

CITIZENS LEAGUE REPORT

No. 107

City of Minneapolis
Consequences of *Hold Orders*

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Citizens League
545 Mobil Building
Minneapolis 2, Minnesota

March 25, 1959

TO: Board of Directors
FROM: Planning and Zoning Committee
SUBJECT: Report on City Council Hold Orders

Purpose and Method of Study

In an appearance before the Planning and Zoning Committee in April 1958 the Planning Director of Minneapolis pointed out the undesirable consequences for good planning of the system of hold orders. The committee therefore decided to look into the facts on the hold order system.

Leavitt Barker acted as subcommittee chairman and prepared a subcommittee report of which this report is an amplification.

The committee studied the list of hold orders in effect, talked with Planning Commission personnel, examined statutes in effect in other places which provide a more orderly manner of restricting the use of property contemplated for public improvements, and had a discussion with Sixth Ward Alderman H. P. Christensen.

What are hold orders?

Hold orders are actions of the Minneapolis City Council placing greater restrictions upon the use of property than the restrictions imposed by the zoning ordinance. They frequently result from the present poor and obsolete zoning ordinance.

There are three basic types of hold orders:

1. Land use control or substitute for zoning.
2. Control of sites for public improvements, such as highways and public buildings.
3. Control of all development in the Sixth Ward (this is possibly a composite of the first two).

Extend of hold orders

In a memorandum to the Planning Commission dated May 15, 1958, the Planning Director said that there were 91 hold orders in effect in the City, dating back as far as 1938. Of these, 69, or 76%, were of the first type listed above, affecting land use. Fifty-two of these prohibited certain classes of use on specific properties, one was a general hold order affecting commercial or industrial zoned property which was predominantly improved by dwellings, and 16 involved the control of certain properties in a manner not directly related to zoning. Of the 69 hold

orders, two covered properties which have since been rezoned but on which the hold order has not been released.

Twenty-one hold orders covered sites for public improvements. Two of these involved properties falling within the right of way of the proposed postwar highways, which plans have since been discarded without the hold order being removed; six covered right of way for highways other than the freeway; one covered right of way for the interstate freeway; six covered sites for public buildings or other public projects; and one covered the expansion area for the Metropolitan Airport.

The Planning Director estimated that 10% to 15% of the land area of the City was covered by one or more of the hold orders, with the bulk under the 6th Ward hold order and the general hold order of July 9, 1948 affecting commercial or industrial zoned property, the majority of the frontage of which was occupied by dwellings.

Hold orders rescinded and added by the City Council

On recommendation of the City Planning Commission, the City Council on June 27, 1958 adopted a policy calling for the termination of all unnecessary hold orders, such as those covering postwar proposals and properties which have since been rezoned or cancelled. Pursuant to this policy, the Council on October 10, 1958 rescinded 21 hold orders.

The 21 rescinded hold orders fell into the following categories:

1. For public improvement for which property or easement had since been obtained.
2. For public improvement which had been abandoned or relocated.
3. Superseded by a hold order of later date.
4. Pending rezoning of property, the property since having been rezoned.
5. Against a particular building with records indicating the building had since been constructed.
6. Released by other type of Council action (quit claim deed).

Since that time the Council has placed six months hold orders prohibiting residential building on Nicollet Island and various other places in the Third Ward, as a result of the alderman's apprehensions over the relocation of Lower Loop residents.

The Sixth Ward hold order.

The Committee had a meeting with Alderman H. P. Christensen of the Sixth Ward to learn the background and effects of the Sixth Ward hold order. It was felt that this is the most extreme case of a hold order's being used in contradiction to the objective of a zoning ordinance. In fairness to Alderman Christensen, it should be

noted that this hold order came into existence in 1944, 11 years before he took office.

The Sixth Ward hold order is found in City Council Proceedings, December 29, 1955, and reads as follows:

"Alderman Bastis moved that before any building permits of any nature are issued in the Sixth Ward, the Aldermen* be consulted on the proposition in order that they may find out what kind of business is going into the buildings."

This has meant in effect that the alderman's approval is required on every building permit issued for the Sixth Ward.

Alderman Christensen defended this practice in the following manner:

The Sixth Ward takes in all of the downtown area, and is the most complex ward in the City, with a heavy proportion of relief cases, unemployment, transients, hotels and retail trades. Nearly all of the ward is zoned for industrial, light commercial and commercial use. Because of the heterogeneity of the ward, the alderman believes he has to see that property alterations cause a minimum of friction among residents of the ward.

Alderman Christensen cited cases where he persuaded property owners to alter their building plans so their buildings would be more sightly or would not be likely to interfere with neighbor's use of their property. In these cases apparently, the alterations suggested by the alderman were not required by the zoning ordinance or building code.

A number of comments by Alderman Christensen are further indicative of why he feels hold orders are essential in his ward:

"In fairness to people who own homes in the ward, they should know when a new building is going in, and what kind it is."

Q: Could some of these problems -- setbacks, parking space, for example -- be met by a modern zoning ordinance? Doesn't the present system result in government of men rather than of law, open to charges of abuse?

A: The alderman of the ward must use his judgment on nuisances, aesthetics, etc. The Sixth Ward is entirely different from other wards, since it is all industrial and commercial.

Q: Wouldn't it be better to have safeguards written into the zoning ordinance rather than depend on the judgment of one man?

A: People of the ward still would hold the alderman responsible.

Q: Would the requirement of notifying the alderman before the issuance of a permit be enough?

A: It would not give the alderman enough leverage to require such things as seal-coating and painting of concrete blocks.

*At this time there were two aldermen per ward.

"If you start throwing your weight around and abusing people, you won't last long in the Council", he said.

The committee was impressed with Mr. Christensen's candor in discussing the operation of the Sixth Ward hold order. It led us to believe -- without undertaking further research on the matter-- that he has exercised the powers imposed on him by the hold order in an admirably conscientious manner.

Serious effects of hold orders

1. Places arbitrary power in hands of officials.

No matter how conscientious the alderman in whose hands is placed the virtually unlimited authority to tell a person how he may use his property, the fact of conferring this authority is repugnant to our democratic philosophy of a government of laws, not men. The opportunity for abuse in the hands of an official lacking in integrity is obvious, and the temptations which it may lead to are greater than most people should be asked to withstand.

The law should provide reasonable standards which any person can be expected to understand. Compliance with the standards in a reasonable manner should result in automatic permission to use his property as he wishes, without need for subjecting himself to the possible arbitrary whims of an official.

2. Doubtful legality provides false sense of security for property owner.

Attorneys indicate serious doubt as to whether hold orders, particularly those of unlimited duration, would stand up under court test. As a result, owners of property under a hold order are relying on a restriction which may be very shaky.

For example, when the Council has directed that in a specified commercial zone, no building permit be issued for other than private dwellings, a property owner may build a residence in the belief that the surrounding area is also limited to residential development. Were the courts to declare the hold order void, as they might, neighborhood property owners might erect commercial buildings, with a depreciating effect on the value of the residence.

3. Constitutes a roadblock to a modern, well-planned zoning ordinance.

As already noted, hold orders frequently are issued to remedy the effects of a poor zoning ordinance. To the extent that the hold orders act as a spot remedy, they obscure the fundamental defect of the zoning ordinance, and lessen the concern for necessary revision.

An orderly procedure for controlling construction on public improvement sites.

As already indicated, 21 of the City's 91 hold orders existing on May 15, 1958 came into existence to control the sites of public improvements.

In the interest of avoiding excessive condemnation and other costs, it is important for municipal governments to have some control over sites of proposed improvements. Many municipalities have met this problem in an orderly manner, so far as future street improvements are concerned, through the use of mapped street plans.

Under the provisions of Minnesota statutes, all municipalities in Minnesota except cities of the first class are authorized to adopt such street plans. After adoption of such plans by the council and filing with the register of deeds, the municipality is permitted to deny permits for building within the limits of the mapped street beds. However, their denial is subject to appeal to a zoning appeals body.

Section 471.33 of the statutes would need to be repealed to make the mapped street plan procedure available for Minneapolis.

Other cities have carried this type of control farther by including planned sites for parks, schools and other public improvement in addition to streets and highways. A further provision requires that in the event the owner requests permission to construct a building above a specific percentage of the property's existing value, the municipality must issue the permit or initiate condemnation proceedings.

Conclusions and recommendations

We conclude that as soon as possible the City of Minneapolis should abolish the use of hold orders in the interest of promoting the development and adoption of an effective, modern zoning ordinance, protecting users of present property under hold orders, and removing the potential for arbitrary exercise of power over the use of property.

To accomplish these ends in an orderly manner, we recommend that the Citizens League:

1. Cooperate in every possible way in the development and adoption of an effective, modern zoning ordinance to replace the present outmoded ordinance. As part of this effort, the League should do its best to help publicize the vital need for a modern and properly planned zoning ordinance.

2. Support efforts to obtain authority to adopt a mapped street and site improvement plan, either through amendment of the present law (Minnesota Statutes 471.33) or adoption of a special act for Minneapolis, thereby providing an orderly procedure for protection of both public and private interests in the development of property in the sites of planned public improvements.