Planning Advocacy Think Tank

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• Chair, NDPA Legislative Committee

NDPA Annual Conference 2019 – Bismarck Event Center
Session Agenda

1) Summary: 2019 State Legislative Session

2) Interim Study / Statewide Planning Issues & Needs Survey

3) Group Discussion: planning & zoning issues in your region

4) Identify priority NDPA issues for 2021 session

5) Get involved
Century Code

The North Dakota Century Code on this website contain currently effective laws of North Dakota. Changes approved by the 68th Legislative Assembly are now reflected on this website. Sections of law with expiration dates or delayed effective dates are indicated in the Section caption.

Century Code may vary in some respects from the text as contained in printed or online versions available from private publishers.

The table of contents to this online version of the Century Code is derived from the listing of titles of the code. Selecting the appropriate title will lead you to that title. A list of Chapters in that title will appear. Selecting a chapter leads you to the text of that Chapter. You can scroll through the Chapter on a section-by-section basis.

To copy code: If you want to place text from the code into a word processing document: (1) select the text select button (the button with "abc" or "T" on it); (2) highlight the text you want to copy; and (3) select the copy button (the button with two pages on it). This will place the selected text on your clipboard for pasting into your word processing document.

11-33 Counties  40-47 Municipal Gov’t  58-03 Townships
2019 Legislative Session

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<th>2017 Bills</th>
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<tr>
<td>Senate</td>
<td>344</td>
<td>362</td>
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- Wind turbines
- CAFOs
- ETAs
- Non-conforming residences
SB 2345 - CAFOs
Adopted into law. Amends NDCC:

- 11-33-02.1 (County Farming & Ranching Regulations)
- 58-03-11.1 (Townships Farming & Ranching Regulations)
- 23.1-06-15 (Regulation of Odors) adds definitions for business, campground, church, park, public building and school.
SB 2345 - Specifics

For Counties and Townships:

• Zoning determination required within 60 days
  – Default/no response: approved
  – If CUP required, clock starts when completed CUP application received.
SB 2345 - Specifics

For Counties and Townships:

• Reiterates authority granted by State. Local government ONLY allowed to regulate:
  – Location
  – Size
  – Type of animal

• Expressly prohibited from regulating water quality, closure, site security, lagoons or imposing nutrient plan requirements.
SB 2345 - Specifics

For Counties and Townships:

• No additional regulation can be imposed

• Provided construction commences within 3 years from date State Health Department issues the final permit.
CAFO/ SB 2345
Questions?
Wind Turbine Setbacks
2017 Session

• SB 2313 - Adopted
  • Established exclusion & avoidance areas (setbacks) for wind turbines
    – 1.1 x tower height from property line of non-participating land owner
    – 3 x tower height from inhabited residence of a non-participating land owner
2019 Session

- HB 1167
  - Tower setback from property line of non-participating land owner from 1.1x to 3x tower height.
Visualizing 3x tower height setback on a quarter-section

1,500 ft setback

Zero available placement area

2,640 ft Quarter-section

approx. 500 ft tall

1,500 ft setback

1,200 ft setback

1.3 acre placement area

2,640 ft Quarter-section

approx. 400 ft tall
HB 1167 Outcome

• **Failed** to pass the House for want of Constitutional majority
  – 47 Yeas
  – 43 Nays
  – 4 absent

• **Considerations:**
  – setbacks for safety (i.e. from residences) should be consistent across the state.
  – setbacks for other reasons, best based on local values/goals
    • Testimony from townships (paraphrased): “we don’t have the staff or expertise to create ordinances for these things. We need protection from the state.”
Wind Turbine / HB 1167
Questions?
HB 1165 – Nonconforming Residences
HB 1165 - Specifics

Bill would allow (applies to cities/counties/twps):

• Any residential structure** damaged beyond 50%, automatically allowed to rebuild/reconstruct if
  – Building permit obtained within 6 months
  – Restoration begins within 1 year
  – Size, height, lot placement, off-site parking spaces remain the same
HB 1165 – Planning Issues/Questions

• How to cities/counties/townships want to address non-conformities?
  – Non-conforming lots
  – Non-conforming structures
  – Non-conforming uses

• Flood zone issues

• Health & safety concerns
  – Unsafe structure standing for up to a year without being addressed and city has no recourse to force action
HB 1165 - Outcome

- House Political Subdivisions Committee Recommendation:
  - Do Pass
  - 9 yea / 5 nay
- House Floor: Passed
  - 82 yea / 7 nay
- Senate Political Subdivisions Committee Recommendation:
  - Do not pass
  - 4 yea / 1 nay / 1 absent
- Senate Floor: Failed
  - 17 yea / 30 nay

WILL pass next session unless there is organized opposition.
Non-Conformities / HB 1165 Questions?
HB 1210 –
New Extraterritorial Areas Subject to Vote
40-21-01. Qualified electors in municipality election - Restrictions.

1. Every resident of a municipality and any resident of the extraterritorial zoning jurisdiction of the city who is qualified to vote therein at general elections may vote at all municipality elections held therein. When by that city.

2. Except as provided in subsection 3, when elections are held by wards or precincts, an individual may not vote in any place other than the ward or precinct of which the individual is a resident.

3. An individual who is a resident of the extraterritorial zoning jurisdiction of the city is entitled to vote in the ward or precinct to which that area of the jurisdiction has been designated to vote by the governing body of the city.
Special election - Zoning.

1. Notwithstanding any other provision of law, the board of county commissioners shall call a special election to allow owners of property in a proposed extraterritorial zone, as provided in section 40-47-01.1, to vote on the proposed extension of extraterritorial zoning authority. The outcome of the vote is binding on the city seeking to extend the extraterritorial zone.

2. The board of county commissioners shall provide notice of the proposed change and date of the special election through certified mail to each property owner that would be impacted by the proposed change.

3. An election relating to a proposal to extend extraterritorial zoning authority over the same area may not be held more often than once in any twelve-month period.
HB 1210 - Outcome

- House Political Subdivisions Committee Recommendation:
  - Do Pass
  - 9 yea / 5 nay
- House Floor: Passed
- Senate Political Subdivisions Committee Recommendation:
  - Do not pass
  - 6 yea / 0 nay
- Senate Floor:
  - 1 yea / 44 nay
HB 1297 – Repeal Extraterritorial Zoning Authority

Section 1. Amendment. Section 11-33.2-03 of the North Dakota Century Code is amended and reenacted as follows:

Section 11-33.2-03. Scope of county authority.

County regulation of subdivisions pursuant to the provisions of this chapter shall in no way affect subdivisions within the corporate limits, or within the area of application of extraterritorial zoning jurisdiction adopted pursuant to section 40-47-01.1, of any city. Additionally, no resolution, regulation, or restriction adopted pursuant to the provisions of this chapter shall prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

Section 2. Amendment. Subsections 1 and 2 of section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

23-25-11. Person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more...
HB 1297 - Outcome

- Failed in the House
- Margin of defeat shrinking

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<th>House Vote</th>
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<tr>
<td>Yea</td>
<td>17</td>
<td>34</td>
</tr>
<tr>
<td>Nay</td>
<td>68</td>
<td>58</td>
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</table>
ETA Repeal / HB 1297
Questions?
...these bills will be back in 2021...

VERDICT

Non-conforming residences

ETAs

Wind Energy
2019 Legislative Session Take-Aways

1) Disconnect among political subdivisions, especially ETA

2) Need for a state-wide assessment of planning issues & needs
Interim Legislative Study

North Dakota League of Cities

North Dakota Planning Association

North Dakota Association of Counties

North Dakota Township Officers Association
Interim Legislative Study

Study Aims To:
1) Identify top planning and zoning issues for cities/counties/twps
2) Catalog capacity/resources for planning, of cities/counties/twps
3) Identify solutions that could improve the ability of political subdivisions to engage in effective planning.
4) Develop draft amendments to ND Century Code (as desired/necessary)
5) Present findings to ND House & Senate Political Subdivisions Committees for 2021 session

Feedback Collection Method:
Statewide Issues & Needs Survey
(via SurveyMonkey)
Statewide Issues & Needs Survey

Questions/Content:
1) Role, city/county/twp
2) Resources available: staffing levels, GIS available, status of P&Z Commission
3) Rate your comprehensive plan & zoning ordinance
4) What are your most significant challenges? Legislative-based challenges?
5) Describe those challenges & preferred solutions.
6) What are your city/county/twp greatest planning-related needs?
7) Opinion on HB 1297 (ETAs), HB 1165 (non-conforming residences)
Please Take the Statewide Survey!!
Available at www.ndplanning.org
Who Should Take The Survey?

Public Sector – City / County / Township

• Zoning Administrators
• Planning Directors
• Planners
• Planning & Zoning Commissioners
• Elected Officials
Statewide Survey www.ndplanning.org
Spread the Word!!!
Discussion:
Top planning issues in your region?

Ideas to get you started:

1) Conflicts in extraterritorial areas
2) Wind energy facilities
3) Concentrated animal feeding operations
4) Conflicts over dedication of right-of-way
5) Local political environment
6) Lack of capacity to effectively engage in basic planning & zoning activities
7) Inadequate legal counsel on land use matters
8) Limited ability to enforce zoning and/or building regulations
9) Urban growth management
10) Development options are limited by lack of funds to extend infrastructure
11) Others...
Day-to-Day/
Housekeeping Issues

Changes needed to NDCC?

1) Clarify standing of cities/
counties/ townships to own right of way
permanently

2) Standing of political subdivisions to engage in
administrative review vs. subdivision process
(i.e. lot mergers)

3) Others?
Boil It Down

Top Priorities

1)
2)
3)
4)
Get Involved!

**General Involvement:**
1) Provide regional feedback
2) Contact legislators
3) Present local testimony at ND State Capitol

**NDPA Legislative Committee:**
1) Conference calls ~1x month during session
2) Draft or review NDPA position statements

Contact Natalie Pierce
701-667-3361 or natalie.pierce@mortonnd.org
Statewide Survey www.ndplanning.org
Spread the Word!!!
Thank you!