal action.

- (f) - the municipality must place cash payments in a special fund to be used for the purpose for which the money was obtained.

- (g) - the municipality must only use cash payments for acquisition and development or improvement of parks, recreational facilities, playgrounds, trails, wetlands or open space based on an approved park systems plan, and not for ongoing operation or maintenance.

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

- (i) - previously subdivided property, which has already made park dedication, is exempt, unless such property is resubdivided and the number of lots is increased. In that case, the park dedication or per-lot cash fee must apply only to the net increase of lots.

The 2007 amendments also changed the way municipalities measure the cash amount in lieu of dedication (see *Minn. Stat. §462.358, subd. 2b(c)*). When a municipality chooses to take fees in lieu of land for redevelopment projects, the cash value must be 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 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.

For redevelopment, the municipality may take a cash fee-based fair market value, no later than the time of final approval. According to the author of the bill, these changes were needed so that municipalities could uniformly determine the fair market value for the dedication fee requirements for unplatted land.

Cities must comply before exacting dedication

The 2006 amendments require that municipalities adopt an ordinance or

establish a fee schedule prior to exacting park dedication from developers. A developer can understand how the municipality has structured its dedication requirements by reviewing the municipal code and comprehensive plan, evaluating park plans and budgets (if any), and discussing dedication requirements with the municipality.

The developer can then determine whether the ordinance or fee schedule was properly established and whether the municipality complies with the statute. While this determination should be straightforward, it may be difficult to obtain some information, such as the CIP park budget. Because the dedication requirements are likely based upon the CIP budget, the developer should persist in requesting this information from the municipality.

The developer should also request that the municipality provide written detail on the basis for the park dedication.

Survey: Municipality compliance spotty

In 2007, Hoisington Koegler Group Inc. (HKGI), a Minneapolis-based urban planning and design firm, published results from its 2007 Park Dedication Survey. This survey was conducted to better understand the effect of the 2006 amendments and to identify best practices for park dedication. HKGI sent its survey to 110 Minnesota cities located throughout the state. Of this, 56 cities returned the survey. A majority of the survey response was from metro area cities.

Survey results indicate that only 25 percent of the municipalities had amended their park dedication ordinance in response to the 2006 amendments. With this knowledge, a developer should be able to clearly evaluate municipal park dedication requirements, determine whether a municipality has met its statutory obligations or if it is acting outside the limits of its authority, and negotiate an acceptable park dedication.

Stone's Throw project experience

Over the past two years, the Beard Group has been working with Hassan Township, the city of Rogers and surrounding communities and property owners on the Stone's Throw project. As part of the project, the developer became involved with the parkland process, met with the township's Park and Open Space Committee and provided CIP park budget information from surrounding communities.

Subsequently, the committee reevaluated its priorities for parks, open spaces and trails. As a result, the developer anticipates that the township will revise the CIP park budget, which will likely be the basis for determining park dedication requirements for the project.

Stone's Throw proposes to provide approximately 200 acres of open space for parks, largely to preserve Stieg Woods — an old growth forest remnant — and include 14-plus miles of biking and walking trails. The township must consider these factors when determining park dedication for this project.

While park dedication requirements of the township and city of Rogers remain undetermined, the municipalities' and developer's knowledge of the park dedication statute and its recent amendments, the status of the township's CIP park budget and parkland planning process and the CIP park budgets of surrounding communities will all help guide the municipalities and developer's negotiations.

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