

**Advisory Commission on Intergovernmental Relations
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Comments on extraterritorial zoning authority

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I have lived in the area controlled by the City of Bismarck through their extraterritorial zoning authority for the past 30 plus years. For me to say that the grant of this authority by the legislature to the various municipal corporations throughout the state was a major legislative blunder and mistake is an understatement. For over 30 years, I and my rural neighbors, have been the victims of a flawed system wherein the City of Bismarck was given control over our lives and property with no corresponding accountability to us. There are no real provisions within the present system to protect rural citizens from abusive and unilateral actions of the various cities. Conflicts directly related to this grant of power are not limited to one particular city commission or to any one city within the state. This is a fundamentally flawed concept that cannot be fixed by minor changes or token, unenforceable, advisory or appeals rights. My experience in dealing with the city of Bismarck over the past 30 plus years, is that the city has not been responsible to the rural residents simply because they are not required to do so.

The legislature must be criticized for passing this flawed legislation, which provides a grant of power and authority to the cities with no corresponding accountability to the rural citizens, affected by that grant of authority. The legislature deserves criticism for its failure over the past 30 years to review how this grant of authority is working and its effect on the rural citizens. Those who are serving in the State Legislature should understand the basic principles of a democracy and how citizens provide feedback to their elected representatives through the voting process. When situations, such as this extraterritorial zoning scheme are created, situations which eliminate the essential element of voter participation, we are beginning to lose democracy itself. The legislature has taken away our rights and provided no remedy for wrongs done by the cities.

It is important to review how this legislation was pushed through the legislature and the role that special interest lobbyists played in its initial passage. The city planners, whom you have all heard from in this matter, are simply paid special interest lobbyists working for the cities. The fact that these planners were able to masquerade as technical experts and hide the fact that they are just special interest lobbyists is largely responsible for their success. As lawmakers, you need to be acutely aware of the dangers posed by special interest lobbyists at all levels of government. For example, the last national energy policy bill was written, in secret, behind closed doors, by unknown lobbyists and energy company executives. The prescription drug bill was bought and paid for by the pharmaceutical industry. The new bankruptcy bill was bought and paid for by the

banking and credit card industry. All this to the detriment of the citizens. As a citizen, I am deeply concerned about this trend and believe that we have a similar situation here with the city's lobbyists posing as experts. I ask that you give more weight and credibility to the voters who had to leave their work and travel across the state to be here, and less credibility to the city's lobbyists who are being paid to be here.

Many years ago, I attended an interim hearing wherein some of these issues were discussed. At the end of the hearing, the committee chairman told the staff to get together with some of the planners and draw something up. Needless to say, I was astonished. Even after describing the problems to the committee and discussing the question of special interest lobbyists, the committee chairman had the nerve to tell the staff to get together with the special interest lobbyists and draw something up. I did not testify before any legislative committees over the following 10 years. There appeared to be no reason to testify when the committee was only interested in listening to special interest lobbyists and not the citizens. I do remember one hearing where one of the committee members asked a former Bismarck planner if the city had experienced any resistance from the rural residents to this extraterritorial zoning. He told that committee that there was no problem and that everyone was satisfied with the system. What a blatant lie. Extraterritorial zoning authority is, and always has been universally resented in the rural area. The degree of resentment is increasing as the cities gradually increase their heavy handed control over these areas. As legislators, you need to understand how you have been duped by the cities and their lobbyists.

There is a connection between power and authority, and duties and responsibilities. Along with the power to zone comes the duty to exercise that power in a responsible manner and a duty to respect the rights of all citizens of the state whether they are represented or not. The cities have accepted the power to zone and have rejected the responsibilities connected to that grant of power. There is not time here to describe all the irresponsible actions that I have witnessed and experienced at the hands of the cities and their lobbyists over the past 30 years. I remember years ago that then Bismarck Mayor, Bus Leary, was criticized at a city commission meeting for not answering a letter from a rural resident. Mayor Leary's answer was that he would not spend his time corresponding with rural residents when they were not part of the city and did not vote. Even the present mayor of Bismarck has expressed his position on extraterritorial zoning as "because we can". This type of arrogance with no accountability is not acceptable.

Many years ago, in the early 1950's, the City of Bismarck came out several miles and annexed the 100 acres of land where our family lived. The property was in the country on the other side of the State Penitentiary. We had no city services available; no police, no fire, no water, no sewer, etc. My father had to go into County Court in order to get the irresponsible annexation reversed.

What is important for you to understand is that this is a fundamental problem. Extraterritorial zoning will never work. The underlying problem is that you cannot grant any type of power in a vacuum. There must be real protection against the abuse of that power. When no form of accountability is associated with any grant of power this type of abusive arrogance will surface. Even if it were possible to teach a particular city commission the difference between right and wrong, even if it were possible to teach a particular city commission to respect the rights of rural residents, the system would fail over time because another new amateur city commission would be elected in the following election and the abuses would resurface again. The legislature needs to review present annexation law. At one of the hearings on House Bill 1321, the cities have already hinted that if they could not have their extraterritorial zoning authority, they could just annex the rural property in order to have their way. The cities simply don't get it. The legislature must step in and control the cities power grab.

This is not a situation that can be corrected by any compromises, minor adjustments to the law, or any sham or toothless advisory rights, or minor grandfathered types of exceptions. This is not democracy. This is fundamentally wrong. The legislature gave the cities a serious public trust. The cities have failed and failed miserably. The extraterritorial authority needs to be taken away from the cities because they simply have not used their authority responsibly over the years. Nobody here is against responsible planning. Planning decisions must be made by all the voters. The elected County Commission is the proper zoning authority for the area. The elected County Commission is the only body that represents all the citizens.

The zoning authority must be taken away from the cities and given to the respective elected county or township government.