

CITY COUNCIL REPORT  
PUBLIC

DATE: August 25, 2016  
TO: Mayor, Vice-Mayor and City Council  
FROM: Josh Copley, City Manager  
CC: Barbara Goodrich, Shane Dille and Leadership Team  
SUBJECT: Proposed League Resolution GAHRE #1

The following is a City Council Report on information from the City Attorney's Office after reviewing public records related to recent rezone requests to see how they would have been impacted if the language in Proposed League Resolution GAHRE #1 would have been effective.

**Key Considerations**

At the Council meeting last week some questions were raised regarding the proposed League Resolution GAHRE #1. This League Resolution formally asks the League to lobby the Legislature for an amendment to state statute requirements on rezone protests. The questions raised were:

**Question: If the League Resolution language proposed was in already in effect in Flagstaff, how would it have impacted the recent matters where a supermajority was required? (Please note that "it" refers to the proposed language.)**

Answer: The Standard – Due to the shape of the lot proposed to be rezoned, one property owner had twenty percent (20%) of the real property within 150 feet of the proposed rezone, and it still would have allowed that one single property owner to require a supermajority.

Answer: The Hub – Due to the shape of the lot proposed to be rezoned, it would have prevented one single property owner from requiring a supermajority even though that single property owner alone had twenty percent (20%) of the real property within 150 feet one side of the proposed rezone.

Answer: Mogollon property – Council did not direct the City Manager to move forward with the proposal to rezone of the Mogollon Property so the opportunity to require a supermajority was never formally presented.

**Question: Would this change or diminish the rights that current property owners have to protest a rezone?**

Answer: Yes, under certain circumstances and depending on lot shapes.

After looking through the documents involved in with the last three matters in Flagstaff where a supermajority was, or could have been required, it appears that the proposed language in League Resolution GAHRE #1 could have impacted one of those three matters. In a conversation with Tom Belshe at the League I confirmed the language proposed in the resolution will mirror the language currently applicable to rezones in counties.

The operative language applicable to counties (proposed by Sedona) reads:  
*“If twenty percent of the owners of property by area and number [protest]...”* then a supermajority can be required.

The operative language applicable to municipalities currently reads:  
*“If owners of twenty percent or more of either...the area...or of those immediately adjacent [protest]”* then a supermajority can be required.

Two things in the proposed language are different: 1) The proposed language changes the placement of “twenty percent” putting it later in the sentence, after “owners,” and, 2) The need for twenty percent of **BOTH** real property area and number of property owners. These two differences would have impacted one of the previous three matters here in Flagstaff as indicated in the answers above.

Specifically, the Hub would have been impacted as one owner of twenty percent of the area adjacent to the Northeast side of the Hub would not have been able to require a supermajority under the proposed language (but this property owner was allowed to require a supermajority under the current language). It should be noted that in that case, the Hub, it was specifically due the shape of the lot proposed to be rezoned. The unique shape created an additional side under the current reading of the statute which gave a property owner twenty percent of real property area within 150 feet. That property owner would not have had twenty percent of the area required under the new, proposed language.

**RECOMMENDATION / CONCLUSION:**

This report is for information only.

**ATTACHEMENTS**

- Proposed League Resolution GAHRE #1

League of Arizona Cities & Towns Resolution

*Text of Resolution: Set the requirements to achieve a valid legal protest relating to re-zoning as 20% of the area within the re-zoned area or 20% of the area of lots of property owners within 150 feet of the property to be re-zoned whether adjacent (sharing a border) or non-adjacent (e.g., across the street).*

**A. Purpose and Effect of Resolution.**

Current state statute allows a protest to be filed against a proposed zoning amendment. The protest can be filed if 20% of the owners of the adjacent lots or those lots within 150 feet of the proposed change are opposed to the amendment. The proposed amendment cannot become effective unless three-fourths of the council vote in favor of the amendment (a supermajority vote requirement.)

Current statutory language describing the determination of the lots affected by the rezoning amendment is very convoluted. A.R.S. §9-462.04 (H) states the following: “If the owners of twenty per cent or more either of the area of the lots included in a proposed change, or of those immediately adjacent in the rear or any side thereof extending one hundred fifty feet therefrom, or of those directly opposite thereto extending one hundred fifty feet from the street frontage of the opposite lots,…” It is possible for this vague language to create a situation where a rezoning amendment on an odd-shaped parcel would allow for only one small property owner to file a protest and trigger the supermajority voting requirement. There is a specific case of this happening in the City of Sedona.

This resolution proposes using statutory language similar to that provide for county rezoning amendments. A.R.S. §11-814(E), states the following: “If twenty per cent of the owners of property by area and number within the zoning area file a protest to the proposed rezoning, the change shall not be made except by a three-fourths vote of all members of the board for those counties with five or more supervisors...In calculating the owners by area, only that portion of a lot or parcel of record situated within three hundred feet of the property to be rezoned shall be included. In calculating the owners by number or area, county property and public rights-of-way shall not be included.”

This resolution proposes simplifying the language for cities and towns to reflect the more direct language of the county language.

**B. Relevance to Municipal Policy.**

This situation could present itself in any city or town across the state, so the change in language will help all cities and towns.

**C. Fiscal Impact to Cities and Towns.** There is no fiscal impact from this proposed resolution.

**D. Fiscal Impact to the State.** There is no fiscal impact from this proposed resolution.

**E. Contact Information:**

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