

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Wednesday, March 26, 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, Ron Krebsbach, Rodney Ness, Bev Nielson, Greg Sund, Ken Yantes; Governor's Designee Brian D. Bitner

Member absent: Citizen Member Linda Coates

Others present: See [Appendix A](#)

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

REPORT ON DOCUMENT PRESERVATION FUND

Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, provided a written report ([Appendix B](#)) regarding how each county has used the county's document preservation fund during the preceding two fiscal years. He said every county has continued the creation of archival copies of each land record on microfilm. He said all records are duplicated back to the very first records. He said 50 counties, up from 46 counties two years ago, have implemented one of five different automated systems of land record management. He said 33 counties use the system provided by Computer Software Associates. He said 45 counties, up from 40 counties two years ago, have linked the county automated system into one central repository. He said the joint repository allows duplicate electronic images of each record to immediately be sent to a backup server in Fargo, for that image to be published to the World Wide Web, and for an automatic copy of the image to be placed in archival microfilm storage.

In response to a question from Representative Kaldor, Mr. Traynor said equipment for the system has to be replaced on an ongoing basis because it wears out. He said overall, technology and storage costs will continue to rise.

In response to a question from Representative Kaldor, Mr. Traynor said all but four counties need books for old records.

In response to a question from Mr. Bitner, Mr. Traynor said the recording fee is \$5 for the first page and \$2 per page thereafter. He said the fee for preserving vital land records is \$3 for the first page.

In response to a question from Senator Cook, Mr. Traynor said 100 percent of the fees collected go to preserve more records. He said in Grand Forks, the fees do not cover the costs.

In response to a question from Senator Cook, Mr. Traynor said the North Dakota Recorders Information Network (NDRIN) User Board meets periodically and has cut fees to use the electronic system in half. He said there is very positive user response. He said the oil industry wants more records that go back further in time. He said 42 counties use the NDRIN repository, and 39 of those counties publish the documents to the Web.

In response to a question from Mr. Bitner, Mr. Traynor said placing documents in the electronic format does not reduce indexing errors.

STATE'S ATTORNEYS' SERVICES TO RURAL AREAS

Commission counsel presented a memorandum entitled [State's Attorneys' Positions in Rural Areas](#).

In response to a question from Senator Cook, commission counsel said part of the complexity of the law is due to the piecemeal changes in the law, partially due to changes in the Constitution of North Dakota.

Mr. Peter Welte, President, North Dakota State's Attorneys Association, provided testimony on the provision of state's attorneys' services in rural areas. He said the present law works. He said the primary issue is when there is not a resident attorney in a county who can run or there is not a resident attorney in a county who wants to run for the position of state's attorney. He said the present laws are relatively new laws that allow counties to appoint a state's attorney. He said these laws address the vast majority of issues that have been presented, but minor changes can be addressed as problems arise. In addition, he said, the North Dakota State's Attorneys Association is in favor of retaining the county base system, instead of moving to a state base system.

In response to a question from Senator Cook, Mr. Welte said the association recommends the commission do nothing in relation to providing state's attorney services in rural areas.

In response to a question from Senator Cook, Mr. Welte said state's attorneys have core constitutional functions. He said attorneys should not be under a state system like public defenders or the

unified court system. He said state's attorneys work closely with the Attorney General, and some involvement by the Attorney General in state's attorney matters is appropriate. He said the civil commitment of sexual offenders may be an appropriate area for the Attorney General to have jurisdiction.

In response to a question from Senator Cook, Mr. Welte said assistant state's attorneys do not need to be electors from the area in which they serve.

In response to a question from Ms. Nielson, Mr. Welte said most of the exceptions to having an elected state's attorney that is an elector of the county are to provide a state's attorney that is an elector of one of the counties of which the state's attorney provides services.

In response to a question from Representative Kaldor, Mr. Welte said having a state's attorney run for the purpose of appointing an assistant state's attorney to do all the work is not in the spirit of the law and may be a limited instance that may need to be addressed by the Legislative Assembly.

In response to a question from Representative Wrangham, Mr. Welte said three counties do not have a state's attorney in the county who is an elector of that county.

In response to a question from Senator Anderson, Mr. Welte said the three counties are in different areas of the state, and the problem does not seem to be getting worse. He said the same problem arises for all elected positions.

In response to a question from Ms. Nielson, Mr. Welte said most prosecutors choose the job because they like the work.

In response to a question from Representative Kaldor, Mr. Welte said if there is a nonexclusive state's attorney with private clients in a county and there is a conflict of interest, usually the neighboring county will provide help without charge.

Mr. Sund said cities appointing prosecuting attorneys seems to work well.

Mr. Paul Murphy, State's Attorney, Foster County, presented information to the commission. He said the two counties in which there were difficulties in appointing a state's attorney were Grant and Burke Counties. He said Griggs County is sending a paycheck to a Crookston, Minnesota, law firm for an attorney who is appointed.

LANDFILL SITING

Mr. Steve Tillotson, State Department of Health, made a presentation ([Appendix C](#)) on landfill siting. He said this state needs new landfills, and no new permits have been issued for landfills in the last 15 years. He said Grand Forks needs a landfill because the present landfill will be full in 2008 or 2009. He said the Federal Aviation Administration rules limit the placement of a landfill around an airport.

In response to a question from Representative Kaldor, Mr. Tillotson said there is an opportunity for a county election for every municipal landfill. He said if

the county chooses to have the election and the vote is against the landfill, the state will not issue a permit.

In response to a question from Representative Kaldor, Mr. Tillotson said there is no regional or statewide planning for landfill siting.

Mr. Sund said landfills are very expensive, and there needs to be regional solutions for siting landfills.

In response to a question from Mr. Bitner, Mr. Tillotson said a landfill can produce methane, which is a viable fuel. He said burning the methane also reduces the odor. For methane to be produced, he said, there needs to be moisture, and that moisture might need to be injected into the solid waste. He said injecting water to produce methane produces a firmer solid waste and breaks down the trash. He said the usual landfill in North Dakota is a dry tomb and the trash lasts forever.

In response to a question from Mr. Bitner, Mr. Tillotson said power plants create waste that is dumped in landfills produced by the mines. He said transporting other waste to mines raises the issue of the significant cost of transportation.

In response to a question from Senator Cook, Mr. Tillotson said North Dakota is in a very good position for managing power plant waste.

In response to a question from Senator Cook, Mr. Tillotson said sometimes zoning approval is contingent upon approval of the state permit. He said the State Department of Health does not zone. He said the department supports identifying where a landfill could be placed a long time in advance of the need for the landfill.

In response to a question from Senator Cook, Mr. Tillotson said there is an opportunity for a hearing and usually public involvement in the siting of a solid waste landfill. He said sometimes there is not any public interest in the siting of inert waste landfill.

Mr. Curt Kreun, Grand Forks city council member and Grand Forks city and Grand Forks County planning and zoning member, provided two handouts ([Appendix D](#)) on the Grand Forks municipal solid waste landfill siting and the city of Grand Forks Good Neighbor Policy. In addition, he provided a map ([Appendix E](#)) of the possible places for siting a landfill around Grand Forks. He said the city has a close relationship with the townships, the county, and concerned citizens. He said the city has the responsibility for providing waste management for approximately 100,000 people. He said the only place the city has control in which to place the landfill is within the extraterritorial zoning limits.

In response to a question from Representative Kaldor, Mr. Kreun said the landfill will be sited in Section 13 of Rye Township. He said this will be the last landfill in Grand Forks County because of composting, incineration, and other waste management tools. However, he said, to use those tools the city needs a landfill first.

In response to a question from Representative Kaldor, Mr. Kreun said the city of Grand Forks was in a very difficult situation because of the need for a

landfill and a very narrow area in which to site the landfill. He said there needs to be a regional approach.

In response to a question from Mr. Bitner, Mr. Kreun said the extension of the extraterritorial zone to four miles resulted from a need for planning. After the extension, he said, the landfill became an issue.

In response to a question from Mr. Bitner, Mr. Kreun said some members of the planning and zoning board were against the extension of the extraterritorial zoning. He said there are six members on the city planning and zoning commission who have strong ties to property outside the city limits. He said the decision to extend extraterritorial zoning is not a cut-and-dried decision between people inside and outside the area to be included within extraterritorial zoning, but is a policy decision.

In response to a question from Senator Cook, Mr. Kreun said Rye Township is an organized township, and he would expect that if the township could vote on the siting of the landfill it would vote in favor of the landfill. He said he is not against giving Rye Township the right to vote on the landfill. He said the city has provided all the information it has received to the township. He said there were a lot of concerns at the beginning of the siting process, but the city worked with individuals and groups and met the concerns. He said the city has gone beyond any hearing requirements required by law. He said the township has given no indication that it wants a vote on the landfill siting. He said the city will ask the township if the township wants a vote.

In response to a question from Mr. Bitner, Mr. Kreun said the city will give the township a vote on the matter. He said if the township voted against the landfill, the city would ask what concerns there are relating to the landfill and the city would address the concerns. He said if Grand Forks does not have a new landfill, it will have to haul all the garbage to Gwinner. He said this would greatly increase costs and affect economic development.

In response to a question from Mr. Bitner, Mr. Kreun said the city would need legitimate concerns to readdress the siting issue. He said the issue of siting a landfill is not an issue of the heart, but of the mind.

In response to a question from Representative Kaldor, Mr. Kreun said somebody has to have the final say as to whether to site a landfill.

In response to a question from Senator Cook, Mr. Kreun said people living next to the landfill will not be able to see or smell the landfill.

Representative Wrangham said the decision to site a landfill in the extraterritorial area should not be the decision of the city, but should be a regional decision.

Mr. Sund said that one solution may be to have a voting district of the service area of the landfill.

Senator Cook said if everyone that uses the landfill gets to vote on the landfill, then everyone that shops

in Grand Forks should be able to vote on the sales tax.

In response to a question from Mr. Yantes, Mr. Kreun said he would not mind a landfill in his backyard. He said he has seen landfills in the center of urban areas with high-priced homes around the landfill. He said if a landfill is constructed properly, it does not bother the surrounding homes. However, he said, as a practical matter it is best to place the landfill as far away from people as possible due to the stigma of living by the landfill.

HEARING ON LANDFILL SITING BILL DRAFT

Commission counsel presented a bill draft [\[90107.0100\]](#) that would require a city zoning authority to have a hearing on a particular landfill at a particular site.

Senator Cook said the major issue is giving people that are affected by a decision of the city to have the right to vote for the board making the decision. He said at present there is a hearing for a zoning change. He said the law authorizing a county to have an election on a landfill could be changed to require an election on the landfill.

OFFICE OF ADMINISTRATIVE HEARINGS TO DETERMINE ZONING DISPUTE BILL DRAFT

Commission counsel presented a bill draft [\[90064.0100\]](#) that would require a city to receive the approval of the governing body that previously had zoning jurisdiction before a change in zoning in an extraterritorial area. He said the bill draft allows a governing body involved in the dispute to petition the Office of Administrative Hearings to appoint an administrative law judge to issue a binding determination relating to a disputed regulation.

Senator Cook said he requested the bill draft as a means of resolving disputes relating to zoning in the extraterritorial area.

Mr. Jerry Hjelmstad, North Dakota League of Cities, presented information to the commission. He said extraterritorial zoning authority was created in 1975 and expanded in 1997. He said there appears to be some consensus that there needs to be some extraterritorial zoning authority and that most concern is with the expanded area. He said the League of Cities suggests having shared authority in the expanded area. He said the bill draft could be changed to provide for the hearing only for disputes in the expanded area.

In response to a question from Ms. Nielson, Mr. Hjelmstad said the League of Cities would like to review the bill draft and make suggestions at a future meeting.

Representative Kaldor said the language relating to a review of the decision within 10 years makes sense if the township wins, but does not make sense if the city wins.

Ms. Sandy Clark, North Dakota Farm Bureau, presented information to the commission. She said there needs to be representation of the people in the extraterritorial zoning authority of a city through the ability to vote for the people making the decision.

JOINT JURISDICTION IN OUTSIDE HALF OF EXTRATERRITORIAL ZONING AUTHORITY BILL DRAFT

Commission counsel presented a bill draft [\[90105.0100\]](#) that would provide for joint zoning regulation in the outside half of the allowed area for extraterritorial zoning authority. The bill draft requires any change in that area to be approved by both governing bodies, otherwise the regulation in place at the time of the extension is deemed the regulation of the city.

In response to a question from Representative Wrangham, Mr. Sund said he understood the bill draft to require a property owner that wants a change in zoning to have the approval of both boards. He said if either body rejected the change, there would not be a change.

Ms. Nielson was concerned there was not a method of mediation or arbitration.

Mr. Bill Wocken, City Manager, Bismarck, said under present law the city has full jurisdiction in the outer half, and under the bill draft there would need to be joint approval for any change. He said there cannot be two separate sets of zoning regulations so the city's regulations would apply, but the city's regulations would be the same as the township's regulation if there was not agreement in the outside half of the extraterritorial zoning area.

In response to a question from Representative Kaldor, Mr. Wocken said the city of Bismarck enacts zoning changes every time it expands, even if the change is just a change in name, i.e., placing the name "Bismarck" in front of the regulation.

In response to a question from Senator Cook, Mr. Wocken said there are not any major differences in agricultural zoning when an area moves to city zoning, unless the person is not really a farmer, e.g., the person has under 10 acres. He said the goal is to make the zoning easy to understand for the landowner subject to the jurisdiction change.

In response to a question from Mr. Bitner, Mr. Wocken said the League of Cities proposal addresses the right to vote in the outside half of the extraterritorial zoning area. He said the proposal in effect gives the township a veto power. He said there would not be a change in the zero- to two-mile zone.

In response to a question from Representative Nielson, Mr. Wocken said a change in the bill draft from joint jurisdiction to arbitration would be an option for the outside half; however, the cities are offering a full veto.

In response to a question from Representative Wrangham, Mr. Wocken said the city has budget hearings on a yearly basis and reviews the planning

and zoning budget. As part of that review, the public has input on the money spent on services for planning that are outside the city limits. He said how much money is spent on inside and outside the city limits of Bismarck for planning are separate line items in the budget.

Senator Cook said the commission has received a lot of testimony from citizens that were angry they did not have a vote and has heard numerous times from the citizens that the extraterritorial zoning authority should be cut in half.

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

Commission counsel presented a bill draft [\[90101.0100\]](#) that would require the board of county commissioners to hold a hearing on any regulation in the extraterritorial zoning authority area and approve or disapprove of the regulation. He said under the bill draft, the board of county commissioners may refer the matter first to the county planning commission for a recommendation.

RESTRICTION ON DENSITY REQUIREMENTS IN EXTRATERRITORIAL ZONING AREA BILL DRAFT

Commission counsel presented a bill draft [\[90102.0100\]](#) that would prohibit density restrictions more stringent in the outside half of the allowed extraterritorial zoning jurisdiction than in the inside half.

Mr. Sund said the density restriction issue is a narrow issue that is addressed by the bill drafts that more broadly address extraterritorial zoning authority.

Ms. Nielson said the bill draft prohibits more restrictive density requirements even if everyone agrees. She said the bill draft is overly restrictive.

TESTIMONY ON BILL DRAFTS AND EXTRATERRITORIAL ZONING

Mr. Doug Neibauer, Executive Director, South Central Regional Water District, Bismarck, provided information to the commission. He said 20 percent of the revenue for the water district comes from within two miles of the city, and 50 percent comes within four miles of the city. He said if the city annexes the property, then the water district loses revenue. He said the water district purchases water from the city of Bismarck and has an agreement relating to annexation with Bismarck for the first two miles around Bismarck. He said he is concerned with the two- to four-mile area.

In response to a question from Mr. Sund, Mr. Neibauer said the water district cannot get financing for the area which is within the extraterritorial zoning authority of a city because

lenders see that area as an area that is potentially going to be annexed.

In response to a question from Representative Wrangham, Mr. Neibauer said if an area is annexed and goes to a municipal source, most of the system is replaced.

Mr. Claus Lembke, Bismarck, provided information to the commission. He said he opposed the extension to four miles as a county commissioner. He said the best bill draft presented was the bill draft requiring a hearing by the Office of Administrative Hearings for zoning disputes because it addresses the concerns of all individuals in the extraterritorial zoning authority of a city.

Mr. Larry Syverson, District Director, North Dakota Association of Township Officers, presented information to the commission. He said he supported the same bill draft as Mr. Lembke because it, in effect, returns the right to vote to the people within the extraterritorial zoning authority of a city.

COMMISSION DISCUSSION

Ms. Nielson said a bill draft that had the Office of Administrative Hearings handle disputes in the outer half may balance the need of the city to plan which is less in the two- to four-mile area.

Mr. Bitner said the greatest concern is the citizen's right to vote, and he did not want to needlessly complicate zoning or make more government in addressing that concern.

The commission received written testimony from Ms. Sheila Bichler, Mr. Richard Hammond, and Mr. Jonathan T. Garaas, which is attached as [Appendix F](#).

No further business appearing, Chairman Kaldor adjourned the meeting at 2:20 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:6