

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-029-O

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING SUBDIVISION STANDARDS.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-35 of Chapter 50 be amended as follows:

Table 50-35-1: Procedures Summary Table								
Type of Application			Review, Decision, & Appeal Authority					
	Public Notice Required	Pre-Application Required	Staff	Land Use Supervisor	Heritage Preservation Commission	Planning Commission	Council	Final Action
R = Review D = Decision A = Appeal <> = Hearing N = Newspaper Notice S = Sign Notice M = Mail Notice RES = Resolution ORD = Ordinance AL = Action Letter COA = Certificate of Appropriateness								
Comprehensive Land Use Plan	N			R		<R>	D	RES
UDC Text or Zoning Map Amendment								
Text Amendment	N			R		<R>	D	ORD
Map Amendment	N, S, M*	✓		R		<R>	D	ORD
District Plan Adoption/Amendment	S	✓		R		<D>	<A>	
Subdivision Plat Approval								
Concept Plan		✓		R				**
Preliminary Plat	S			R		<D>		AL
Final Plat				R		<D>		AL***
Quick-Plat Minor Subdivision / Registered Land Survey	S			R		<D>		AL***
Vacation of Street	S, M	✓		R		<R>	- - -	RES
Concurrent Use of Streets Permit	S	✓		R		<R>	D	ORD
Historic Resource Designation	M				<R>	R	D	ORD
Variance	S, M		R			<D>	<A>	AL
Special Use Permit	S, M	✓		R		<D>	<A>	AL
Interim Use Permit	S, M	✓		R		<R>	D	RES
Planning Review								
General Planning Review				D		<A>		AL
Planning Commission Review When required in MU-C, MU-W, MU-I Zoning Districts and HE-O Overlay District	S, M	✓		R		<D>	<A>	AL
Temporary and Sidewalk Use Permit				D		<A>		AL
Zoning Permit****			D			<A>		AL
Historic Construction/Demolition	S				<D>		<A>	COA
Wetland/WCA Permits			D			<A>		AL

*Mailed notice is required to affected property owners within 350 ft. when the amendment involves changes in district boundaries affecting an area of 5 acres or less.

** Planning staff will provide applicant with a preapplication verification.

*** Applicant must provide documentation that the plat or RLS has been recorded with the county.

**** This category includes shoreland permit, erosion and sediment control permit, sign permit, fence permit and airport environs permits. Appeals of airport environs permits related to Duluth International Airport are heard by the airport board of adjustment.

Section 2. That Section 50-37.1 of Chapter 50 be amended as follows:

50-37.1 Common procedures and requirements.

A. Pre-application meetings.

A pre-application meeting is an informal discussion between a potential applicant, interested citizen, city staff and the heritage preservation commission (if applicable) regarding a possible project subject to this Chapter. The purpose of the pre-application meeting is to assist the applicant by identifying the types of approval needed to complete the project, application material and impact studies required, applicable comprehensive plan provisions and applicable review criteria. A pre-application meeting may include a site visit at the request of the city. Pre-application meetings are required for the following types of applications:

1. UDC zoning map amendment;
2. District plan adoption or amendment;
3. Subdivision concept plan;
4. Vacation of street;
5. Concurrent use of streets permit.
6. Historic resource designation;
7. Special use or interim use permit;

B. Authority to file applications.

1. A property owner or a contract purchaser may apply for any type of permit or approval unless a more specific application is stated in this Section 50-37.1.B or in sections 50-37.2 through 16 below. In the event of a conflict between the provisions of this Section 50-37.1.B and the provisions of sections 50-37.2 through 16, the provisions of sections 50-37.2 through 16 shall govern;
2. An agent of the property owner, or a resident of the property, may apply for any type of permit or approval provided the agent or resident has written authority of the property owner to do so;
3. Applications for designation of a historic resource are governed by Section 50-37.8;
4. Any person may request an interpretation of this Chapter, and the land use supervisor may issue interpretations of this Chapter as needed and shall post issued interpretations on the city web site;

C. Application materials and fees.

1. Each application for a permit or approval, or for a modification of a permit or approval, pursuant to this Chapter, shall include all those application materials listed for that type of application or modification listed in the UDC application manual for this Chapter and a fee in the amount listed for that type of application or modification shown in the latest schedule of fees approved by council;
2. The city may reject applications not meeting the requirements of this Chapter, the UDC application manual, or as required or authorized by MSA 15.99;
3. Any and all representations made by the applicant to the city on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the city;
4. The schedule of fees shall be adopted from time to time by the council by resolution, pursuant to Section 31-6 of the Code, to defray estimated staff costs and expenses of processing applications;
5. The schedule of fees may provide for additional fees if an applicant submits more than two applications that are incomplete, pursuant to Section D below, for the same proposed development;

6. All fees are non-refundable regardless of whether the applicant withdraws the application prior to a decision or whether the application is approved, approved with conditions or denied;

D. Determination of completeness.

A determination of completeness shall be made for each application pursuant to MSA 15.99;

E. Inactive complete applications.

If an application has been determined to be complete, but review of the application reveals possible additional impacts on the surrounding area, any request by the city for additional materials necessary to evaluate those impacts shall comply with the provisions of MSA 15.99;

F. Withdrawal of applications.

An applicant may withdraw an application at any time prior to a decision by the city by filing a written request to withdraw the application with the city. Any resubmission is subject to the provisions of subsection 50-37.1.G below. If the application is later resubmitted, it shall be treated as a new application for purposes of review and scheduling. Any fees paid for a withdrawn application shall not be refunded;

G. Successive applications.

If an application pursuant to this Chapter has been denied by the city, an application requesting the same or essentially the same approval shall not be accepted during the next 12 months;

H. Public notice.

1. Types of notice.

The city uses one or more of the following methods to notify the public about pending applications where there is an opportunity for public comment on the application. The type(s) of notice provided for different types of applications are shown in Table 50-35-1.

- (a) Newspaper notice means the publication of one notice in a newspaper of general circulation within the city at least ten days before the date of the public hearing, except in the case of amendments to the text of this Chapter or zoning map, in which case the notice shall be published at least once each week for three successive weeks before the date of the public hearing;
- (b) Mailed notice means a letter mailed by first class mail to property owners within 350 feet of the applicant's parcel at least ten days prior to the date of the public hearing. In the case of an application for vacation of a street, the notice shall be mailed to the owners of all properties abutting (a) the portion of the street proposed to be vacated, and (b) the portion of that street extending 350 feet from the ends of the portion proposed to be vacated. In the case of an application for rezoning an area of five acres or less, the notice shall be mailed to each property owner in the area to be rezoned and each owner of property located partly or entirely within 350 feet of the area to be rezoned. Failure to give mailed notice as required by this Section or any defect in the notice given shall not invalidate any action of the planning commission or council, provided that a bona fide attempt to comply with this Section has been made;
- (c) Sign notice means a sign with minimum dimensions of 24 inches by 30 inches posted as close as reasonably possible to each street frontage on the applicant's property with the text between three and five feet above grade level, with a title line reading "Zoning Notice" in letters at least three inches tall, and with the remainder of the text in letters at least 1/2 inch tall. Each sign must be posted at least two weeks before the date of the public hearing, and must remain in place and legible through the date of the public hearing

as shown on the sign. If the sign will not be legible at the stated height due to snow accumulations it may be placed higher, but at the lowest elevation that will be legible to the public. If snow obscures the sign during the posting period, the snow shall be removed and/or the sign shall be relocated so as to be legible within 24 hours after snowfall ends. Evidence produced at or before the public hearing that one or more of the required signs were not in place or legible throughout that period shall be grounds for postponement of the public hearing and a requirement to repost the property. Required signs may not be posted in any portion of the public right-of-way;

2. Content of notice.

Each required notice shall include the following information:

- (a) The name of the applicant;
- (b) The address of the property;
- (c) A narrative description of the project including the proposed land uses, size (in square feet) and height (in feet and stories) of any proposed buildings or building expansions;
- (d) The type of permit or approval being sought;
- (e) Contact information where additional information can be obtained from the applicant (which may be an address, telephone number, web site, or e-mail address or other electronic site or method);
- (f) Contact information for the assigned city staff member;
- (g) The date, time and place of the public hearing;

3. Special notice provision for appeals.

In the case of an appeal to the planning commission or council pursuant to Section 50-37.1.O, mailed notice shall be provided to any interested parties that were notified of the original application and the right to receive notice of any appeal, and who have notified the city in writing that they would like to receive notice of the appeal;

I. Public hearings.

1. Public hearings before the planning commission and public hearings before the council on matters related to this Chapter shall be conducted pursuant to rules and practices established by each of those bodies and in compliance with state law;
2. Attendance shall be open to the public;
3. All hearing and decision timeframes shall comply with MSA 15.99;

J. Review criteria.

1. The planning commission shall approve or recommend approval of an application if it makes a written finding that:
 - (a) The application is consistent with the adopted comprehensive land use plan, as that plan may have been amended after adoption;
 - (b) The application complies with all applicable requirements of this Chapter, as those requirements may have been varied through a variance approved pursuant to Section 50-37.9;
 - (c) The application complies with all additional approval criteria listed in Section 50-37.2 below;
2. If the planning commission determines that the criteria in subsection 1 have not been met, the commission shall deny or recommend denial of the application or approve it with conditions to bring the application into conformance with the above criteria;
3. The council is encouraged, but not required, to make decisions on applications under this Chapter pursuant to the criteria listed in subsection 1. In no case may the city's final action result in the approval of a use variance;
4. The applicant bears the burden of proof that an application complies with all applicable standards and criteria in this Chapter;

K. Conditions on approval.

1. As an alternative to denying an application, the building official and the land use supervisor are authorized to approve applications with conditions necessary to bring them into compliance with the requirements of this Chapter or with any previously approved district plan for the property;
2. As an alternative to denying an application, the planning commission is authorized to recommend or impose conditions on approvals that it determines are necessary to (a) bring the application into compliance with the requirements of this Chapter, the purposes of the zone district where the property is located or any previously approved district plan for the property, or (b) prevent or minimize adverse effects upon surrounding areas or upon public facilities and services;
3. All conditions imposed on approved applications shall be reasonably related to the anticipated impacts of the proposed development or land use and to the purposes of this Chapter;
4. In the case of decisions made by the planning commission or council, where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any condition imposed shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts;
5. Any conditions on approved applications shall be listed in or attached to the approval document, and violation of any approved condition shall be a violation of this Chapter;

L. Administrative adjustments.

Where an application concerns development or redevelopment of a lot and the applicant demonstrates practical difficulty in designing the redevelopment to comply with all requirements of this Chapter, the land use supervisor is authorized to approve applications that diverge from the requirements of this Chapter in up to two of the following ways:

1. The front, side or rear setbacks of a new or modified structure are no more than one foot smaller than the minimum setbacks required by this Chapter;
2. The height of a new or modified structure is no more than two feet taller than the maximum required by this Chapter;
3. For properties where Section 50-24 requires more than three off street parking spaces, and the property does not contain a single-family residential structure (regardless of the use of that structure) the site contains one less parking space than is required, or one more parking space than the maximum allowed in Section 50-24.4;
4. Handicap accessibility structures can encroach into the yard setbacks;
5. For properties where Section 50-21.2 requires improved street frontage, exceptions limiting the street improvement to no more than 50 feet in length may be granted if the land use supervisor determines that further extension of the street is not anticipated due to topography, comprehensive land use plan or utility availability;
6. For properties where Section 50-21.2 requires that not more than 30 percent of the rear yard be occupied by any one accessory structure, exceptions may be granted for an accessory structure to occupy up to 40 percent of the rear yard;
7. The area of a new or modified sign is no more than ten percent larger than the maximum allowed by Section 50-27;

M. Modifications of approvals.

1. Application.
An applicant who has received a permit or approval from the city pursuant to this Chapter may apply to modify that approval pursuant to this Section 50-37.1. An

application for a modification shall be made to the building official, who shall determine whether it requests a minor or major modification pursuant to the criteria in subsections 2 or 3, as applicable;

2. Minor modifications.

Minor modifications are those that (a) relate to redevelopment of a single building on one or more existing platted lot(s), (b) qualify as administrative adjustments pursuant to subsection 50-37.1.L or (c) that the city determines are otherwise consistent with any district plan approved for the zone district where the property is located. Applications for minor modifications may be approved by the city if it determines that the applicant would have practical difficulties designing or constructing the project without the minor modification. However, the city may require that an application meeting the criteria for a minor modification be treated as an application for a major modification if it determines that the application raises a significant public controversy on which numerous parties other than the owner of the property may want to offer testimony;

3. Major modifications.

Major modifications are those that do not qualify as administrative adjustments pursuant to subsection 50-37.1.L or minor modifications pursuant to subsection 2 above. Applications for major modifications shall be treated as a new application for an approval of the same type being modified. However, if the city determines that an application for modification is not consistent with a district plan applicable to the property, and that the inconsistency may materially and adversely affect other property owners subject to the same district plan, the city may require that the applicant obtain approval of a revised district plan instead of a major modification. In the case of a major modification involving a natural resources permit, the city may require additional reports and data necessary to evaluate the impacts of the modification;

N. Lapsing of approvals.

Some permits and approvals issued pursuant to this Chapter shall lapse and be of no further force or effect if the action approved in the permit or approval does not begin within a specific period of time, as listed below:

1. Approved preliminary plats for subdivision shall lapse unless a complete application for a final plat of at least 50 percent of the land covered by the preliminary plat is submitted within five one years of the preliminary plat approval. Approved final subdivision plats shall lapse unless the approved final plat is recorded within two years after approval;
2. ~~Approved final subdivision plats shall lapse unless the approved final plat is recorded with the register of deeds within 180 days two years after approval~~ Approved minor subdivisions and boundary line adjustments shall lapse unless recorded within 180 days of approval;
3. Approved vacations of streets shall lapse unless a plat showing the vacation is recorded with the office of the county recorder within 90 days after final approval;
4. Approved planning reviews, zoning permits, special use permits, interim use permits, concurrent use of street permits, sidewalk use permits and variances shall lapse if the project or activity authorized by the permit or variance is not begun within one year of the permit date. The building official may extend this period one time for a period of up to one year if the property owner presents a written request showing the reasons for the delay was outside the owner's control;
5. Erosion and sediment control permits (ESCP) shall lapse one year after approval if all construction activities are not completed or the entire site is not fully stabilized with 70 percent successful establishment of vegetation. In case of a lapse of the ESCP, a new permit shall be obtained;
6. Approved building permits shall lapse one year after issuance unless construction has begun by that date;

7. The MS-4 statement of compliance and accompanying drainage report will be valid for two years from the date of approval. If permanent stormwater facilities (BMPs) are not fully constructed and operational within two years, and extension of one year may be granted if a written request is submitted and approved by the city engineer. The written request should document the reasons for the extension and the current state of completion of the project;

0. Appeals.

This Section is intended to comply with the provisions of MSA 462.357 and MSA 360.068 as amended, and shall be interpreted to comply with those provisions wherever possible.

1. General provisions for appeal to planning commission.
 - (a) Except as noted in subsection 2, any person aggrieved by, or any department of the city affected by, any decision of any city official engaged in the administration or enforcement of this Chapter may appeal that decision to the planning commission. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the commission and specifying the grounds of the appeal;
 - (b) If the appeal relates to a decision regarding the zoning of an airport or the Airport Overlay district, any person aggrieved by the decision, any taxpayer affected by the decision and any governing body of a municipality, county or airport zoning board, that believes the decision is an improper application of this Chapter as it concerns that governing body or board may appeal that decision to the airport board of adjustment. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the board and specifying the grounds of the appeal. If the appellant is a person aggrieved or a taxpayer affected by the decision regarding the zoning of an airport or the Airport Overlay district, the applicant shall submit an appeal to the city clerk in the manner set forth in Minnesota Statutes 360.068, Subdivision 2. All appeals shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;
 - (c) The building official shall promptly transmit to the commission, or to the airport board of adjustment, as applicable, the documents and records related to the decision being appealed;
 - (d) A timely appeal shall stay all proceedings involved in the appeal; and no appeal shall be deemed to permit the appellant to do or to continue doing, directly or indirectly, any act or thing prohibited by the decision being appealed. However, if the building official notifies the planning commission in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the planning commission may order that proceedings not be stayed pending appeal;
 - (e) The commission shall fix a time for a hearing on the appeal, shall provide notice of the hearing pursuant to Section 50-37.1.H, and shall hold a public hearing pursuant to Section 50-37.1.I;
 - (f) Any party may appear at the hearing in person, by agent or by attorney. Notice of the decision of the board shall be mailed to the appellant;
 - (g) If the appeal alleges that the boundaries of a wetlands or shorelands area on the Natural Resources Overlay map in Section 50-18.1 are in error, the appellant shall bear the burden of proving the map erroneous by the production of clear and convincing technical evidence;
2. Exceptions.
 - (a) An appeal from any decision regarding the interpretation or application of sign regulations in subsections 50-27.1.I, *No safety obstructions*, 50-27.1.L, *Attachment to buildings*, 50-27.1.M, *Wind pressure design*, 50-27.1.N,

- Electrical wiring, or 50-27.1, Certification of structural engineer, must be taken to the state building official as provided in the State Building Code;*
- (b) An appeal from a decision regarding a building permit must be taken to the building appeals board created in Article IV of Section 10 of the City Code or to the state building official;
 - (c) An appeal from any decision under the housing code provisions in Section 50-32 of this Chapter must be taken to the building appeals board;
 - (d) If an applicant believes that the decision of staff regarding compliance with the requirements of the SP-O zone district is incorrect or deprives the applicant of the reasonable use of his or her property, or is unreasonable given the size and shape of the property and its orientation to the protected views, the applicant may request review of the decision by the planning commission. The planning commission's review shall be based on the purpose and standards of this Section, but may authorize variations to those standards, in accordance with the procedures in Article V of this Chapter, if unusual site conditions not generally shared along Skyline Parkway make compliance with the standards unreasonable or ineffective to protect the intended views of Lake Superior, the St. Louis River and the harbor;
3. Powers of planning commission on appeal.
- (a) The planning commission shall consider the record of the application and any testimony presented at the hearing regarding the application of this Chapter to the application and shall affirm, modify or reverse the decision appealed, and may make any orders, requirements, decisions or determinations that the building official or land use supervisor could have made regarding the application;
 - (b) In hearing permitted appeals of decisions regarding the sign regulations in Section 50-27, the planning commission shall have only the power to affirm, reverse or modify the decision of the building official;
 - (c) In the case of an appeal regarding the application of the NR-O Natural Resources Overlay district, no relief shall be granted that violates the limitations on variances applicable to that district;
 - (d) The decision of the planning commission shall be final unless a further appeal is filed pursuant to subsection 4 below;
4. Appeals of planning commission decisions to council.
- (a) Except as provided in subsection 5 below, any person aggrieved by, or any department of the city affected by, any decision of the planning commission on an appeal pursuant to subsection 1 above may appeal that decision to the council;
 - (b) Any appeal must be filed within ten days after the planning commission's decision by filing with the city clerk a written notice of appeal addressed to the council and specifying the grounds for the additional appeal;
 - (c) The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. However, if the building official notifies the council in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the council may order that proceedings not be stayed pending appeal;
 - (d) The council shall hear the appeal at the next scheduled meeting with time available, and may affirm, modify or reverse the board's decision, and may make any orders, requirements, decisions, or determinations it deems appropriate regarding the appeal;
 - (e) No decision on an appeal or variance shall have the effect of allowing a use that is not a permitted or special use in the zone district where the property is located;
 - (f) If the appeal is regarding an application in any district where the approval of a district plan is required or requested prior to development, the council shall

- only approve development plans if it finds that the requirements for the district plan in that district will be satisfied;
5. Appeal of planning commission decisions to the courts.
 - (a) In the case of an appeal regarding the zoning of an airport or an Airport Overlay district, the appeal shall proceed pursuant to applicable state law and shall be perfected within 60 days after the decision appealed from is filed in the office of the planning commission;
 - (b) In case of decisions appealable to the district court pursuant to MSA 462.361, the appeal shall be perfected in 60 days after the decision appealed from is filed in the office of the planning commission;
 - (c) All other appeals not otherwise provided for above shall be pursuant to MSA 606.01;
 6. Appeals of heritage preservation commission decisions to council.
Where applicable, subsection 50-37.1.O.4 shall apply of heritage commissions decisions, when appealable to city council;

P. Security for improvements.

1. If the provisions of this Chapter or conditions attached to a permit or approval under this Chapter require the applicant to construct or make improvements to the property, to protect the city or adjacent property owners from injury or damage, or to return the property to a stated condition following the completion of operations or construction, and those actions have not been completed, then the city shall require the applicant to post security to ensure that those improvements are made in a timely manner, and that if the applicant fails to make those improvements the city will have adequate funds on hand to complete the improvements at the applicant's expense;
2. Security shall be posted in a form acceptable to the city, which may include but are not limited to cash, a promissory note, a letter of credit issued by a financial institution acceptable to the city, or a performance bond issued by a financial institution acceptable to the city. The security shall be in an amount equal to 110 percent of the estimated cost for the city to complete the improvements;
3. The city shall release posted financial security upon confirmation by the building official that the required improvements have been constructed in accordance with all applicable design and construction standards. In the case of any improvements to be dedicated to the city, the city shall release posted financial security upon acceptance of the improvements by the city. At the discretion of the building official, partial releases of financial security may be made after construction or dedication of some but not all of the required improvements, but financial security equal to 110 percent of the estimated cost of for the city to complete the improvements shall be retained;
4. As an alternative to requiring the posting of financial security, the city may authorize the issuance of a temporary certificate of occupancy for the property, provided that the applicant signs a development agreement with the city agreeing to pay the city a specific financial penalty per month if the required improvements are not constructed by a certain date. The amount of the penalty shall be calculated so that if the applicant does not construct the improvements within one year after the required date the penalties will equal at least that amount set in accordance with Section 31-8 of this Code of the estimated cost for the city to complete the improvements.

Section 3. That Section 50-37.5 of Chapter 50 be repealed and replaced as follows:

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



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; it does not provide for the subdivision of unplatted land, unless that land is described by a governmental subdivision legal description.

1. The Planning Commission shall approve the application if it is determined that:
 - (a) The lot or lots to be subdivided or combined have frontage on an improved public street;
 - (b) Each proposed lot meets the minimum zoning requirements of the district that it is in. If a proposed lot is described by a governmental subdivision legal description, the proposed lot must be at least 5 acres in size and have 250 feet of frontage regardless of the 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.

Minor Subdivision



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

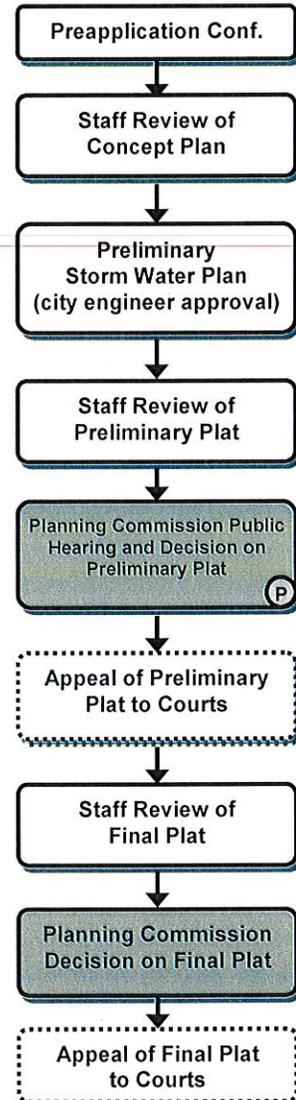
The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 50-37.5.J.3 below.

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;
- (d) Is consistent with any approved district plan covering all or part of the area of the preliminary plat;

Subdivision Plat Approval or Amendment



(P) Indicates Public Hearing Required

- (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 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.

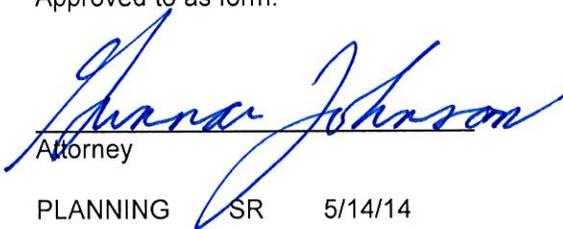
6. Registered Land Survey Recording

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.

Section 4. That this ordinance shall take effect 30 days after its passage and publication.

Approved to as form:


Attorney
PLANNING SR 5/14/14

STATEMENT OF PURPOSE: This ordinance implements text amendments to chapter 50 of the City Code, known as the Unified Development Chapter (UDC). It replaces the current subdivision regulations with new language that is in conformance with state statutes relating to municipal planning and subdivision regulations (462, 505, and 508). The proposed change include clarifying the applicability of subdivision regulations (including property transfers and conveyance by metes and bounds), adding provisions for minor subdivisions (to replace the current quick plat process), and the length of approval for preliminary and final plats.

The proposed changes were discussed at a published public hearing on May 13, 2014. After the public hearing was closed, the Duluth Planning Commission made a motion to approve the recommended amendments to the subdivision regulations with a vote of 8 yeas, 0 nays and 0 abstentions, with 1 Planning Commission member being absent from the meeting.

Action Deadline: Not Applicable

PL: 14-027



City of Duluth
Planning Division

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218-730-5580 • Fax: 218-730-5904 • www.duluthmn.gov

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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.

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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 1/2 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



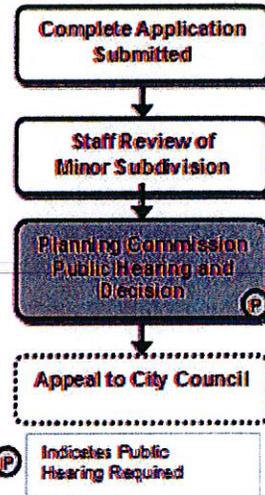
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D Minor Subdivision

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.

Minor Subdivision



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;



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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;

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- (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.

→ Current Language

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.

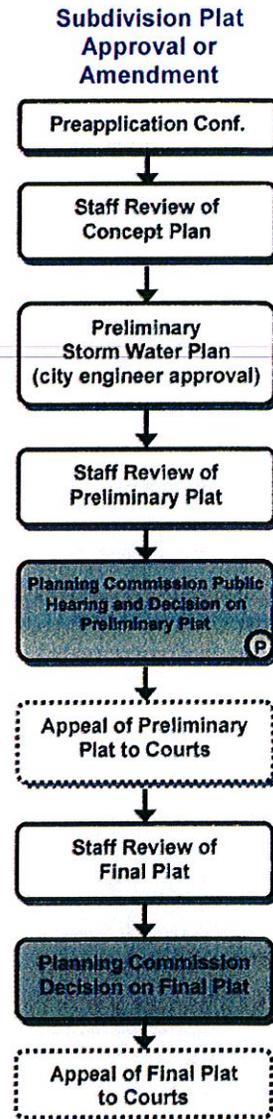
B. Subdivision Preliminary Plat Procedure

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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50-37: Review and Approval Procedures

- (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:

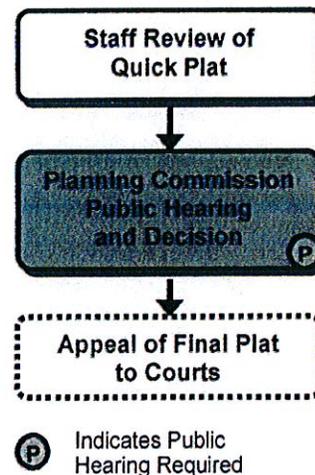
1. Streets allowing access to and among the platted lots and connecting each platted lot to the public street system. All streets shall be open to the public unless the planning commission waives this requirement;
2. Curbs, gutters, sidewalks and street lighting, except in the case of the R-C, RR-1 and 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.

Quick Plat Approval



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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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May 6, 2014

City of Duluth Planning Commission
411 West First Street
Duluth, MN 55802

Re: 50-37.5 City of Duluth UDC Text Amendment for Subdivisions

Dear Commissioners:

Thank you for the opportunity to speak at the Planning Commission Meeting held on April 30, 2014 to voice my concern with a specific aspect of the proposed subdivision language.

I agree that the existing language needs to be changed to clarify various existing issues. I appreciate the outgoing nature of city staff to solicit comments from multiple sources as well as their receptive attitude to our suggestions.

The one concern that I continue to have is the splitting of large unplatted abstract parcels of land. Under the proposed language, if you own registered property or previously platted abstract property there are processes to address simple splits into four or fewer lots (Minor Subdivision Plat / Registered Land Survey). However, if you own a previously unplatted abstract parcel of land which is, for example, 35 acres and you wish to split it into two parcels, you are forced to complete a Chapter 505 plat, which is burdensome. I believe that it is burdensome to the point that it would be restrictive to some of my future clients.

St. Louis County Ordinance 60, Article VI, Section 6.1, has a provision for this situation which allows for a split of previously unplatted abstract land into three or fewer parcels with a minimum parcel size of 2.5 acres and 200 feet in lot width and road frontage (providing that it meets the current zoning requirements) without performing a Chapter 505 plat. It has been mentioned that the City of Duluth is prevented from instituting a similar policy per MN Statute 462.358, Subd 4b. that states:

Subd. 4b. Restrictions on filing and recording conveyances. (a) In a municipality in which subdivision regulations are in force and have been filed or recorded as provided in this section, no conveyance of land to which the regulations are applicable shall be filed or recorded, if the land is described in the conveyance by metes and bounds or by reference to an unapproved registered land survey made after April 21, 1961 or to an unapproved plat made after such regulations become effective.

It then goes on to list exceptions, which have been duplicated in UDC language

I agree that this does limit the ability to approve land conveyed by metes and bounds descriptions, but I would like to note that it does not restrict conveyances which are made by governmental subdivision.

A metes and bounds legal description is a description which describes the individual courses of a boundary, such as "...North 45°13'56" East for a distance of 403.12 feet; thence South 10°34'51" East for a distance of 203.12 feet..."

A governmental subdivision legal description would read "The southeast quarter of the southeast quarter of Section 3, Township 52 North, Range 15 West" It is further defined in Minnesota State Statute 508.47, Subd 3. Definitions:

- (a) A full government subdivision is defined as a government lot, a quarter-quarter section, a quarter-quarter-quarter section ad infinitum;*
- (b) A simple fractional part of a full government subdivision is defined as: one-half; two-thirds; one-fourth, and similar fractions;*
- (c) A simple quantity part of a full government subdivision is defined as: 20 acres; 200 feet, ten chains, and similar quantities.*

These are two completely different methods of legal descriptions. I concede that in the above example splitting a previously unplatted abstract 35 acre parcel into two smaller parcels could not be done by metes and bounds without a Chapter 505 plat. However, I believe that the City of Duluth is not restricted by Minnesota State Statutes to approve a split of said land by governmental subdivision without requiring a Chapter 505 plat.

As most larger parcels are still described by governmental subdivision and not by metes and bounds, I feel that most of my concerns could be alleviated with the addition of language in Section D, Minor Subdivision Plat, to allow the subdivision of previously unplatted property into four or fewer lots which meet the current zoning requirements if the conveyance is performed by governmental subdivision and not by metes and bounds.

This could be accomplished by adding the following or similar language in Section D, Minor Subdivision Plat, 1, (a):

(a) The lot or lots to be subdivided or combined are previously platted lots and have frontage on an improved public street OR are previously unplatted lots that have frontage on an improved street and are not described in the conveyance:

- 1. by metes and bounds or*
- 2. by reference to an unapproved registered land survey made after April 21, 1961 or*
- 3. to an unapproved plat made after Minnesota Statute 462.358 became effective*

I believe that the addition of such language would be in keeping with the spirit of the state statutes, would be similar to St. Louis County's Ordinance, and would be in the best interest of the citizens of Duluth.

Thank you for your consideration,

David Szyszkoski
Minnesota Professional Land Surveyor 47046

