



**City of Duluth  
Planning Division**

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## MEMORANDUM

**DATE:** May 5, 2014  
**TO:** Planning Commissioners  
**FROM:** Steven Robertson, Senior Planner  
**SUBJECT:** Proposed Text Amendments to Subdivision Regulations

The Planning Division is recommending an amendment to the subdivision process based on information from several of the other home rule charter cities, State Statute (462, 505, and 508), and the 1974 Laws of Minnesota relating to Duluth. The proposed language is a replacement for current UDC section 50-37.5, Subdivision Plat Approval or Amendment. Also included with this memo is the current language on subdivision regulations.

At the last Planning Commission meeting, there was public comment related to the impact on the proposed changes as they relate to property owners who own property that is not currently platted but may want to subdivide in the future without having to follow the platting process. The Planning Commission voted to table the item one more time to give more time to review and consider the final language.

There are several changes, but the most significant changes are related to:

- applicability of the section (clarifying some exemptions, such as the conveyance of unplatted land),
- property transfers (requiring that new lot splits be reviewed by the city to ensure that new non-conforming lots are not created),
- minor subdivision process (replacement for the quick plat process), and
- process for Registered Land Survey approval

The language for traditional subdivisions (preliminary and final plat) is largely unchanged.

Some additional items of note:

### Approval Deadline

State Statute 462.358 3c implies the authority should be 1 year for preliminary plats and 2 years for final plats.

### Exemption for Registered Land Surveys that Simply Clarifying Legal Descriptions

Under section A, exemptions, it states that "registered land surveys prepared for the purpose of clarifying existing land descriptions" are exempt from typical subdivision review.

Minor Subdivisions, Process and Number

State Statute 505.01 gives the City some leeway to use an alternative process for minor subdivisions, but the intent is that it truly has to be minor/small in scope, thus the maximum of 4 lots. Also, according to Laws of Minnesota 1972, the Planning Commission has to approve plats, including our alternate minor subdivision; it can't be done administratively by the Land Use Supervisor.

Preliminary Plats

The existing language in the UDC references needing to meet 505 for preliminary plats, but it should be noted that preliminary plats do not need to meet all the requirements of 505.

Conveyance by Metes and Bounds

Staff took the exemption language for conveyances of metes and bounds right out of 462.358 sub 4b. In addition, the statute does allow for some relief (listed below) that we have incorporated into the language.

In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the platting authority may waive such compliance by adoption of a resolution to that effect and the conveyance may then be filed or recorded.

Property Transfer

This section only applies if the platted lot or parcel conveyed is less than a whole parcel of land as charge in the tax lists.

Subdividing Unplatted Land

Based on what City staff have read in state statute and from other home rule charter cities, the minor subdivision process is intended for previously platted land. Future lot splits for metes and bounds property should be done through a conventional subdivision or a RLS. With that being said, State Statute 462.358 sub 3b allows for consolidation of preliminary and final review of subdivisions; staff have suggested a provision that would allow small subdivisions (no more than 4 lots of at least 5 acres each) to go from concept plan to final plat, skipping the preliminary plat process.

## 50-37.5 Subdivision Plat Approval or Amendment

### A. Applicability

This section applies to all applications to subdivide unplatted land, or to replat previously platted land, or to adjust the boundary lines between existing property lines. This section is intended to comply with all applicable provisions of state law, including without limitation Laws of Minnesota 1933, Chapter 93 and Laws of Minnesota 1974, Chapter 236 and any provisions of MSA 462.358 and Chapter 505 and 508, as amended, still applicable to the city, and shall be interpreted to comply with those provisions wherever possible. All applications to subdivide land shall follow the standard subdivision process in subsections G and H below unless provided for in subsections C, D, E, or I below.

In addition to city approval, all subdivision plats, registered land surveys, and condominium plats will need to be approved by the St. Louis County Surveyor prior to recording at the St. Louis County Recorder's Office.

#### 1. General Exemptions

The following subdivisions of land are exempted from the provisions of this section:

- a) Platted cemeteries done in accordance with the requirements of applicable state statutes and ordinances;
- b) Transfers of interest in land pursuant to court order; or
- c) Registered Land Surveys prepared for the purpose of clarifying existing land descriptions.

#### 2. Conveyance by Metes and Bounds

The following conveyances by metes and bounds shall be exempt from the provisions of this section and shall not constitute a subdivision if the subject of the conveyance meets any of the following:

- a) Was a separate parcel of record on the date of adoption of subdivision regulations, or was the subject of a written agreement to convey entered into prior to such time; or
- b) Was a separate parcel of not less than 2 ½ acres in area and 150 feet in width on January 1, 1966; or
- c) Was a separate parcel of not less than five acres in area and 300 feet in width on July 1, 1980, or;
- d) Is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width; or
- e) Is a single parcel of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.

In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the Planning Commission may waive such compliance by adoption of a resolution to that effect and the conveyance may then be filed or recorded.

## **B Property Transfers**

Pursuant to Minnesota Statute 272.162, no land shall be transferred or divided in official records until the transfer has been approved by the land use supervisor to determine if the transfer is appropriate and conforms with existing city ordinances and regulations if the platted lot or parcel conveyed is:

1. Less than a whole parcel of land as charged in the tax lists; and
2. Is part of or constitutes a Subdivision as defined in Minnesota Statute 462.352, subdivision 12.

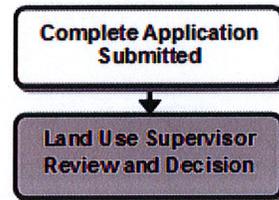
The land use supervisor shall certify that the transfer has complied with subsection C through I below, as applicable.

## **C Boundary Line Adjustment**

A boundary line adjustment provides for the alteration of existing property lines, where no additional lots and parcels are created.

1. The land use supervisor shall approve the application if it is determined that:
  - (a) The application will not result in the creation of any new lots or parcels;
  - (b) If each of the existing lots and parcels, and the structures on those lots parcels, complies with the requirements of this Chapter, then after the adjustment each of the resulting lots or parcels, and the structures on those lots or parcels, will still comply with the requirements of this Chapter;
  - (c) If one or more of the existing lots or parcels, or a structure on one or more of those lots or parcels, does not comply with the requirements of this Chapter, the proposed relocation will not create any new nonconformity or increase any existing nonconformity between the requirements of this Chapter.
2. After the application is approved, the applicant must submit a legal description and survey or similar recordable exhibit, prepared by a licensed land surveyor, reflecting the relocated boundaries; obtain the land use supervisor's signature on that survey or exhibit; and record the survey or exhibit in the appropriate office at St. Louis County. If the survey or exhibit is not recorded within 180 days after the boundary line adjustment is approved, that approval will lapse.

### **Boundary Line Adjustment**

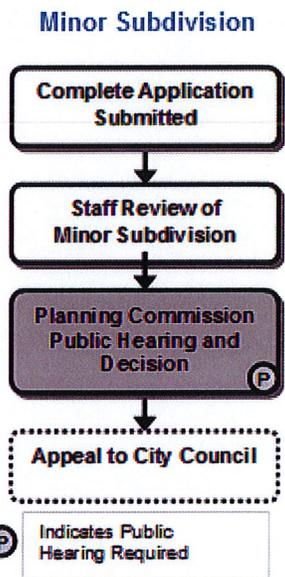


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**D Minor Subdivision**

A minor subdivision allows for the subdivision of a maximum of four lots, or the combination of any number of previously platted lots into a smaller number of platted lots. A minor subdivision is an approval process for simple land divisions, but does not provide for the subdivision of unplatted land.

1. The Planning Commission shall approve the application if it is determined that:
  - (a) The lot or lots to be subdivided or combined are previously platted lots and have frontage on an improved public street;
  - (b) Each proposed lot meets the minimum zoning requirements of the district that it is in;
  - (c) If an existing structure on a lot complies with the requirements of this Chapter, then after the minor subdivision structures on each of the resulting lots will still comply with the requirements of this Chapter; and
  - (d) If one or more of the existing lots, or a structure on one or more of those lots, does not comply with the requirements of this Chapter, the proposed relocation will not create any new nonconformity or increase any existing nonconformity between the requirements of this Chapter.
  
2. After the application is approved, the applicant must submit a legal description and survey or similar recordable exhibit, prepared by a licensed land surveyor, reflecting the relocated boundaries; obtain the land use supervisor's signature on that survey or exhibit; and record the survey or exhibit in the appropriate office at St. Louis County. The approval will lapse if the survey or exhibit is not recorded within 180 days after the minor subdivision is approved.



**E Combination of Parcels**

Any person with a legal or equitable interest in two or more contiguous lots or parcels of land may combine those parcels into a fewer number of lots or parcels by plat or registered land survey by complying with all the applicable subdivision procedures in subsections D, H, or I.

**F Amending an Approved Subdivision Plat**

An application to adopt or amend a subdivision preliminary plat or a subdivision final plat shall be filed pursuant to Section 50-37.5.G. An application to amend the street names of a subdivision final plat shall be filed pursuant to Section 50-37.5.H.

## G Subdivision Plat, Preliminary Procedure

### 1. Consolidated Preliminary and Final Review

For subdivisions that result in no more than four lots that are no less than five acres each, and where each lot will have a minimum frontage of 250 feet on an improved public road, preliminary and final review may be consolidated if the Land Use Supervisor determines that the proposed subdivision is of small size and minor importance. Subdivisions so designated as being of small size and minor importance may submit a final plat application after staff review of a concept plan.

### 2. Concept Plan

No application for a preliminary plat shall be accepted until the applicant has submitted a concept plan for the proposed subdivision. Concept plans shall reflect the general location of proposed lots, tracts, and streets, shall reflect all areas of the property where development is restricted pursuant to the NR-O overlay district in Section 50-18.1. The intent of the concept plan is to review general concepts for development of the site before applicants have incurred costs for engineering, soil, or storm water studies. The concept plans shall be reviewed in an informal discussion with planning staff.

### 3. Preliminary Storm Water Plan

A preliminary storm water plan shall be submitted and approved by the city engineer prior to submittal of the application for a preliminary plat.

### 4. Preliminary Plat Decision

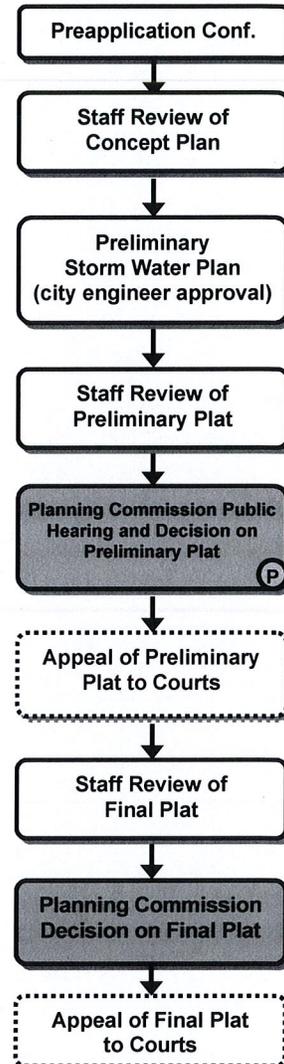
The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 50-37.5.J.3 below.

### 5. Preliminary Plat Criteria

The planning commission shall approve the application, or approve it with modifications if it determines that the application:

- (a) Is consistent with the Comprehensive Land Use Plan;
- (b) Is consistent with all applicable requirements of MSA 462.358 and Chapter 505;
- (c) Is consistent with all applicable provisions of this Chapter;

### Subdivision Plat Approval or Amendment



**(P)** Indicates Public Hearing Required

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- (d) Is consistent with any approved district plan covering all or part of the area of the preliminary plat;
- (e) Is located in an area where adequate police, fire and emergency facilities are available to serve the projected population of the subdivision within the city's established response times, or the applicant has committed to constructing or financing public facilities that will allow police, fire or emergency service providers to meet those response times;
- (f) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

## **H Subdivision Plat, Final Procedure**

### **1. Final Plat Decision**

After the approval of the preliminary plat, the applicant shall submit one or more final plats covering part or all of the land covered by the preliminary plat, together with evidence that the requirements of the approved plat have been met for the portion(s) of the land covered by the final plat. The planning commission shall approve, adopt with modifications or deny the final plat based on the criteria in subsection 3 below. The planning commission may refer the final plat to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection 3 below have been met.

### **2. Final Plat Review and Referral**

The final plat, together with the surveyor's mathematical calculations, shall be reviewed by the city engineer for accuracy of the surveys, the adequacy of the monuments, the proposed street improvements and other features of concern. The final plat may be submitted to the county engineer if the plat involves features of concern to the county highway department, and to such other divisions of government or public utility corporations as the city deems necessary or desirable. The city engineer shall check the plat boundary survey to determine the coinciding of the plat boundary lines with the boundary lines of adjoining plats, tracts or other subdivision lines or markers.

### **3. Final Plat Criteria**

The planning commission shall approve the application, or approve it with modifications, if the application meets the following criteria:

- (a) Is consistent with all applicable provisions of MSA 462.358 and Chapter 505;
- (b) Is consistent with the terms and provisions of the preliminary plat approval for the property;
- (c) Demonstrates that all required improvements have been installed or that (a) the applicant has signed a development agreement committing to construct those improvements within 2 year after approval of the final plat and (b) adequate security for the construction of the required improvements has been posted with the city pursuant to Section 50-37.1.P.

### **4. Final Plat Recording**

Once approved, plats shall be signed by the President and Secretary of the Planning Commission. After the final plat is approved, it must be recorded in the office of the county recorder as provided in MSA 505.04. The approval will lapse if the plat is not recorded within 2 years after the plat is approved. After the final plat has been recorded, lots may be sold and building permits for structures on

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the platted lots may be issued; any sales of lots shown on the final plat before recording of the final plat shall be a violation of this Chapter.

## **I Registered Land Survey**

Registered land surveys that subdivide land shall be approved in the manner required for the approval of minor subdivision plats in subsection D above if the registered land survey create four or less parcels or tracts of land. Registered Land Surveys that create five or more parcels or tracts of land must follow the process listed below.

### **1. Concept Plan**

No registered land survey shall be accepted until the applicant has submitted a concept plan for the proposed subdivision. Concept plans shall reflect the general location of proposed parcels and tracts, and shall reflect all areas of the property where development is restricted pursuant to the NR-O overlay district in Section 50-18.1. The intent of the concept plan is to review general concepts for development of the site before applicants have incurred costs for engineering, soil, or storm water studies. The concept plans shall be reviewed in an informal discussion with planning staff.

### **2. Storm Water Plan and Wetland Delineation**

A storm water plan shall be submitted and approved by the city engineer, and all wetlands must be delineated, prior to submittal of the application for a registered land survey.

### **3. Review and Referral**

The registered land survey, together with the surveyor's mathematical calculations, shall be reviewed by the city engineer. The registered land survey may be submitted to the county engineer if the registered land survey involves features of concern to the county highway department, and to such other divisions of government or public utility corporations as the city deems necessary or desirable.

### **4. Registered Land Survey Decision**

The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 50-37.5.I.5 below.

### **5. Registered Land Survey Criteria**

The planning commission shall approve the application, or approve it with modifications if it determines that the application:

- (a) Is consistent with the Comprehensive Land Use Plan;
- (b) Is consistent with all requirements of MSA 462.358 and Chapter 508;
- (c) Is consistent with all applicable provisions of this Chapter;
- (d) Is consistent with any approved district plan covering all or part of the area of the registered land survey;
- (e) Is located in an area where adequate police, fire and emergency facilities are available to serve the projected population of the subdivision within the city's established response times, or the applicant has committed to constructing or financing public facilities that will allow police, fire or emergency service providers to meet those response times;

- (f) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

**6. Registered Land Survey Recording**

After the registered land survey is approved, it must be recorded in the office of the county recorder as provided in MSA 508. The approval will lapse if the registered land survey is not recorded within 180 days after the registered land survey is approved. After the registered land survey has been recorded, parcels and tracts may be sold and building permits for structures on the parcels and tracts may be issued; any sales of parcels and tracts shown on the registered land survey before recording of the registered land survey shall be a violation of this Chapter.

50-37: Review and Approval Procedures

50-37.5 Subdivision Plat Approval or Amendment

This section applies to all applications to subdivide unplatted land, or to replat previously platted land, or to adjust the boundary lines between two or more platted lots. This section is intended to comply with all applicable provisions of state law, including without limitation Laws of Minnesota 1933, Chapter 93 and Laws of Minnesota 1974, Chapter 236 and any provisions of MSA 462.358 and Chapter 505, as amended, still applicable to the city, and shall be interpreted to comply with those provisions wherever possible. All applications shall follow the standard subdivision process in subsections B and C below except:

- (1) Applications to divide a parcel or tract of land that has not been previously subdivided into 3 or fewer lots for sale or development;
- (2) Applications for approval of a Registered Land Survey pursuant to MSA Chapter 508 for a parcel or tract of land that has not been previously subdivided and that will contain 3 or fewer parcels for sale or development; or
- (3) Applications to combine two or more previously platted lots into a smaller number of platted lots, each of which shall be processed pursuant to the quick plat process in subsection E below. No land that has been created by or included in a quick plat may be further divided through the quick plat process.

**A. Application**

An application to adopt or amend a subdivision preliminary plat or a subdivision final plat shall be filed pursuant to Section 50-37.1.B.

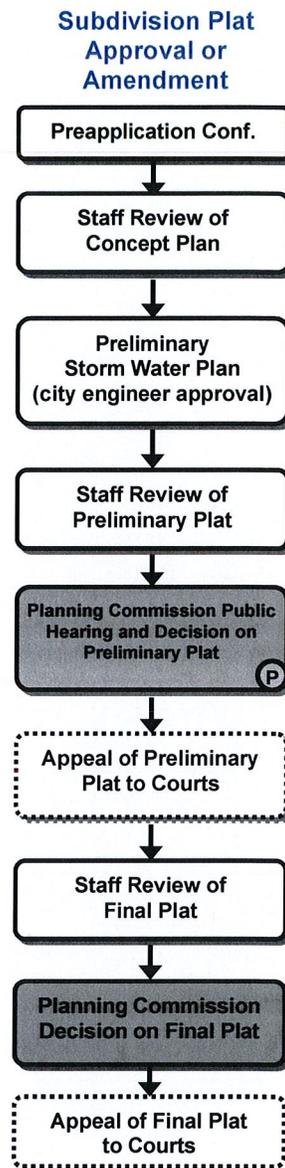
**B. Subdivision Preliminary Plat Procedure**

1. **Concept Plan**

No application for a preliminary plat shall be accepted until the applicant has submitted a concept plan for the proposed subdivision. Concept plans shall reflect the general location of proposed lots, tracts, and streets, shall reflect all areas of the property where development is restricted pursuant to the NR-O overlay district in Section 50-18.1. The intent of the concept plan is to review general concepts for development of the site before applicants have incurred costs for engineering, soil, or storm water studies. The concept plans shall be reviewed in an informal discussion with planning staff.

2. **Preliminary Storm Water Plan**

A preliminary storm water plan shall be submitted and approved by the city engineer prior to submittal of the application for a preliminary plat.



**P** Indicates Public Hearing Required

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**3. Preliminary Plat Review and Referral**

The applicant shall submit a preliminary plat and all required and proposed improvements to the city. The preliminary plat, together with the surveyor's mathematical calculations, shall be reviewed by the city engineer for accuracy of the surveys, the adequacy of the monuments, the proposed street improvements and other features of concern. The preliminary plat may be submitted to the county engineer if the plat involves features of concern to the county highway department, and to such other divisions of government or public utility corporations as the city deems necessary or desirable. The city engineer shall check the plat boundary survey with the county surveyor to determine the coinciding of the plat boundary lines with the boundary lines of adjoining plats, tracts or other subdivision lines or markers.

**4. Preliminary Plat Decision**

The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 50-37.5.C.3 below.

**5. Preliminary Plat Criteria**

The planning commission shall approve the application, or approve it with modifications if it determines that the application:

- (a) Is consistent with the Comprehensive Land Use Plan;
- (b) Is consistent with all requirements of MSA 462.358 and Chapter 505;
- (c) Is consistent with all applicable provisions of this Chapter;
- (d) Is consistent with any approved district plan covering all or part of the area of the preliminary plat;
- (e) Is located in an area where adequate police, fire and emergency facilities are available to serve the projected population of the subdivision within the city's established response times, or the applicant has committed to constructing or financing public facilities that will allow police, fire or emergency service providers to meet those response times;
- (f) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

**C. Subdivision Final Plat Procedure**

**1. Final Plat Review and Decision**

After the approval of the preliminary plat, the applicant shall submit one or more final plats covering part or all of the land covered by the preliminary plat, together with evidence that the requirements of the approved plat have been met for the portion(s) of the land covered by the final plat. The planning commission shall approve, adopt with modifications or deny the final plat based on the criteria in subsection 2 below. The planning commission may refer the final plat to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection 2 below have been met.

**2. Final Plat Criteria**

The planning commission shall approve the application, or approve it with modifications, if the application meets the following criteria:

- (a) Is consistent with all provisions of MSA 462.358 and Chapter 505;

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- (b) Is consistent with the terms and provisions of the preliminary plat approval for the property;
- (c) Demonstrates that all required improvements have been installed or that (a) the applicant has signed a development agreement committing to construct those improvements within 1 year after approval of the final plat and (b) adequate security for the construction of the required improvements has been posted with the city pursuant to Section 50-37.1.P.

3. **Final Plat Recording**

After the final plat is approved, it must be recorded in the office of the county recorder as provided in MSA 505.04. A final plat that is not recorded within 90 days after approval will lapse and may not be recorded. After the final plat has been recorded, lots may be sold and building permits for structures on the platted lots may be issued; any sales of lots shown on the final plat before recording of the final plat shall be a violation of this Chapter.

**D. Improvements**

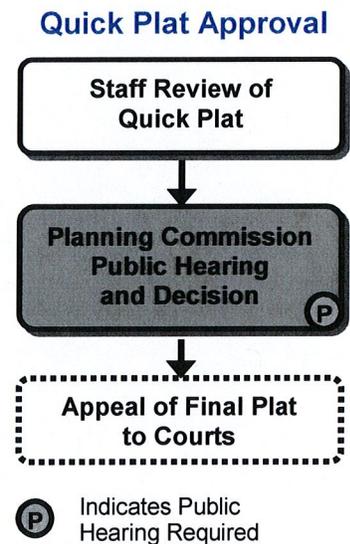
The applicant shall be required to complete the following improvements related to a new subdivision, at the applicant's cost, unless (i) the planning commission waives or amends these requirements as part of a subdivision preliminary plat approval, or (ii) the subdivision is within an area covered by an approved district plan that does not require the improvements. All required improvements shall be designed and constructed to standards approved by the city. The city may, at its discretion, require that some or all of the requirements be dedicated to the city, and if those improvements are dedicated the applicant shall be relieved of responsibility to maintain the dedicated improvements:

- 1. Streets allowing access to and among the platted lots and connecting each platted lot to the public street system. All streets shall be open to the public unless the planning commission waives this requirement;
- 2. Curbs, gutters, sidewalks and street lighting, except in the case of the R-C, RR-1 and RR-2 districts;
- 3. Water, gas, sanitary sewer and storm drainage improvements meeting all applicable requirements of the city or the applicable service provider.

**E. Quick Plat / Registered Land Survey**

Applications to (1) divide a parcel or tract of land that has not been previously subdivided into 3 or fewer lots for sale or development, (2) approve a Registered Land Survey (RLS) pursuant to MSA Chapter 508 for a parcel or tract of land that has not been previously subdivided and that will contain 3 or fewer parcels for sale or development, and (3) applications to combine two or more previously platted lots into a smaller number of platted lots shall be processed under this quick plat process.

- 1. No concept plan or preliminary plat shall be required. The applicant shall file a plat meeting all of the requirements for a final plat, or meeting all of the requirements for a RLS pursuant to MSA Chapter 508, as applicable.



2. The planning commission shall approve, adopt with modifications or deny the application based on the criteria in subsection 3 below. The planning commission may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection 3 below have been met.
3. The planning commission shall approve the application, or approve it with modifications, if it determines that the application:
  - (a) Is consistent with all provisions of MSA 462.358 and 505 or 508, as applicable;
  - (b) Each resulting lot or parcel meets all of the dimensional requirements for the zone district in which the property is located;
  - (c) Each resulting lot or parcel has access to a public street.
4. After approval, the quick plat or RLS must be recorded in the office of the county recorder as provided in MSA 505.04. If not recorded within 90 days after approval, the approval will lapse and the quick plat or RLS may not be recorded. After recording, lots may be sold and building permits may be issued; any sales of lots before recording shall be a violation of this Chapter.

**F. Boundary Line Adjustments**

1. An applicant may file an application to relocate the boundary line between up to three previously platted lots without the need to obtain subdivision approval if the proposed relocation will not result in the creation of an additional developable lot.
2. The land use supervisor shall approve the application, or approve it with modifications, if it is determined that the application:
  - (a) Will not result in the creation of any new developable lots;
  - (b) If each of the existing lots and the structures on those lots complies with the requirements of this Chapter, then after the adjustment each of the resulting lots will still comply with the requirements of this Chapter;
  - (c) If one or more of the existing lots, or a structure on one or more of those lots, does not comply with the requirements of this Chapter, the proposed relocation will not create any new nonconformity or increase any existing nonconformity between the requirements of this Chapter and any of the lots or any of the structures on the lots whose boundaries are to be adjusted.
3. After the application is approved, the applicant must prepare a survey reflecting the relocated boundaries, obtain the land use supervisor's signature on that survey, and record the survey in the county register of deeds. If the survey is not recorded within 90 days after the boundary line approval, that approval will lapse and the survey may not be recorded.

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