

September 27, 2004

The Lincoln County Commission convened in a Special joint session with the Sioux Falls City Council at 7:00 P.M., September 27, 2004, at the Lincoln County Courthouse, Canton, South Dakota.

Commissioners present were: Dennis Weeldreyer, Burdell Coplan, Michael Poppens, Otto Hagedorn, and Jim Schmidt. The County Auditor was Clerk of the Board.

City Council members present were: Gerald Beninga, Darrin Smith, Kevin Kavanaugh, Bob Jamison, De Knudson, Vernon Brown, Kermit L. Staggers, Andy Howes, and Mayor Dave Munson.

Lincoln County Commission Chairman, Otto Hagedorn, called the meeting to order.

Mayor Munson called the Special Sioux Falls City Council meeting to order.

The boundary line for the joint jurisdiction area was presented.

Motion by Schmidt and seconded by Poppens to approve the boundary line as follows: Beginning at the NW corner of Section 10 (T100N R51W), thence south to the SW corner of Section 10, thence east to the SE corner of Section 10, thence south to the W 1/4 corner of Section 14, thence east to the E 1/4 corner of Section 14, thence south to the SW corner of Section 13, thence east to the NW 1/4 corner of Section 19 (T100N R50W), thence east to the N 1/4 corner of Section 19, thence south to the S 1/4 corner of Section 19, thence east to the SE corner of Section 19, thence south to the SW corner of Section 29, thence east to the S 1/4 corner of Section 28, thence north to the central 1/4 corner of Section 28, thence east to the E 1/4 corner of Section 28, thence north to the NE 1/4 corner of Section 28 along the Delapre/Springdale Township Line. In Lincoln County, Springdale Township (T100N-R49-50W): Beginning at the SW 1/4 corner of Section 22 (T100N R50W), thence east to the SE corner of Section 22, thence north to the E 1/4 corner of Section 22, thence east to the W 1/4 corner of Section 22 (T100N R49W), thence south to the SW 1/4 corner of Section 22, thence east along the south line of Sections 22 and 23 to the Big Sioux River, thence north following the Big Sioux River, to the Lincoln/Minnehaha County line, thence following west to the point of beginning.

Public comment was received from Larry Nelson, Attorney for the City of Harrisburg. The City of Harrisburg opposes the proposed boundary line and proposes that the boundary line be drawn across Lincoln County Highway 106 straight across from the interstate. The City believes that some of the areas should be in Harrisburg's area instead of Sioux Falls.

Commissioner Schmidt stated that the boundary line now conforms with SDCL 11-6-10 regarding equidistance between Sioux Falls, Tea and Harrisburg.

Larry Nelson stated that if the boundary were drawn across Lincoln County Highway 106 it would square out the boundary line. He also stated that the boundary line doesn't fit in with the master sewage plan.

George Hahn asked how set in stone was the proposed boundary line. He asked if it could be amended later.

Commissioner Poppens stated the he encouraged the use of the proposed boundary line and the proposed area could be altered in the future.

Commissioner Schmidt called the question. All Commissioners voted "Aye". Motion carried.

Sioux Falls City approved the joint jurisdictional boundary area, as presented.

This was the date set for the deferred action on a Resolution to amend the Sioux Falls 2015 Growth Management Plan.

Public comment was received from Larry Nelson, Attorney for the City of Harrisburg. He would like to see it amended to include the cities of Harrisburg and Tea. City Councilman Staggers felt that Lincoln County would be losing some authority with joint jurisdiction. Commissioner Schmidt stated that he didn't feel the County would be losing anything, but both the County and the City would benefit. It is a planning situation. Commissioner Poppens stated that he looks at it as a win-win situation. It will allow the property owners to do more with their property.

Larry Nelson stated that the cities of Tea and Harrisburg want it on record as requesting joint jurisdiction with Lincoln County.

RESOLUTION: WHEREAS, the County Commissioners of Lincoln County, SD held a public hearing in accordance with SDCL 11-6-11 on the proposed revisions to the Sioux Falls 2015 Growth Management Plan for the City of Sioux Falls, SD and; WHEREAS, comprehensive planning for the area beyond the City of Sioux Falls extending a distance not exceeding six miles from the municipal corporate limits has and continues on a joint basis between the City of Sioux Falls, Lincoln County, and Minnehaha County, and; WHEREAS, the future growth and development of the joint planning area has been guided

by Sioux Falls 2015: A Growth Management Plan which was adopted by the City Council of the City of Sioux Falls on January 21, 2003. The plan was also adopted by a resolution of the Minnehaha County Commission on January 21, 2003, and the Lincoln County Commission on October 1, 2002, and; WHEREAS, the Lincoln County Planning Commission has recommended adoption of the revised Sioux Falls 2015: A Growth Management Plan which shows the planning commissions recommendations for the physical development of the city and joint planning area, including land use policies, growth area boundaries, land use, utilities, transportation, schools, parks, and open space, neighborhood conservation, public facilities, community image, and historic preservation, surrounding rural development, and an implementation program. NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby adopts Sioux Falls 2015: A Growth Management Plan as the official document to guide decisions on the future development of the joint planning area. Motion by Poppens and seconded by Schmidt. Roll Call Vote: Coplan – “Aye”, Hagedorn – “Aye”, Poppens - “Aye”, Schmidt – “Aye” and Weeldreyer – “Aye”.

RESOLUTION: WHEREAS, the Lincoln County Planning Commission has held at least one Public Hearing on the amendment of the Lincoln County Comprehensive Plan and WHEREAS, such Public Hearings were held on June 24, 2004 and September 20, 2004 and WHEREAS, notice of time and place of such Public Hearings was given pursuant to SDCL 11-2-18 and WHEREAS, the Lincoln County Planning Commission has recommended the Lincoln County Comprehensive Plan be amended to include the following language: **Joint Zoning.** South Dakota Codified Laws allow counties and cities of the state to enter into joint planning and zoning agreements. The new Joint Ordinance should be regularly updated to maintain uniformity with the county ordinance and incorporate changes based on the adopted Sioux Falls 2015 Growth Management Plan.

The following **Policy Statement on Joint Zoning in Lincoln County** was adopted by the Planning Commission on June 24th 2004 to guide decisions involving joint zoning activities with the municipalities.

General Overview. South Dakota Compiled Laws enable municipalities to adopt zoning regulations within their corporate jurisdictions. Similarly, the authority for zoning in the unincorporated areas is placed with the counties. Municipalities may also exercise zoning powers not to exceed six miles of their corporate limits subject to county approval. In this case, the city and county must mutually agree upon joint (extraterritorial) zoning regulations. The county may also relinquish zoning authority to a city not to exceed six miles of the corporate limits. [SDCL 11-6-12]

Municipalities also have authority over the platting of land not to exceed three miles of their corporate limits or within the joint jurisdictional area. Under state statutes, a city assumes this authority by preparing a major street plan and filing the plan with the county register of deeds. If a joint zoning jurisdiction does not exist, a city has exclusive platting jurisdiction beyond its corporate limits [SDCL 11.6.26 non-joint; 11-6-26.1 joint jurisdiction]. Where joint zoning has been authorized, plats require approval of the county planning commission in addition to municipal approval.

Since joint zoning authority requires the concurrence of both governing bodies, the city in effect maintains veto power over county decisions. For example, if the county approves a rezoning or conditional use but the city denies the request, the county's action is negated.

State law fails to address the procedure necessary to terminate a previously agreed upon joint jurisdiction. It is assumed that this can be accomplished by mutual agreement of the county and city or the county can unilaterally terminate an existing joint jurisdiction on the basis that State law requires both entities to approve a substantially identical zoning ordinance. If the county does not agree with the city on a zoning ordinance, there can be no joint jurisdiction.

The origin of joint zoning in the United States can be traced back to the period following World War II when many of the nation's large cities were experiencing explosive growth into adjacent unincorporated areas previously untouched by urban development. While municipal zoning sought to promote a sound and efficient land use pattern inside corporate limits, counties were generally ill prepared to handle the land use problems and conflicts associated with this new expansion. Without such planning and control, numerous conflicts and haphazard uses contributed to the undermining of city zoning efforts.

State legislatures have approached the issue in different ways. In some instances, the size of the joint zoning jurisdiction is based on a city's population. Some states allow municipalities to zone outside corporate limits only if the county has no zoning. In other cases, the city is allowed to perform planning functions for the fringe areas and the county then zones those areas in accordance with the plan.

There are several arguments dealing with this issue which are worthy of discussion. Foremost is the argument that a serious impairment of the rights of property owners occurs when zoning regulations are

extended beyond municipal boundaries without consent of the affected residents. Property becomes subject to decisions on land use restrictions and legislative matters over which the landowners have no voice.

The counter argument is that joint zoning is a more equitable alternative than annexation because of its single purpose intent. Annexation is premised on the idea of present land need, while joint zoning is concerned with future need and development. Municipal officials argue that the latter concept is less burdensome than the former, but the opposing point of view indicates that joint zoning is more objectionable because it results in restriction without any immediate or tangible advantage. Annexation on the other hand results in immediate benefits to residents, including police and fire protection, utility services and of particular importance, a voice in the municipal government. Annexation and zoning are different concepts, designed to accomplish different ends. But one common element is present in both concepts - the basis or justification required of a municipality prior to taking such action. South Dakota law requires a study as a prerequisite to annexation to determine the need for additional territory and to identify the resources necessary to extend municipal boundaries. This study must ensure that ample and suitable resources exist to accommodate the orderly growth of the annexed area, that there is a definite timetable upon which municipal services such as utilities and streets will be extended, and that the anticipated cost of improvements to residents is identified. State law is not specific as to the scope of municipal planning and zoning authority outside city boundaries, only that the jurisdiction cannot extend more than three miles from the corporate limits. The only direction set forth in the law is that the city planning commission is responsible for proposing a plan for the physical development of the municipality, including any areas outside the corporate limits and within its planning jurisdiction which, in the commission's judgment, bear relation to the planning of the municipality.

Alternatives to Joint Zoning. There is no doubt that a city's input into future growth patterns and the impact this growth may have beyond the city are important considerations for the county as well. When improperly managed, this growth can pose serious short term problems to the county and result in future long term liabilities for the city. This is not to imply, however, that joint zoning is the only possible solution. Several options are available and should be seriously considered by a city before requesting joint zoning jurisdiction.

County endorsement of the municipal comprehensive plan pertaining to areas beyond the corporate limits. Development proposals would be reviewed by the county to determine conformance with the plan before final action is taken.

Notification by the county of development proposals around the fringe of the city. The city would be given a specified time to review the proposal and make a recommendation before any action is taken by the county.

Municipal control over platting of land outside the city by filing a major street plan with the Register of Deeds.

The above options ensure input into county land use decisions without establishing a formal and burdensome process required by joint zoning. State law mandates joint meetings of planning commissions and governing bodies before decisions are reached in the joint area. This could be a burden for some cities to assemble a quorum for these meetings. Final decisions on land use issues outside corporate boundaries would rest exclusively with the county. This removes the argument that landowners in the joint jurisdiction are subject to decisions by city officials who do not represent them. It also ensures that land use issues which may have regional significance are addressed at the county level and not by any one city with self serving interests.

Procedural Requirements for Joint Zoning Requests. Court decisions nationwide have upheld the constitutionality of joint zoning. But this authority is based on several critical elements. First, there must be a grant of state enabling authority. Secondly, it must be determined that the regulations are a reasonable exercise of the police power in the public interest. Third, it must be established that extension of municipal zoning powers over adjacent territory is necessary to the orderly and harmonious expansion of the core city. Fourth, the exact area to which joint zoning will apply must be justified on the basis of municipal need and the general welfare. It can only be implied that the State Legislature had the last element in mind when enacting planning and zoning statutes in South Dakota. To ensure that any authorization of joint zoning jurisdiction is constitutionally defensible, the county has set forth the following requirements to be met by a municipality proposing joint zoning control outside corporate boundaries.

The municipality must have adopted a comprehensive plan or updated a previously adopted plan within the past three years. The plan shall include the following elements:

Population component, including past and present trends, and projected population for the 20-year planning period shown in five year increments.

Forecast of land consumption during the planning period for residential, commercial and industrial uses based on projected population.

Location and supply of vacant developable land presently within corporate limits and the classification of these areas for residential, commercial or industrial use.

Net land area required beyond the corporate limits during the planning period.

Feasibility and timetable for extending municipal utilities to serve future development areas.

The municipality shall present their comprehensive plan to the county planning director. The planning director shall review the document for completeness and accuracy before making a recommendation to the Planning Commission. The plan shall include the proposed boundary of the joint jurisdiction.

The Planning Commission shall make a recommendation to the Board of County Commissioners as to the need for joint jurisdiction. The Planning Commission may recommend a different boundary or recommend denial of the municipal request.

If the Board authorizes joint zoning jurisdiction for a municipality, the county and city planning commissions shall meet jointly to propose a zoning ordinance for the area. The zoning ordinance should conform as much as possible to the existing zoning regulations of the county. Administration of the regulations should rest with the county.

Joint action by the county and city in adopting the ordinance shall constitute the agreement for the joint zoning jurisdiction.

And WHEREAS, Notices of Hearing were published and said Hearings were held on July 26, 2004 and September 27, 2004 at the Harrisburg Legion Hall, Harrisburg, SD and the Lincoln County Courthouse in Canton, SD respectively and the Lincoln County Board of County Commissioners having received the recommendation of the Lincoln County Planning Commission, NOW THEREFORE BE IT RESOLVED that the Lincoln County Comprehensive Plan be amended to include the above language. Motion by Coplan and seconded by Poppens. All Commissioners voted "Aye".

Motion by Poppens and seconded by Schmidt to adjourn. Motion carried.

Otto Hagedorn, Chairman

ATTEST: _____
Paula Feucht
County Auditor