

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

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This committee has now held a number of hearings and heard from citizens and voters from throughout the state. As you consider and evaluate all the testimony presented over these past several months, it is important to remember that this is a democracy. The rights and desires expressed by the citizens, voters, and taxpayers deserve far more consideration than the narrow wants of a small group of city planners. The representatives to the legislature are elected by the voters and should be responsible to those voters, not to any special interest group. At times, the legislature must protect the minority from the tyranny of the majority. In this case, the planners/lobbyists do not even represent a majority.

Years ago, when this extraterritorial zoning authority was first considered by the legislature, it was met with justified skepticism. That is why it took three legislative sessions before the initial enabling legislation was passed. The passage was successful only after intensive lobbying by the cities. The passage was based entirely on the planner's false projections alleging how necessary and good extraterritorial zoning would be for all concerned. Today, we can look back 30+ years experience, with 20/20 hindsight, and with volumes of testimony on how this extraterritorial zoning authority has failed in actual practice. Back then, the legislature was duped by the planning lobby.

When considering the testimony provided, we must recognize that there is little or no citizen support for continuing to allow the cities to have this power. The committee has had numerous citizens objecting to the manner in which the cities have used and abused this power. The various County Commissions are against the cities having this power. The Townships are against the cities having this power. There are no citizens testifying in favor of the cities having this power. The only testimony in favor of retaining this authority has been from the cities own paid lobbyists - the city planners. These planners do not represent the opinion of the voters who live in the various cities. We must give credibility to all those citizens who have traveled great distances, on their own time and at their own expense to testify before this committee. On the other hand, these planners are being paid to be here.

What began as extraterritorial zoning authority, underwent a slow mission creep wherein the cities began to enforce other municipal ordinances in addition to the originally authorized planning and zoning. You have heard testimony at previous hearings about how the City of Bismarck would go out 3 miles or so and complain about an old car in a rural tree grove. The justification being that mice

or rodents might live in an abandon car. What would happen if the city discovered that mice will live in hay stacks or even in barns or granaries? These are the kind of people who would order us to burn down the barn to get rid of the rodents. The city has no business operating in the rural areas. They are doing such a miserable job of managing their own respective cities, nobody wants them out in the rural area.

It is a sad day for democracy when we have ordinary citizens pleading with the legislature about the most basic principles of representative government. The will of the people. The right to vote for representatives, and to have those representatives respect their wishes. The right to have a reasonable remedy when government gets out of line. Our government is based on a carefully balanced separation of power. There should always be a safety check or some kind of protection associated with any grant of power. You don't grant power in a vacuum. This extraterritorial zoning authority provides enormous powers to the various cities, and at the same time, provides no protection to the citizens in the event of any abuse of that authority. There is no accountability on the part of the cities. They have the dangerous combination of power without any corresponding responsibility associated with that grant of authority. It is disappointing to me to see those in our legislature exhibiting such a lack of understanding of these basic democratic principles. This is a representational issue.

This situation will not lend itself to any kind of so-called "compromise". There are some situations wherein one has to get on one side of the fence or the other. The suggestion to possibly move the extraterritorial zone back to two miles from the city limits is not an acceptable solution. Most of the abuses, which you have heard about, took place within those first two miles. I would like to know if any legislator anticipated that the City of Fargo would annex a 60 foot wide, 3 mile long strip of land in order to simply control more of the rural area. That incident tells us more about the character of the city officials than you could learn from 100 witnesses. That incident is a clear example of what is wrong when a grant of power is given without any corresponding accountability. It doesn't get any more basic than this.

I request that this extraterritorial zoning authority be taken away from the cities and given to the various County and Township Boards in which we have elected representation.