

N.D.A.G. Letter to McBeth (Feb. 13, 1990)

February 13, 1990

Mr. Ronald W. McBeth
Richland County Assistant
State's Attorney
Law Enforcement Center
413 Third Avenue North
Wahpeton, ND 58075

Dear Mr. McBeth:

Thank you for your January 31, 1990, letter concerning the manner in which municipal extra-territorial zoning is to be determined.

N.D.C.C. § 40-47-01.1 provides for municipal extra-territorial zoning authority. Essentially, cities may, by ordinance, extend their zoning authority to areas outside of their city limits. Prior to 1981, the extension of city zoning authority occurred on all unincorporated territory within a certain distance of the city limits. However, this statutory scheme resulted in problems and inequities as one tract of land could be governed by different zoning authorities.

The 1981 Legislative Assembly responded to this situation and amended N.D.C.C. § 40-47-01.1 to allow a city's extra-territorial zoning authority to apply to each and every quarter quarter section of incorporated territory where the majority of the land within that quarter quarter section is within a certain distance of the city limits. 1981 N.D. Sess. Laws ch. 421. The purpose of the amendment was to "simplify cities' administrative application of zoning regulations and, at the same time, prevent the inequities possible when one tract of land is governed by the zoning jurisdiction of two units of government." Legislative Council of North Dakota, Report to the Legislative Assembly of 1981, at 114 (1980).

According to your letter, the City of Wahpeton has a population of more than 5,000 but less than 25,000 people. Wahpeton has also adopted an extraterritorial zoning ordinance. Thus, the provisions of N.D.C.C. § 40-47-01.1(2) allow Wahpeton to extend its zoning regulations to each quarter quarter section of incorporated territory so long as a majority of the land within that quarter quarter section is located within one mile of the city limits.

According to the map attached to your letter, it is at the center of section 20 of Township 132 North, Range 47 West, that the Wahpeton city limits is at a point closest to the proposed land site in section 29. Assuming this fact to be correct, it is my opinion that each quarter quarter section of incorporated territory, where the majority of the land in that quarter quarter section is located within one mile of the center of section 20, is subject to Wahpeton's extra-territorial zoning authority. See also Letter from Attorney General Spaeth to Robert Alexander (March 7, 1986). Thus, I concur with your suggestion that a

circle be drawn with a one mile radius from the center of section 20 on your map.

Your letter suggests, and you have confirmed in a telephone conversation with a member of my staff, that the one mile radius from the center of section 20 will cause some, but not all, of the territory embracing the proposed landfill site in section 29 to fall within Wahpeton's extra-territorial zoning boundaries. If this indeed occurs, then that portion of the proposed landfill site which is found within a quarter quarter section of land the majority of the land of which is located within one mile of the center of section 20 on your map will be subject to Wahpeton's zoning regulations. Within this extra-territorial area, the city would possess "complete zoning control" to the exclusion of county or township zoning authorities. Apple Creek Tp. v. City of Bismarck, 271 N.W.2d 583, 587 (N.D. 1978). That portion of the proposed land fill site in section 29 which is outside of this extra-territorial zoning area is not subject to Wahpeton's zoning regulations.

I realize that this result may cause confusion for city and township officials and for the public. However, this result is required by the literal words of N.D.C.C. § 40-47-01.1 as well as the Legislative intent surrounding the enactments of the 1981 amendments to this law.

I hope this discussion is helpful to you and the other township and City officials dealing with this issue.

Sincerely,

Nicholas J. Spaeth

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