Local Control of Zoning and Subdivision

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by Don Epstein
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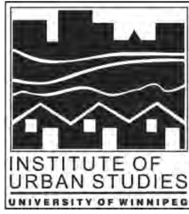
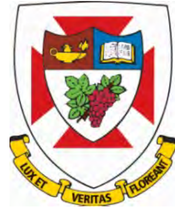
The Institute of Urban Studies





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[Don Epstein]

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INTRODUCTION

Much of the criticism of the City of Winnipeg Act has focused on the cumbersome lengthy procedures which must be followed by persons applying for a zoning variance, rezoning, or subdivision of property. A study prepared for the Housing and Urban Development Association of Manitoba by Underwood McLellan Ltd. points to the fact that the administrative procedures presently used to process subdivisions applications involves about 90 procedural acts. The report suggests that changes should be made in the process to facilitate applications. With that suggestion we concur.

In order to streamline subdivision and zoning procedure the Institute recommends that the local community committees be given exlcusive jurisdiction to deal with these questions. It is our submission that a change of this nature would result in a number of benefits in addition to improved efficiency. The Community Committee and Resident Advisory Groups System would be strengthened; the concepts of responsible government and participatory democracy would be promoted and efficiency in the work of Council at large will increase. Our recommendation is however a qualified one. A number of prerequisites must be fulfilled before exclusive jurisdiction of zoning and subdivision applications should be transferred to the local Community Committees.

DECISION MAKING UNDER THE PRESENT ACT

Decision making on zoning and subdivision applications normally begins at Community Committee and ends at City Council. In between, the application with recommendations is shuffled among Environment Committee, EPC, Council, Minister of Urban Affairs, and the Muncipal Board. The procedure involves the convening of two public hearings as well as three or four opportunities to appear before various committees as a delegation. Applications for zoning variances are considered by environment committee, and by community committee with appeal to environment committee or under certain circumstances by the Commissioner of Environment with appeal to the Committee on Environment.*

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* See Appendix I for Subdivisions, and Zoning Procedure.

RECOMMENDATIONS

Exclusive jurisdictions over these matters should be vested with the community committees. Those provisions in the act mandating considerations of applications by Environment Committee, E.P.C., Council, Minister of Urban Affairs and Municipal Board should be deleted.

BENEFITS WHICH WILL BE DERIVED FROM THE CHANGE

(a) Streamlining of procedures hopefully will encourage and facilitate housing construction.

(b) Responsible Government will be promoted. Under the present system decisions which affect only one neighbourhood are made by councillors outside that neighbourhood who are not accountable for their actions to the people who are affected by the decision. Decision making at the local level will eliminate this undemocratic process.

(c) The Community Committee system will be strengthened because the Community Committees will attain a definite function which is more than merely advisory in nature. The lack of powers of the Community Committees is often pointed to as one of the main reasons for the lack of success. Moreover the purpose and function of the local RAG will be concomitantly strengthened.

(d) Council, E.P.C., and the committee on Environment will have more time to deal with important policy questions rather than dealing with matters which are often routine and relatively unimportant.

QUALIFICATIONS TO OUR RECOMMENDATIONS

1) Guidelines, which must be adhered to, shall be provided by council to Community Committees. Thus the local decisions on zoning and subdivisions will reflect policy formulated and adopted by the city. This is an essential prerequisite, the absence of which would result in uncoordinated, indiscriminate and haphazard growth.
The mechanism for providing these quidelines is already included in the present Winnipeg Act. The implementation of the mechanism has been, however, delayed and neglected.
S-570 of the Act incorporates the Metropolitan Development Plan (by-law 1117) into the Act as the Greater Winnipeg development for the city and additional zone.

S-569 (f) defines Greater Winnipeg Development Plan means "a

> statement of the city's policy and general proposals in respect to the development or use of the land in the city and the additional zone, set out in texts, maps or illustrations, and measures for the improvement of the physical, social and economic environment and transportation".

The act calls for a review of the plan every five years (S-572). This review is currently being undertaken.
Generally the Plan as it now exists divides the city and additional zone into living, working, and service areas; designates areas of future expansion, no expansion and future thoroughfares, and sets out policy in such areas as Riverbanks, Transportation, urban growth, Parks and Recreation and Urban Renewal.

The act acknowledges that the utility of the Development Plan is minimized if more specific plans are not enacted to implement the policies of the Development Plan.

> Thus S-579 (1) calls for the preparation and approval of District Plans for each district in the city and additional zone "as soon as it is practicable".
>
> S-569 (d) "district plan" means a plan for a district within the city or the additional zone which consists of text and maps or illustrations formulating in such detail as the council think appropriate, proposals for the development and use of land in the district, and a description of the measures which the council considers should be undertaken for the improvement of the physical, social and economic environment and transportation within the district;

The only other district plan now in force is the North St. Boniface Plan.

The district plan sets specific policies for the area with which it is concerned, with regard to land use, housing, transportation, industry and recreation.
For example the River Osborne District Plan, now under consideration by the Fort Rouge Community Committee, recommends the designation of Rehabilitation and Redevelopment Areas and outlines policies for those areas:
a) The city shall ensure that necessary new development within rehabilitation areas will conform to the existing ranges of scale and density and to design standards which reinforce the desirable aspects of neighbourhood character.
b) The city shall ensure that new development within redevelopment areas will be compatible with adjacent development in terms of height, bulk, set backs, and

yards or other aspects of site coverage and configuration in an effort to maintain the overall spatial quality of the district.

The plan goes into even more detail by restricting development in various areas to certain specified heights and densities. For example in some areas development must not exceed 110 units per acre and 10 stories while in other areas the restriction is 35 units and three stories.

It is submitted that once a district plan has been adopted so that the community committee is bound by the policies and provisions enacted by council at large zoning and subdivision applications should be dealt with at local level.

RECOMMENDATION

a) The act should impose a time limit on council to ensure that district plans will be prepared and adopted by council forthwith, as contemplated by S-579 (1) of the act. It should be pointed out that the formulation of these district plans is not the formidable task which it may appear to be. Detailed plans now exist for the areas of West Kildonan and Old Kildonan,* St. Vital,* Fort Garry,* Transcona,* and Charleswood.* Moreover, documents and studies such as the Westminister Ward Study,* the Memorial Ward Study,* Balmoral West Study* can easily lay the basis for other district plans.

b) The Community Committee should at that point be given control but must be prohibited from allowing an application which is contrary to the intent of the development or district plan.

2nd QUALIFICATION : Discrimination in zoning must be prohibited. It is essential to ensure that applications are heard strictly on the merits and that irrelevant, unfair,

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* prepared in 1970 by Metro
* prepared in 1968 by Metro
* prepared in 1970 by Metro
* prepared in 1971 by Metro
* prepared in 1970 by Metro
* prepared in 1974 under the auspices of the Midland RAG
* prepared in 1975 under the auspices of the Midland RAG
* conducted in 1974-75 by the Institute of Urban Studies

or discriminatory elements do not enter the process. This is of real concern with regard to applications from government agencies such as Manitoba Housing and Renewal Corporation. Frank Fedoruk of that agency stated in an interview with this writer* that in his opinion there is general hostility towards housing for low income families and he cited a munber of examples to substantiate his opinion. Many people, rightly or wrongly tend to believe that housing for low income persons leads to an increase in the neighbourhood crime rate, especially vandalism, resulting in a decrease in property values. Mr. Fedoruk stated that sometimes the prejudice is not even disguised but is openly evident in debate.

RECOMMENDATION: A clause similar to that contained in the Human Rights Act should be inserted into the City of Winnipeg Act. A suggested clause is as follows:

> " The Community Committee shall not make a decision in regard to a zoning or subdivision application that discriminates against any person, group, or organization on the basis of race, creed, color, sex, age, or income."

It is acknowledged that an anti-discrimination clause is difficult to enforce and may be no more than a pious declaration but it is submitted that fair, law abiding councillors will pay heed to it.

3rd QUALIFICATION: The procedures employed in conducting the public hearing with regard to any application must be improved to ensure that it is thorough and fair. The hearing conducted by the Community Committee, is of course, of utmost importance because it is the only opportunity for the applicant and objectors to put forth their views to the Committee.

The Act, in its present form requires a zoning application to be "in such form and accompained by such supporting material and the payment of such fee as the council deems advisable". Similar words are used with regard to an application for a zoning variance* and a subdivision application.*

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* conducted November 28, 1975

* S.621 (2)

* S.637 (9) and (11)

S-637 (10) also mandates that a subdivision application disclose:

a) The purpose for which the lots are to be used

b) The nature of the existing uses of adjoining land

c) The approximate dimensions and layouts of the proposed lot

d) Natural and artificial features such as buildings, railways, highways, watercourses and drainage ditches within or adjacent to the land proposed to be subdivided.

In practice the applicant is not required to furnish any supporting material. An application f   a rezoning or variance merely details the applicant, property, and nature of change requested. Sample applications are attached as appendix 2. Assessment of the effects of the proposed change is carried out by the administration. This assessment, which is in general not made public until the hearing* is often not as informative and complete as is necessary.

The project and its potential effects are often not dealt with in a thorough manner.

Reports dealing with variances often do little more than restate the criteria for zoning variances set out in S.621 (3) of the act. Sample administration reports are attached as appendix 3.

A problem encountered not only by the Community Committee in conducting public hearings required by the act but by most agencies charged with the responsibility of convening public hearings is that of informing the public of the nature, time, and place of that hearing. The City of Winnipeg Act in its present form requires the publication of notice in a local community paper where possible and in the daily City newspapers two successive weeks before the meeting*; requires that a notice be posted on the land or building to which the zoning by-law applies for at least two weeks before the meeting* and permits but does not require the council to give notice in any other manner the council deems advisable, which may include mailing notices to:

1) the applicant, if any
2) the owners of any land as shown on the assessment rolls of the city
3) any other organization that has filed a written request for a notice
4) "the occupant" of rental dwelling units
5) any other person or organization that the council deems advisable

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* I.U.S. Freedom of Information Under the City of Winnipeg Act.
* S.609 (4) (a)
* S.609 (4) (b)
* S.609 (4) (c)

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In practice 609 (4) (c) has not been utilized. Notices are not mailed to any persons. Moreover 609 (4) (c) is not fully complied with because notices are not published in local community papers.*

RECOMMENDATION

(1) The applicant should be required to provide in addition to the application form supporting material as follows:

a) site plan and design drawings
b) reason for variance of change
c) benefits which will accrue to neighbourhood
d) any deleterious effects project will have on neighbourhood

(2) The administration report should contain:

a) complete description of project and surrounding area
b) effect on adjacent property
c) effect on neighbourhood or area
d) benefit to neighbourhood and city
e) alternative choices; ie. approve, reject, or improve certain conditions.

(3) The administration report must be made available to the public and applicant at least 14 days prior to the date of hearing.*

(4) Applications, supporting material, and administration reports must be sent to Community Committee office, RAGS, applicants and adjacent property owners and renters and any other person that has filed a written request with the Communications Clerk, at least 14 days prior to hearing.

(5) The newspaper advertisements should state in layman's terms the nature and effect of the application and should state that a copy of the application and administration report is available for inspection and duplication at the city clerk or Community Committee office.

4th QUALIFICATION: The Executive Policy Committee must be given the power to decide that any zoning application is of such importance to the city as a whole that it should be dealt with by the council at large. This power could be

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* Conversation with Deputy Clerk Sanger, December 29, 1975

* I.U.S. Freedom of Information Under the City of Winnipeg ACt.

involved in cases involving zoning in the downtown area or unusually large subdivision applications in the suburbs.

ZONING APPLICATIONS TO BE INITIATED BY COMMUNITY COMMITTEE

Under the present act zoning applications can be initiated by either the property owners or the City. It is suggested that the Community Committee be given powers to initiate rezoning proceedings - a power which would be in line with the local control concept.

It is suggested that is is imperative to ensure that the Community Committee has the power and is aware of that power to bring zoning by-laws in to harmony with the districtplan. Under the present act a zoning by-law in force before the enactment of the Development Plan or District Plan takes precedence over that plan. The zoning by-laws prevaliant in many neighbourhoods are inordinately permissive. Without the power to change the zoning by-law to conform to the District Plan the District Plan will be of little use. It would only be a tool to stop permissive rezonings and variances which would rarely be necessary.

It should be pointed out that Council has and always has had the right to change the zoning of property to either permit additional land uses or prohibit certain land uses which the present zoning by-law had allowed. A restrictive rezoning may be quashed if it is descriminatory i.e. if it can be shown that it was aimed at the only person in the defined area to be affected by it.

Thus if the city or Community Committee is desirous of restricting land uses on various properties to conform with the district plan it can do so long as the actions are not discriminatory. Compensation need not be paid. (See Appendix 4)

RECOMMENDATION: a) Though this municipal neglect of zoning adjustment has always existed it is suggested that the power be spelled out specifically in the statute. To our knowledge, the power has never been exercised, and we believe that the reason it has never been exercised is because many councillors are not aware of it. There is a general fear that the city could be liable for damages because the by-law would be tantamount to expropriation.

b) The right to initiate rezoning proceedings should be conferred upon Community Committee.

APPEALS: Except for court appeals as to questions of procedure - jurisdiction, an appeal should only lie on the questions of whether or not Community Committee erred in finding that an application complied with or did not comply with Development or District Plan and whether or not the decision of the Community Committee was discriminatory.

It must be emphasized that the limited right of appeal on the merits in no way detracts from the right of an interested person to commence court action on the grounds that procedural requirements were not followed by the Community Committee or that natural justice was denied to a party at the hearing.
To the contrary, because the hearing of Community Committee is most important it is essential that the right of appeal to the courts be maintained.

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