

MEMORANDUM

TO: Brian Frantz, Director of Planning and Zoning  
Village of Richfield  
FROM: Northstar Planning & Design LLC  
Mark Majewski AICP  
RE: PRIVATE STREETS, SHARED DRIVES, FLAG LOTS  
DATE: 16 September 2015

To follow up on our discussion with the Planning Commission regarding whether and how private streets, shared drives, and flag lots should be addressed as alternative means of lot access in the updated Subdivision Regulations, I have conducted some internet research to understand relevant issues, to assess current practices, and to develop a recommendation.

Private Streets

For purposes of discussion, I will define a private street as an improved street which is not publicly owned and maintained and which is used for access to two (2) or more lots which do not have frontage on public streets.

With regard to private streets, three general themes became apparent from my research.

- First, most communities favor public streets over private streets as a means of ensuring that property access is in the control of and largely managed and maintained by the communities themselves rather than by private parties. Providing and maintaining access to lots for private purposes and for the provision of public services is an essential function of local government.
- Second, subdivision regulations vary widely, with many communities appearing to: prohibit private streets (if not outright, then at least by omission); severely limit their use (permitting only in PUDs, multi-family developments, cluster developments, unique infill situations and the like); or list them as a very rarely used alternative.
- Third, many communities are working to take over - that is make public – some if not many existing private streets due to various problems relating to operations, maintenance, hazard, or need for reconstruction.

Based on my overview, it appears that at least the following pros and cons attend to the concept of private streets:

PROS

- Possible lower initial installation expense to developer (depending on required improvements) and perhaps to initial home buyers (if that savings is passed on in the sales price)
- Possible flexibility in street design, depending on village standards, with lower cost and higher lot yield.
- Potential for innovative site design potentially accompanied by benefits of alternative forms of housing and ownership, private open space/recreation
- For the community, possible limited or no maintenance costs while still collecting tax revenues which will not be expended on maintaining those privately operated streets. These savings may be modest, depending on the extent of the private streets.

- Some developers are able to plat one or more additional lots on an otherwise un-subdividable property. (This “additional density” may be a Pro or Con for the community depending on overall development objectives and specific locations)

#### CONS

- Lot owners on private streets “pay double” for their street – they are responsible for the operations, maintenance, repair, and replacement costs while likely paying the same local taxes as residents benefitting from frontage on publicly maintained streets
- Lot owners take on management burdens such as operating their “association”, contracting for snowplowing, storm sewer maintenance, repairs, etc. Depending on the nature of the improvements and the nature of the association, this may not be an efficient situation.
- The community puts the provision of some essential public responsibilities at risk (lot access, safety, other basic services) in the hands of private parties
- The community is put in a negative position when it is necessary to enforce requirements for maintenance or replacement or when the community negotiates cost recovery in the process of converting a private street to public – even if the circumstances are a “rescue” of the affected property owners
- After the initial lot owners create the private street, subsequent owners often are not aware of the liabilities they have acquired
- Private streets cannot be used for public through access, must be carefully permitted only where they will not interfere with likely future street development patterns

Considering the above, I suggest that private streets are generally not appropriate as a means of platting, access and development in the Village of Richfield. There appear to be significant potential liabilities – for both the community and lot owners - which can be avoided by requiring public street frontages for almost all lots.

It may nonetheless be wise to allow for some very limited circumstances in which a private street may benefit the community as well as property owners. Consideration should also be given to sizable condominium and homeowner association developments and commercial or industrial private streets.

I suggest that new language in the Subdivision Regulations address the following:

- Definition of a “private street”
- Establish a strong preference for public street frontage for all lots
- Establish the requirement that proposed private streets be subject to major subdivision review procedures (by both the Planning Commission and Village Council)
- Establish basic review standards including but not limited to demonstration that: public street development is not feasible or is not suitable to the proposed form of development; public benefit will result from the creation of a private street; there is private capacity to construct, operate, and maintain the private street in perpetuity; the private lots are not harmed; and that the future development of the immediate surrounds and the community at large is not harmed, including limitations on likely future street development patterns.

### Flag Lots

For purposes of discussion, I will define a flag lot as a lot which has a buildable area setback and detached from the public street and which has access to the street via a narrow, attached fee simple strip of land. The strip typically does not conform to the conventional width and frontage requirements of the zoning district in which it is located.

Communities vary in their approach to flag lots. Much depends on development character. Relevant topics include:

- Impact on neighborhood development character in short and long term
- Impact on future street development pattern – as well as public water and sewer pattern
- Relationships between front and rear yards of dwellings on frontages and flag lots
- Concentration of curb cuts on street frontage
- Safety and serviceability of homes on flag lots
- Permitted length of flag “poles”, i.e., distance from public right-of-way
- Benefit to property owners with deep lots which are otherwise not subdividable
- Avoidance of public street construction costs - but also reduced street maintenance cost for the community
- Driveway maintenance costs

There may be limited sites within the Village where flag lots are appropriate if carefully regulated.

Suggested standards may include the following:

- Permit a flag lot where existing lot is isolated among smaller, un-subdividable lots
- Front lot must be code conforming in all respects
- New rear lot must be oversized (perhaps double required lot area, not including area in the pole)
- Maximum one flag lot to be created
- Access by fee simple ownership of the pole only
- Review and approval by Planning Commission and with notice to neighbors/public hearing
- Not to be used where full subdivision/public street construction is feasible
- Access must be suitable for public emergency vehicles and drive construction feasible without significant environmental damage
- Turnaround area required sufficient for emergency vehicles
- Limit potential for flag lot to selected large lot residential zoning districts?
- Greater flexibility for industrial/office areas?

### Shared Drives

For purposes of discussion, I will define a shared drive as a driveway providing access to the public street for two or more code-conforming lots via an easement over one or more of those lots.

Provided that lots comply with the subdivision regulations (i.e., have conforming frontage and the potential to provide their own drives), the issue of shared drives is more of a site development standard than a subdivision topic.

Issues to consider regarding shared drives include the following for both the community and the affected property owners:

- Number of dwellings (or businesses) permitted to share a drive, benefitting from and potentially at access risk the provision and maintenance of that drive
- Permitted maximum length and nature of construction, particularly with regard to access for emergency vehicles
- Requirement for suitable, feasible, code-conforming alternative or replacement access routes for individual lots if the shared drive is abandoned
- Sufficiency of private maintenance agreements and easements
- Impacts on present and future area development pattern
- Potential community benefit from allowing shared drives since they may reduce the number of curb cuts, amount of pavement, heat gain, and storm water.

If private drives are permitted, it may be appropriate to address the following standards:

- limit the number of dwellings attached to a private drive (maximum 4 dwellings?) and limit length (maximum 200 feet?), thereby limiting the number of homes at risk if the drive becomes unsuitable for emergency vehicles and limiting the potential for drive deterioration due to lack of maintenance participation by affected lots.
- Require that all lots have code- conforming dimensions and public street frontage (so that separate drives could be constructed if necessary) unless they are approved flag lots.
- Recorded easement required