

**LETTER OPINION**  
**2014-L-06**

March 13, 2014

Mr. Howard D. Swanson  
Grand Forks City Attorney  
PO Box 12909  
Grand Forks, ND 58208-2909

Mr. Peter Welte  
Grand Forks County State's Attorney  
PO Box 5607  
Grand Forks, ND 58206-5607

Dear Mr. Swanson and Mr. Welte:

Thank you for your letters asking whether the city of Grand Forks may require a resident in the city's extraterritorial zoning area to clean up accumulated junk, when such accumulation is not prohibited by the city's zoning ordinances. For the following reasons, it is my opinion that the city of Grand Forks may not require a resident in the city's extraterritorial zoning area to clean up accumulated junk, when such accumulation is not prohibited by the city's zoning ordinances.

ANALYSIS

You indicate that an individual who is storing vehicles and other items of junk resides within the four mile extraterritorial zoning jurisdiction of the city of Grand Forks but beyond the city's one-half mile of jurisdiction for general police powers.

You indicate that the city's land development code, which contains all the requirements for zoning and subdivisions within the city's extraterritorial zoning jurisdiction, does not include prohibitions against the accumulation of junk or inoperable vehicles. You indicate that the city has other ordinances, which are not zoning ordinances that deal with the storage of trash, rubbish, junk, junk automobiles, or abandoned vehicles on private property.<sup>1</sup> You

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<sup>1</sup> See Grand Forks City Code of 1987, ch. XIII, art. 7 and, in particular, sections 13-0701 through 13-0704. Violation of these ordinances can result in a fine not to exceed \$1,000. See Grand Forks City Code of 1987, ch. XIII, art. 7, § 13-0709.

also indicate that while the city has general police power to abate nuisances and to assess the costs of abatement against the property owner,<sup>2</sup> similar provisions do not appear within the city's zoning ordinances.

State law provides that the governing body of a municipality has general police power jurisdiction "[i]n and over all places within one-half mile . . . of the municipal limits for the purpose of enforcing health ordinances and regulations, and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality."<sup>3</sup> A city is also authorized to apply its zoning and subdivision regulations up to four miles beyond the city limits, depending upon the population of the city.<sup>4</sup> The city of Grand Forks' extraterritorial zoning jurisdiction extends to four miles beyond the city limits.<sup>5</sup> In 1978, the North Dakota Supreme Court determined that a city has complete zoning control in this extraterritorial zoning area.<sup>6</sup> However, after state law changes in 2009, the city and the county exercise joint jurisdiction within the two to four mile area.<sup>7</sup> The city of Grand Forks and Grand Forks County have signed a zoning and subdivision agreement which provides that the "[c]ity shall be responsible for all zoning and subdivision administration, activities and regulation for areas within the 2 mile area beyond the city limits."<sup>8</sup>

Grand Forks County has argued that the city's nuisance ordinances regulating the accumulation of junk may be treated as zoning ordinances pursuant to the city's general authority to regulate land and thus be enforced in the city's extraterritorial zoning area.<sup>9</sup>

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<sup>2</sup> See Grand Forks City Code of 1987, ch. X, art. 1, §§ 10-0107 and 10-0108.

<sup>3</sup> N.D.C.C. § 40-06-01(2).

<sup>4</sup> See N.D.C.C. §§ 40-47-01.1 and 40-48-18.

<sup>5</sup> See Grand Forks City Code of 1987, ch. XVIII, art. 2, § 18-0202.

<sup>6</sup> See Apple Creek Twp. v. City of Bismarck, 271 N.W.2d 583, 587 (N.D. 1978). See also, N.D.A.G. 2004-L-34 (A county's zoning authority does not affect property in the zoning and subdivision authority of a city unless the city has relinquished its zoning authority to the county under N.D.C.C. § 11-33-20.), N.D.A.G. 2002-L-24 (A city's zoning authority preempts county or township zoning within the city's jurisdiction, including the city's extraterritorial zoning area.), N.D.A.G. 96-L-188 (If a city has not zoned in its extraterritorial zoning area, no zoning scheme is in effect in that area, and the county's zoning does not apply.), N.D.A.G. 95-L-112 (County zoning does not apply in a city's extraterritorial zoning area, even though the city has not yet acted to classify the extraterritorial area into zoning districts.), N.D.C.C. § 11-33.2-03 (A county's regulation of subdivisions does not extend into a city's extraterritorial zoning area.)

<sup>7</sup> See 2009 N.D. Sess. Laws ch. 350, § 1, codified at N.D.C.C. § 40-47-01.1.

<sup>8</sup> Letter from Dale Rivard, Grand Forks Cnty. Asst. State's Att'y, to Wayne Stenehjem, Att'y Gen. (Oct. 31, 2013).

<sup>9</sup> Id.

This office has previously determined that if a city's ordinances are properly adopted as zoning ordinances, they will apply in the city's extraterritorial zoning area. For example, a city's fire prevention code would not generally apply beyond the one-half mile police power jurisdiction of the city; however, all or portions of a city's fire prevention code, if properly adopted as zoning ordinances, would apply within the city's entire extraterritorial zoning area.<sup>10</sup>

The North Dakota Supreme Court reviewed a situation involving ordinances of the city of Jamestown prohibiting the storage or accumulation of trash, rubbish, junk, junk automobiles, or abandoned vehicles on any private property.<sup>11</sup> The court rejected the argument that the ordinance constituted a zoning ordinance, stating, "[t]he plain language of the ordinance . . . indicates it is a criminal ordinance generally applicable throughout the City . . . and not a zoning ordinance."<sup>12</sup> Similarly, the plain language of the ordinances you refer to in article 7 of the Grand Forks City Code of 1987 indicates they are criminal ordinances and not zoning ordinances.<sup>13</sup>

Because these Grand Forks city ordinances regarding the accumulation of junk have not been adopted as zoning ordinances, they cannot be applied to the property in question since the property lies beyond the one-half mile general police power jurisdiction of the city.<sup>14</sup> If the city properly adopts zoning ordinances that deal with the storage of trash or the abatement of nuisances, such ordinances would be enforceable within the city's extraterritorial zoning area.<sup>15</sup>

Even though the city has complete zoning authority in the one-half to two mile extraterritorial zoning area, county ordinances that are not zoning ordinances may

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<sup>10</sup> See N.D.A.G. 98-F-18.

<sup>11</sup> City of Jamestown v. Tahrán, 657 N.W.2d 235, 237 (N.D. 2003). The city of Jamestown also defined "junk" in its ordinance in a substantially similar manner to Grand Forks' junk ordinances. See Grand Forks City Code of 1987, ch. XIII, art. 7, § 13-0701.

<sup>12</sup> Tahrán, 657 N.W.2d at 237.

<sup>13</sup> Article 7 of the Grand Forks City Code of 1987 deals with Junk, Abandoned Vehicles, Building Materials, Etc.

<sup>14</sup> N.D.C.C. § 40-06-01. See also N.D.C.C. § 40-05-01.1 (there is no provision in this statute to assess costs for work done necessary for general welfare outside of city limits).

<sup>15</sup> See N.D.C.C. § 40-47-01 (A city may use zoning to "regulate and restrict . . . the location and use of buildings, structures, and land for trade, industry, residence, or other purposes."). See also N.D.C.C. § 40-47-03 (City zoning regulations are intended to encourage "the most appropriate use of land . . . .")

continue to apply in that one-half to two mile extraterritorial zoning area.<sup>16</sup> Thus, the county may enforce its ordinances prohibiting the accumulation of junk, in the city's one-half to two mile extraterritorial zoning area, as long as those ordinances are not county zoning ordinances.<sup>17</sup>

Based on the foregoing, it is my opinion that the city of Grand Forks may not require a resident in the city's extraterritorial zoning area to clean up accumulated junk, when such accumulation is not prohibited by the city's zoning ordinances.

Sincerely,

Wayne Stenehjem  
Attorney General

jff/las/vkk

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.<sup>18</sup>

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<sup>16</sup> See for example N.D.A.G. 97-F-10 (Although a city's zoning regulations may effectively prohibit a person from engaging in the sale of alcoholic beverages at a particular location within the extraterritorial zoning jurisdiction of the city, the county has the authority to issue licenses for the retail sale of alcoholic beverages in that same area.)

<sup>17</sup> Another potential remedy is that the local board of health could remove or abate the nuisance and assess the costs to the appropriate political subdivision to be charged against the land upon which the work is done. See N.D.C.C. §§ 23-35-01, 23-35-08, and 23-35-09; see also 7 McQuillin, Mun. Corp. § 24:230 (3d ed. 2005) (power may be conferred on municipal corporations or health boards to abate public health nuisances and make the cost of them a lien on the property owners). In N.D.A.G. 2005-L-16, I determined that the appropriate governmental agency to assess costs against real property under N.D.C.C. § 23-35-09 for land located outside city limits, but within a city's extraterritorial jurisdiction, is the county. If the nuisance is in the county but outside the city limits, the county is the entity to be billed; however, if the nuisance is within the city, the city is the appropriate entity to be billed.

<sup>18</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).