

To: Advisory Commission on Intergovernmental Relations
 From: Mark Brodshaug
 Date: January 23, 2008
 Re: Extraterritorial Zoning Authority

I am Mark Brodshaug. I am a farmer and I live in rural Fargo in Fargo's extraterritorial area (ET). I serve on the Fargo Planning Commission as one of the Cass County appointees from Fargo's ET area. I also serve as a Warren Township supervisor and serve on the board of the SE Cass Water Resource District. I support the right of all cities, big or small, to have zoning and subdivision control in their future growth areas. ET zoning and subdivision authority is important so cities can plan land integration into transportation and utility systems, avoid conflicting uses of land, and avoid premature city tax levies on land. Scattered, uncoordinated development at city edges makes future utility extensions prohibitively expensive and conflicts with farming. Seamless growth allows for more efficient systems and lower costs for all users of city streets, utilities, and other services. I think a more equitable process is needed to define the extent of a city ET area while still allowing cities to plan their growth.

Here are some of the limitations in the current law:

- Currently, cities can expand ET areas to legislated limits without agreement from the affected township, the county, landowners, or other nearby cities who may be better suited to serve the area.
- Hearings by the city when an ET area is expanded, serve only to help the expanding city decide whether or not to follow through with the expansion.
- Zoning transition meetings with the affected township are for information purposes and don't require township approval.
- Residents in the expanding ET area cannot vote for the city commissioners who will have zoning authority over the area.
- The ET representatives on city planning commissions have only advisory authority and make decisions based on criteria of benefits to residents of the city.
- Other nearby interested entities that may be able to serve the area such as school districts, park districts, rural water systems, water resource districts, fire districts, and neighboring cities currently have an opportunity to provide comment to the expanding city, but these comments from non-voters can safely be ignored by city decision makers.

ND Century Code Chapter 11-35 (<http://www.legis.nd.gov/cencode/t11c35.pdf>) provides for regional planning and zoning commissions which likely only work where there are only 2 zoning authorities and a county involved with all willing to cooperate and agree on how they would split administrative cost. An example of a more likely situation is the Fargo metro area where Fargo, West Fargo, Horace, Frontier, Prairie

Rose, Reile's Acres, Briarwood, Harwood, Stanley Township, Mapleton Township, Pleasant Township, Reed Township, and other entities jostle for planning and zoning control. Voluntary cooperation by 2 or more cities in planning and zoning is unlikely in an area where cities are competing for growth and the resulting tax base. Townships are reluctant to give up their traditional control of zoning authority.

The state of Minnesota has also struggled with the issue of how to settle disputes regarding city boundaries and ET zoning. "City Limits: A Report to the Minnesota Legislature on Municipal Boundary Adjustments" gives a good forty-year history of their legislative changes to deal with the issue.

(<http://www.mba.state.mn.us/pdfs/CityLimits.pdf>) From 1960 to 1999 Minnesota had a state board with authority to settle city boundary disputes. Moorhead Minnesota currently has subdivision authority in their 2 mile ET area but the townships still retain zoning authority. Zoning in Oakport Township, which is in Moorhead's northern ET, is controlled by a joint board created as part of an annexation agreement. Members of the joint board are appointed from each of the city, township, and county governing bodies. The metro area around Minneapolis has some planning functions and some utilities, such as bus and sewer service, provided by a regional planning agency called the Metropolitan Council (<http://www.metrocouncil.org/>) which was created by the Minnesota Legislature. North Dakota's tradition of smaller state government and less state involvement in local affairs may preclude adoption in ND of a state board or a state mandated regional planning council.

County government could have a role to play in the transition from a rural to an urban environment. City government is best suited to manage growth in an expanding urban area as cities need to make investments in infrastructure and plan for growth well in advance of actual development. Township government is best suited for rural areas where the priority is protecting agriculture from conflicting uses. County government represents the entire county population and may be best suited to defining the transition area between rural and urban.

One approach to strengthen the county's role is to suggest that the next legislature modify the law relating to the way that city ET area limits and ET zoning districts are determined. Cities, townships, or individuals wanting a change in ET boundaries would be required to submit an application to the County Planning Commission supporting their request for a change in the ET area. A County Planning Commission hearing date would be set and notice would be given to all neighboring units of government, utility providers, and landowners in or near the ET area to be changed, as well as public notice in the newspaper. The applicant requesting the ET area change would make their case to the County Planning Commission. Other interested parties would also provide input at the County Planning Commission hearing. After deliberation, the County Planning Commission would make their recommendation to the County Commission. The County Commission would schedule a hearing and, after further input, either accept, modify or deny the Planning Commission's recommendation. Following county approval, the city would have zoning and subdivision authority in the new ET area. A city could also lose ET area to another city or township upon County Commission approval. Perhaps this

procedure could occur annually so that one city's proposed boundary changes could be considered in context with other boundary changes. Annual consideration of these items would allow better contemplation of the long range issues and avoid a rush into changes that could have negative effects for decades.

The legislature could list relevant factors to be considered by the county commission in this process. Some suggestions from Minnesota law (http://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT_CHAP&year=2007§ion=414#stat.414.02.0) are:

- present and projected population of the 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
- the degree of contiguity of boundaries of the subject area and adjacent units of government

This proposed county hearing process could also set the city zoning map to be used within the ET area as well as the ET boundaries. A proposed zoning district change in the ET area by a city would need to go through the same hearing process with the County Planning Commission and County Commission before implementation. Cities would be free to approve or deny development within the ET area based on the zoning district approved by the county. Cities could extend city limits within their ET area without county approval using the current annexation laws. Annexations outside their ET areas would need to be approved by the county.

This proposal gives authority over city expansions to elected representatives of landowners and residents in the ET area as well as the city. Zoning authority has a powerful influence on people's lives. Any change in who has that authority deserves careful deliberation and investigation of all alternatives by a regional authority. Cities need zoning and subdivision controls in their growth areas but I think the larger region should have a role in determining if a particular ET area is an appropriate growth area. County government has the regional legitimacy needed in the important decision of city expansion and city border disputes. Thank you for the chance to provide my input.

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