

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Monday, September 15, 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, Jim Gilmour, Ron Krebsbach, Rodney Ness, Bev Nielson, Greg Sund, Ken Yantes; Governor's Designee Brian D. Bitner

Others present: See [Appendix A](#)

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

20-YEAR GROWTH PLAN WITH JOINT JURISDICTION IN THE OUTSIDE HALF OF THE EXTRATERRITORIAL AREA BILL DRAFT

Commission counsel presented a bill draft [\[90289.0100\]](#) that would limit the extraterritorial zoning authority of cities to a 20-year projected growth plan that was approved by the board of county commissioners. The bill draft required joint jurisdiction with the previous entity with jurisdiction in the area of a 10-year growth plan to the 20-year growth plan with a dispute mechanism of an administrative law judge. The bill draft required property owners to request zoning or subdivision decisions from the city unless the decision was to change zoning classification or for a conditional use permit, in which case, the owner would be able to request a change from the other jurisdiction if the city denied the request. Under the bill draft, if the city was rejected by the other jurisdiction, the city could petition the Office of Administrative Hearings to make a determination as to the dispute. The bill draft provided for eight factors for the administrative law judge to consider in making determinations. The bill draft provided for retroactive application on August 1, 2011.

In response to a question from Senator Cook, commission counsel said a city would need a growth plan to have extraterritorial zoning authority and could begin and extend extraterritorial zoning authority under this bill draft; however, previous extensions of extraterritorial zoning authority before August 1, 2009, would be replaced by this bill draft on August 1, 2011.

In response to a question from Representative Kaldor, commission counsel said a city could have no extraterritorial zoning authority under the bill draft.

In response to a question from Mr. Sund, commission counsel said the county could not delay and win because the board of county commissioners is required to make a decision within 60 days of a request of a city and if the board of county commissioners does not act, the plan is approved.

In response to a question from Mr. Sund, commission counsel said the district court was used as a dispute mechanism for the approval of a growth plan, instead of an administrative law judge, because the idea came from a previous bill draft and because removal of the stop of an administrative law judge would quicken the process.

Representative Kaldor said the issue for the district court should be simple because it is only one issue, whether the growth plan reasonably projects growth.

In response to a question from Mr. Sund, commission counsel said in practice the 20-year growth plan would be a 25-year plan with 1-year lines between 20 and 25 years and between 10 and 15 years. He said the plan would update on a yearly basis for a period of five years at which time the board of county commissioners could review the plan to determine if the assumptions used in the plan have become unreasonable due to a significant change in circumstances.

In response to a question from Senator Cook, Mr. Gilmour said it would be a rare circumstance in which the city would want to change the zoning designation of an area without the application of a landowner. He said there are supermajority protections if the city acts on its own.

In response to a question from Representative Wrangham, commission counsel said a subdivision decision requested by a property owner is to be made by the city. He said a subdivision decision is not included within the exception that allows for a second ruling by the other jurisdiction. He said a subdivision decision that includes a zoning decision is a zoning classification decision, which would require a second decision by the other jurisdiction.

In response to a question from Mr. Gilmour, commission counsel said North Dakota Century Code (NDCC) Section 40-47-01.1(4) in the bill draft applies to property owners in the entire extraterritorial zoning area, not only the outside half.

In response to a question from Representative Wrangham, commission counsel said NDCC Section 40-47-01.1(6) in the bill draft was intended to state that the extension of zoning in subdivision regulations

by the city would be enforced solely by the city, not in a joint manner. He said this subsection was not intended to give the city additional general police power in the extraterritorial zoning area.

Mr. Brad Gengler, City of Grand Forks, presented testimony on the bill draft. He said the use of terms in the bill draft like "projected growth plan" are confusing to planners. He said the terms in the bill draft are terms of art that as used in the bill draft mean other things than what planners generally would intend the terms to mean.

Mr. Carl Hokenstad, City of Bismarck, presented testimony in opposition to the bill draft. He said the bill draft would have a confusing implementation. He said the bill draft requires that the growth plan must be based on past growth. He said most cities in the state have not grown so he feared they would not have any extraterritorial zoning authority. He said the bill draft created multiple boundaries to be drawn as part of a growth plan which would be burdensome to cities. He said subsection 4 did not provide for the other jurisdiction to review the approval of a city of a change initiated by a property owner. He said there may be some instances in which the other jurisdiction may not want the change. He said the bill draft would be retroactive to some regulation that was initiated in the late 1970s. He said if this regulation became void there would be uncertainty.

In response to a question from Ms. Nielson, Mr. Hokenstad said the term growth plan could mean a number of things that a city already does.

In response to a question from Ms. Nielson, Mr. Hokenstad said a comprehensive plan is a general policy plan that does not include specific items like growth boundaries.

Mr. Richard Hammond, Burleigh County resident, presented written testimony ([Appendix B](#)) in opposition to the bill draft.

JOINT JURISDICTION IN OUTSIDE HALF WITH ADMINISTRATIVE LAW JUDGE USING FACTORS AS A DISPUTE MECHANISM BILL DRAFT

Commission counsel presented a bill draft [\[90140.0200\]](#) that would provide for joint jurisdiction in the outside half and provide for an administrative law judge as its dispute mechanism. The bill draft provides eight factors for the administrative law judge to consider.

Senator Cook said the extraterritorial zoning law appears to be broken and the goal of the commission should be to reinstate the rights of the individuals living within the extraterritorial zoning area. He said the commission needs to balance the rights of the property owners and give jurisdiction to cities to control growth. He said the major issues to him were whether there should be joint jurisdiction in the whole area or in the outside half and which factors are used to make a determination in the dispute mechanism. He said the most important aspect of the bill draft was

the factors. He said having joint jurisdiction in the entire area may be the answer if the proper factors are included.

Mr. Jerry Hjelmstad, North Dakota League of Cities, presented testimony in favor of the bill draft. He said interested parties were invited to provide a list of factors and the factors of the League of Cities are in the bill draft. He said one of the factors is if the change is within the growth plan. He said the city will be in a stronger position to defend a change if the city has a growth plan.

In response to a question from Representative Kaldor, Mr. Hjelmstad said the bill draft is intended to address future changes, not what is already in place.

In response to a question from Representative Wrangham, Mr. Hjelmstad said the present regulation in the two- to four-mile area would remain the same.

In response to a question from Representative Kaldor, Mr. Hjelmstad said the original extraterritorial zoning authority worked well until the distance was doubled.

In response to a question from Mr. Bitner, Mr. Hjelmstad said the Legislative Assembly has granted extraterritorial zoning authority to cities and everyone in this state was represented in that decision made by the Legislative Assembly.

In response to a question from Representative Kaldor, Mr. Randal Loeslie, Grand Forks - Traill Rural Water District, said the extension of extraterritorial zoning from two miles to four miles affects the water district because the water district has no growth in that area because of the limit on subdivisions. He said the water district made decisions based on two-mile extraterritorial zoning authority.

Mr. Sund said in Dickinson the city has to reimburse the water district for its cost if the city expands into the water district area.

In response to a question from Senator Cook, commission counsel said the county or township would not have authority to initiate a zoning change with a city under the bill draft.

In response to a question from Representative Kaldor, commission counsel said the plain meaning of the bill draft includes changes initiated by individuals.

Ms. Nielson said the complaint of people in the extraterritorial zoning area not having the right to vote for the person that makes the decision is not solved by having the decision made by an administrative law judge.

Senator Cook said the process in the bill draft would operate when a landowner requests a change from the city and the city does not grant the change. He said the landowner would then go to the township and if the township said yes, then the administrative law judge would make the decision.

Representative Kaldor said an individual could get the township and the city to agree before going to an administrative law judge.

Mr. Bitner said he preferred joint jurisdiction in the whole area.

It was moved by Mr. Bitner, seconded by Mr. Yantes, and carried on a roll call vote that the bill draft be amended to include joint jurisdiction in the entire area. Representatives Kaldor and Wrangham; Senator Cook; Citizen Members Bina, Krebsbach, Ness, Nielson, and Yantes, and Governor's Designee Bitner voted "aye." Senator Anderson and Citizen Members Gilmour and Sund voted "nay."

Senator Anderson said he was not in favor of the amendment. He said the law has been in effect since 1975 and has worked well in the inside half.

Mr. Yantes said joint jurisdiction gives people the right to vote for someone with control over the decision that relates to that individual.

Mr. Gilmour said the problems with joint jurisdiction in the entire area are that the area right next to the city has the greatest impact on the city and will be the earliest to be annexed. He said the commission should provide for joint jurisdiction in the outside half and see if it works well. He said if it fosters cooperation, then the law could be extended to the inside half.

Senator Cook said the law worked well until it was extended. He said the bill draft may need further amendments, but is a move in the right direction. He said he would support the bill as amended.

Representative Kaldor said there should be little problem with extending joint jurisdiction to the entire area if the criteria are weighted toward the city when determining a dispute over property close to the city. He said there needs to be more debate on the factors.

Representative Wrangham said the amendment makes progress and he would support the bill as amended.

Senator Anderson said he would vote no on the amendment; however, he would vote yes on the bill draft as amended because it was a good start.

It was moved by Ms. Nielson, seconded by Mr. Sund, and carried on a roll call vote that the amended bill draft relating to providing joint jurisdiction with an administrative law judge using factors as a dispute mechanism be approved and recommended to the Legislative Council. Representatives Kaldor and Wrangham; Senators Cook and Anderson; Citizen Members Bina, Gilmour, Krebsbach, Ness, Nielson, Sund, and Yantes; and Governor's Designee Bitner voted "aye." No negative votes were cast.

Chairman Kaldor thanked the commission for addressing a complex matter for which there was no easy solution.

It was moved by Senator Cook, seconded by Senator Anderson, and carried on a voice vote that the chairman and staff of the Legislative Council be requested to prepare a report and the bill draft recommended by the commission and to present the report and recommended bill draft to the Legislative Council and for the commission to be adjourned sine die.

No further business appearing, Chairman Kaldor adjourned the meeting sine die at 11:30 a.m.

Timothy J. Dawson
Commission Counsel

ATTACH:2