Questions that relate to Zoning (Joel Quanbeck, Senior Planner, Ulteig)

- If a township adopts county ordinances does it count as a plan?
  o It is essential to differentiate between a “plan” and an “ordinance” when talking about zoning. North Dakota law requires that a zoning ordinance be based on a comprehensive plan, but the plan is not the ordinance, and the ordinance is not the plan. Essentially the plan is a strategy for the local jurisdiction’s development, land use, and a number of other potential topics. A zoning ordinance is the law enacted by the local jurisdiction as a tool to help implement the plan. Therefore, a township cannot adopt county ordinances as a plan.

- If the comprehensive plan is out of date, can new zoning ordinances be made before the new comprehensive plan is finished?
  o Because North Dakota law requires that a zoning ordinance is based on a comprehensive plan, the essential issue is whether a proposed new zoning ordinance is consistent with the existing comprehensive plan. If not, the new ordinance may be at risk of court challenge, and may turn out to be at odds with the new comprehensive plan once the new plan is completed.

- How far outside city limits does a town with less than 1,500 people have territorial jurisdiction? Over 1,500 in population? And less than 5,000?
  o Chapter 40-47 of the North Dakota Century Code addresses questions of extraterritorial zoning authority. In general, a municipality with a population of less than 5,000 can establish extraterritorial zoning authority up to 1 mile outside its municipal boundary; however, the outer ½ mile is joint jurisdiction with an “other political subdivision,” as detailed in Chapter 40-47. It is important to note the maximum extent of extraterritorial authority must be established by a rule that says the authority can be established for any quarter of a quarter section of unincorporated territory if a majority of the quarter of a quarter section is located within the 1-mile distance.

- How is the zoning that is in place enforced?
  o Matters of enforcement procedure are best discussed with an attorney experienced in this kind of issue. The North Dakota Century Code provides certain applicable guidelines.

- If a township has relinquished their zoning to the county and decided they want to be able to re-claim their zoning, what is the process?
The ND Township Officers Association has identified this process. Please consult a member of the NDTOA or an attorney experienced in this matter.

If both city and county zone the same area, who has the most authority?

- A county does not typically have authority to zone land within a municipality unless by a formal agreement. It is best to consult an attorney experienced in this kind of issue. A city that has established extraterritorial zoning authority has unilateral control over the first half of its potential area of authority and, typically, has joint jurisdiction with an “other political subdivision” over the second half of its potential area of authority. In areas of joint jurisdiction, neither political subdivision typically has more power because a “no” by either would result in a “no” to a proposed development action.

- Does extra territorial boundary change automatically if city expands?
  - No. Extraterritorial boundaries typically change only when an ordinance enacts the boundary change.

- How do you enforce zoning? Calling the sheriff does not always work.
  - Matters of enforcement procedure are best discussed with an attorney or planner experienced in this kind of issue. The North Dakota Century Code provides certain applicable guidelines.

- What resources are available for those communities who cannot afford $50,000- $100,000 comprehensive land plan from an engineering/consulting firm?
  - Some written resources are available on the websites of the North Dakota League of Cities, the North Dakota Association of Counties, and the North Dakota Planning Association. Additional resources about how to develop comprehensive plans are available from other website sources, specialized libraries, and bookstores. Technical assistance may be available from North Dakota’s regional councils, the NDSU Extension Service, and other community or rural assistance organizations. Financial assistance may be available from private foundations and government agencies at regional, state, and national levels.

- How can we, as a township board, have any clue as to the timeframe of the oil action for our area?
  - Perhaps the best sources for information on timing of oil development activity are found on the North Dakota Oil and Gas Division’s website and at the County Recorder’s Office. The leasing activity taking place in
your county must be recorded at the Recorder’s office. The Oil and Gas Division has a number of presentations and documents on recent trends as well as an online map tool that illustrates current activity. Attending local or regional meetings on oil and gas development, and networking with county and state officials, as well as state legislators, may also be useful.

- Please address the cooperation between your city governments and your county governments—partnerships, planning and zoning?
  - First of all, keep in mind that cities and counties generally do not have overlapping jurisdiction, except in the case of joint jurisdiction in extraterritorial areas. It is advisable for county and city officials to coordinate their plans and regulations to address development activity. At a minimum, such plans and regulations should not work against each other by allowing incompatible development to happen. Updating plans and regulations in a joint process may result in economic efficiencies, and can result in coordinated plans and regulations. There are also benefits to considering joint administrative and enforcement processes.

- How does a zoning board regulate and monitor building in the county? Who does this and what is the penalty?
  - The fundamental tool typically used to monitor and regulate development is the use of zoning certificates or building permits. By instituting such procedures, all development can theoretically be monitored, even if permits are issued for most things without any public meetings or approval by a city or county agency, board, or governing body.

- Does land tax change if zoning changes?
  - Tax categories control the rate of taxation. Typically, these categories are residential, commercial, and agricultural. If the use of land changes is from one category to another, the tax rate may change. Changing the zoning of a parcel of land will not necessarily change the tax rate on that parcel.