

From: Ben Martig <Ben.Martig@ci.northfield.mn.us>
Sent: Thursday, March 24, 2022 12:31 PM
To: Lance Heisler; Judy Schotzko; James Prichard
Subject: INFORMATIONAL EMAIL: Charter Discussion of Section 4.5
Attachments: Nordmarken v City of Richfield.rtf; Mr Brian D Neugebauer.pdf; Abrahamson v. City of Le Sueur_ 2013 Minn. App. Unpub. LEXIS 779.pdf; Minn Stat 462.355 - Comprehensive plan.pdf; Minn Stat 462.357 - Zoning.pdf; Ordinance amendment for zoning vote v.1 111221.docx

I am providing some additional background information to you in consideration of the discussion last Charter Commission meeting. The following section of email as follows was provided by Mr. Hood to me as additional perspective he shared and also relates to some of these case law items. I didn't catch that this was on the agenda prior to the meeting otherwise I could have sent this information as I did have it.

The Charter Commission should in fact change Section 4.5 of the Charter to be consistent with state law and legal precedent. It currently is not, and to the extent it is not, it is void and ineffective. A simple majority vote of all members of the City Council is what is required by law to rezone a property, unless such property is rezoned from residential to commercial or industrial, in which latter case a 2/3 vote is required.

Attached is the case law establishing preemption of the Northfield City Charter, Section 4.5, on the vote required to approve a rezoning ordinance. In addition to the 2002 Attorney General's opinion attached, there are two cases out of the Minnesota Court of Appeals that also discuss the preemption of charter provisions inconsistent with the Municipal Land Use Planning Act (Minn. Stat. 462.351, et. seq.). I have attached both the Richfield and Le Sueur decisions and AG opinion to this email for your information.

In short, the Charter provision requiring a 2/3 vote to amend the zoning ordinance (Charter Section 4.5) is ineffective and void since it is preempted by Minn. Stat. 462.357, subd. 2, which provides: "(b) Subject to the requirements of subdivisions 3, 4, and 5, the governing body may adopt and amend a zoning ordinance by a majority vote of all its members. The adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body."

The League of Minnesota Cities in their Zoning Guide for cities states on page 2 thereof: "Cities derive authority to adopt zoning ordinances from Minnesota and U.S. Supreme Court cases and from the Municipal Planning Act found in Minnesota Statutes. The Municipal Planning Act establishes a uniform and comprehensive procedure for adopting or amending and implementing a zoning ordinance. The Municipal Planning Act applies to all cities, including a city operating under a home rule charter." And on page 10 thereof states: Cities have a wide range of discretion in developing a zoning ordinance. City zoning requirements can range from very complex to minimal. However, no matter the complexity involved, all city zoning authority arises out of, and is subject to, the Municipal Planning Act, including both the substantive and procedural requirements contained in that act." The LMC cites the following for this opinion. *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, (1926); *Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App. 2002); *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997); Minn. Stat. §§ 462.351 - 462.365; 473.851 - 473.871.

Thus, in most cases only a simple majority of the entire Council is required to amend the Northfield zoning ordinance, with the exception noted in the above statute for commercial or industrial rezoning. Again, Charter Section 4.5 is preempted by State law as determined by the AG Opinion and case law on this question.

I thought this added information may be useful before you consider additional legal counsel and expense on this topic. If you do choose to move ahead with the other legal opinion this information could be shared with that person. I asked Mr. Hood late last year if we had a clean up Charter amendment what might that look like. I also attached that Word document that illustrates that request he sent to me.

I am sending to all of you who have the legal background on the board that might appreciate the actual case law. Feel free to send on to the full board or include in future Charter packet too if you wish.

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