

To: Advisory Commission on Intergovernmental Relations
 From: Mark Brodshaug
 Date: June 3, 2008
 Re: Extraterritorial Zoning Authority

I am Mark Brodshaug, a farmer in Cass County, and a resident of Fargo's ET area. I am finishing my term as a Cass County appointee to the Fargo Planning Commission and also serve as a Warren Township supervisor. I testified before your Commission at your January 23, 2008 hearing in Fargo. (<http://www.legis.nd.gov/assembly/60-2007/docs/pdf/ac012308appendixh.pdf>) I proposed that legislation be prepared to give county commissions authority to approve or reject expansions in the size of a city's zoning authority and that county commissions have the authority to approve or reject city zoning regulations in their ET areas. Today I would like to comment on the testimony I heard at your hearing in January and what I read in the minutes of your March 26, 2008 hearing in Bismarck and I will offer my opinions of the issues that merit changes in legislation.

Perceived problems in ET zoning identified in the testimony include:

- ET areas are zoned by cities without adequate representation from the ET area.
- Zoning infringes on private property.
- ET zoning is too restrictive.
- ET zoning is too permissive.
- Ribbon annexations extend ET areas unreasonably.
- Landfill siting in ET areas is undemocratic and unfair.
- ET areas are larger than needed for realistic city growth.

With such a wide range of perceived problems, I think consideration of a progression of questions can help lead to the answer of what changes are needed. These questions are:

1. Is zoning of any kind necessary? The answer is clearly yes. Zoning balances the property rights of a landowner with the property rights of his neighbors. Property rights include the right to not have the use and enjoyment of your property unfairly infringed on by a neighbors' use. Zoning sets the standard for what uses can be expected on property in an area and the hearing process gives neighbors the opportunity to show how they would be affected by a change in use.

2. Is city zoning authority in an ET area necessary? My answer is yes. ET zoning and subdivision authority is important so cities can plan land integration into transportation and utility systems. Scattered, uncoordinated development at city edges makes future utility extensions expensive and conflicts with farming. City zoning in an ET area would seem reasonable since the proximity of the city is causing much of the attractiveness of the property for uses other than farming. Cities that are growing are doing something right to attract employers and residents and should be better suited to plan for city growth than townships. If cities had no ET area, they would annex land into their city limits sooner in order to control land use in their growth area, which would increase property taxes in the annexed area before development would be expected.

3. What should be the extent of an ET area? I think an ET area should be approximately a 25 year growth area of a city. Cities, like Grand Forks and Fargo, which expect most of their growth to be south of their city limits should have most of their ET area on their south side. Small ET areas of approximately ½ to 1 mile, should be around cities not expecting growth so that cities have some control of uses just outside their city limits.

4. Are ET residents and landowners adequately represented under current law? I don't think so. Lack of representation in city government of ET residents and property owners is a problem brought up by most of the people testifying at your hearings. ET residents and property owners see the city commission as the final zoning authority and feel that they are not listened to because they can't vote in city elections. County Commissions represent the entire county and could serve as the judge of what should be the size of

a city's ET area on a city by city basis. County Commissions could also approve or reject zoning regulations in an ET area.

5. Are there land uses that should require different zoning procedures? Clearly uses such as landfills, sewage lagoons for cities, large feedlots, large flood control projects, and large industrial facilities have effects, both positive and negative, that go beyond the boundaries of a township or city that may have the zoning authority to permit or deny the use. There should be legislation to define a different process for approving or denying zoning of these uses with large effects. Uses that have a benefit for a large area but concentrated negative effects are unlikely to receive a fair consideration by a local city or township government. A larger regional zoning authority or perhaps a state authority for zoning these large uses would allow for finding the best site for these uses. Presently developers may search for an area with looser zoning regulations or a site in a jurisdiction where the negative effects are mostly borne by those outside the jurisdiction

In conclusion, I think a city should have zoning and subdivision authority in its 25 year growth area. The county commission, because of its representation of people both inside and outside city limits, should have the authority to approve or reject changes in a city's ET area and annexations outside a city's ET area. For large cities in ND a 2 mile ET area may be too big for part of the city where growth is limited but 4 miles may be too small for the area that is growing quickly. The expansion of cities should consider regional effects and long term cost of services and not just be determined by which city has the fastest attorney or which landowner has a whim to become a part of a city. Thanks for the opportunity to testify.

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