

N.D.A.G. Letter to Fahy (Aug. 29, 1985)

August 29, 1985

Mr. Vernon Fahy, P.E.
State Engineer
North Dakota State Water Commission
900 East Boulevard
Bismarck, ND 58505

Dear Mr. Fahy:

Thank you for your letter of July 31, 1985, concerning floodplain ordinances.

The first question in your letter concerns floodplain ordinances and whether such ordinances are considered to be zoning ordinances. Authority has been bestowed upon the various political subdivisions to enact zoning ordinances, regulations, and restrictions. N.D.C.C. §§11-31-01, 40-47-01, 58-03-11. The phrase that appears in the statutory language providing for such authority includes the following words: "for the purpose of promoting the health, safety, morals, or the general welfare" of the people in that particular area. Although floodplain regulation or floods themselves are not mentioned, it is clear that the threat of flooding is one which would concern the health, safety, and general welfare of political subdivision. Therefore, I have no hesitation in concluding that the authority to provide zoning ordinances, regulations, and restrictions would include floodplain ordinances as discussed in N.D.C.C. Ch. 61-16.2. See also, Note, Various Aspects of Flood Plain Zoning, 55 N.D. L. Rev. 429, 450 (1979).

The second and third questions in your letter appear to concern the issuance of building or other types of permits as part of a political subdivision's authority to zone and subdivide territory within its jurisdiction. A member of my staff has spoken with Jeff Klein of your staff and has learned that your second and third questions concern the requirement of permits by a political subdivision in enacting regulations. In other words, your inquiry appears to be whether zoning and subdivision regulations require the issuance of permits.

In reviewing the various statutes concerning zoning and subdivision regulation of political subdivisions, I am unable to find any requirement that permits be part of such regulatory schemes. Thus, a permit process is not essential, although it certainly may be included, as part of the regulatory schemes adopted by the political subdivisions in carrying out their zoning and subdivision regulatory authority.

Sincerely,

Nicholas J. Spaeth

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