

**LETTER OPINION
2006-L-37**

November 24, 2006

The Honorable Jerry Klein
State Senator
331 2nd St N
Fessenden, ND 58438-7203

Dear Senator Klein:

Thank you for your letter asking when a township zoning commission must include city members. For the reasons stated below, it is my opinion that a township zoning commission must include city members when:

1. Any part of the city is located in the township,
2. The city is located outside the township, but the city's border touches the township at any point, or
3. The city exercises extraterritorial zoning authority over any area that is located in the township.

ANALYSIS

A township zoning commission consists of three township supervisors and, if there are municipalities "concerned in relation to which such zoning is contemplated," then two additional members must be appointed from the municipalities concerned.¹

Initially, it is my conclusion that the membership of a township zoning commission is determined based on where the city is situated in relation to the township, and is not determined based on the particular zoning issue being contemplated by the township zoning commission. State law provides:

¹ N.D.C.C. § 58-03-13, N.D.A.G. 2006-L-18.

The regulations and restrictions established in any township zoning district must be made in accordance with a comprehensive plan with reasonable consideration as to the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and must be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, promote health, safety, and general welfare, and provide for emergency management. . . .²

The requirement to consider the growth and development of the municipality in any township zoning district means that all parts of the township are related to the municipality's normal growth and development. This is not surprising considering that a township usually consists of a square area of land whose sides are only 6 miles long.

There is another reason I conclude that the membership of a township zoning commission is determined based on where the city is situated in relation to the township, and is not determined based on the particular zoning issue being contemplated by the township zoning commission. If membership were determined based on the particular zoning issue, a township board's membership would be inconsistent, and there would be inconsistency between townships on what issues would warrant adding city members to township boards. This result would not be just or reasonable, and it is presumed that the Legislature enacts just and reasonable statutes.³

The statutes governing township zoning⁴ do not specifically state when a municipality is concerned in relation to the township zoning, which would thereby require city members to be on the township zoning commission. Words used in a statute are generally to be understood in their ordinary sense.⁵ "Concerned" means "interested and involved . . .".⁶ Also, the purpose for enacting a statute should be considered when construing a statute.⁷ Some of the purposes for enacting the township zoning laws are "to secure the orderly development of approaches to municipalities"⁸ and to establish regulations "with reasonable consideration as to . . . the normal growth of the municipality, and . . . [to] encourage orderly growth and development of the municipality and adjacent areas."⁹ Thus, in my opinion, a city would be interested and involved in township zoning if any part of the city is located in the township, if the city's border touches the township, or when the

² N.D.C.C. § 58-03-12 (emphasis added).

³ See N.D.C.C. § 1-02-38(4).

⁴ N.D.C.C. §§ 58-03-11 through 58-03-15.

⁵ N.D.C.C. § 1-02-02.

⁶ American Heritage Dictionary, 305 (2d Coll.Ed.1991).

⁷ County of Stutsman v. State Historical Society, 371 N.W.2d 321, 327 (N.D. 1985).

⁸ N.D.C.C. § 58-03-11(1).

⁹ N.D.C.C. § 58-03-12.

city exercises extraterritorial zoning authority¹⁰ over any area located within the township. In these circumstances, it is my opinion that a township zoning commission must include city members.

You also ask whether the county commission can disregard a determination made by the township zoning commission. If the county commission is aware that a decision was made by a township zoning commission when its membership did not comply with state law, it is my opinion that the county commission is not obligated to accept the decision of the township zoning commission.¹¹

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹²

¹⁰ See N.D.C.C. § 40-47-01.1.

¹¹ See Homer Township v. Zimney, 490 N.W.2d 256, 258 (N.D. 1992) (procedural requirements in state zoning enabling statutes are mandatory, and a substantial failure to comply will invalidate a zoning ordinance).

¹² See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).