

CITIZENS LEAGUE REPORT

No. 156

**City of Minneapolis
Zoning Law Consent Provision**

March 1963

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Citizens League
545 Mobil Oil Building
Minneapolis 2, Minnesota

APPROVED
BOARD OF DIRECTORS
DATE MAR 20 1963

TO: Citizens League Board of Directors

FROM: Minneapolis Zoning Committee, Ed Baker, Chairman

SUBJECT: Report and Recommendations on the Consent Provision of the Minneapolis Zoning Law

SCOPE OF THE REPORT

This report is concerned with the City Council's request for a change in the state law pertaining to neighborhood consent for rezoning within the City of Minneapolis. The change, as first proposed, would eliminate the requirement that, except in limited circumstances, two-thirds of the surrounding property owners must give their written consent before the City Council may rezone property in Minneapolis.

Members of the Minneapolis City Council have indicated that they will not adopt a new zoning ordinance until the consent provision has been changed. The Citizens League has supported the adoption of the proposed zoning ordinance since October 5, 1960. Despite these two factors we have attempted to evaluate the proposed elimination of the consent provision on an objective basis and not on the basis of whether or not the city should have a new zoning ordinance.

We have been told, "If you are for the zoning ordinance then you should be in favor of the deletion of the consent provision because the city has said they will not pass the new zoning ordinance without this change." However, we strongly feel that the consent provision should be evaluated on its own merits. This we have attempted to do.

This report was prepared by the Minneapolis Zoning Committee. During the course of our study, we met with Minneapolis City Planning Director, Larry Irvin and with Theodore Herman. The members of the Minneapolis Zoning Committee who actively participated in the preparation of this report include: Ed Baker, chairman, Robert Auvinen, Leavitt Barker, Charles Boyum, Winston Close, Robert Crabb, William Fine, Eugene Hickey, Milton Leadholm, William E. MacGregor, Jr., Carroll K. Michener, Roy A. Nelson and Robert J. White.

RECOMMENDATION

1. We urge the Minnesota Legislature to enact legislation which would permit the Minneapolis City Council to rezone property within the City of Minneapolis by two-thirds majority and without the consent of the surrounding property owners. The legislation should require the City Council to hold a hearing or hearings on the proposed rezoning after giving proper notification to the residents and property owners in the immediate vicinity of the rezoning.

Because of recent court decisions which have restricted severely the city's zoning power, the consent provision should be eliminated even if the proposed new zoning ordinance is not adopted.

2. While we support the complete elimination of the consent provision, we also support the enactment of the compromise proposal which would permit the City Council to rezone property within 5 years after the adoption of a comprehensive new zoning

ordinance without the consent of adjacent property owners provided, however, that the property could be rezoned only to its classification under the old ordinance or to an intermediate classification. We believe that enactment of this compromise would be a step in the right direction.

FINDINGS

1. Under the existing Minneapolis Zoning Ordinance, many sections of the city which are used for residential purposes are zoned for non-residential uses. Recent court decisions have held that, in certain circumstances, the consent provision constitutes an unconstitutional delegation of authority. As a result of these decisions, the City of Minneapolis is unable to rezone small tracts of land to a zoning classification which puts more restrictions on a particular property:

Because of this combination of factors, many of the city's residential areas are virtually unprotected from the incursion of new land uses which may have a detrimental effect upon the surrounding properties.

2. While adjacent property owners who may be affected by a rezoning certainly have a legitimate interest in rezoning, there are also other interests involved. There is the citywide interest in the proper and orderly development of the city and, of course, there is the property owner's interest in developing his land as he wishes.

We believe that the elected City Council is the proper body to evaluate these varied and often conflicting interests in exercising the zoning power. Either the land owner or the adjacent residents would have recourse to the courts from an arbitrary or unreasonable use of the zoning powers by the City Council.

3. The consent provision applies only to the three cities of the first class in Minnesota. In every other municipality within Minnesota, the City Council is permitted to rezone land without the consent of adjacent property owners. Also, to the best of our knowledge, a provision of this nature has not been incorporated into the statutes of any other state.

DISCUSSION

The present Minneapolis zoning ordinance was adopted in 1924 and at that time it was one of the first zoning ordinances in effect in the United States. However, this ordinance was developed in a different era and was designed to accommodate to the pattern of living of that day. Consequently, in order to accommodate the needs of the population which was dependent upon the street car for transportation, the zoning ordinance provides for long strips of commercial uses along the street car routes of that day. But the automobile became popular, living patterns changes, and many sections of the city did not develop in the same way they were zoned. Because the 1924 zoning ordinance permits so-called "higher uses" in an area zoned for a so-called "lower use," some of the areas which had been zoned for commercial purposes were used as residential areas. (According to Minneapolis Planning Director, Lawrence M. Irvin, 20-30% of the city's homes are not actually in residentially zoned areas.)

Hold Orders

However, because the 1924 zoning remains in effect, owners of homes in areas zoned for non-residential purposes have no protection against the construction of a

filling station or a drive in on an adjacent lot. In an attempt to provide some protection without rezoning the City Council for many years has been using the device of "hold orders" to prevent the issuance of a building permit for a proposed structure. However, these hold orders have been ruled illegal by the courts.

Consent Provision

State law (Minnesota Statutes, Chapter 462.18) provides that in any city of the first class, the City Council may rezone "only after there shall be filed in the office of the City Clerk a written consent of the owners of two-thirds of the several descriptions of real estate situated within 100 feet of the real estate affected and after the affirmative vote in favor thereof by a majority of the members of the governing body". However, the City Council "by a two-thirds vote of all its members in favor thereof, may, after hearing, adopt a new zoning ordinance or plan or amend or alter any existing zoning ordinance or plan without such written consent wherever the planning commission or planning board of such city shall have made a survey of the whole area of the city or of an area of not less than 40 acres, within which the new ordinance or plan or the amendments or alterations of the existing ordinance or plan would take effect when adopted."

This has been interpreted to mean that the City Council cannot even consider rezoning of smaller areas until the Council has been presented with a petition signed by two-thirds of the property owners within 100 feet of the property to be rezoned. However, in recent court cases, where the Council, in response to petitions from adjacent property owners, has rezoned a parcel to a more restrictive use, the courts have ruled the rezoning invalid on the basis that this procedure constitutes an illegal delegation of power.

In effect, these decisions have deprived the city of any means to rezone small areas to a more restrictive use and have left the owner of a home in an area zoned for non-residential uses without any protection against the construction of possibly adverse non-residential uses on adjacent property even though his home is now surrounded by other homes.

Proposed New Zoning Ordinance

In 1960 the City Planning Commission prepared a comprehensive new zoning ordinance for the City of Minneapolis. While this ordinance has had broad community support, including the support of the Citizens League, the City Council has not passed the new ordinance. The Council contends that undetected errors will inevitably be discovered in an ordinance as comprehensive as the proposed zoning ordinance and because of the consent provision the city would be powerless to rectify these errors. Members of the Minneapolis City Council have indicated that they will not adopt a new zoning ordinance until the consent provision has been changed.

Original Proposal

The City Council therefore proposed the enactment of a new law pertaining only to the City of Minneapolis which would:

1. Authorize the Minneapolis City Council to amend the zoning ordinance (including the rezoning of property) by a majority vote of all its members and without the consent of surrounding property owners, except that a two-thirds vote of all the members of the Council shall be required for the passage of any new ordinance or regulation embracing the whole city.

2. If the zoning ordinance amendment or regulation affects an area of not more than 5 acres, notice of the amendment shall be mailed to the owner of the affected property and the owners of any property within 200 feet and a hearing shall be held by a committee of the City Council or by an agency designated by the Council before the amendment or the regulation can be enacted.

3. If the amendment or regulation affects an area of 5 acres or more, the change shall not be made until after published notice has been made and public hearings have been held by the City Council and the City Planning Commission.

Compromise Proposal

Because of opposition to its proposal, the Council has recently submitted a compromise proposal to the Legislature which would permit the City Council to rezone property within 5 years after the adoption of a comprehensive zoning ordinance without the consent of adjacent property owners; provided however that without the consent of adjacent property owners, the Council could rezone a property only to its previous classification under the old zoning ordinance or to a zoning classification between the property's new classification and its previous classification.

Clearly, this compromise was developed to meet the objections of people opposed to the elimination of the consent provision while permitting the City Council to rectify errors in the new zoning ordinance by rezoning property back to its present classification. The compromise appears to constitute an effort to remove the Council's major objection to passage of the new zoning ordinance and does not appear to be based upon an evaluation of the merits of the consent provision itself.

Consent Provision Should Be Eliminated

We believe that the consent provision should be completely eliminated even if the proposed new comprehensive zoning ordinance is not adopted. While the consent provision protects a neighborhood from possible arbitrary action by the City Council in rezoning, we believe that this provision also deprives a land owner of the opportunity to obtain a fair and impartial hearing on his proposals. Under the consent provision the neighborhood is authorized to cast a veto on a property owner's rezoning request before he is permitted to submit that request to the City Council. We do not believe that this is proper.

There are many interests involved in a proposed rezoning--the interest of the property owner requesting the rezoning, the interest of the neighborhood which might be affected by the rezoning and the city-wide interest of the city in the effect of the rezoning upon the proper and orderly development of the city. In determining a request for rezoning, all of these interests should be considered and a determination should be made only after all of the parties and interests have had an opportunity to be heard. We believe that the City Council is the proper body to weigh the evidence and render a decision on rezoning provided that the law offers adequate safeguards as to notice and hearings.

As stated by Minneapolis Planning Director, Larry Irvin, zoning is an exercise of the police powers for the protection of the public health, safety, morals and general welfare similar to the police powers contained in traffic codes, building codes housing codes and other regulations. Those with an interest in a rezoning have recourse to the courts if the City Council were to misuse its zoning powers in an arbitrary, unreasonable or capricious manner. In view of this protection, the City Council should be given the right and responsibility for the exercise of the zoning power just as it has the responsibility for exercising other police powers.

Compromise Proposal Is a Step in the Right Direction

Although the compromise proposal appears to be based more upon political expediency than an objective evaluation of the consent provision, we believe enactment of the compromise proposal would be a step in the right direction. This would permit the Council to rezone in some instances without the consent of the adjacent property owners and to this extent it would be an improvement. From the viewpoint of the legislators this approach would also have the advantage of shifting the responsibility for passage of the new zoning ordinance back to the Minneapolis City Council where this responsibility properly should lie.

On the basis that the compromise proposal would improve the situation and would constitute a step in the right direction, we support its enactment. It is quite possible that this would then separate the question of the consent provision from the controversy over the proposed new zoning ordinance. If this were to occur, the Legislature would then be able to consider the consent provision on its own merits at some future session.