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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4015

03/02/2020 Authored by Elkins, Mekeland, Stephenson, Theis, Nash and others
The bill was read for the first time and referred to the Committee on Government Operations

1.1 A bill for an act
1.2 relating to local government; limiting planning and zoning controls that increase
1.3 housing costs and limit availability of affordable housing; amending Minnesota
1.4 Statutes 2018, sections 394.24, subdivision 1; 462.357, subdivision 2; 462.358,
1.5 subdivisions 2a, 2b; 462.3612, subdivision 2; 473.858, subdivision 1; 473.865,
1.6 subdivisions 2, 3; proposing coding for new law in Minnesota Statutes, chapter
1.7 462.

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

1.9 Section 1. Minnesota Statutes 2018, section 394.24, subdivision 1, is amended to read:

1.10 Subdivision 1. **Adopted by ordinance.** Official controls which shall further the purpose
1.11 and objectives of the comprehensive plan and parts thereof shall be adopted by ordinance.
1.12 The comprehensive plan must provide guidelines for the timing and sequence of the adoption
1.13 of official controls to ensure planned, orderly, and staged development and redevelopment
1.14 consistent with the comprehensive plan. Official controls do not conflict with a
1.15 comprehensive plan if they permit all of the uses that are permitted or required in the
1.16 comprehensive plan at the densities permitted or required by the comprehensive plan, and
1.17 they prohibit all of the uses that are expressly prohibited by the comprehensive plan.

1.18 Sec. 2. Minnesota Statutes 2018, section 462.357, subdivision 2, is amended to read:

1.19 Subd. 2. **General requirements.** (a) At any time after the adoption of a land use plan
1.20 for the municipality, the planning agency, for the purpose of carrying out the policies and
1.21 goals of the land use plan, may prepare a proposed zoning ordinance and submit it to the
1.22 governing body with its recommendations for adoption.

2.1 (b) Subject to the requirements of subdivisions 3, 4, and 5, the governing body may
 2.2 adopt and amend a zoning ordinance by a majority vote of all its members. The adoption
 2.3 or amendment of any portion of a zoning ordinance which changes all or part of the existing
 2.4 classification of a zoning district from residential to either commercial or industrial requires
 2.5 a two-thirds majority vote of all members of the governing body.

2.6 (c) The land use plan must provide guidelines for the timing and sequence of the adoption
 2.7 of official controls to ensure planned, orderly, and staged development and redevelopment
 2.8 consistent with the land use plan. Official controls do not conflict with a land use plan if
 2.9 they permit all of the uses that are permitted or required in the land use plan at the densities
 2.10 permitted or required by the land use plan, and they prohibit all of the uses that are expressly
 2.11 prohibited by the land use plan.

2.12 Sec. 3. **[462.3575] LIMITING REGULATIONS ON RESIDENTIAL**
 2.13 **DEVELOPMENT.**

2.14 Subdivision 1. **Application.** This section applies to official controls adopted under
 2.15 sections 462.357, 462.358, and 462.3595.

2.16 Subd. 2. **Planned unit development.** A municipality must not require the use of a
 2.17 planned unit development for residential development under a zoning ordinance, subdivision
 2.18 regulation, or as a conditional use. If an applicant elects to use a planned unit development
 2.19 that includes residential development, the municipality cannot use the development agreement
 2.20 to require fees or demand design standards above those prescribed by law.

2.21 Subd. 3. **Duplexes.** A two-family residential building, also known as a duplex, is a
 2.22 permitted use in all areas zoned for single-family residential use and in any residential
 2.23 subdivision development.

2.24 Subd. 4. **Limitation on aesthetic mandates.** A municipality must not condition approval
 2.25 of a building permit, subdivision development, or planned unit development on the use of
 2.26 specific materials, design, amenities, or other aesthetic conditions that are not required by
 2.27 the State Building Code.

2.28 Sec. 4. Minnesota Statutes 2018, section 462.358, subdivision 2a, is amended to read:

2.29 Subd. 2a. **Terms of regulations.** (a) The standards and requirements in the regulations
 2.30 may address without limitation: the size, location, grading, and improvement of lots,
 2.31 structures, public areas, streets, roads, trails, walkways, curbs and gutters, water supply,
 2.32 storm drainage, lighting, sewers, electricity, gas, and other utilities; the planning and design

3.1 of sites; access to solar energy; and the protection and conservation of floodplains, shore
3.2 lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features. The
3.3 regulations shall require that subdivisions be consistent with the municipality's official map
3.4 if one exists and its zoning ordinance, and may require consistency with other official
3.5 controls and the comprehensive plan. The regulations may prohibit certain classes or kinds
3.6 of subdivisions in areas where prohibition is consistent with the comprehensive plan and
3.7 the purposes of this section, particularly the preservation of agricultural lands. The regulations
3.8 may prohibit, restrict or control development for the purpose of protecting and assuring
3.9 access to direct sunlight for solar energy systems. The regulations may prohibit the issuance
3.10 of permits or approvals for any tracts, lots, or parcels for which required subdivision approval
3.11 has not been obtained.

3.12 (b) Regulations do not conflict with a comprehensive plan if they permit all of the uses
3.13 that are permitted or required in the comprehensive plan at the densities permitted or required
3.14 by the comprehensive plan, and they prohibit all of the uses that are expressly prohibited
3.15 by the comprehensive plan.

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

3.24 (d) A municipality may require that an applicant establish an escrow account or other
3.25 financial security for the purpose of reimbursing the municipality for direct costs relating
3.26 to professional services provided during the review, approval and inspection of the project.
3.27 A municipality may only charge the applicant a rate equal to the value of the service to the
3.28 municipality. Services provided by municipal staff or contract professionals must be billed
3.29 at an established rate.

3.30 (e) When the applicant vouches, by certified letter to the municipality, that the conditions
3.31 required by the municipality for approval under this subdivision have been satisfied, the
3.32 municipality has 30 days to release and return to the applicant any and all financial securities
3.33 tied to the requirements. If the municipality fails to release and return the letters of credit
3.34 within the 30-day period, any interest accrued will be paid to the applicant. If the municipality
3.35 determines that the conditions required for approval under this subdivision have not been

4.1 satisfied, the municipality must send written notice within seven business days upon receipt
 4.2 of the certified letter indicating to the applicant which specific conditions have not been
 4.3 met. The municipality shall require a maintenance or performance bond from any
 4.4 subcontractor that has not yet completed all remaining requirements of the municipality.

4.5 (f) The regulations may permit the municipality to condition its approval on compliance
 4.6 with other requirements reasonably related to the provisions of the regulations and to execute
 4.7 development contracts embodying the terms and conditions of approval. The municipality
 4.8 may enforce such agreements and conditions by appropriate legal and equitable remedies.

4.9 (g) The municipality may not require land dedications or fees in the development contract
 4.10 that are not authorized by statute or mutually agreed upon by all parties. In addition, the
 4.11 amount of financial security for work authorized by the municipality must have a rough
 4.12 proportionality to the work to be completed by either the municipality or the applicant.
 4.13 Unless otherwise agreed, at least seven days before any approval that requires a development
 4.14 contract, the municipality must provide a copy of the complete development contract,
 4.15 including all exhibits, to the applicant. The municipality may enforce such agreements and
 4.16 conditions by appropriate legal and equitable remedies.

4.17 Sec. 5. Minnesota Statutes 2018, section 462.358, subdivision 2b, is amended to read:

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

4.25 (b) If a municipality adopts the ordinance or proceeds under section 462.353, subdivision
 4.26 4a, as required by paragraph (a), the municipality must adopt a capital improvement budget
 4.27 and have a parks and open space plan or have a parks, trails, and open space component in
 4.28 its comprehensive plan subject to the terms and conditions in this paragraph and paragraphs
 4.29 (c) to (i).

4.30 (c) The municipality may choose to accept a cash fee as set by ordinance from the
 4.31 applicant for some or all of the new lots created in the subdivision, based on the average
 4.32 fair market value of the unplatted land for which park fees have not already been paid that
 4.33 is, no later than at the time of final approval or under the city's adopted comprehensive plan,
 4.34 to be served by municipal sanitary sewer and water service or community septic and private

5.1 well as authorized by state law. For purposes of redevelopment on developed land, the
5.2 municipality may choose to accept a cash fee based on fair market value of the land no later
5.3 than the time of final approval. ~~"Fair market value" means the value of the land as determined~~
5.4 ~~by the municipality annually based on tax valuation or other relevant data.~~ The total fee for
5.5 parks and trails, if applicable, must not exceed five percent of the fair market value and may
5.6 be imposed on an acreage or unit basis. If the municipality's calculation of valuation is
5.7 objected to by the applicant, then the value shall be as negotiated between the municipality
5.8 and the applicant, or based on the market value as determined by the municipality based on
5.9 an independent appraisal of land in a same or similar land use category.

5.10 (d) In establishing the portion to be dedicated or preserved or the cash fee, the regulations
5.11 shall give due consideration to the open space, recreational, or common areas and facilities
5.12 open to the public that ~~the applicant proposes to reserve~~ will be reserved for the subdivision.
5.13 The value of any portion dedicated or preserved for park or trail purposes shall be deducted
5.14 from any cash fee so that the applicant is not penalized for including open space, recreational,
5.15 or common areas and facilities in their development proposal.

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

5.18 (f) Cash payments received must be placed by the municipality in a special fund to be
5.19 used only for the purposes for which the money was obtained. The municipality must
5.20 maintain records detailing the purposes for which the money was obtained and the manner
5.21 in which it was spent to further those purposes. The records must be readily available to the
5.22 applicant upon request.

5.23 (g) Cash payments received must be used only for the acquisition and development or
5.24 improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open space
5.25 based on the approved park systems plan. Cash payments must not be used for ongoing
5.26 operation or maintenance of parks, recreational facilities, playgrounds, trails, wetlands, or
5.27 open space. The municipality must maintain records demonstrating the manner in which
5.28 each cash payment was used.

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

5.32 (i) Previously subdivided property from which a park dedication has been received,
5.33 being resubdivided with the same number of lots, is exempt from park dedication

6.1 requirements. If, as a result of resubdividing the property, the number of lots is increased,
 6.2 then the park dedication or per-lot cash fee must apply only to the net increase of lots.

6.3 Sec. 6. Minnesota Statutes 2018, section 462.3612, subdivision 2, is amended to read:

6.4 Subd. 2. **Conditions; contents.** The responsible municipality ~~may~~ must prepare a housing
 6.5 fiscal impact note prior to the public hearing on the proposed adoption or amendment of an
 6.6 official control.

6.7 The housing fiscal impact note ~~may~~ must:

6.8 (1) estimate in dollar amounts the increase or decrease in the costs as a result of the
 6.9 municipal proposed action;

6.10 (2) specify long-range implications of the proposed action;

6.11 (3) describe appropriate alternatives to the proposed action; and

6.12 (4) discuss the rationale for the proposed change.

6.13 Sec. 7. Minnesota Statutes 2018, section 473.858, subdivision 1, is amended to read:

6.14 Subdivision 1. **No conflicting zoning, fiscal device, official control.** Within nine months
 6.15 following the receipt of a metropolitan system statement for an amendment to a metropolitan
 6.16 system plan and within three years following the receipt of a metropolitan system statement
 6.17 issued in conjunction with the decennial review required under section 473.864, subdivision
 6.18 2, every local governmental unit shall have reviewed and, if necessary, amended its
 6.19 comprehensive plan in accordance with sections 462.355, 473.175, and 473.851 to 473.871
 6.20 and the applicable planning statute and shall have submitted the plan to the Metropolitan
 6.21 Council for review pursuant to section 473.175. The provisions of sections 462.355, 473.175,
 6.22 and 473.851 to 473.871 shall supersede the provisions of the applicable planning statute
 6.23 wherever a conflict may exist. If the comprehensive municipal plan is in conflict with the
 6.24 zoning ordinance, the zoning ordinance shall be brought into conformance with the plan by
 6.25 local government units in conjunction with the review and, if necessary, amendment of its
 6.26 comprehensive plan required under section 473.864, subdivision 2. A local government
 6.27 unit shall not adopt any fiscal device or official control which is in conflict with its
 6.28 comprehensive plan, including any amendments to the plan, or which permits activity in
 6.29 conflict with metropolitan system plans, as defined by section 473.852, subdivision 8. The
 6.30 comprehensive plan shall provide guidelines for the timing and sequence of the adoption
 6.31 of official controls to ensure planned, orderly, and staged development and redevelopment
 6.32 consistent with the comprehensive plan. ~~For purposes of this section, a fiscal device or~~

7.1 ~~official control shall not be considered to be in conflict with a local government unit's~~
 7.2 ~~comprehensive plan or to permit an activity in conflict with metropolitan system plans if~~
 7.3 ~~such fiscal device or official control is adopted to ensure the planned, orderly, and staged~~
 7.4 ~~development of urbanization or redevelopment areas designated in the comprehensive plan~~
 7.5 ~~pursuant to section 473.859, subdivision 5.~~ Fiscal devices and official controls do not conflict
 7.6 with a comprehensive plan if they permit all of the uses that are permitted or required in
 7.7 the comprehensive plan at the densities permitted or required by the comprehensive plan,
 7.8 and they prohibit all of the uses that are expressly prohibited by the comprehensive plan.

7.9 **APPLICATION.** This section applies in the counties of Anoka, Carver, Dakota,
 7.10 Hennepin, Ramsey, Scott, and Washington.

7.11 Sec. 8. Minnesota Statutes 2018, section 473.865, subdivision 2, is amended to read:

7.12 Subd. 2. **No conflict with plans.** A local governmental unit shall not adopt any official
 7.13 control or fiscal device which is in conflict with its comprehensive plan or which permits
 7.14 activity in conflict with metropolitan system plans. Fiscal devices and official controls do
 7.15 not conflict with a comprehensive plan if they permit all of the uses that are permitted or
 7.16 required in the comprehensive plan at the densities permitted or required by the
 7.17 comprehensive plan, and they prohibit all of the uses that are expressly prohibited by the
 7.18 comprehensive plan.

7.19 **APPLICATION.** This section applies in the counties of Anoka, Carver, Dakota,
 7.20 Hennepin, Ramsey, Scott, and Washington.

7.21 Sec. 9. Minnesota Statutes 2018, section 473.865, subdivision 3, is amended to read:

7.22 Subd. 3. **Amendments.** If an official control conflicts with a comprehensive plan as the
 7.23 result of an amendment to the plan, the official control shall be amended by the unit within
 7.24 nine months following the amendment to the plan or within 60 days of the submission of a
 7.25 development application that is not in conflict with the comprehensive plan, whichever
 7.26 occurs first, so as to not conflict with the amended comprehensive plan.

7.27 **APPLICATION.** This section applies in the counties of Anoka, Carver, Dakota,
 7.28 Hennepin, Ramsey, Scott, and Washington.