

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-30

Date issued: October 18, 1994
Requested by: Stephen J. Rice
Walsh County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether townships must file comprehensive zoning ordinances in the office of the county auditor before they are considered to have zoned.

II.

Whether a resolution adopting township zoning needs to be passed by the township electors at their annual meeting.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that townships do not need to file comprehensive zoning ordinances in the office of the county auditor before they are considered to have zoned.

II.

It is my further opinion that a resolution adopting township zoning does not need to be passed by the township electors at their annual meeting.

- ANALYSES -

I.

Township zoning is governed by N.D.C.C. ?? 58-03-11 through 58-03-15. These statutes provide, in part:

**58-03-11. Establishment of zoning districts -
Limitation - Scope of zoning regulations and
restrictions.** For the purpose of promoting the

health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provision of chapter 54-21.3 [state building code], regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. No regulation or restriction, however, may prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming. The provisions of sections 58-03-11 through 58-03-15 may not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

58-03-12. Basis for township zoning regulations and restrictions. 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, and promote health, safety, and general welfare. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

58-03-13. Township zoning commissions - Membership - Reports and recommendations - District boundaries - Hearings -Notice. The board of township supervisors of a

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township desiring to avail itself of the powers conferred by sections 58-03-11 through 58-03-15 shall establish, by resolution, a township zoning commission to recommend the boundaries of the various township zoning districts and appropriate regulations and restrictions to be established therein. . . . [The township zoning] commission shall make a preliminary report and hold public hearings thereon before submitting its final report and recommendations to the board . . . of township supervisors. The board . . . of township supervisors may thereupon establish, and from time to time change, the boundaries of township zoning districts and establish, amend, supplement, and enforce regulations and restrictions in such districts. No regulation, restriction, or boundaries become effective until after a public hearing thereon at which parties in interest and citizens have an opportunity to be heard. . . . The description of any land within any zoning district established by a zoning commission together with any regulations and restrictions established therein must be filed with the governing bodies of the township and municipalities concerned, and in the event amendments are made to the boundaries of the zoning district or the regulations or restrictions established therein, such amendments must be filed in the same manner.

N.D.C.C. ?? 58-03-11, 58-03-12, 58-03-13 (emphasis supplied).

These statutes require that a comprehensive plan be developed.¹ The board of township supervisors creates a township zoning commission. After holding hearings, the township zoning commission submits a final report and recommendations to the board of township supervisors regarding the boundaries of township zoning districts and appropriate regulations and restrictions to be established therein. The board of township supervisors may then establish the boundaries of township zoning districts and establish and enforce regulations and restrictions in those districts. The regulations and restrictions of the board of township

¹N.D.C.C. ?? 58-03-11 through 58-03-15 do not specify whether the board of township supervisors or the township zoning commission develops the comprehensive plan. It would appear that the board of township supervisors would have such authority, but could delegate it to the township zoning commission.

supervisors establishing the township zoning districts must be made in accordance with the comprehensive plan. "The description of any land within any zoning district established by a zoning commission, together with any regulations and restrictions established therein must be filed with the governing bodies of the township and municipalities concerned, and in the event amendments are made to the boundaries of the zoning district or the regulations or restrictions established therein such amendments must be filed in the same manner." N.D.C.C. ? 58-03-13. These statutes do not require the filing of any documents in the office of the county auditor. Therefore, it is my opinion that townships do not need to file comprehensive zoning ordinances in the office of the county auditor before they are considered to have zoned. The statute does say that "[n]o regulation, restriction, or boundaries become effective until after a public hearing thereon at which parties in interest and citizens have an opportunity to be heard." N.D.C.C. ? 58-03-13.²

II.

After receiving from the township zoning commission a final report and recommendations regarding the boundaries of the various township zoning districts and appropriate regulations and restrictions to be established therein, the board of township supervisors may establish the boundaries of township zoning districts and establish and enforce regulations and restrictions in such districts. N.D.C.C. ? 58-03-13.

Various statutes discuss meetings of township electors. "The electors of each township annually shall assemble and hold a township meeting on the third Tuesday in March" N.D.C.C. ? 58-04-01. Special township meetings may be held for specified purposes. See N.D.C.C. ? 58-04-02. "The qualified electors present on the day of the annual or special meeting must be called to order by the township clerk, or, if

²See N.D.C.C. ? 58-01-04, however, which states that three years after the adoption or amendment of township resolutions or regulations it is conclusively presumed that the resolutions or regulations were adopted or amended as required by law.

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he is not present, the qualified electors may elect by acclamation one of their number to act as chairman for the purpose of calling the meeting to order and to act as clerk after the selection of a moderator." N.D.C.C. ? 58-04-05." "All questions upon motions made at township meetings must be determined by a majority of the electors voting." N.D.C.C. ? 58-04-06.

Other statutes address meetings of the board of township supervisors. "The board of township supervisors shall hold regular meetings on the second Tuesday in March, on the fourth Tuesday in March, and on the second Monday in June of each year, except that in the discretion of the township supervisors the meetings provided for the second Tuesday and fourth Tuesday in March may be held on the same day as the annual township meeting as provided in section 58-04-01." N.D.C.C. ? 58-06-03. "The board of township supervisors may adjourn from time to time and in cases of emergency may hold special meetings on the call of the township clerk on three days' notice." N.D.C.C. ? 58-06-04.

The statutes distinguish between meetings of the township where township electors conduct business, and meetings of the board of township supervisors where the board of township supervisors conduct business. It is my opinion that the statute authorizing the board of township supervisors to establish zoning districts and regulations and restrictions in such districts, does not require a vote of the township electorate. Cf. 1965 N.D. Op. Att'y Gen. 441 (a statute stating townships may relinquish their power to enact zoning regulations to the county by resolution of the board of township supervisors does not mean that a resolution must be passed by the township electorate); Bank of Park River v. Town of Norton, 104 N.W. 525 (N.D. 1905) (a statute stating the township board is authorized to purchase any road grader does not mean that such purchase must be approved by the township electorate).

In conclusion, it is my further opinion that a resolution adopting township zoning does not need to be passed by the township electors at their annual meeting.

- EFFECT -

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 questions presented are decided by the courts.

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