

**Advisory Commission on Intergovernmental Relations**  
**October 3, 2007**  
**Prepared by North Dakota League of Cities**

Chairman Kaldor and Members of the Commission:

Thank you for the opportunity to present information regarding the Commission's study of extraterritorial zoning authority. There are representatives from West Fargo, Grand Forks, Fargo, Minot and Bismarck who will present information about planning and zoning issues, as well as a practitioner in the private sector who works for developers.

**Annexation vs. zoning authority**

It is important to separate the processes of **annexation** whereby land becomes incorporated into municipal boundaries and **zoning** (including extraterritorial zoning) which is a planning tool. The Commission's study deals with zoning.

**Why is zoning authority available?**

"Good fences make good neighbors" is a time-honored phrase that could be revised to say, "Good zoning makes good neighbors." People in a residential subdivision don't want to live next to a noisy, high volume street, nor do they want a feedlot to move in up wind. Business owners don't want single family houses in a business district because the difference in land use and residents' expectations can generate cycles of complaints.

For decades, North Dakota law has provided authority to develop plans for the orderly growth of a municipality. Zoning is simply a way of dividing up uses of land so compatibility, not competition, rules. Zoning ensures land use makes sense and the provision of services will be seamless as the city boundaries move out.

**How does North Dakota's zoning authority protect neighbors?**

North Dakota's laws grant permission to provide for orderly growth and in the process, the laws protect the interests of all parties.

40-47-01 gives a city authority to develop regulations that promote health, safety and welfare of the community; regulate building size; and govern the percentage of the lot that may be occupied, size of yards and open spaces, population density, location and use of buildings. The section establishes a board of adjustment to ensure regulations "are in harmony with their general purpose." The city is also authorized to establish environmental health controls in concert with the state department of health.

North Dakota's laws do not grant zoning authority without providing many steps in the process of adopting land use plans. The following sections of code indicate some of the ways residents must be involved in developing plans and ordinances.

40-48-10 requires at least one **public hearing** held by the zoning commission for a master plan.

40-48-11 requires the city's governing body to hold a **public hearing** on the master plan.

40-48-12 provides a requirement for **reasons in writing** when a construction request is denied.

40-48-16 requires a **public hearing** when changes are proposed for a master plan.

40-48-18 provides detailed **procedures for resolving** extraterritorial zoning **disputes**.

40-48-21 gives a **timeline** for a zoning commission to approve or deny a plat.

40-48-32 requires notice and a **public hearing** before a street map is approved

40-48-34 sets out a mechanism by which property owners may **protest** a proposed street.

40-48-36 provides a way for a property owner to claim a “**taking**” and demand vacation or compensation under certain circumstances in the case of a proposed street opening or widening..

40-47-01.2 provides a change in zoning **cannot contain a requirement for annexation** unless municipal services are going to be provided.

40-47-04 requires a **public hearing** before zoning regulations are established.

40-47-05 provides that amendments or repeals of zoning restrictions may be **protested** by signatures representing 20% of the area lots.

40-47-06 requires the city zoning commission to include **residents of the extraterritorial area:**

Under 5,000 population – 1 resident

5,000-25,000 – 2 residents

25,000 plus – 3 residents

40-47-07 provides a board of adjustment (five people) to **hear appeals** from any order, requirement or decision made by an administrative official. The board’s decision may be appealed to the city’s governing body and finally to district court.

44-47-01.1 (4) requires a **zoning transition meeting** if an area is already zoned and there is a proposed change. Notice must be given and the meeting held before an ordinance is passed.

44-47.01.1 (5) protects both governing bodies when ET zoning authority overlaps. The two must come to an **agreement** and if that’s not possible, **mediation** may proceed. If mediation doesn’t work, the dispute goes to an **administrative law judge**.

**How does this authority protect “public health and safety” inside and outside city limits?**

City officials are authorized by law to pass ordinances that provide sanitary living conditions. These ordinances are enforced in the ET zone on a complaint basis. These complaints are researched and ordinances are enforced by public officials who have a more intense level of training than township officials typically have. The enforcement actions protect the public in general but more importantly, the actions protect the interests of neighbors.

Information will be provided to you by Mel Fischer, a Bismarck health official, regarding examples of complaints and enforcement actions in Bismarck's ET zone.