
CITY OF MOTLEY

BOARD OF ADJUSTMENT/ PLANNING COMMISSION

MEETING PACKET FOR
September 24, 2013



CITY OF MOTLEY
PLANNING AND ZONING COMMISSION
AGENDA
September 24, 2013
6:00 pm – Motley City Hall

1. Call to Order
2. Roll Call
3. Public Hearings
(NOTE: members of the public wishing to comment on a particular public hearing will be given an opportunity during the appropriate public hearing)
 - a. Ordinance Amendment to Sections III (Definitions) and 9.6 (Variances) of the same ordinance regarding the criteria for deciding on variance requests. Both ordinance amendments are intended to bring the City's ordinance into compliance with recent changes to state law.
 - i. Applicant(s): City of Motley
 - b. Ordinance Amendment to Section 6.10 of the City of Motley Land Use and Subdivision Ordinance regarding the procedures for determining fair market value of land when calculating park dedication fees.
 - i. Applicant(s): City of Motley
4. Additions or Deletions to Agenda
5. Open Forum
(NOTE: the open forum is an opportunity for members of the public to comment on any item not related to a specific agenda item, but relating to land use regulations or planning within the City)
6. Approval of Minutes
 - a. August 27, 2013
7. Planning and Zoning Administrator's Report
8. Other Business
 - a. Discussion – Options/Ideas for Comprehensive Plan update process
 - b. Training Session (if time allows) – Overview of Zoning/Subdivision Ordinances and Basic Zoning Terminology
9. Adjournment

This agenda is not exclusive. Other business may be discussed as deemed necessary.

Members of the public:

Please see the next page for the City of Motley's policy regarding "Standards of Conduct at Public Meetings".

CITY OF MOTLEY
STANDARDS OF CONDUCT AT PUBLIC MEETINGS

The City Council encourages good-faith testimony from its citizens and desires to provide an environment based on respect and civility. In order to do so, the City Council of the City of Motley has established the following Standards of Conduct at Public Meetings, based on the norms of acceptable and courteous business behavior:

1. Members of the audience wishing to address the Council shall first secure the permission of the Chairperson.
2. Members of the audience will refrain from disruptive actions such as hand clapping, stamping of feet, whistling, cheering, yelling or similar demonstrations, which conduct disturbs the peace and good order of the meeting and which conduct might have an intimidating effect upon members of opposing viewpoints.
3. Persons addressing the City shall also refrain from slurs against race, creed, color, religion, national origin, gender, sexual or affectional orientation, marital status, familial status, age, disability, or status with regard to public assistance.
4. Profanity, slander, false statements, violence, or the threat of violence in any form shall not be tolerated.
5. City Officials shall also comply with these **STANDARDS OF CONDUCT**, the City of Motley's **CODE OF ETHICS FOR PUBLIC OFFICIALS** and the **CITY OF MOTLEY CONFLICTS OF INTEREST POLICY**.

Violations of these **STANDARDS** shall be determined by the opinion of the Chairperson of the meeting or, absent such opinion, by the opinion of the majority of the members of the deliberating body.

1. Any person violating these standards shall be called to order by the Chairperson of the meeting. If such conduct continues, said person may, at the discretion of the Chairperson, lose the floor. With the exception of Elected Public Officials (e.g. City Council) at City Council meetings, said person may be denied further audience before the City for that meeting.
2. If said person refuses to come to order and obey the directives of the Chairperson of the meeting, the Chairperson may request that said person leave the building. An exception to this is made for Elected Public Officials at City Council meetings as protected by law.

STAFF REPORT

Application: Ordinance Amendment to Sections III (Definitions) and 9.6 (Variances) of the same ordinance regarding the criteria for deciding on variance requests. Both ordinance amendments are intended to bring the City's ordinance into compliance with recent changes to state law.

Applicant: City of Motley

Agenda Item: 3(a)

Background Information:

- **Proposal:** The proposed ordinance amendment would be for the purpose of complying with changes the Minnesota State Legislature made to the state statutes regarding the criteria that must be met to obtain a variance. Essentially, the Legislature made a change that established the same criteria for variances in cities as had previously existed in counties. These changes were made in 2011.

Applicable Statutes/Ordinances:

Minnesota State Statutes

Sec. 2. Minnesota Statutes 2010, section 462.357, subdivision 6, is amended to read:

Subd. 6. **Appeals and adjustments.** Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the ~~literal provisions of the ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. "Undue hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner;~~ and the variance, if granted, will not alter the essential

character of the locality. Economic considerations alone ~~shall do not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.~~ Undue hardship also includes practical difficulties. Practical difficulties include, but is are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not ~~permitted~~ allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances ~~to insure compliance and to protect adjacent properties.~~ A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

EFFECTIVE DATE. This section is effective the day following final enactment.

Presented to the governor May 2, 2011

Signed by the governor May 5, 2011, 3:03 p.m.

City of Motley Ordinances

SECTION XI - SEPARABILITY, SUPREMACY, EFFECTUATION, AMENDMENTS, NOTICES

11.4 Amendment.

The City Council may adopt amendments by 4/5 vote to either the Zoning Ordinance or Zoning map in relation to the land uses within a District or the boundaries of the District(s). Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals of the community or changes in the conditions of the City.

1. Procedure.

- A. An amendment may be initiated by the Council, the Planning Commission or by any property owner.
- B. The Zoning Administrator shall review the proposed changes and make a recommendation to the Planning Commission.
- C. The Planning Commission shall make a reasonable attempt to cause all property owners within a minimum of 350 feet of proposed Zoning District change to be notified by regular mail and shall publish a hearing notice for either a Zoning District change or Zoning Ordinance change in the legal section of the official newspaper and shall provide notice to the DNR at least 10 days ahead of the public hearing. The Planning Commission shall hold the hearing and make a timely recommendation to the City Council. Adoption of a new Zoning map shall require published notice only. The Planning Commission shall consider the criteria for land use categories, Sec 5.1(8), in its decision.

- D. The City Council shall review the recommendations and shall make a timely decision. An amendment requires a 4/5 vote to be enacted.
- E. The City Clerk shall publish a summary of the text of the change or description of boundary change or a new Zoning map, whichever is appropriate, in the official newspaper within 30 days after action by the Council and shall send a copy to the DNR.

Planning Commission / Board of Adjustment Direction: The Planning Commission / Board of Adjustment may recommend to the City Council approval of the ordinance amendment, denial of the ordinance amendment, or table the request for more research or discussion.

Staff Recommendation: Staff recommends adoption of the proposed ordinance amendment, as it will bring the City into compliance with state law.

SECTION III - RULES AND DEFINITIONS

~~110. **Hardship, Undue.** The property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to circumstances unique to the property and were not created by the landowner, and a variance, if granted, would not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if reasonable use exists under the terms of the Ordinance.~~

(Insert new) **Practical difficulties.** As used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.

~~241. **Variance.** A legally permitted deviation from the provisions of this ordinance, as deemed necessary by the Board of Adjustment when the strict interpretation of the Ordinance would create undue hardship and be impractical because of circumstances, relating to lot size, shape, topography or other characteristics of the property, and when the deviation from the Ordinance, with any attached conditions, will still be in keeping with the spirit and intent of the Ordinance. Variances cannot create a land use not permitted in a zone.~~

SECTION IX - ADMINISTRATION

9.6 Variances.

~~1. Variances shall not create a use not provided for in a zoning district.~~

~~2. Variances shall be issued to the property and are not transferable.~~

1. Variance requests shall require a public hearing before be issued to the property for structures or other specified uses, as recommended by the Planning Commission after a public hearing. The Planning Commission shall issue its recommendation to the City Council, who shall make a final decision, and approved by the City Council.

~~3.2.~~ All applications for a Variance shall be submitted to the Zoning Administrator **30** days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The Zoning Administrator shall notify all property owners within a minimum of 350 feet by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 10 days ahead of the public hearing. The Zoning Administrator shall send the same notice 10 days in advance of this hearing to the DNR if the proposed is in shoreland. At the applicant's option, the applicant may request a sketch plan review with no action by the Planning Commission and with no fee by giving 14 days notice thereof to the Zoning Administrator, meeting time permitted.

~~4.3.~~ Submissions for Variances. The applicant shall complete the Variance application approved by the City Council. The application shall contain submittal requirements, criteria for approval, procedure for consideration and City contact information. The City shall not accept applications

where the applicant has past due fees or charges due to the City until the account is made current.

5.4. In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions¹.

6.5. Variances shall be decided within the required time frame with consideration for the following:

- A. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan.
- B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.
- C. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.
- D. Economic considerations alone do not constitute practical difficulties.
- E. A variance may not permit any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.
- F. The city may impose conditions in the granting of variances provided it is directly related to and bears a rough proportionality to the impact created by the variance.
- G. Variances shall be issued to the property and are not transferable.
- ~~A. The strict interpretation of the Ordinance would create undue hardship, and~~
- ~~B. The strict interpretation of the Ordinance would be impractical because of — circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner, and~~
- ~~C. The deviation from the Ordinance with any attached conditions will still be in keeping with the spirit and intent of the Ordinance, and~~
- ~~D. The variance will not create a land use not permitted in the zone, and~~
- ~~E. The variance will not alter the essential character of the locality, and~~
- ~~F. The variance is not for economic reasons alone, but reasonable use of the property does not exist under the Ordinance.~~

7.6. When costs to the City involved in processing and reviewing an application exceeds the original application fees, the applicant shall reimburse the City for any additional costs. Such expenses may include, but are not limited to, payroll, mailing costs, consultant fees and other professional services the City may need to retain in reviewing permits.

8.7. Failure by the owner to act within 6 months on a Variance unless extended by the Board of Adjustment shall void the Variance. A second extension shall require a new public hearing. This provision shall apply to any Variance outstanding at the time of the Ordinance adoption.

9.8. Appeals from the action of the City Council shall be filed with the District Court within 30 days after Council action.

10.9. The Variance shall be filed with the County Recorder within 45 days.

¹ Amended by Ordinance 153.05, 3/9/2010

STAFF REPORT

Application: Ordinance Amendment to Section 6.10 of the City of Motley Land Use and Subdivision Ordinance regarding the procedures for determining fair market value of land when calculating park dedication fees.

Applicant: City of Motley

Agenda Item: 3(b)

Background Information:

- **Proposal:** The proposed ordinance amendment would be for the purpose of complying with changes the Minnesota State Legislature made to the state statutes regarding the manner in which property values are determined for the purposes of park dedication (during a subdivision process). These changes were made in 2011.

Applicable Statutes/Ordinances:

Minnesota State Statutes

Sec. 41. Minnesota Statutes 2012, section 462.358, subdivision 2b, is amended to read:

Subd. 2b. **Dedication.** (a) The regulations may require that a reasonable portion of the buildable land, as defined by municipal ordinance, of any proposed subdivision be dedicated to the public or preserved for public use as streets, roads, sewers, electric, gas, and water facilities, storm water drainage and holding areas or ponds and similar utilities and improvements, parks, recreational facilities as defined in section 471.191, playgrounds, trails, wetlands, or open space. The requirement must be imposed by ordinance or under the procedures established in section 462.353, subdivision 4a.

(b) If a municipality adopts the ordinance or proceeds under section 462.353, subdivision 4a, as required by paragraph (a), the municipality must adopt a capital improvement budget and have a parks and open space plan or have a parks, trails, and open space component in its comprehensive plan subject to the terms and conditions in this paragraph and paragraphs (c) to (i).

(c) The municipality may choose to accept a cash fee as set by ordinance from the applicant for some or all of the new lots created in the subdivision, based on the average fair market value of the unplatted land for which park fees have not already been paid that is, no later than at the time of final approval or under the city's adopted comprehensive plan, to be served by municipal sanitary sewer and water service or community septic and private well as authorized by state law. For purposes of redevelopment on developed land, the municipality may choose to accept a cash fee based on fair market value of the land no later than the time of final approval. "Fair market value" means the value of the land as determined by the municipality annually based on tax valuation or other relevant data. If the municipality's calculation of valuation is objected to by the applicant, then the value shall be as negotiated between the municipality and the applicant, or based on the market value as determined by the municipality based on an independent appraisal of land in a same or similar land use

category.

(d) In establishing the portion to be dedicated or preserved or the cash fee, the regulations shall give due consideration to the open space, recreational, or common areas and facilities open to the public that the applicant proposes to reserve for the subdivision.

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

(f) Cash payments received must be placed by the municipality in a special fund to be used only for the purposes for which the money was obtained.

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

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

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

City of Motley Ordinances

SECTION XI - SEPARABILITY, SUPREMACY, EFFECTUATION, AMENDMENTS, NOTICES

11.4 Amendment.

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1. Procedure.

- A. An amendment may be initiated by the Council, the Planning Commission or by any property owner.
- B. The Zoning Administrator shall review the proposed changes and make a recommendation to the Planning Commission.
- C. The Planning Commission shall make a reasonable attempt to cause all property owners within a minimum of 350 feet of proposed Zoning District change to be notified by regular mail and shall publish a hearing notice for either a Zoning District change or Zoning Ordinance change in the legal section of the official newspaper and shall provide notice to the DNR at least 10 days ahead of the public

hearing. The Planning Commission shall hold the hearing and make a timely recommendation to the City Council. Adoption of a new Zoning map shall require published notice only. The Planning Commission shall consider the criteria for land use categories, Sec 5.1(8), in its decision.

- D. The City Council shall review the recommendations and shall make a timely decision. An amendment requires a 4/5 vote to be enacted.
- E. The City Clerk shall publish a summary of the text of the change or description of boundary change or a new Zoning map, whichever is appropriate, in the official newspaper within 30 days after action by the Council and shall send a copy to the DNR.

Planning Commission / Board of Adjustment Direction: The Planning Commission / Board of Adjustment may recommend to the City Council approval of the ordinance amendment, denial of the ordinance amendment, or table the request for more research or discussion.

Staff Recommendation: Staff recommends adoption of the proposed ordinance amendment, as it will bring the City into compliance with state law.

SECTION VI - SUBDIVISION STANDARDS

6.10 Dedication to the Public – Standards.

1. In accordance with the provisions of Section 462.358 of the Minnesota Statutes, or amendments thereto, the sub divider shall dedicate, to the public, lands for highway right of ways, street right of ways, utility easements, wetland easements and similar lands required for perpetual and public improvements.
2. In addition, for every new subdivision of land involving three or more lots which are to be developed for residential purposes, the Planning Commission, with the concurrence of the City Council, shall require a payment to the City, in lieu of a land dedication for conservation purposes or for public use as parks, recreational facilities, playgrounds, trails, wetlands or open space, of a sum not to exceed ten percent (10%), of the fair market value of the land to be subdivided. The fair market value of the land to be subdivided shall be determined as per MN Statutes 462.358, subdivision 2b. ~~the value as determined by the Morrison and/or Cass County Assessor at the time of Final Plat approval by the City Council.~~ The amount of the payment shall be set by the Planning Commission, with the concurrence of the City Council, after taking into consideration the open space, park, recreational or common areas and facilities with the applicant proposes to reserve for public use within the subdivision. Funds received by the City, in lieu of land dedication, shall be placed in a special fund in accordance with Section 462.358, Subdivision 2b, of the Minnesota Statutes.
3. All dedications shall be included in the dedicated portion of the plat, included in the development contract, or received by the City in Warranty Deed prior to the approval of the final plat, without further restrictions or reservations.

AGENDA ITEM 8 - OTHER BUSINESS

a. Discussion - Planning Commission/Board of Adjustment Policy

The City Council approved the Planning Commission Policy at their September meeting. A copy of the final version will be distributed at the meeting for inclusion in your zoning portfolio/binder (we can also assess where everyone is at with their binders, to ensure everything is up to date).

b. Discussion - Options/Ideas for Comprehensive Plan update process

Staff presented a number of options/ideas for a Comprehensive Plan update process, including budgetary options, at the July meeting. The Commission asked for time to review those options and place it back on the agenda for the September meeting.

The intent of the information handed out in July was to move toward a more concrete "outline" of what the City wants in a Comprehensive Plan update (if it decides it wants to move forward on an update) and some rough budget options. At that point, I would be happy to present a more detailed budget proposal based on that outline. The City could also request proposals from other organizations should it wish based on the same outline so that the proposals are for the same scope of work.

c. Training Session (if time allows)

Staff will present a training session regarding Basic Zoning Terminology as well as a basic summary of the City's existing Zoning/Land Use ordinances.