

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, June 3, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Lee Kaldor, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Lee Kaldor, Dwight Wrangham; Senators Arden C. Anderson, Dwight Cook; Citizen Members Randy Bina, Rodney Ness, Bev Nielson, Greg Sund, Ken Yantes; Governor's Designee Brian D. Bitner

Members absent: Citizen Members Linda Coates, Ron Krebsbach

Others present: See [Appendix A](#)

It was moved by Ms. Nielson, seconded by Mr. Sund, and carried on a voice vote that the minutes of the previous meeting be amended to include Ms. Nielson's comments indicating Mr. Kreun did not have the authority to commit the Grand Forks City Council to any specific actions, Mr. Kreun was only testifying as an individual member of the council, and, as he agreed, Mr. Kreun could not speak for the council as a whole.

It was moved by Ms. Nielson, seconded by Mr. Bina, and carried on a voice vote that the minutes of the previous meeting be approved as amended.

EXTRATERRITORIAL ZONING AUTHORITY STUDY

Representative Wrangham provided written testimony ([Appendix B](#)) in favor of restricting extraterritorial zoning authority.

In response to a question from Representative Kaldor, Representative Wrangham said his intent was for the Advisory Commission on Intergovernmental Relations to request a bill draft that would eliminate extraterritorial zoning authority.

Mr. Curly Haugland, Landowners Association of North Dakota, provided information on the Burleigh County Comprehensive Plan. He provided a copy ([Appendix C](#)) of a page of the plan relating to the extraterritorial zoning and subdivision regulation by cities. He said the Burleigh County Comprehensive Plan is applying the comprehensive plan of King County, Washington, to Burleigh County. He said the comprehensive plan states that Burleigh County will work to defend the right of the cities to exercise extraterritorial zoning and subdivision authority. He said the plan states that Burleigh County will organize an effort to present information to the Legislative Assembly regarding the extraterritorial zoning and

subdivision regulation authority of cities. He said cities do not have rights in the constitution. He said counties should not lobby the Legislative Assembly. He said it is wrong for counties to use taxpayer money to lobby the Legislative Assembly. He said cities and counties have been lobbying the Legislative Assembly for years and that is how extraterritorial zoning and subdivision regulation was passed into law.

In response to a question from Senator Cook, Mr. Haugland said if extraterritorial zoning authority is repealed, he does not support city residents not paying county taxes. He said people do not move to the country to avoid taxes and when people move to the country there is no burden on the city. He said people move to the country for space.

Senator Cook said there are many reasons people move to the country and people that move to the country are cognizant of property taxes. In addition, he said, people move to the country but want to be close to the city to receive the benefits of living close to a city. He said city and county residents may live across the street from each other, but the city resident pays city and county tax and the county resident only pays county tax. He said if the Legislative Assembly was to remove extraterritorial zoning authority, there would be more growth in the extraterritorial zoning area and more burden on the city. He said people moving to the area right outside the city would not pay city taxes, but would have the benefit of living near the city. He said removing extraterritorial zoning authority is too extreme.

In response to a question from Senator Cook, Mr. Haugland said city property taxes do not pay for services of people in rural areas. He said county people pay for county services. He said people that live in the country come to the city to shop and pay city sales tax. He said extraterritorial zoning authority is not a tax issue but a property rights issue.

Senator Cook said the roads in a city are paid for with special assessments. He said people who live in the city pay property taxes for roads in the county, including the extraterritorial zoning area.

In response to a question from Senator Cook, Mr. Haugland said county road funds pay for county roads. He said city people drive on county roads and receive a benefit from having county roads.

Mr. Richard Hammond, Burleigh County resident, presented written testimony ([Appendix D](#)) to the commission in support of removing the extraterritorial zoning authority of cities. He said it took

three sessions for the Legislative Assembly to pass extraterritorial zoning authority. He said the city planners came in year after year until they wore down the opposition.

Mr. Charles A. Morman, Road Superintendent, Morton County, provided information to the commission. He said he was sent at the direction of Mr. Dick Tokach, Chairman, Morton County Commission, to express that Morton County is not against extraterritorial zoning per se; however, representation of the people living in the extraterritorial zoning area needs to be addressed. He said, for zoning in the extraterritorial zoning area in Morton County, the city planner asks for comments from the county on a form and that is how the county is involved.

In response to a question from Representative Kaldor, Mr. Morman said the county has representation on the Mandan Planning and Zoning Commission. He said the final decisions for zoning are made by the five-member Mandan City Commission.

In response to a question from Senator Cook, Mr. Morman said Morton County supports legislation that provides for representation. He said the city should have to come to the county, not the county to the city, for development planning outside of city limits.

Mr. Warren Solberg, Wild Rice, presented written testimony ([Appendix E](#)) in favor of returning zoning in areas outside of city limits to townships and to prohibit the annexation of land unless the infrastructure needs of the land are greater than what the township can provide.

Mr. Perry Ronning, Stanley Township, presented written testimony ([Appendix F](#)) in favor of limiting extraterritorial zoning to less than a mile for cities such as Fargo and to prohibit strip annexation. He said he supported most of Representative Wrangham's testimony.

Senator Cook said sometimes it appears that no entity, the city, the county, or the township, wants responsibility for roads.

Representative Kaldor said there appears to be different practices in different areas of the state.

Mr. Doug Schonert, Burleigh County Commissioner, presented information to the commission. He said the county is the best governing vehicle to make decisions in the extraterritorial zoning area. He said the board of county commissioners is elected by all residents of the county. He said most townships are not organized in certain parts of the state. He said the gas tax pays for roads in Burleigh County. He said one-quarter of one mill is set by state law and that brings in about \$50,000. He said a portion of the Bismarck city sales tax pays for city streets. He said people in the county pay sales tax for purchases made in the city. He said taxes appear to go from the city to the county and the county to the city. He said, although city residents pay for sheriff services, the sheriff provides services to city

residents, for example, serving warrants. He said county tax dollars pay for the recorder's office, the veterans' service office, the Extension Service, and social services, not just roads and law enforcement. He said the Metropolitan Planning Organization provides regional cooperation on roads.

Senator Cook said the county receives property tax funds for roads from the county road and bridge tax fund that is within the general fund but may be increased up to an extra five mills. He said a county may receive money from the farm-to-market fund and the federal aid highway fund that may be set at any mill amount approved by the voters. He said the county road fund may be set up to five mills. He said all of these mill levies are paid by citizens of the city. In addition, he said, the unorganized township road and bridge fund pays for rural roads.

Representative Kaldor said the commission should not discuss taxes and should restrict discussion to extraterritorial zoning.

BOARD OF COUNTY COMMISSIONERS TO RESOLVE ZONING DISPUTE IN EXTRATERRITORIAL ZONING AREA SECOND BILL DRAFT

Commission counsel presented a bill draft [\[90101.0200\]](#) that would require the board of county commissioners to hold a hearing on any zoning or subdivision regulation in the extraterritorial zoning authority area and approve or disapprove of the regulation after looking at certain factors. He said the major change in the bill draft was to provide weight to a previous township determination. He said if there was a change from previous township regulation, the board of county commissioners would need to find by a preponderance of the evidence for the change desired by the city using the factors listed in the bill draft.

In response to a question from Senator Cook, commission counsel said the bill draft applies to future changes and to regulation changes within the extraterritorial zoning area, not distances of extraterritorial zoning.

In response to a question from Ms. Nielson, commission counsel said the bill draft does not apply to annexation.

Mr. Mark Brodshaug, Fargo Planning Commission and Warren Township Supervisor, presented written testimony ([Appendix G](#)) in favor of a city having zoning and subdivision authority in the city's 25-year growth area and for the board of county commissioners to have authority to approve or reject changes in a city's extraterritorial zoning area and approve or reject annexation outside a city's extraterritorial zoning area. He said the board of county commissioners should be able to approve the distance of extraterritorial zoning at a particular place and approve annexations. He said these powers should be retroactive.

In response to a question from Representative Wrangham, Mr. Brodshaug said there needs to be a regional authority to approve annexations, especially if there is no extraterritorial zoning authority. He said this regional approval would resolve disputes between competing cities.

Representative Kaldor said, without extraterritorial zoning authority, cities would need to annex for planning and annexation is more expensive for landowners in the area.

Mr. Solberg provided testimony in opposition to the bill draft. He said the bill draft provides another level of zoning. He said the township should control zoning with the help of cities and counties. He said a township would not vote against a zoning change unless it was a terrible change.

Ms. Marilyn Gregoire, Grand Forks County resident, presented testimony to the commission. She said the board of county commissioners is elected at large and the rural areas are underrepresented. She said the power to zone should be in the township's hands.

JOINT JURISDICTION IN EXTRATERRITORIAL AREA LIMITED TO 10-YEAR GROWTH PLAN WITH DISPUTE RESOLUTION BY OFFICE OF ADMINISTRATIVE HEARINGS BILL DRAFT

Commission counsel presented a bill draft [\[90064.0200\]](#) that would limit extraterritorial zoning jurisdiction to within a city's 10-year growth plan, require joint jurisdiction of the city and the governing body that exercised zoning or subdivision jurisdiction before the extension in the area of extraterritorial zoning, and provide for dispute resolution through the Office of Administrative Hearings to determine whether the proposed regulation is substantially related to the purpose of the regulation and does not unnecessarily burden affected persons. He said the application section makes the 10-year growth plan limit the limit even if a city has already expanded extraterritorial zoning authority further than that point. He said cities are given six months to phase back to the 10-year growth limit.

In response to a question from Senator Cook, Representative Kaldor said some cities have growth plans. He said it is common for cities to estimate growth and he believes that most cities have an estimation.

Mr. Morman presented testimony in favor of the bill draft. He said the city of Mandan has expanded to the farthest point allowed and that point is where the city will be after 550 years of growth.

Mr. Haugland presented testimony on the bill draft. He said the standard used by the administrative law judge is improper. He said there is no need for the city to expand unless the property owners want the city to expand. He said he would delete the language in the bill draft that said the administrative law judge

may consider the need of the city to plan for development of the city and the preferences of the residents or property owners in the unincorporated territory.

Mr. Hammond provided testimony on the bill draft. He said growth projections are arbitrary.

In response to a question from Ms. Nielson, Representative Kaldor said there is nothing consistent throughout the state as to staff for planning and zoning by townships, cities, and counties.

In response to a question from Representative Kaldor, Mr. Ronning said that Stanley Township receives aid from the county for planning. He said the planning process begins with the county and the township reviews what the county suggests.

Mr. Sund said some counties and cities in the state do not have professional planning staff.

REPEAL OF SUNSET ON PRESENT EXTRATERRITORIAL ZONING AUTHORITY LAW BILL DRAFT

Commission counsel presented a bill draft [\[90154.0100\]](#) that would remove the sunset on present extraterritorial zoning authority law. He said present law has the limits at one-half mile, one mile, and two miles, and allows an extension up to two times the distance allowed if approved by five members of a six-member committee. He said the committee consists of three members appointed by the governing body of the city and three members appointed, jointly, by the bodies of any political subdivision that is exercising zoning authority in the territory to be extraterritorially zoned. He said the application section of the bill draft would have the limits phased in over time as cities expand.

Mr. Solberg presented testimony on the bill draft. He said the bill draft does not address strip annexation and the extension of extraterritorial zoning authority from a point that has been annexed by a strip of land.

Mr. Sund said present law creates a board for the extension of the extraterritorial zoning authority. He said this is different from the other bill drafts which create a dispute mechanism for the regulations within the extraterritorial zoning authority.

JOINT JURISDICTION IN THE OUTSIDE HALF OF THE EXTRATERRITORIAL AREA WITH DISPUTES RESOLVED BY THE OFFICE OF ADMINISTRATIVE HEARINGS BILL DRAFT

Commission counsel presented a bill draft [\[90140.0100\]](#) that would provide joint jurisdiction in the outside half of the area to be extraterritorially zoned. He said the bill draft would affect future changes. He said the standard for review by the Office of Administrative Hearings as to disputes would be whether the proposed regulation is substantially related to planning practices consistent with the city's

comprehensive plan and does not unnecessarily limit appropriate land use by affected persons.

In response to a question from Representative Kaldor, commission counsel said the standards used by the Office of Administrative Hearings in the different bill drafts appear to be very similar.

Mr. Haugland presented testimony in opposition to the bill draft. He said the bill draft creates two monsters. He said by making the standard used by the administrative law judge to resolve disputes include whether the regulation is substantially related to the city's comprehensive plan makes the comprehensive plan hard law. He said comprehensive plans are merely guidelines and deny property rights.

Mr. Jerry Hjelmstad, North Dakota League of Cities, presented testimony in support of the bill draft. He said the comprehensive plan was used because it is a public document.

Representative Kaldor said as a different standard the city could show "good cause" instead of showing that the regulation is substantially related to the comprehensive plan.

In response to a question from Mr. Bitner, Mr. Hjelmstad said the issue of representation is not addressed in the bill draft for the inside half of the extraterritorial zoning area.

Mr. Bitner said the overwhelming concern of citizens is the right to vote. He said this right does not change based on the distance away from the city.

Mr. Sund said a veto power is representation.

In response to a question from Mr. Bitner, Mr. Hjelmstad said by having joint jurisdiction in the outside half, the inside half would remain as extraterritorial zoning was originally enacted. He said this power is needed by cities to protect citizens from improper or unsafe uses of land.

Mr. Bitner said he would not do anything on his land to damage the health or safety of people of the city.

Senator Cook said in Fargo the commission received testimony that could be summarized as people wanting the right to vote and wanting the reach of extraterritorial zoning authority returned to where it was before 1997. He said the bill draft is a great compromise. He said if there is joint jurisdiction there may be no need to regulate the area of extraterritorial zoning.

Ms. Nielson said if extraterritorial zoning authority is repealed there may be things that have been done that may be difficult to undo. She said the return to the original areas is a good compromise.

Mr. Bitner said the bill draft would possibly add another meeting. He said a landowner wishing to change zoning must hire an engineer or attorney. He said by increasing the number of meetings the cost to the landowner is raised and is not in the interests of housing affordability.

Representative Wrangham said citizens are protected presently as to health and safety even if

they live 10 miles away from the city. He said extraterritorial zoning is a power issue.

In response to a question from Representative Wrangham, Mr. Hjelmstad said the League of Cities receives calls from cities concerned with hazardous activities happening directly outside of city limits on a regular basis.

Ms. Gregoire presented testimony on the bill drafts. She said there is nothing that cannot be undone. She said she is in favor of repealing extraterritorial zoning authority.

REPEAL OF EXTRATERRITORIAL ZONING AND SUBDIVISION REGULATION AUTHORITY BILL DRAFT

Representative Wrangham distributed a bill draft [\[90108.0200\]](#) that repeals extraterritorial zoning and subdivision regulation by cities.

Mr. Brodshaug provided testimony on the bill draft. He said in annexation disputes there is the issue of who pays for the administrative law judge. He said this is an important issue and the state may wish to appropriate money to cover the cost of any dispute resolution mechanism in the bill draft.

Representative Kaldor said the city would most likely be the party petitioning for an administrative law judge and it appears the city would pay for the administrative law judge.

Mr. Curt Kreun, Grand Forks City Council member and planning and zoning commission member for the city of Grand Forks and Grand Forks County, presented testimony in opposition to the bill draft repealing extraterritorial zoning authority. He said there would need to be funding for cities if extraterritorial zoning were repealed. He said there would be costs in transitioning to rural water. He said there would be higher costs for individuals annexed into the city because they would pay for all improvements through specials instead of having some of these services paid citywide. For example, he said, the city of Grand Forks bought the rural water system. He said the whole city paid for this buyout.

In response to a question from Representative Kaldor, Mr. Kreun said the taxpayer would pay for duplication of services. He said the city would need a funding mechanism or particular people would have to pay more.

In response to a question from Mr. Bitner, Mr. Kreun said a previous statement by a representative of the Grand Forks-Traill Water District that Grand Forks voided the water service agreement with the water district was an incorrect statement.

In response to a question from Representative Kaldor, Mr. Kreun said a rollback in extraterritorial zoning authority would be costly and would create an issue of who will pay for the rollback.

In response to a question from Representative Kaldor, a representative from the Grand Forks-Traill

Water District said the city has bought out what the city has annexed into the city.

LANDFILL SITING

Mr. Kreun provided an update on activities with the siting of a landfill near the city of Grand Forks. He said there was a vote in Rye Township. He said the city is doing testing and is working on establishing a positive relationship with Rye Township. He said issues are being addressed and an effort is being made to mitigate those issues.

Mr. Terry Stromsodt, Rye Township, said there was a vote regarding the landfill siting at a special meeting on May 27, 2008. He said there were 79 votes cast; 72 of those votes were against the landfill and 7 were for the landfill. He said the results of the vote were provided to the Grand Forks City Council and the Grand Forks Board of County Commissioners. He said Rye Township is in the process of coming to an agreement with the city.

In response to a question from Senator Cook, Mr. Stromsodt said the city has a sewage lagoon, an airport, and the English Coulee diversion in Rye Township. He said the nontaxable property is 20 quarter sections. He said Rye Township is concerned with paying for infrastructure with the creation of the landfill. He said the township and township residents should not bear the cost of the landfill. He said Rye Township is working with the city of Grand Forks to reduce the impact on the township.

In response to a question from Representative Kaldor, Mr. Stromsodt said the Rye Township Board assumes the city will place the landfill in section 13, so the township is working with the city on logistics to mitigate the impact to the township. He said the township is keeping open the dialogue with the city to protect the interests of landowners, residents, and the township.

In response to a question from Representative Kaldor, Mr. Stromsodt said the location of the landfill is a logical place for the landfill. He said the landfill will be close to the wastewater management center and to the balefill site. He said it is reasonable to keep the landfill in the area.

In response to a question from Mr. Yantes, Mr. Stromsodt said the vote did not have an impact on the outcome because of extraterritorial zoning authority.

Mr. Todd Feland, Public Works Director, city of Grand Forks, presented testimony ([Appendix H](#)) on landfill siting in Rye Township. He provided handouts entitled *A Comprehensive Plan for Municipal Solid Waste Management in Grand Forks* by Dexter Perkins and Jason Schaefer and *Final Environmental Impact Study for the Grand Forks Municipal Solid Waste Balefill Facility*. He said both documents supported the placement of the landfill in the proposed area by people previously against the location of the landfill elsewhere. In addition, he provided a handout of photographs of the areas involved and a report from the State Department of Health. A copy of the

handouts is on file in the Legislative Council office. He said the city has taken into account the recommendations of opponents to the siting of the landfill.

In response to a question from Senator Cook, Mr. Feland said, without extraterritorial zoning authority, the city would need a landfill authority made up of regional governmental entities to site a landfill. He said there will be opponents to the siting of a landfill anywhere.

In response to a question from Mr. Bitner, Mr. Feland said a fire in the landfill is put out with dirt. He said there is rural water and a water main near the new site. He said the city of Grand Forks would have primary responsibility for a fire at the landfill and the city will contract with the Manvel Fire Department.

In response to a question from Mr. Bitner, Mr. Stromsodt said there are approximately 85 homes in Rye Township.

Mr. Kreun said landfills are a regional problem and four landfills in the area have closed because of the cost. He said a regional authority in which local governments work together would be better than a city using extraterritorial zoning authority. He said no matter who is in charge of landfill siting, someone will have to make an unpopular decision.

In response to a question from Representative Kaldor, Mr. Kreun said individuals that voted against the landfill have to contact the city with their concerns and the city will address the concerns. He said the city had to make a decision and the Legislative Assembly gave that decision to the city.

Mr. John Spitzer provided testimony on landfill siting. He said large cities created the problem of no one wanting to be near a landfill. He said small landfills do a good job of covering the trash and preventing it from blowing away. He said he has flown over landfills in this state and Grand Forks, Fargo, Bismarck, and Minot are the worst landfills. He said there are seagulls living at these landfills because the cities do not cover the trash immediately.

Mr. Frank Matejcek, Grand Forks City Planning and Zoning Commission, provided testimony on landfill siting. He said landfill siting in the Grand Forks area is a zoning issue because the city changed the zoning when it took the extraterritorial zoning authority. He said the city changed the zoning in the area to make a landfill a permitted use. He said a person may not place a school next to a slaughterhouse and in the same way a person should not be able to place a landfill next to existing rural structures. He said the city of Grand Forks changed the criteria for annexation when it changed to the four-mile extraterritorial zoning area. He said the criteria are no longer based on services. He provided a copy ([Appendix I](#)) of the point system used by the city of Grand Forks to annex property.

In response to a question from Representative Kaldor, Mr. Matejcek said the changed point system makes it easier to annex property within the four-mile extraterritorial zoning authority.

In response to a question from Mr. Yantes, Mr. Matejcek said the point system was created by the city of Grand Forks.

Mr. Matejcek said strip annexation creates specials for farmers so that the city can get services to a development. He said the farmers receive no benefit if they continue to farm.

Mr. Dave Meagher presented testimony on landfill siting. He said the Rye Township Board seemed to represent the minority. He said people are concerned because the road by the landfill has not been taken care of and the township has been told it must take care of the road.

Mr. Ryan Scott, Rye Township resident, presented written testimony ([Appendix J](#)) on the siting of the landfill in Rye Township directly across the road from his residence.

Ms. Gregoire presented written testimony ([Appendix K](#)) on extraterritorial zoning authority and the landfill.

COMMISSION DISCUSSION

In response to a question from Representative Kaldor, commission counsel reviewed the factors used by an administrative law judge in an annexation dispute.

Mr. Sund said the more factors you list for the administrative law judge to use to determine a dispute, the more legal problems. He said the final factor of any other factors swallows the other factors.

Senator Cook said the list is of what the administrative law judge must consider and the listed factors are required to be considered. He said the judge may consider other factors the judge finds relevant.

Representative Kaldor said the commission should try to come to a consensus and asked for comments from commission members.

Representative Kaldor said the issue is whether to roll back extraterritorial zoning to a certain point or altogether.

Representative Wrangham said extraterritorial zoning authority is not needed to solve problems.

Representative Wrangham said he will work on an improved bill draft for the repeal of extraterritorial zoning authority.

Representative Kaldor said extraterritorial zoning authority and annexation have a relationship. He said removing extraterritorial zoning authority may encourage annexation.

Senator Cook said annexation is sometimes used to extend extraterritorial zoning authority, especially through strip annexation.

Senator Anderson said extraterritorial zoning authority has worked well, especially when it was first introduced. He said the doubling of the area of extraterritorial zoning authority may have gone too far. He said there needs to be a compromise and the bill draft that provides for joint jurisdiction in the outside half of the area is a good compromise.

Mr. Ness said the commission needs to find some middle ground.

Mr. Bill Wocken, Bismarck City Administrator, answered questions for the commission.

In response to a question from Mr. Ness, Mr. Wocken said anytime the city expands there is a cost. He said extraterritorial zoning allows a city to plan in advance for expansion of water, sewer, and roads. He said planning lessens that expense. He said there are legitimate concerns relating to costs because the city does not typically assess all the costs of services to people being annexed into the city.

Representative Wrangham said utilities always plan in advance and do not have extraterritorial zoning authority.

In response to a question from Representative Wrangham, Mr. Wocken said zoning needs to be enforced through extraterritorial zoning to have the proper roadway access, right of way, size of services, and setbacks.

In response to a question from Representative Wrangham, Mr. Wocken said citizens may choose whether to be within city limits.

Representative Wrangham said extraterritorial zoning authority has nothing to do with how a city develops and a city should be allowed to develop naturally without unnecessary city intervention.

Mr. Sund said he supports the bill draft to provide joint jurisdiction in the outside half of the extraterritorial zoning area. He said some work on that bill draft may need to be done, especially as to factors the administrative law judge considers.

Mr. Bina said he supports the bill draft to have joint jurisdiction in the outside half of the extraterritorial zoning area. He said he may support joint jurisdiction in the entire area. He said repealing extraterritorial zoning authority would have consequences the commission has not considered.

Mr. Yantes said might does not make right and citizens should be able to vote for government bodies that make decisions that concern them.

Mr. Bitner said he was not willing to compromise on the issue of the rights of citizens to vote. He said the citizens have not been overly concerned with zoning rules but with their inability to vote for people that make decisions concerning them.

Senator Cook said the commission needs to do something and eliminating extraterritorial zoning authority would be better than doing nothing. He said the determination by the commission is to what degree extraterritorial zoning authority will be limited.

No further business appearing, Chairman Kaldor adjourned the meeting at 2:30 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:11