

Clay County MN Access Management Policy

October 2012

prepared by: Fargo-Moorhead Metropolitan Council of Governments

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Background. At the request of Clay County this project was included within Metro COG’s 2012 Unified Planning Work Program (UPWP). Under the project scope as approved by the County Commission on December 8, 2011; Metro COG will provide technical assistance regarding development and adoption of a county-wide access management policy. Clay County has an adopted *Development Code*, however, there are only a few non-descript regulations and guidelines pertaining to access management which are interpreted by the County to only apply to ‘new’ development.

What is Access Management? *Access Management* is a pro-active corridor management tool(s) which refers to a set of techniques which are utilized to minimize/control the number of conflict points on a corridor to preserve the functional integrity of the corridor. Access management policies are intended to ensure effective and reliable mobility by reducing crashes, traffic delays and congestion; while maximizing corridor capacity and functionality.

Why is an Access Management Policy Important? An effective, local access management policy/program or strategy can play an important role in preserving highway capacity, reducing crashes, minimizing costly remedial roadway improvements and establishing consistency on corridors in fringe areas which are likely to urbanize at some point in the future (key point for Clay County; ie. 12th Ave S corridor, etc.). Further, this type of policy provides a consistent framework and metric under which the roadway authority or local government body can analyze requests and issue defensible decisions respective to development or improvements on any type of property; irregardless of whether it is new “development” on platted or unplatted acreage or a non-development activity on platted or unplatted acreage (ie. access request).

Applicable County Comprehensive Plan Goals, Policies and Strategies. The Clay County Comprehensive Plan was adopted in July of 2002 and includes the following relevant goal and policy statements:

1. Transportation Goal No. 1 – Provide and maintain a safe, convenient and efficient County transportation system for the movement of people and goods.
 - a. Policy 1. Continue to cooperate with Mn/DOT, Clay County cities, Townships, Metro COG and other agencies involved in transportation planning to provide the most effective system for Clay County.
 - b. Policy 2. Adopt and support Metro COG and Mn/DOT Access Management Guidelines. *These Metropolitan Access Management ‘Guidelines’ were established in 2001 as part of the Minnesota Extraterritorial Corridor Preservation Planning Study (Ulteig Engineers, Inc.). The current Clay County Development Code does reference these ‘metro’ guidelines and the Mn/DOT Access Management Guidelines in a few specific locations, again, applicable only to new development (for further details and analysis see below) and which are probably somewhat questionable from an enforcement perspective. Not only should these guidelines be tailored to the needs of Clay County, the policy should also be inclusive and robust from a process, permitting, standards and penalty perspective; and adopted directly into the County’s Development Code.*

Applicability. Pursuant to Minnesota State Statute §160.02, §160.08 and §160.18 the County Board under the auspices of the statutorily defined ‘road authority’ has the ability to designate, locate, improve and maintain controlled-access highways for public use as deemed appropriate. Further, the road authority has the ability to design, regulate, restrict or prohibit access pursuant to terms and conditions as specified by the County. As noted in §160.02, this authorization applies to all “highways” under the County’s purview; inclusive of County Highways, County state-aid highways and township roads.

Applicable Statutory Definitions. These definitions are recited verbatim per MN Statute §160.02 and are important as they set forth the framework under which this policy and any subsequent ordinance is developed.

Controlled Access Highway. “Controlled-access highway” means any highway, street, or road including streets within cities, over, from, or to which owners or occupants of abutting land or other persons have or are to have no right of access, or only a controlled right of the easement of access, light, air, or view.

Road or Highway. “Road” or “highway” includes, unless otherwise specified, the several kinds of highways as defined in this section [ie. County Roads, CSAH, town roads, Trunk Highways, etc.], including roads designated as minimum-maintenance roads, and also cartways, together with all bridges or other structures thereon which form a part of the same.

Road Authority. “Road authority” means the commissioner, as to trunk highways; the county board, as to county state-aid highways or county highways; the town board, as to town roads; and the governing bodies of cities when the governing bodies or city streets are specifically mentioned.

Review of Current Definitions, Standards and Practices. Outlined below is a brief summary and discussion relative to existing (applicable) sections of the Clay County *Development Code*.

Definitions.

1. *Development* [§ 8.1.6(A)]– The performance of any building or mining operations, the making of any material change in the use of any structure or land, the parceling of land into one or more lots, tracts or parcels and the creation or termination of rights of access or riparian rights. *Activities considered “development” include: change in use, re-construction/ alteration, increase in use intensity, mining/ excavation, alteration of shore or floodplain, re-establishment of use, subdivision or departure from normal use.*
 - The “development” definition per existing County Code addresses a majority of the activities that would prompt a potential access request. However, a few gaps exist that need to be accommodated within the overarching definition to align the access policy and standards with any type of access request (see proposed revisions to §8.1.6(A) of the draft Policy). For example, if a property owner requested access onto a County roadway, whether it was platted or unplatted property, whether structures were present or not (as long as the use, intensity, etc. was not changed) the County would have no oversight.
2. *Street* [§1.3.2] – Shall include alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.
3. *Street Classification* [§8.8.2] - All streets are to be considered classified under the following categories in the County Comprehensive Plan:

Arterial Street and Highways: Those which are used primarily for fast or heavy traffic.

Collector Street: Those which carry traffic from minor streets to the major system of arterial streets and highways, including principal entrance streets of a residential development and streets for circulation within such a development.

Minor Streets: Those which are used primarily for access to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.

- These definitions and the network classifications become important as they establish the framework under which the access standards and guidelines are applied. The *street* definition and association to the *street classification* definition is a little strange given the references to public squares, public places and sidewalks; and may merit some additional clarification. More importantly, the *street classification* definition makes reference to designations and classifications pursuant to the County Comprehensive Plan. It appears this reference relates to Figure 2-18a and Figure 2-18b which are the Metro Functional Classification and Rural Functional Classification maps, respectively. These maps were prepared in 2002 by Comprehensive Plan consultant DSU, Inc. and probably have not been reviewed or updated since. These maps are important because they represent the formal link between the access management policy and the applied classifications; therefore it is critical to ensure the accuracy of these maps and the intentions of the County relative to access management standards/guidelines.

Standards. Chapter 3 of the County *Development Code* comprises dimensional standards and general provisions which apply to all zoning districts, inclusive of minimum lot size, setbacks, parking, signage and the following standards related to traffic control and access management:

Traffic Control / Access Management [§8.3.6]: The following access management provisions apply to development in all zoning districts.

- A. *Approval of Access:* Location of and specifications for points of ingress and egress shall be approved by the district highway engineer or the county highway engineer.
- B. *Maximum Width:* Points of ingress to and egress from state and county roads, streets or highways shall be controlled and limited to a width of not more than thirty five feet (35').
- C. *Access Standards:* Access design and internal subdivision roadway design shall conform to the Metropolitan Access Standards adopted by Clay County and Minnesota Department of Transportation access management requirements. Standards are available in the Clay County Planning Office.
 - A couple of analysis points: These references essentially state that in all zoning districts where an activity falls within the terms of the “definition” any approvals or applied standards or criteria for approval is at the sole discretion of the county engineer. This type of regulatory approach is very difficult to apply and enforce from a consistency standpoint; much less defend if challenged, and is less than desirable from a developer or investors perspective due to the level of subjectivity and uncertainty in the development entitlement process. Secondly, the “development” definition loop hole for certain actions (see pg. 2 explanation) remains intact and the provisions as drafted under this section would seemingly not apply nor would the provision for approval at the county engineer’s discretion.

Chapter 5, Zoning Districts. The Clay County *Development Code* delineates nine (9) zoning districts; two of which are identified as ‘overlay’ districts (Resource Protection Overlay District and Land Field Overlay District). Of these 9 zones, four (4) have prescribed standards for access separation or driveway separation by functional classification:

Local – 100 feet;
Collector - 300 feet;
Principal - 500 feet; and
Intersections - 100’ feet.

The 4 zoning districts with applied standards include the Resource Protection Overlay Zone (RP), Agricultural General District (AG), Limited Highway Commercial District (LHC) and the Highway Commercial District (HC). The remaining districts inclusive of: Flood Hazard Zone District, Shoreland Zone Land Use Districts, Urban Expansion District (UED) and Landing Field Overlay District, do not accommodate any such standards. Further, both the LHC and HC districts include a provision which prohibits direct access from a parcel to highways designated as principal arterials.

In addition, use specific standards within Chapter 6 establish the following:

Standards for All Commercial and Industrial Uses [§8.6.10]:

- A. *Access Management*: Proposed commercial and industrial uses where any portion of the boundary of the proposed parcel is adjacent to Highways 10, 336, 9, 32, 34 or Interstate 94 shall submit an access management plan with any conditional use, rezoning, platting or subdivision request. The access management plan shall conform to the access management requirements of the Clay County engineer and the Minnesota Department of Transportation. The access management plan shall include the following:
1. Locations and widths of proposed vehicular access drives;
 2. Locations and widths of any internal roads;
 3. Locations and dimensions of parking and loading areas.
- The application of this standard to only certain highways, certain development activities and specific uses is an issue that needs to be addressed in the access management policy. This section could probably remain within Chapter 6, but needs to be expanded, clarified, more inclusive and harmonious to standards set forth in the access management policy.

Chapter 7, Subdivision Provisions. The subdivision chapter of the County *Development Code* includes discussion on street connectivity and alignment (§8.7.14 E.2), block length, lot design, monumentation and references adopted Metropolitan Access Management Standards and Mn/DOT guidelines as well as the following:

Vehicular Access: There shall be no direct vehicular access from residential lots to an arterial street and residential lots shall be separated from major arterial streets and railroad rights-of-way by a twenty five foot (25”) buffer strip.....

- As currently written, this provision would only apply to new subdivision requests and any other request that did not fit within the context of the “development” definition per the existing code would be free to establish an access at their own prerogative, even if a safety concern or more feasible/appropriate alternative was available.

Practices. As indicated by the Clay County Highway Department through early stages of this policy development process, current access permitting practices are limited. As new developments, subdivisions or uses are changed through platting or other official County permitting mechanisms (ie. conditional use permits, variances, subdivisions, development permits, etc.) the Highway Department and county engineer have the ability to be involved and discretionary approvals are utilized, as applicable, for access creation/termination. For any other activity, the only reason (and for that matter incentive) for a property owner to notify and/or ask the County for permission for a new access or access modification is to receive a free culvert. The County follows a policy statement from February of 1997 which states the County will provide a culvert for new or modified access and this does, to some degree, serve the needs of the County. To note, under MN Statute §160.18 the County has the authority upon adoption of a locally approved resolution to provide a culvert(s) to enable access onto a highway for an abutting landowner, upon issuance of a permit. Granted however, if the County issued a permit there would be no standards or requirements that would apply relative to spacing, width, location, number of access points, etc.

Other Recommendations. In the process of drafting this Access Management Policy, Metro COG has identified a few aspects that the County should consider updating and/or addressing; as outlined below:

- 1. Street Classification.** Pursuant to §8.8.2 of the County *Development Code*, all county roadway facilities are classified under three (3) categories: Arterial Street/Highways, Collector and Minor; pursuant to maps and applied designations within the County Comprehensive Plan. It appears that this reference in the County Code directly correlates to Figure 2-18a (Metro Functional Classification) and Figure 2-18b (Rural Functional Classification) which were prepared in 2002 by the Comprehensive Plan consultant and do not appear to have been reviewed or updated since. As previously noted, these maps are important because they represent the formal link between the access management policy (ie. Access Spacing and Access Connection Requirements, see pg. 9 of this document) and the applied classifications; therefore it is critical to ensure the accuracy of these maps and the intentions of the County relative to access management standards/guidelines. The County should closely review and consider whether these maps need to be updated or whether a more updated map could be referenced within the *Street Classification* definition as set forth within §8.8.2. ***As part of this project, County staff has directed Metro COG to prepare an updated Existing Functional Classification Map, to be amended into the County Comprehensive Plan. Metro COG has prepared the ordinance and the map which will need to be adopted concurrently with the Access Management Policy ordinance. This updated Existing Functional Classification Map will effectively replace Map 2.18a and 2.18b as they currently exist within the 2002 County Comprehensive Plan. See corresponding ordinance and the updated map for further details.***
- 2. Access and Culverts.** As discussed in detail on page 4 of this document, as developments, subdivisions or uses are changed through platting or other official County permitting mechanisms (ie. conditional use permits, subdivision, development permits, etc.) the county highway engineer has the ability to be involved and discretionary approvals are utilized, as applicable, for access creation/termination. For any other activity, the only reason (and for that matter incentive) for a property owner to notify and/or ask the County for permission for a new access or access modification is to receive a free culvert. The County follows a Policy Statement (approved February 4, 1997) which establishes the mechanism whereby the County may provide a culvert for a new or modified access; and this does, to some degree, serve the needs of the County. To note, under MN Statute §160.18 the County has the authority upon adoption of a locally approved resolution to provide the necessary culvert(s) for access onto a highway for an abutting landowner, upon issuance of an Access Permit. It appears that the existing (1997) policy meets the minimum requirements set forth in MN Statute §160.18; however, this policy needs to be updated and language adjusted to meet current practices of the County Highway Department. The Access Management Policy, as drafted (see pg. 10), includes language which would continue this practice for any issued Access Permit.

Public Input. On August 24, 2012 Metro COG and Clay County issued a notice which accompanied a packet containing the draft ordinances (Access Policy & Comprehensive Plan Amendment) and associated attachments. This information was sent to all cities, townships, watershed districts and joint power boards within the County. In addition, a copy was also sent to the Minnesota Department of Transportation. Comments and feedback was requested by September 21st, 2012.

Comments were received from the City of Moorhead on September 21st and are attached to this memorandum. A majority of these comments have been addressed and/or incorporated into the draft Access Management ordinance.

All other public or stakeholder input will be requested as part of the public hearings associated with these ordinances.