

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Wednesday, January 23, 2008
City Commission Meeting Room, Fargo City Hall
Fargo, North Dakota

Senator Arden C. Anderson, Vice Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives Lee Kaldor, Dwight Wrangham; Senators Arden C. Anderson, Dwight Cook; Citizen Members Linda Coates, Ron Krebsbach, Rodney Ness, Greg Sund, Ken Yantes; Governor's Designee Brian D. Bitner

Members absent: Citizen Members Randy Bina, Bev Nielson

Others present: Rick Berg, State Representative, Fargo

Wesley R. Belter, State Representative, Leonard Edmund Gruchalla, State Representative, Fargo
Tom Fischer, State Senator, Fargo
Carolyn Nelson, State Senator, Fargo

See [Appendix A](#) for additional persons present.

It was moved by Mr. Yantes, seconded by Mr. Sund, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

FUNDING OF RURAL ROADS AND BRIDGES

Mr. Jon Mielke, Upper Great Plains Transportation Institute, provided written testimony ([Appendix B](#)) on generating public involvement in the transportation policy and funding decisionmaking process. He also provided handouts on the workshops to be held around the state and a brochure on the activities of the Upper Great Plains Transportation Institute. A copy of the handouts is on file in the Legislative Council office.

Mr. Mielke said the steering committee has finalized plans for eight public informational sessions. He said the informational sessions are scheduled for the last week of March and the first week of April. He said the agenda for the workshops will be informational and is designed to elicit comment from attendees. He said invitations have been mailed to approximately 4,500 North Dakotans.

In response to a question from Representative Wrangham, Mr. Mielke said the steering committee was created by the Upper Great Plains Transportation Institute and is representative of a cross-section of highway stakeholders. He said the steering committee provides comment on the study plan so that issues are not missed in the program design. He said the purpose of the study is to invite citizens to provide comment on transportation funding issues.

REPORT ON DOCUMENT PRESERVATION FUND

Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, provided written testimony ([Appendix C](#)) on surveys of county recorders to complete the report on the document preservation fund required to be provided to the Advisory Commission on Intergovernmental Relations by April 1, 2008. He said the report should be finished at the end of January and available to the commission at its next meeting.

STUDY OF EXTRATERRITORIAL ZONING

Vice Chairman Anderson read a statement ([Appendix D](#)) prepared by Chairman Kaldor on the authority of the Advisory Commission on Intergovernmental Relations to study extraterritorial zoning. He said the commission will study the issue and may or may not recommend legislation.

Mr. Jonathan Garaas, representing Stanley Township, presented testimony ([Appendix E](#)) based on a handout on annexation and extraterritorial zoning around Fargo. A copy of the handout is on file in the Legislative Council office.

Mr. Garaas said Stanley Township is the leader in development regulation and oversight. He said extraterritorial zoning authority removes the power of Stanley Township. He said Stanley Township is the closest and best governmental entity to represent the people and landowners in Stanley Township. He said the city treats rural inhabitants of the extraterritorial zoning area different because they do not have the right to vote for city officers. He said the city of Fargo has completed two ribbon annexations. He said the city of Fargo used the assessed value of the property annexed, which was land for development, to prevent landowners with 25 percent of the property from protesting the annexation.

In response to a question from Senator Cook, Mr. Garaas said property already zoned in a township that is included within the extraterritorial zoning authority of a city is under the jurisdiction of the city zoning. He said the city zones land as agricultural so commercial property, for instance a fireworks stand, which is included within the extraterritorial zoning of a city, is then in violation of the zoning. He said Fargo charges \$300 to amend the growth plan, which must be changed before a zoning change.

In response to a question from Mr. Bitner, Mr. Garaas said when a city annexes property, it would need to adopt a resolution or ordinance to extend the extraterritorial zoning authority from the border of the annexed property. He said state law requires notice to the township before the exercise of the extraterritorial zoning authority.

In response to a question from Mr. Bitner, Mr. Garaas said annexation and extraterritorial zoning authority are not statutorily tied and are different actions. He said Fargo has not asserted its entire extraterritorial zoning authority and has been lax in enforcement in the extraterritorial zoning area.

In response to a question from Mr. Bitner, Mr. Garaas said Fargo required the standards that Stanley Township adopted, which would have prevented the dike wanted by Fargo. He said this resulted in Fargo adopting a ribbon annexation. He said the people of Stanley Township know the dike will negatively affect many people.

In response to a question from Senator Cook, Mr. Garaas said there is no difference in the special assessment if the land is zoned commercial or agricultural. He said the special assessment is supposed to be assessed on the benefit to the property.

Mr. Jim Gilmour, Director of Planning and Development, Fargo, answered questions for the commission. He provided a history of the strip annexations. He said Fargo and Horace entered an agreement on extraterritorial zoning jurisdiction which established the boundary. He said the agreement was entered just after zoning jurisdictions were expanded in 1997. In 2006, he said, the city of Horace started a process to extend extraterritorial zoning jurisdiction beyond the boundary and stated Horace would not honor the agreement. In addition, Horace annexed land inside the boundary without the permission of the developer. He said Fargo was concerned that Horace would annex land that was within the extraterritorial zoning jurisdiction of Fargo. He said two developers were concerned that Horace would try to annex property outside the boundary. He said the developers had acquired the property for urban development and did not think Horace would be able to provide the proper infrastructure. He said Fargo initiated annexation of the developers' property and strips of land to connect the properties along the border with Horace. He said these annexations were completed in 2006-07. He said the contractors do not expect to develop the property for 20 years. He said the longest annexation was five miles from the existing city limits.

In response to a question from Senator Cook, Mr. Gilmour said if Fargo wanted to annex an area within the extraterritorial zoning authority of West Fargo, Fargo would need the consent of West Fargo or a determination in Fargo's favor by an administrative law judge. He said if the land were not in the extraterritorial zoning authority of West Fargo, then Fargo could annex the land.

In response to a question from Mr. Bitner, Mr. Gilmour said the strip annexations did not go into the extraterritorial zoning authority of Horace.

In response to a question from Ms. Coates, Mr. Gilmour said there is an agreement on extraterritorial zoning between Fargo and Horace which requires consent or the determination of an administrative law judge.

Mr. Bob Staloch, representative from Pleasant Township, provided written testimony ([Appendix F](#)) on annexation and extraterritorial zoning authority. He said the jurisdiction with the strictest floodplain ordinance takes precedence. He said this creates confusion when a city exercises extraterritorial zoning authority. He said there needs to be a limit on strip annexation. He said the people in the extraterritorial zoning area need more representation when determining whether to be included in the extraterritorial zoning area.

Mr. Perry Ronning, Stanley Township Zoning Administrator, provided written testimony ([Appendix G](#)) on extraterritorial zoning. He said the extraterritorial zoning takes the right to vote away from the people who are affected by the decision. He said the law should be corrected to require areas that are annexed or are included within extraterritorial zoning jurisdiction to be adjacent to the border of the city. He said strip or ribbon annexation should be prohibited. He said cities receive revenue from the area extraterritorially zoned but do not take care of the roads or snow removal. He said the city does not follow the proper setbacks needed for snow removal.

In response to a question from Mr. Bitner, Mr. Ronning said he was the mayor of Horace at the time the Fargo strip annexations occurred. He said although Horace could not have supported the infrastructure required for workforce housing, West Fargo could have provided the needed infrastructure to Horace with a joint powers agreement.

Ms. Coates said the particular developer that wanted to build workforce housing preferred to be in Fargo because of the services offered by Fargo.

Mr. Mark Brodshaug, Fargo Planning Commissioner, provided written testimony ([Appendix H](#)) to the commission. He listed six problems with the current law.

1. Cities can expand extraterritorial zoning areas without agreement of the affected townships, the county, the landowners, or other nearby cities.
2. The hearing held by the city on whether to expand the extraterritorial zoning area serves only to help the expanding city.
3. Zoning transition meetings with the affected township are for informational purposes and do not require the approval of the township.
4. Residents in the extraterritorial zoning area cannot vote for the city commissioners who will have zoning authority over the area.
5. Representatives from the extraterritorial zoning area on the city planning commission

only have an advisory authority and make decisions based on the criteria of the benefit to residents of the city.

6. A city may safely ignore comments from nonvoters when deciding whether to expand the extraterritorial zoning authority.

Mr. Brodshaug said one approach for legislative change would be to strengthen the county role in extraterritorial zoning. He said if a city wanted to change the extraterritorial zoning boundaries, the city would be required to submit an application to the county planning commission. He said the county planning commission would have a hearing after public notice. He said the county planning commission would make a recommendation to the board of county commissioners. He said the board of county commissioners would have a hearing and accept, modify, or deny the planning commission's recommendation. He said the city would have to follow the decision of the county. He said a city could also lose extraterritorial zoning area to another city upon approval by the board of county commissioners. He said annual consideration of these items would allow better contemplation of the long-range issues included in these decisions. He said the Legislative Assembly could list relevant factors to be considered by the board of county commissioners, including:

- Present and projected population of subject area;
- Natural topography of the area;
- Present and projected transportation network;
- An analysis of whether necessary government services can best be provided through the proposed action or another type of boundary adjustment; and
- The degree of contiguity of boundaries of the subject area and adjacent units of government.

Mr. Brodshaug said annexations would be outside the area that would need approval by the county.

In response to a question from Ms. Coates, Mr. Brodshaug said the county already has boards to address questions related to governmental services.

In response to a question from Mr. Bitner, Mr. Brodshaug said a city does not consider the county comprehensive plan within the extraterritorial zoning area. He said a city applies the city's comprehensive plan.

In response to a question from Senator Cook, Mr. Brodshaug said there is rural water in the zoning jurisdiction of Fargo.

In response to a question from Senator Cook, Mr. Gilmour said the Fargo Fire Department has a joint powers agreement with fire departments closer to areas annexed through a strip annexation.

Mr. Beau Bateman, Chairman, Brenna Township, Grand Forks County, provided written testimony ([Appendix I](#)) on a township prospective of extraterritorial zoning. He said the extraterritorial zoning area around Grand Forks includes areas in which it would take 115 years to develop. He said Wisconsin requires a zoning board of three city

officials and three rural officials to make majority decisions over extraterritorial zoning areas. He said the city of Grand Forks limited the homes per quarter section to four. He said the city could have used ghost platting to allow for development. He said after expanding the extraterritorial zoning, the city of Grand Forks changed the zoning ordinance and made a landfill a permitted use. He said this resulted in the city being able to allow a landfill in the extraterritorial zoning area without a hearing. He said the city of Austin, Texas, has a two-mile limitation on extraterritorial zoning and has the population approximately the same as the entire state of North Dakota. He said extraterritorial zoning authority should be tied to an index of growth trends. He said the limitation on houses forces people to live in the city and for the city to receive the taxes. He said the city agreed with the water district for the expansion south of Grand Forks and the water district sized the pipes based on growth. He said once Grand Forks limited development, the rural water district could not recover the costs of the pipe. He said the limit of extraterritorial zoning needs to be two miles and the limitation needs to be applied retroactively to cities.

In response to a question from Senator Anderson, Mr. Bateman said the growth of a city can be predicted with accuracy. He said extraterritorial zoning should be tied to growth.

Mr. Randal Loeslie, Manager, Grand Forks-Traill Water District, presented written testimony ([Appendix J](#)) on the effects of the extraterritorial zoning authority of Grand Forks on the water district. In 2000, he said, the water district and the city of Grand Forks entered a long-range plan, whereby the water district would have water service just outside the then existing flood control levies and the two-mile extraterritorial zone. He said the city extended its extraterritorial zoning and voided the water service agreement. He said the limit of four houses per 160 acres made lots unaffordable. He said the water district has put over \$500,000 in infrastructure improvements into the water service area and the city has stranded that investment. He provided a copy of the 2000 agreement between the city of Grand Forks and the water district, which is on file in the Legislative Council office.

Mr. Frank W. Matejcek, presented testimony ([Appendix K](#)) on the extraterritorial zoning by the city of Grand Forks. A copy of the handouts is on file in the Legislative Council office. He said the extraterritorial zoning changes appear to have been done to site a landfill without a public hearing.

In response to a question from Senator Anderson, Mr. Matejcek said a solution would be to require ghost platting and protect corridors for future growth. He said the access points should be easy to plan in this state.

Mr. David Koethe, Thompson, provided written testimony ([Appendix L](#)) on the problems with extraterritorial zoning. He said the law does not provide equal representation and political

accountability through voting, does not prevent predatory zoning, and does not give citizens the power to stop the extraterritorial zoning.

Mr. Albert Frisinger, Fargo, provided written testimony ([Appendix M](#)) on extraterritorial zoning. He recommended the law be changed to require cities to provide emergency services and a detailed road and utility service plan before annexation.

Ms. Marilyn Gregoire, Grand Forks, presented written testimony ([Appendix N](#)) on extraterritorial zoning. She said the four-mile limit should be repealed retroactively to two miles.

Mr. Richard Gross, Grand Forks, provided written testimony ([Appendix O](#)) on extraterritorial zoning. He said people in the area extraterritorially zoned have been disenfranchised. He said they have lost the fundamental right to vote for someone that makes decisions concerning their property.

Mr. Paul Erickson, Grand Forks, provided written testimony ([Appendix P](#)) on extraterritorial zoning. He said his voting and representation rights have been violated through extraterritorial zoning laws. He said the landfill sites are all near railroad tracks. He said he fears the landfill will become quite large.

In response to a question from Senator Cook, Mr. Erickson said the city will receive the results of suitability of the selected sites within two weeks. He said he would expect the city to use eminent domain if there is not a willing seller.

In response to a question from Representative Kaldor, Mr. Erickson said there basically are two general areas in which the landfill may be sited. He said there has been a ground water study for the last two months which concluded the ground water is 10 feet to 12 feet below the ground. He said this is too short a time for a ground water study and it was done at a time when the ground water was at its lowest level.

Senator Cook said the commission may need to send a letter to Grand Forks on the landfill issue.

Mr. Rod Ballinger, Fargo, presented testimony on his difficulties in zoning a winery south of Fargo. He said the difficulty came when Fargo extended the extraterritorial zoning of the city. He said he has been working with the city for a long time and only recently has been making progress with the city. He said the issues relate to liquor licensing and building safety issues.

Mr. Gilmour said there needs to be zoning changes for a winery that serves beer and is a restaurant. He said the ordinance has been changed for conditional use in an agricultural zone. He said the application for a conditional use was applied for but then removed. He said the city would like to work with the winery.

In response to a question from Representative Wrangham, Mr. Gilmour said the county controls the liquor licenses; however, the city zones where the alcoholic beverages may be sold.

Mr. John Rutten, Mapleton Township, presented testimony on extraterritorial zoning of West Fargo. He said Mapleton Township has worked well with West

Fargo in West Fargo's exercise of extraterritorial zoning.

Mr. Warren Solberg, Horace, provided written testimony ([Appendix Q](#)) on extraterritorial zoning in Stanley Township. He said there is tension because Horace does not want to be surrounded and Fargo does not want a barrier to growth. He said strip annexation is a bad policy. He said one solution to the problems created by extraterritorial zoning is to allow townships around metropolitan areas to have common zoning and floodplain control with one administrator.

Mr. Sund said townships may do this through a joint powers agreement.

Mr. Steven Schultz, Horace, presented testimony on extraterritorial zoning and strip annexation. He said he suspects the reason for the strip annexation is for control over the proposed dike corridor.

Mr. Brad Gengler, Grand Forks City Planning, presented testimony on extraterritorial zoning in Grand Forks. He said there are two sections on the north side and four sections on the south side which are being considered for the landfill.

In response to a question from Representative Kaldor, Mr. Gengler said the siting process is a city function and the city has invested \$400,000 in studies.

In response to a question from Senator Cook, Mr. Gengler said the city is in negotiation with sellers for the land for the landfill site. He said eminent domain has been a topic of public discourse, but there has been no public announcement related to the subject.

In response to a question from Senator Cook, Mr. Gengler said the landfill is a regional facility of seven counties in North Dakota and Minnesota.

In response to a question from Representative Kaldor, Mr. Gengler said the extraterritorial zoning was extended to four miles in 2006 and the zoning code changes were made in 2007.

Mr. Keith Berndt, Engineer, Cass County, provided written testimony ([Appendix R](#)) on extraterritorial zoning. He said one of the primary considerations in planning should be to minimize the tax burden on current and future citizens. He read a resolution from the Cass County Board of Commissioners supporting city planning officials as the body in the best position to understand and plan for the future needs of the city and in support of the four-mile extraterritorial zoning authority for cities over 25,000 in population and a two-mile extraterritorial authority for cities with over 5,000 in population.

In response to a question from Representative Kaldor, Mr. Berndt said all 49 townships in Cass County have exercised zoning authority.

In response to a question from Representative Kaldor, Mr. Berndt said until today he had not heard of any abuses of extraterritorial zoning and has not seen any in Cass County.

In response to a question from Senator Cook, Mr. Berndt said there needs to be a balance of the cost of not properly planning with property rights.

Representative Wrangham said zoning is best done by those closest to the area zoned.

In response to a question from Representative Wrangham, Mr. Berndt said he supports decisions made with the involvement of stakeholders.

In response to a question from Representative Wrangham, Mr. Berndt said he is not opposed to township zoning in rural areas, but there is a problem with township zoning around a metropolitan area. He said farmers who say they do not want to sell and want to be farmers who live next to a city generally change their mind when their land becomes very valuable for development.

Representative Wrangham said there are protections in annexation for the people being annexed, but not in extraterritorial zoning. He said there may be a need to have similar protections for extraterritorial zoning.

Mr. Doug Goulding, Grand Forks County Citizen Coalition, presented testimony (included in [Appendix U](#)) on extraterritorial zoning around the city of Grand Forks. He said the Grand Forks County Citizen Coalition is an affiliate of the Dakota Resource Council. He said there should be a limit on extraterritorial zoning because citizens affected do not have the right to vote or to self-governance. He said zoning is a power that is seldom questioned by the courts. He said the only recourse against poor zoning is the ballot box. He said the landfill has a heavy impact on water, air pollution, and infrastructure use. He said before the changes in the zoning regulations, the city would have needed a conditional use permit and would have had to go through the county to site the landfill. He said if the county made the decision, the people would have received notice and a hearing. He said the board of county commissioners is politically accountable to all the citizens in the county. He said when the city of Grand Forks made the landfill a permitted use, no hearing was needed, and the decision is made by an unaccountable board that is not objective. He said four-mile extraterritorial zoning allows all the benefits of annexation without the burdens of annexation. He said the city does not need to provide police, fire, water, waste control, or road maintenance or any service in an area extraterritorially zoned. He said although the State Department of Health and the federal government have permits, these environmental laws are supposed to work with local zoning, not replace zoning authority. He said he would encourage legislation that would balance the orderly development of a city with local self-governance. He said there should be legislation to allow people impacted by a high-impact or high-pollution facility to have a hearing and for the decision to be made by a politically accountable board.

In response to a question from Mr. Yantes, Mr. Goulding said the commission should review Wisconsin's laws.

Mr. Larry Syverson, District Director, North Dakota Township Officers Association, presented written testimony ([Appendix S](#)) on extraterritorial zoning. He

said township residents that live within the extraterritorial zoning of the city do not have electoral power over those who regulate the property use of their homes. He said there is some opportunity to be represented on the zoning commission, but that is merely in an advisory capacity. He said cities may be growing, but few grow in 360 degrees. He said the democratic way of handling growth by cities would be to identify areas of future expansion and advise the local authority of those areas and what is needed for the future. He said cities in Minnesota have two miles of extraterritorial zoning.

Ms. Nancy Kaeding, Contractors Leasing, presented testimony on the strip annexation in Fargo. She said she represented one of the developers that had asked for the strip annexation. She said having land within the extraterritorial zoning authority of Fargo will increase the value of the property.

In response to a question from Representative Wrangham, Ms. Kaeding said the annexation six miles south of Fargo was done because Fargo will be the first city to be able to provide services. She said the city has annexed property against the will of her company in the past.

Mr. Wayne Anderson, Jamestown, provided testimony on extraterritorial zoning. He said the city does not follow the setback provided for by the township and this creates snow removal problems. He said the city will not pay for roads outside city limits because the city is forbidden from spending taxes outside city limits, but the city approves the plot maps. He said someone should be responsible for the roads, perhaps the developer. He said many township officers want to be involved in zoning in the extraterritorial zoning area, but the city ignores the township officers.

In response to a question from Mr. Yantes, Mr. Anderson said a joint zoning authority would be a good idea.

Mr. Gilmour provided testimony related to a map on the estimated growth of Fargo. A copy of the map is on file in the Legislative Council office. Mr. Gilmour said the population projection for Fargo in 50 years is 165,000 to 240,000. He said this will result in an increase of 70,000 people. He said if this increase comes at 15,000 people per year, it will require five sections of land per decade. He said 10 years ago there were areas not in the extraterritorial zoning authority that are now fully built. He said a two-mile extraterritorial zoning authority is not sufficient.

In response to a question from Representative Wrangham, Mr. Gilmour said the reason Fargo plans for growth is because the majority of citizens want good jobs, economic development, a place for businesses, and nice houses. He said more difficulty in expanding the city would limit growth.

In response to a question from Representative Wrangham, Mr. Gilmour said it is not the size of the city that is as important as the quality of life in the city. He said there are advantages with economies of scale

with a larger city. He said a larger city can share services and provide more coordination.

Ms. Coates said there are two reasons for annexation--to stop another city from annexing or for growth. She said the first in time to annex takes priority. She said Horace, West Fargo, and Fargo all want the ability to grow.

In response to a question from Mr. Bitner, Mr. Gilmour said he does not know of any inconsistency between the city and county comprehensive plans. He said the county plan applies outside the extraterritorial zoning area.

In response to a question from Mr. Bitner, Mr. Gilmour said the city and county look at roads in the extraterritorial zoning area differently. He said the city looks at roads for future use and the county for present use. He said the city works with the county.

In response to a question from Mr. Bitner, Mr. Gilmour said the reason the city needs extraterritorial zoning, even though the city cooperates with the county, is that the city is concerned with proper planning and the city has the staff and expertise to administer proper planning.

In response to a question from Representative Kaldor, Mr. Gilmour said for the extraterritorial zoning to extend from a strip annexation, the strip has to be at least 100 feet wide. He said the first strip annexation was 200 feet wide and the second was 60 feet wide.

In response to a question from Representative Wrangham, Mr. Gilmour said the county provided law enforcement on the strip annexed land. He said the county has jurisdiction.

Mr. Larry Weil, West Fargo, provided written testimony ([Appendix T](#)) on extraterritorial zoning in West Fargo. He said there have been a number of rural subdivisions in place since the 1950s and they have problems. He said septic systems do not last long in the soils around West Fargo. He said some of the subdivisions have wells that are failing. He said new wells are difficult because of the nearby septic systems. He said it is very costly to solve problems that result from poor planning. He said some of the residents cannot afford to solve the problems. He

said the intentions of extraterritorial zoning were good, i.e., to address problems with rural subdivisions.

In response to a question from Representative Wrangham, Mr. Weil said there are state laws relating to septic systems, but the laws may not be stringent enough for the soil types. He said cities and townships need to collaborate.

In response to a question from Mr. Bitner, Mr. Weil said West Fargo cooperates by notifying county officials, township officials, and affected citizens of hearings. He said West Fargo provides good consideration of county, township, and citizen concerns. He said the goal is to meet the common good.

Mr. Sund said maybe landfill sitings should be a state decision.

Representative Wrangham said the commission has heard grievances and now should look for solutions.

Chairman Kaldor requested commission counsel to include in the minutes any testimony or letter provided the commission or commission counsel. Attached as [Appendix U](#) is the testimony from Mr. Larry Teters, Grand Forks; Mr. Shawn Kessel, City Coordinator, Wahpeton; a map of the incorporated city limits and extraterritorial boundaries in Cass County; a letter from Mr. W. C. Wocken, City Administrator, Bismarck, in response to the testimony on October 3, 2007; and response to that letter from Representative Dwight Wrangham; testimony by Mr. Cully Gause, Grand Forks; Mr. Claus H. Lembke, Bismarck; Mr. R. D. Knutson, Briarwood; and Mr. Doug Schonert, Burleigh County Commissioner, Baldwin; and supplemental testimony by Mr. Berndt, Cass County Engineer, West Fargo, and Mr. Goulding, Grand Forks County Citizen Coalition.

No further business appearing, Chairman Kaldor adjourned the meeting at 6:30 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:21