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2007 HOUSE POLITICAL SUBDIVISIONS

HB 1321

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1321

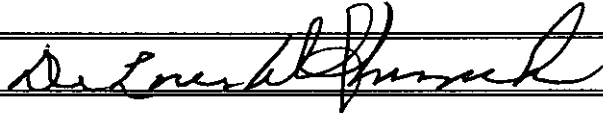
House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2565,2602

Committee Clerk Signature



Minutes:

Chairman Herbel opened the hearing on HB 1321.

Rep.Dwight Wrangham deals with extraterritorial zoning jurisdiction around the larger cities.

It reduces the 4 miles back to one mile if the city has a population of 25,000. I have allot of ideas and thoughts on this issue but I know there are allot of people here that want to bring their talk and bring their personal experiences to you. Passed out some supporting testimony from Doug Schonert (see testimony #1) Mr. Hawkenson, I meet in the hall and he wanted me to extend his support for the bill although he had to leave.

Senator Triplett: We had the experience recently in Grand Forks when the city of Grand Forks moved to extend their jurisdiction from the 2 mile limit, which was the previous law, to the 4 mile limit. The city had under gone their own study about their scheduling needs and their planning needs and they didn't see the city of Grand Forks growing out into the 4 mile zone any time within the next 50 years but they still went and extended the extraterritorial zoning jurisdiction over the objection of many of the people in that two mile and over the specific objections of the Grand Forks County Commission, which I am also a member. The county commission objected to the extension of jurisdiction because we believed that we are working closely with the county and city to address their concerns and were in the process of

updating our long term planning and land use planning. We did not see a problem of us working with them to meet their perceived long term planning needs. The city just announced that they would take it and they did not announce to us that they had made up their minds and they us took the extra two miles. Were thinking they did that so they could have an alternate location for a landfill. This process should be rational and limited to what the city needs. One mile limit that Rep.Dwight Wrangham has in his bill seems rational to me. Even the two miles in current law does not seem unreasonable to me, but the four mile limit seems excessive given the growth of our large cities. I am in support of this bill.

Chairman Herbel: If this was to pass and you get into situations where the city is really growing rapidly would that have some negative implications then because you serve on the county commission?

Senator Triplatt: I think the county is aware that they have to look out for the interest of all the citizens inside the county boundaries and there was nothing going on that was an issue. We were offering to work with the city to meet their concerns. The way it is now they are going to virtually completely eliminate the development inside that four mile arch. It just pushes the problem out.

Rep. Kari Conrad Is there a need to have a statement by the city. Maybe if you had some kind of criteria it would help.

Rep. Damschen: I am in favor of this bill. In the extraterritorial zoning process one person who is given zero consideration is the land owner. Even when there is a squabble between two cities, the land owners preference or rights aren't even considered. I hope you will support this bill. I think it goes a long ways in trying to correct the problem that needs to be addressed.

Rep. Kari Conrad: What do you see the problems being?

Rep. Damschen: I think that a government entity can through the zoning process, which I don't think is intended to expand territory can come in and take private land. Not take it, but in a way it is a restrictive development rights and you severely affect the value in many cases.

Rep. Steve Zaiser In some respects zoning in the land can protect property values as well? Say you were a property owner that lived 3 ½ miles out of town and the city proposed to put a landfill right up adjoining your property. How would you feel about that or maybe would you want some protection from that?

Rep. Damschen: That would be appreciated yes. I think zoning has a place if it is used properly I think it is like every other right or privilege. You can use it right or you can use it wrong.

Rep. Steve Zaiser Some counties and townships don't have zoning ordinances. So if someone wanted to put a landfill in an area that did not have zoning, then you would think that it would be beneficial for the city to have a zoning ordinance to protect you from this happening?

Rep. Damschen: We can't use that as an excuse to over exercise the right and that is the concern here.

Rep. Dwight Wrangham: do you see this as a testimony of who should have that authority.

Rep. Damschen: I think zoning has a place but I think the example that Sen. Triplett gave is a prime example of why these restrictions are needed.

Rep. Kim Koppelman: I was here when this current law was enacted ten years ago. I am concerned that we have given political subdivisions ten years to use this law and now we are saying we should go back to 2 miles now than ½ mile. How do we take that back and question two; do you think that will encourage annexation so we have control of them.

Rep. Damschen: You can not undo what has been done, but we can't take them back. I look at the extraterritorial zoning a little different. Usually there are some opportunities to capitalize on development and the zoning is probably something that has been put in place because it is required for safety needs or uniform rules, but the extraterritorial zoning is extra and this is really what this addresses.

Rep. Kim Koppelman Discussed fact that West Fargo says the extraterritorial zoning is working very well. The land owner wants to stay outside the city and not pay taxes for a longer period of time and they would be forced in quicker; might that not be a consequence of the bill?

Rep. Damschen: I don't know for sure. I know when a land owner loses control of the land or any amount of ownership rights; it is really hard to deal with.

Rep. Steve Zaiser What would you think of having a couple triggers or conditions upon which the city would need to be able to exercise proving the right of growth? Maybe some specific guidelines could be used?

Rep. Damschen: I think reducing the distance that the extraterritorial can extend does that in a way. I think there are more consequences out there leaving the law like it is.

Sen. David O'Connell: I support the bill. (See testimony #2)

Rep. Kim Koppelman Right now there are three tiers of cities. Basically cities of over 25,000 and everyone else. I think that is probably four cities over 25,000. I would submit the needs of a city the size of West Fargo might be a whole lot different than needs of a city of 1200. Any thoughts on that?

Sen. David O'Connell: I have no heartburn about that myself.

Claus Lembke: (see testimony #3).

Discussion on Burleigh County and the City of Bismarck and that generally work very well together on issues.

Rep. Lawrence Klemin Looking at this bill it has the existing statute; on page 2 line 10 where two cities it does describe a process of how to resolve disputes maybe what Rep. Kim Koppelman was getting at is maybe there should be something like this between the county and the city and probably the townships too.

Rod Ballinger: (see testimony #4).

Rep. Steve Zaiser: I hear you correctly the winery has not been zoned agricultural.

Rod Ballinger: That is not correct. We are an agricultural production facility and this legislation allowed us to have our facility operate.

Rep. Steve Zaiser So what was the reason that was given?

Rod Ballinger: I don't think they understand the language? They don't feel they want me to do this. They rejected my beer license to try to get this, they won't give me a permit to have any growth in this area.

Sandy Clark: ND Farm Bureau. I just want to go on support of this bill. These extraterritorial areas do impact farmers and ranchers. We do have one of our members here that would like to testify.

Beau Batemen, Farmer west of Grand Forks: (Testimony outline #5) I have three areas I would like to discuss. From a township prospective, I am a township chairman. We have between 600-700 members in our township and with the recent extension to four miles the city of Grand Forks now takes and zones two thirds of our township and those people have no vote or accountability in terms of elected official for the people that are passing the rules that govern them. When we saw this coming we did talk to our county commissioners when we saw this coming. One of the commissioners we talked to was Connie Trip and she said yes, we will see what we can do? They approached the city and said we will impose a moratorium on any development. No body will try and come in with a large development before you have

your extraterritorial zoning if you will do the same and impose a moratorium of growth in the city and together we will jointly develop a set of rules for the people whose territory you are taking over so those people have a voice in the process of establishing the rules that they will be governed by. Immediately the city of Grand Forks took the four miles anyway. There was no input from the county. The questions we had is why are you in such a rush? The answer is we have not yet got our rules in place for the four mile et. Had the city agreed with the counties proposition those rules would still be being resolved and your committee could stop at the four mile extension. You can't now. As I understand it the water is under the bridge so this probably isn't for my protection, but for some of my friends across the state of ND. We have a unanimous opposition to the Grand Forks four mile zoning signed by all the townships in Grand Forks County and supported at the state level. Our county was suggesting 16 homes per quarter section of land. We had an issue with that but at least we could discuss it with some people that have accountability to us and if we disagree they may get voted out. The city wanted to decrease that to four homes per quarter. Understand that prior to them adopting the four mile we said are you going to impose more restrictive regulations on us than the county is in terms of development for our townships? A city commissioner said that is not why we are doing this. This is intended for city planning. When the regulations came out sure enough the restriction to four homes per section is now in writing and under consideration. When the city does that the townships around the city loose revenue. They are restricting growth that we can have in our townships that we get out taxes from. The intention of this is that the city can have growth were the services are already there; they can annex the homes, and get the income. That is understandable, but in doing so it makes it more difficult for the townships to generate new revenue. We have farmland within the city of Grand Forks that is zones agricultural? The purpose of the zoning, they say, is to preserve and protect agricultural

property. However, if they wish, they will take annexation and if you represent less than twenty five percent of the land being annexed and you protest it you can not stop it. That is what happened to us. We protested some annexation of our farmland and because we represented less than twenty percent they did not have to lesson to us. They annexed the farmland and we continue to farm it but now we are paying \$5,000 acre in tax for the cities dyke protection project on farmland that never got flooded in 1997 and hasn't been flooded since. We have been farming it for 115 years. Extraterritorial zoning is reasonable. In fact if you check many states across the nation four miles is in their legislation as well. Understand those are for cities that are not 50,000 people and 17 sections. These are very large cities and it is relative to the size of the city. Grand Forks growth rate over the last forty years is 1.00085%. The amount of land they took my calculation when they went to the four mile extraterritorial zone, they will not fill for over 140 years. The state of ND is only 118 years old, so we think that is excessive. There are solutions. We can index a cities ability to stretch based on their growth rate. If suddenly growth rapidly increases there could be a reason to say we can handle that. You could index it to the size of the city. The square footprint. Right now Fargo would exercise their four mile extra ET represents 85% of the city. Grand Forks ET represents 325%. Considerable larger. Turtle River township is involved in a lawsuit with the city. Prior to the City passing ET we also asked them if this was an attempt for them to establish a landfill that they could zone within their own ET region. They said no hat is not a consideration; we need this tool for planner. So surprise when the laws came out again, in addition to the 4 homes per quarter there are also a section in there that will permit land fills within the cities extraterritorial and that is a permitted use, not a conditional use. Understand these rules have not been adopted yet, but in discussion with the township at the open hearing we asked it they could permits write it as a conditional rather than permitted. Representatives from the rural areas

who are on the zoning board said understand that the people who will write the rules are the city counsel and the people who will approve those rules are the city counsel so it is a catch twenty two and we might as well leave it as permitted. The city is trying to contain some sprawl. They would like to see homes built close to the city. We would also like to contain some sprawl in our township because if we could concentrate more houses on sections we can upkeep those roads better. It takes about 30 houses to lay gravel on one mile of road in our township. When the city extended the four mile we feared that will then drive people who want to have a 2 ½ acre lot and have horses, dogs, trees, and space. It will just drive them out that much further and in our township you start to get that low maintenance roads and that will increase the cost of upgrading the roads to take care of one or two residence that would normally been a little closer to us using the roads we are currently using. Suggested ghost platting and put a rider on the land purchase to cover this. Could reserve roads, alley ways, storm sewers and through those platting they could buy a 5 acre lot in our township and knowing you could only place a structure on one part of that five acre plot because the rest would need to be reserved for the cities right of way if they get there in a 100 years.

Discussed rural water and problems with Grand Forks Trail and when the city took the four mile then the city said they would serve those people and the rural water were left with a big bill in anticipation of growth which they will never see and they are going to seek redress from the city for payment of that lost investment. The city is resisting that because they said it was a speculative investment on the rural water side. Finally farmer and ranchers, the city will be passing laws on what they can and can not do. The county would be more knowledgeable about their needs. The 14 Amendment expressively provides for private property rights against arbitrary seizure by the government. How reasonable is 100 years. In the US it seems inconsiderable that a government entity can freeze and asset of its people. Because it is

convenient for that government entity to hold that in limbo until they may get there. that seems to be simply unjust and needs to be changed.

Rep. William Kretschmar In your township do you have a zoning board?

Beau Bateman: The township attorney Moe from Mayville said you can go ahead and write that but the city of Grand Forks is going to take a four mile ET and when they do that their zoning will trump your zoning. So you can spend allot of money and write restrictions based on houses and landfills but you will be trumped so you do what you want. The answer is no. Chairman Herbel asked the other people in support to just talk on new evidence.

Bryan Bitner : I live outside the city limits of Bismarck. Over quite a few years me and my neighbors have had quite a few issues with the gravel road boarding my property and development has gone on. Decided to go to the township to see if we could get something done about this gravel road. We go to the township and say I would love to do something about this township road, but we don't have the money to do anything about this. How come we don't have the money to upgrade the road? Ever since the extraterritorial jurisdiction has come out the four mile we no longer receive revenue from such things as building permits and other associated fees. The things that had to do with the subdivisions. We should have money in our township and afford to upgrade a road. The city and county is not going to work to improve a township road so I went to the city commission and was told I could go out and pave the road which I can not afford. Then I decided I wanted to add onto my garage or put up a building because I want to protect my vehicles from the gravel road dust and summer storms. Now I can't go to the township, although we do have zoning regulations in Apple Creek Township. So I can't get a building permit for anything I want to do on my property from the township so I go to the city and then I am stunned to find out I can not apply for a building permit without going through some rezoning process to include in new survey, a subdivision

plan, a storm water plan etc. The city planning staff informs me that my home, which is apparently as none conforming use, (I have owned this home for 20 years) and if it was to burn down I would not be allowed to rebuild for the same reason I can't get a building permit. The county engineer wants to have some more of my land down on the south quarter for a wider road easement. So even if I go through this plan, I can't get it approved if I don't give up some of my land. So I am a contractor and on good terms with the local engineering firm of Swenson and Heggen, so I asked them how to do this process, the subdivision plating. They told me this process is going to cost me between \$6,000-\$10,000 and take about 6 months to make it happen. This is just to get to the point where I can go to the planning zoning commission with paperwork that meets their requirements. That is not saying I will end up with a building permit for this garage. I am faced with quite a financial burden. I can't run for an office, whether a commissioner or mayor, in the city and I can't vote in the city so I think it is wrong that the city has jurisdiction over my property when I can't do anything about it.

Ken Yantes: ND Township Officers Assoc. We do support this bill. There is a unanimous vote for our association to ask for a reduction in the ET distances. Rep. Kim Koppelman remembers 10 years ago the townships were in on this law that exists at the present. We have had our ten years and we are back in here asking for a change.

Rep. Kari Conrad Did you discuss how far we wanted to pull back?

Ken Yates: The resolution was developed in 2003 called for pulling them back. The one that was developed in 2005; one to go back from 4-2 and from 2-1.

Rep. Louis Pinkerton Who is it that gives the authority to put up the buildings in anywhere?

Ken Yates: Who determines the building or zones that outside of the zoning area? If it is outside the zoning outside of the ET the township does that.

Rep. Louis Pinkerton does the city have any input what would go on there. Like an asphalt plan, can I put that in the city. Who has the say on that.

Ken Yates: Something that is hazardous and presents a safety the state health does come in an deal with those.

Jerry Woodcox: Vice chairman of Burleigh County commission and myself: Burleigh county has 4-5,000 people that live in the four mile zone. They have no representation as far as zoning and planning is concerned. Burleigh County is contracting with the Bismarck planning commission to do our planning and has been in place since 1989 and we are updating it right now and we should be done with it by the end of this year. We are considering hiring our own planner and staff to do our own planning. We think four miles is just way too far there is no doubt about it. I think going back one mile is certainly sufficient. We have a lot of development going on Highway 83 North along the river going north on Highway 10 and it is a fortunate problem to have in that we are really expanding. These people in that area have to have representation. They are getting planning, but not representation and we can also do that.

Rep. William Kretschmar Does Burleigh County have a zoning system?

Rep. Lawrence Klemin If we were to go back to the one mile from the four mile, would we also have a zoning transition meeting to plan how we are going to have an orderly transition back to what it was before?

Jerry Woodcox: Our planning commission has 9 members, 5 from the county and 4 from the city and the major happens to be one of them and another representative from the city commission. The city planning commission has representatives from the county but the city commission controls all the planning within four miles so we do work with them. We do have

joint meeting occasionally where we discuss various items, but I don't know how you would handle what has already been done.

Rep. Lawrence Klemin so if we would change this back it would be just in a go forward basis?

Jerry Woodcox: No that extra three miles our planning department would actually take over.

We certainly would want to represent these people. They can't vote for anyone right now.

Rep. Dwight Wrangham If we move this back will we impose any hardships or problems to the county?

Jerry Woodcox: We want to do that job. It would be more work. There is no reason why we wouldn't want to do that.

Shawn Johnson: Encourage a do pass on this bill. I represent myself and my neighbors.

We live in the Prairie Wood Development south of Lincoln. Our primary concern is representation. As far as the roll back. We want to be good neighbors to Lincoln and Bismarck; we see zoning changes outside my backyard and inside my backyard as a precursor to future annexation. Things we do not want. Those things may be inevitable, but by allowing us to have a selected voice on those planning and zoning commissions we will have more of ability to decide what our future will hold. We have faith and recognize and our county and township boards to do zoning for us on our behalf to do those things that are right for our rural communities. Our concern along those lines is when a city decides what our fate will be we will be left out in the cold. I don't think there is anything in this bill that a big city like Bismarck, Grand Forks or Fargo should oppose or be concerned with. All it does is force communication on the over all growth and requirements of that area as a whole.

Richard Hammond: (See attached testimony #6)

Curley Haugland: Landowners Assoc of ND. We have approximately 500 members. Most of board of directors are in support of this and are here. There is an article on property rights. (see handout #7).

Opposition:

Carl Hokenstad: (see testimony #8) Did discuss the need for a subdivision map and we treat everyone the same. They must be platted properly.

Connie Sprynczynatyk: (Handed out a testimony for Jim Gilmour #9) I have no knowledge of the foundation of this law; however, I do recall the discuss in the 1997 session when we had issues among communities about annexation practices and what do we do when one city is growing into another city and how do we provide protection for all. I won't say this is now a perfect law, and the proper ET zoning is right the argument about whether you have representation or not is an interesting one. The people within the quarter mile doesn't probably vote for the people governing that city whether it is one quarter mile, a half mile or four miles. That is the same argument no matter how far. I think your real question is as this law has played out over thirty years have we provided for orderly growth or haven't we. This is a very difficult job for legislatures and that is why we have arbitration.

Rep. Kim Koppelman (handed out testimony from the city of West Fargo #10).

Another testimony handed out later and included in the minutes is from Michael Brown, Mayor of the city of Grand Forks testimony #11).

Hearing closed.

Chairman Herbel reopened the hearing on HB 1321. Job #2602.

Appointed a subcommittee : Rep. Kim Koppelman, Rep. Lee Kaldor and Rep. Pat Hatlestad

And Rep. Dwight Wrangham as a non voting member. Want a resolve by Thursday it would be to our advantage.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1321

House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3320

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on HB 1321.

Motion made to move the amendment by Rep. Kim Koppelman Seconded by Rep. Pat Hatlestad.

Discussion:

Rep. Kim Koppelman said the bill probably could pass in it's present form. We were trying to find a compromise so in the bill we mandated a study. We thought this should be looked at within the next two years and so the bill will lapse in two years so that is why we need this study. I think this whole issue of representation and what do we do to fix this. Whatever the area, you are dealing with an area where people do not get representation. In Wisconsin they call for a commission that consists of three people from that particular area and three people from the city. They get together and have to come to an agreement. These of some of the things that are being discussed. The amendment before you and is a good measure to move forward. It changes the bill from three population levels to two keeps the population level at 10,000 rather than 25,000 and it also rolls back the distances to the pre 1997 level. It does have a grandfather clause does say if the city has exercised the extraterritorial law they will still operate under that for the next two years while this happens. Then it mandates a study to go

on and sunsets the bill in two years. If nothing happens between now and then we roll back to where it was now. So obviously something is going to happen. We felt this was the best way to meet the needs of all of them involved. It says they can't go out as far as they could have in those two years. Discussed in detail the language of the amendment since it was not ready. This is both a grandfathering and a freeze. Say Fargo has gone out 4 miles; under this bill they would still be able to operate in a four mile area during this two year cycle; however, they would not have a 4 mile authority during this two year period. Explained how this would work. Now they can also extend that by annexation. So if the city said they need to be out here they can always annex where they need to be. I talked with out State folks this AM and they don't have any problem with this.

Rep. Lee Kaldor If they do annex in this period of time; it can only go two miles depending on their population.

Rep. Lawrence Klemin We are going to roll back to pre 1997, but it is not going to apply to those who have previously exercised this, except what they might during the next two years. I think this is unnecessarily cumbersome. I don't think I have any problem with the study but to have this jumping around and applying to some and not applying to some and grandfathered. I think it is encumbering the current process. I guess I support the study, but not the rest of it.

Rep. Donald Dietrich I agree.

Rep. Steve Zaiser Can we mandate this study through legislative counsel?

Rep. Kim Koppelman I don't know if we can mandate. We do have the inter governmental affairs committee but I don't know if it is necessary to do that. I think if the counsel does want to do a study, whatever committee is assigned to it, certainly isn't necessary. I understand it is complex but I want to commend the subcommittee for doing work that I think was very detailed. I have not spent more time on a subcommittee session and it probably rivals

anything I have done since I have been here in all the time I have been here. We tried to weigh all the sides. I think the amendment before you would put this out there in such a format so it would be very workable although it sounds confusing. The cities will notice this and they have a two year period and I suppose you could call this a cooling off period where we will work this through so I think this is a pretty good solution. I would hope we would adopt this amendment.

Rep. Dwight Wrangham I will support whatever this committee decides to do with this bill. I still don't think we will have a problem with the roll back. Here are five reasons I think this is a good bill: the four mile ET is unnecessary. Township and counties elected by their local communities should have control of their affairs and serves and they should be free to contact the cities for serves if they choose. But the territory or responsibility should not be taken over by the hostel action by the city. The citizens that choose to live in the county, not in the city, should have the right to be governed by their own entity. Citizen's living outside the ET should be able to learn how to vote in city elections. Elected city officials have a responsibility and a duty to the voters who elect them when they are making a decision on issues that governor people who live outside the city, how can they be objective on their decisions. I don't think they can. I asked people who opposed the bill to come forward with solid reasons other than it won't work and I have not received a good response.

Rep. Nancy Johnson I would like to propose a substitute motion and that would be to just use section 4 on the second page of the proposed amendment to a study. Seconded by Rep. Steve Zaiser

Chairman Herbel in essence what you are saying is scrap that bill and make it a mandatory study.

Rep. Kim Koppelman I am going to resist the motion even though the study would be helpful. Studies don't seem to do well. I would rather see something and this amendment says this is serious and something has to be done.

Rep. Steve Zaiser My concern is this is a very complicated issue and I think a study resolution would require the committee to delve into it. I strongly support Rep. Nancy Johnson.

Rep. Nancy Johnson If all those groups are not committed nothing will happen anyway so I think this study is all we need.

Rep. Kari Conrad Do you think if we only have a study those people in the city will respect the citizens during this two year interim?

Rep. Lee Kaldor: People who attended from the city seemed to have a sincere position and would be concerned and be reasonable. I don't think there is any way we can guarantee that.

Rep. Kim Koppelman I think it is a slap in the face to tell them we are going to do a study. I think what we have done says at least that we recognize the problem; we are sensitive to your concerns. Here is a way we can work with it for two years and I think everyone can tolerate it and cooperate rather than just saying I will study. It is ok the way it is now and we will see you in two years.

Rep. Lawrence Klemin Everyone that appeared here is going to be subject to the grandfather clause as it is proposed here so this isn't going to change anything. I think the substitute motion makes sense. It requires a study and this grandfather clause and all the changes are making it unnecessarily complicated and we could have a study that makes it work without all these timing issues. I think we should support the substitute motion.

Rep. Pat Hatlestad I think they were very sincere that they were going to do it, but that doesn't mean when they go home that they do it. This puts a leash on the issue until we can study it.

Rep. Steve Zaiser I think sometimes that would work both ways. A agree with Rep.

Lawrence Klemin that it has to be a simple straight forward solution; otherwise it is now going to be manageable.

Rep. Lee Kaldor I don't agree with the grandfather clause either because it middy's up the water, but I do think the one thing that the bill accomplishes with the amendment the four mile zone seems to be by several people I have talked to, seems to have been an overkill. If we do nothing else, as annexations occur we are not allowing the bulge to go out 4 miles. That is one reason we should go forward as the bill it is amended.

Rep. Louis Pinkerton I agree with Rep. Nancy Johnson. Could we put an expiration date so that they must do something?

Chairman Herbel decided to proceed with the motion on the Substitute Motion to Amend.

Vote 5 Yes 9 No Failed

Vote on original amendment: Motion Made By Rep. Kim Koppelman Seconded By Rep. Pat Hatlestad Voice Vote Carried.

Do Pass As Amended Motion Made By Rep. Kim Koppelman Seconded By Rep. Pat Hatlestad

Vote 9 Yes 5 No 0 Absent Carrier: Rep. Kim Koppelman

Hearing closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1321

Page 1, line 2, after the semicolon insert "to provide for a legislative council study;"

Page 1, line 3, replace "for application" with "an expiration date"

Page 1, line 13, remove the overstrike over "~~if the city has a population~~"

Page 1, line 14, remove the overstrike over "~~of~~", after "~~less~~" insert "fewer", and remove the overstrike over "~~than five thousand~~"

Page 1, line 15, remove the overstrike over "~~b.~~", after "~~kilometers~~" insert "One mile [1.61 kilometers]", and remove the overstrike over "~~of five thousand or~~"

Page 1, line 16, remove the overstrike over "~~more, but~~" and overstrike "twenty-five" and insert immediately thereafter "ten"

Page 1, line 17, remove the overstrike over "~~e.~~", remove "~~b.~~", replace "One mile" with "Two miles", and replace "1.61" with "3.22"

Page 1, line 18, overstrike "twenty-five" and insert immediately thereafter "ten"

Page 4, line 15, remove the overstrike over "~~one~~"

Page 4, line 16, after "~~person~~" insert "individual", remove the overstrike over "~~residing outside~~", remove the overstrike over "~~the corporate limits of a city~~", after "~~having~~" insert "if the city has", remove the overstrike over "~~a population of~~", after "~~less~~" insert "fewer", and remove the overstrike over "~~than five~~"

Page 4, line 17, remove the overstrike over "~~thousand,~~"

Page 4, line 18, remove the overstrike over "~~of five thousand or more, but~~", overstrike "twenty-five" and insert immediately thereafter "ten", and remove the overstrike over the second overstruck comma

Page 4, line 20, overstrike "twenty-five" and insert immediately thereafter "ten"

Page 5, line 10, remove the overstrike over "~~one~~" and replace "two individuals" with "individual"

Page 5, line 11, after "~~having~~" insert "if the city has", remove the overstrike over "~~a population of~~", after "~~less~~" insert "fewer", remove the overstrike over "~~than five thousand, two~~", after "~~persons~~" insert "individuals", and remove the overstrike over "~~residing outside the corporate limits~~"

Page 5, line 12, remove the overstrike over "~~of five thousand or more, but~~" and overstrike "twenty-five" and insert immediately thereafter "ten"

Page 5, line 13, remove the overstrike over the overstruck comma

Page 5, line 14, overstrike "twenty-five" and insert immediately thereafter "ten"

Page 5, replace lines 25 through 27 with:

"SECTION 4. LEGISLATIVE COUNCIL STUDY - EXTRATERRITORIAL ZONING AUTHORITY. The legislative council shall study, during the 2007-08 interim, the extraterritorial zoning authority of cities and the impact of that authority on other political subdivisions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 5. EXPIRATION DATE. Sections 1 through 3 of this Act are effective through July 31, 2009, and after that date are ineffective."

Renumber accordingly

February 9, 2007

VR
2/12/07
1062

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1321

Page 1, line 2, replace "and" with "to provide for a legislative council study;"

Page 1, line 3, after "application" insert "; and to provide an expiration date"

Page 1, line 13, remove the overstrike over "~~if the city has a population~~"

Page 1, line 14, remove the overstrike over "~~of~~", after "~~less~~" insert "fewer", and remove the overstrike over "~~than five thousand.~~"

Page 1, line 15, remove the overstrike over "~~b.~~", after "~~kilometers~~" insert "One mile [1.61 kilometers]", and remove the overstrike over "~~of five thousand or~~"

Page 1, line 16, remove the overstrike over "~~more, but~~" and overstrike "twenty-five" and insert immediately thereafter "ten"

Page 1, line 17, remove the overstrike over "~~e.~~", remove "~~b.~~", replace "One mile" with "Two miles", and replace "1.61" with "3.22"

Page 1, line 18, overstrike "twenty-five" and insert immediately thereafter "ten"

Page 4, line 15, remove the overstrike over "~~one~~"

Page 4, line 16, after "~~person~~" insert "individual", remove the overstrike over "~~residing outside~~", remove the overstrike over "~~the corporate limits of a city~~", after "~~having~~" insert "if the city has", remove the overstrike over "~~a population of~~", after "~~less~~" insert "fewer", and remove the overstrike over "~~than five~~"

Page 4, line 17, remove the overstrike over "~~thousand,~~"

Page 4, line 18, remove the overstrike over "~~of five thousand or more, but~~", overstrike "twenty-five" and insert immediately thereafter "ten", and remove the overstrike over the second overstruck comma

Page 4, line 20, overstrike "twenty-five" and insert immediately thereafter "ten"

Page 4, line 25, remove the overstrike over "~~Of the members of the commission appointed by a board or boards of county~~"

Page 4, remove the overstrike over lines 26 and 27

Page 4, line 28, remove the overstrike over "~~appointed shall hold office for one year. Thereafter the members shall be~~" and remove "The term of office of"

Page 4, line 29, remove "any member", remove the overstrike over "~~for terms of~~", and remove "to the commission is"

Page 5, line 10, remove the overstrike over "~~one~~" and replace "two individuals" with "individual"

Page 5, line 11, after "~~having~~" insert "if the city has", remove the overstrike over "~~a population of~~", after "~~less~~" insert "fewer", remove the overstrike over "~~than five thousand, two~~", after "~~persons~~" insert "individuals", and remove the overstrike over "~~residing outside the corporate limits~~"

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Page 5, line 13, remove the overstrike over the overstruck comma

Page 5, line 14, overstrike "twenty-five" and insert immediately thereafter "ten"

Page 5, line 19, remove the overstrike over "~~Of the members of the commission~~"

Page 5, remove the overstrike over lines 20 through 22

Page 5, line 23, remove the overstrike over "~~the members shall be appointed for terms of five years.~~"

Page 5, after line 24, insert:

"SECTION 4. LEGISLATIVE COUNCIL STUDY - EXTRATERRITORIAL ZONING AUTHORITY. The legislative council shall study, during the 2007-08 interim, the extraterritorial zoning authority of cities and the impact of that authority on other political subdivisions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Page 5, line 27, replace "void" with "not affected by the reduction in the extraterritorial zoning limits in section 1 of this Act"

Page 5, after line 27, insert:

"SECTION 6. EXPIRATION DATE. Sections 1 through 3 of this Act are effective through July 31, 2009, and after that date are ineffective."

Renumber accordingly

Date: 2-9-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1321

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Moved Amendment

Motion Made By

Rep Koppelman

Seconded By

Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman			Rep. Kari Conrad		
Rep. Dwight Wrangham-V. Chair			Rep. Chris Griffin		
Rep. Donald Dietrich			Rep. Lee Kaldor		
Rep. Patrick Hatlestad			Rep. Louis Pinkerton		
Rep. Nancy Johnson			Rep. Steve Zaiser		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-9-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1327

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Substitute Motion to the Amendment

Motion Made By Rep Johnson Seconded By Rep. Zinner

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman		✓	Rep. Kari Conrad		✓
Rep. Dwight Wrangham-V. Chair		✓	Rep. Chris Griffin		✓
Rep. Donald Dietrich	✓		Rep. Lee Kaldor		✓
Rep. Patrick Hatlestad		✓	Rep. Louis Pinkerton	✓	
Rep. Nancy Johnson	✓		Rep. Steve Zaiser	✓	
Rep. Lawrence Klemin	✓				
Rep. Kim Koppelman		✓			
Rep. William Kretschmar		✓			
Rep. Vonnie Pietsch		✓			

Total (Yes) 5 No 9

Absent 0

Floor Assignment —

If the vote is on an amendment, briefly indicate intent:

Just to do study

Failed

Date: 2-9-07
Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1321

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken As Passed As Amended

Motion Made By Rep Koppelman Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman	✓		Rep. Kari Conrad	✓	
Rep. Dwight Wrangham-V. Chair	✓		Rep. Chris Griffin	✓	
Rep. Donald Dietrich		✓	Rep. Lee Kaldor	✓	
Rep. Patrick Hatlestad	✓		Rep. Louis Pinkerton		✓
Rep. Nancy Johnson		✓	Rep. Steve Zaiser		✓
Rep. Lawrence Klemin		✓			
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1321: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "and" with "to provide for a legislative council study;"

Page 1, line 3, after "application" insert "; and to provide an expiration date"

Page 1, line 13, remove the overstrike over "~~if the city has a population~~"

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Page 5, after line 27, insert:

"SECTION 6. EXPIRATION DATE. Sections 1 through 3 of this Act are effective through July 31, 2009, and after that date are ineffective."

Renumber accordingly

2007 SENATE POLITICAL SUBDIVISIONS

HB 1321

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1321**

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: **March 15, 2007**

Recorder Job Number: **5160**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Senate Political Subdivisions Committee to order. All members (5) present.

Chairman Cook opened the hearing on HB 1321 relating to extraterritorial zoning jurisdiction of cities.

Representative Wrangham, District 8, Bismarck ND Introduced HB 1321. (Attachment #1)

Chairman Cook: Should the interim study come first?

Representative Wrangham: I think that is pretty much what this bill says as it is written right now.

Senator Triplett, District 18, Grand Forks, ND. My district includes both urban and rural areas. I have about three townships and a couple of them are right between the two and four mile zone and there is not a happy camper among them. I have not received any comments from anyone that lives inside the City of Grand Forks indicating that they thought it was necessary with the City of Grand Forks to take that extra two mile of extraterritorial zoning. I am here today representing the rural folks in my district who are very unhappy with what the City of Grand Forks is doing by extending its extraterritorial zoning from two miles to four miles. The concerns is about the lack of representation having a group of folks on the city council

whom they have no opportunity to elect or unelect making decisions and putting restrictions on them. I also serve as a county commission in Grand Forks County and I will tell you as a county commissioner we worked exceedingly long and hard to try to convince the City of Grand Forks to not take the step of adding the extra two miles. We offered to work with them and our county planners tried for more than a year to find out what their issues were and try to work with them to do what ever is necessary. Because the law said that they could just do it if they wanted, they went ahead and did it and took the extra two miles. I am handing out an e-mail from Beau Bateman, who is a township officer in one of the rural townships that is affected and could not be here. (Attachment #2) I would like to move it back to two miles.

Senator Hacker: The county has some zoning capabilities as well.

Senator Triplett: Not in that area anymore.

Representative Koppelman, District 13, West Fargo, ND, testified in support of HB 1321. He was not in favor of this bill as it was originally written but feels that they have done some good work on amending the bill and in its present form it is something that can sustain us for the next two years and I believe during the study portion of the bill we can sort out a lot of these issues. I have been involved in the extraterritorial zoning issue for several years. In the 1997 session I purposed legislation dealing with extraterritorial zoning and so did several other legislatures and portions of those bills ended up being put on to one bill. That is the bill that resulted in the longer distances among cities that you are hearing about. We have heard a lot of testimony in the house about why that might be problematic. We heard testimony about the assertion that people in the rural areas were not having a say on how their property was being controlled because it was being zoned by the people in the city and granted we did put in that law and it operates this way today, that there has to be a rural member on those planning commissions. What we did in the house was a lot of research and didn't put that all in the bill

but we felt if there was a study we could really look at how this issue is handled in other states.

Senator Olafson: Did you say in the 1997 session you extended the extraterritorial zoning parameters. What was the intent of the legislature at that time? It looks like what we are doing now is pulling them back in.

Representative Koppelman: That is exactly the case. In 1997 one of the concerns was the extraterritorial laws had last been amended in the 1980's. At that time the law said non continuous cities before it set forth the parameters for extraterritorial zoning. If you look at cities like West Fargo and Fargo, at that point did not touch one another but eventually would and I think what the legislature was saying back in the 1980's was that once cities in North Dakota start to touch each other all bets are off. You have to figure out a system that works. We did put some good things in the law in 1997 in terms of how cities whose extraterritorial zoning authorities overlap deal with the situation. The reason lines got extended is because there was a feeling that the larger cities needed more area and more distance to be able to plan so we doubled everything. The larger cities had been two miles and they became four, medium size cities had been a mile and they became two and smaller towns had been a half mile and they became one mile. This bill takes sort of a middle line; it rolls it back and grandfathers in what has already been done, so for the next two years the cities that have extended into further distances would continue to operate based on that.

Senator O'Connell, District 6, testified in support of HB 1321. (Attachment #3)

Richard Hammond, Bismarck, ND testified in support of HB 1321. (Attachment # 4)

Larry Syverson, farmer and Chairman of Roseville Township of Trail County and District Director of the ND Township Officers Association testified in support of HB 1321. (Attachment # 5)

Sandy Clark, North Dakota Farm Bureau testified in support of HB 1321.

Brain Bittner, Citizen of Apple Creek Township, testified in support of HB 1321. (Attachment # 6)

Testimony Opposed to HB 1321

Senator Judy Lee District 13, Fargo, ND, testified in opposition of HB 1321 as it is currently written. One thing that is really important for the committee is some historical background on the statute concerning ET zoning and annexation. Ten years ago there were three bills that came before the committee, each dealing with small parts of ET zoning and annexation. It was the decision of the committee at that time that we would talk to sponsors of those three bills and find out if they would be willing to have considered all together and we would look at rewriting the entire section of statute that has to do with ET zoning and annexation and that is what was done. We have some serious issues that we need to consider, one is the mileage was done for the purpose of ET Zoning to do some planning for infrastructure. How do we decide what we are going to do to make sure that streets line up and water and sewer lines are appropriate, if there is an area that is likely to be developed outside of a city? Number two is the way disputes are resolved. In the old statute if there was a dispute, the only way to resolve it was to litigate, now we mediate and that doesn't mean everybody is happy with the outcome. In my part of the state we have probably had more to do with this statute than any others in the last ten years. One of the most important things to rural people, that we are taking for granite in this whole picture, is that they have a place at the table in the way that these decisions are made right now. The city, county and townships are all intertwined and we have to recognize the responsibility that we have to each other in this. I encourage you to consider studying this bill but I have reservations about the last section which, as far as I can tell, goes away before the next legislation session starts which means we have nothing. That I think is a really dangerous thing, why would we bother to study it if the goal is to kill it entirely

and I think that the changes that this bill would make should continue until the majority of legislatures decide that it needs to be changed permanently. It is so important to the development of our areas whether they are small or large to have the relationships that we have between cities, townships and counties between rural residence and people who are living within the city limits, let's make sure that we try and resolve this issue without throwing out the entire statute.

Chairman Cook: Are you sympathetic with the situation of Brain Bittner in the rural area and the challenges he brought before us with the issues he is facing?

Senator J. Lee: Absolutely, I think we need to figure out what we can do to enhance the communication between the rural property owner and the city.

Senator Hacker: You are only concerned about the last section of the bill and the rest of the bill is not heart wrenching to you.

Senator J Lee: The rest is not as heart wrenching to me.

Jim Gilmour, Planning Director, City of Fargo, ND, testified in opposition of HB 1321. (See attachment #7a and 7b)

Donna Bye, City Planner, City of Minot, ND testified in opposition of SB 1321. (Attachment # 8)

Senator Anderson: You mentioned at the bottom of page one that it allows these areas to become partners in the planning process. Can you explain how that works?

Donna Bye: We currently have a thirteen member planning commission, three of our members are appointed from the county planning commission, we also have jurisdiction with our Ward County Engineer and he also has a proven official, with our district health unit, with our air force base. Because of our notification laws, we have expanded our notification area

when subdivisions and zoning are out in that area, so that we can get a good feel on how the neighbors feel about the changes.

Connie Sprynczynatyk, North Dakota League of Cities testified. She is not really sure if the league is for or against HB 1321. It has been ten years since we did the massive remodel of this entire section of this law. The focus in 1997 was in creating a processes where we could bring disputes to a mutual table and settle those disputes. Our membership supports the study but we agree with Senator Judy Lee that it would not be a good idea to throw out the entire statue. There are some good things in the state law now. I think the legislature did some good work in 1997 but we can always do better. All the stake holders came to the table in 1997 and this was the consensus product. I think a study would be wonderful because we can look at what works and what does not work.

Senator Anderson: I think ETZ is a really important thing for cities, especially ones that are expanding. I know some mistakes are made. I think the City of Wahpeton did it right when they went to the ETZ. They had the county appoint township people from each of the two townships there. Do most of the cities have these extra people on their planning commissions?

Connie Sprynczynatyk: There is a requirement in state law for some representation so that would be met. The planning and zoning function is different from community to community. If you look at the top thirteen population cities in the state, you are down to cities under three thousand, so that function will frequently be contracted out or be a shared function.

Senator Hacker: Going back to the point of the planning people that do the planning for the city and county and work together. It seems all the complaints are in the top five population cities. If these people are working together why do we need extra territorial zoning at all?

Connie: There are two processes, one is annexation, which is the actual growth of the city and the other is ET zoning which is a planning tool to make sure that street match and water and sewer lines are properly sized.

Charles Manders, Certified Planner, testified in opposition of 1321. If we discontinue the legislature that is in place it will hamper and leave the cities without an important tool that they need for long range planning.

Testimony in support of HB 1321.

Kathy Mauch, resident of Apple Creek Township testified in support of HB 1321. (Attachment #9)

Doug Schonert, Burleigh County Commissioner, testified in support of HB 1321. We do have a joint staff for planning, The city staff has the zoning and the county contracts with that city staff. We do have excellent communication. We as county commissioners when they took the four mile jurisdiction over could not understand why they were doing that as we had zoning set up all around Bismarck, except for Apple Creek which had their own zoning. In the other townships , we had the zoning control over them, we shared the same zoning staff and to back up a little further, I have been a life long resident of Burleigh County and I have seen the city grow. The city has grown in fifty years about three miles south, three miles north and about one mile east. The city has always had two mile extraterritorial jurisdiction and when they grew a mile they still had two miles. When it takes fifty years to grow three miles in one direction and that is on three sides, why do they think they need a four mile jurisdiction? The county commission could not understand it. I was on the county commission when they took that authority, all five county commissioners all agreed that they should not do it. The city did it because they could. We try to work with the city on infrastructure on road and bridges. Even

with the four mile jurisdiction, the counties and townships are responsible for the roads any way. We need to work with the city. I would like to see it go back.

Larry Weil, Planning Director of West Fargo, testified in support of HB 1321. (Attachment # 10)

Ski Kostman, Horce, North Dakota, testified in support of HB1321. She passed out a packet to the Senators.

Curley Haugland: Landowners of North Dakota testified in support of HB 1321 and passed out a resolution. (Attachment #11)

Tony Bernard, Devils Lake, ND wanted to say planning is being use as a form of control.

Chairman Cook closed the hearing on HB 1321

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1321

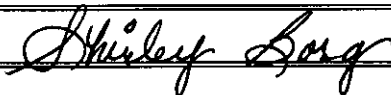
Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: March 23, 2007

Recorder Job Number: 5505

Committee Clerk Signature



Minutes:

Chairman Cook called the Senate Political Subdivision to order. All members (5) present.

Chairman Cook asked the committee to go to HB 1321 and asked Senator Hacker to pass out amendments he had been working on.

Senator Hacker passed out amendments which are separated out into three amendments as requested by the committee. (Attachment 1A, 1B and 1C) John Bjornson and I looked at how to divide these out.

Amendment .0303 deals with rolling back the exemption for towns between ten and twenty five thousand population and this will roll back everybody equally.

Amendment .304 is a mechanism for the interim as this subject matter is studied for the city, county or township to go back to the further ET zone. This creates a committee of three which includes a representative of each entity and they vote on whether or not they would want to continue to zone outside of the original area before it was ever extended.

The last amendment .0302 is the works. It addressed considering the study, effective day of May 1, 2007 and grandfathering in.

Chairman Cook asked Connie Sprynczynatyk, North Dakota League of Cities to speak to the amendments and the language as far as how it is written.

Chairman Cook asked Connie Sprynczynatyk, North Dakota League of Cities to speak to the amendments and the language as far as how it is written.

Connie Sprynczynatyk, North Dakota League of City. With issue of joint appointments, I just want to check for understanding. The mechanism says if you are not already out to your max, you go back. If there is a need to go out further than that there is a joint committee and the committee comprises of three from the city and the city appoints three. If the township is not zoned the county has some zoning in place. You would create equal representation on this committee if a slice of a township is included and they do zone and in the other township so the representation on the committee would be nine total.

Senator Hacker: No, let me clarify. The committee is max at six, which is three from the city and three from the zoning authorities. So if you have two townships out in the county that were going to be included in ET zoning and one township is zoned and they had zoning authority and the other one didn't, the township that zones, depending on size, would probably have one person on that committee and then because of the size, the county would pick up the other two seats. Jointly refers to that township and that county. This is just going to be the next two years not forever.

Senator Hacker moved amendment .0302.

Senator Warner seconded the motion.

Discussion:

Senator Anderson: I want to say I appreciate Senator Hacker getting the information together to make this the best bill possible. I just want you to know in my part of the state this is working the way it is suppose to work. There are two members of townships that are on the planning commission and there has been real good planning and it has worked really well in

Wahpeton, so I am going to vote against the amendments which is no reflection on any thing or anyone, it is just that it worked for us as it is.

Voice Vote: 4 Yes 1 No

Senator Hacker made a motion for a Do Pass as Amended.

Senator Olafson seconded the motion.

Discussion:

Roll call Vote: Yes 4 No 1 Absent 0

Carrier: **Senator Hacker**

JB
3-23-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

Page 1, line 3, after the first semicolon insert "and" and remove "; and to provide an expiration date"

Page 1, line 16, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 1, line 19, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 1, line 20, after "2." insert "Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.

3."

Page 2, line 1, overstrike "3." and insert immediately thereafter "4."

Page 2, line 10, overstrike "4." and insert immediately thereafter "5."

Page 2, line 26, overstrike "5." and insert immediately thereafter "6."

Page 3, line 28, overstrike "6." and insert immediately thereafter "7."

Page 4, line 1, overstrike "7." and insert immediately thereafter "8."

Page 4, line 5, overstrike "8." and insert immediately thereafter "9."

Page 4, line 19, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 4, line 20, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 13, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 14, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 27, replace "study" with "consider studying"

Page 6, line 1, replace "the" with "May 1, 2007,"

Page 6, line 2, remove "effective date of this Act"

Page 6, remove lines 5 and 6

Renumber accordingly

2012

Date: 3.23-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1321

Senate	Political Subdivisions	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved Amendment .0302.

Motion Made By Senator Hacker Seconded By Senator Warner

[illegible]

Total **Yes** 4 **No** 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3-22-07
Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1321

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass As Amended

Motion Made By

Senator Hacker

Seconded By

Senator ^{OLAFSON} ~~Hacker~~

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X		Senator Arden C. Anderson		X
Senator Curtie Olafson, ViceChair	X		Senator John M. Warner	X	
Senator Nicholas P. Hacker	X				

Total Yes

4

No

1

Absent

0

Floor Assignment

Sen. Hacker

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1321, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 3, after the first semicolon insert "and" and remove "; and to provide an expiration date"

Page 1, line 16, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 1, line 19, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 1, line 20, after "2." insert "Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.

3."

Page 2, line 1, overstrike "3." and insert immediately thereafter "4."

Page 2, line 10, overstrike "4." and insert immediately thereafter "5."

Page 2, line 26, overstrike "5." and insert immediately thereafter "6."

Page 3, line 28, overstrike "6." and insert immediately thereafter "7."

Page 4, line 1, overstrike "7." and insert immediately thereafter "8."

Page 4, line 5, overstrike "8." and insert immediately thereafter "9."

Page 4, line 19, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 4, line 20, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 13, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 14, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 27, replace "study" with "consider studying"

Page 6, line 1, replace "the" with "May 1, 2007,"

Page 6, line 2, remove "effective date of this Act"

Page 6, remove lines 5 and 6

Renumber accordingly

2007 HOUSE POLITICAL SUBDIVISIONS

CONFERENCE COMMITTEE

HB 1321

2007 HOUSE STANDING COMMITTEE MINUTES

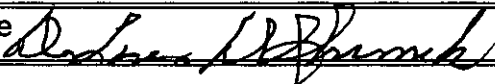
Bill No. HB 1321

House Political Subdivisions Committee

☒ Check here for Conference Committee

Hearing Date: April 13, 2007

Recorder Job Number: 6015

Committee Clerk Signature 

Minutes:

Rep. Kim Koppelman opened the hearing on HB 1321. We are dealing with the senate amendments to HB 1321. We can begin by the Senate explaining the amendments.

Senator Hacker: The amendments are actually pretty simple. The first amendment was a change in population we have the rolling back of the mileage so we rolled them back the same. We found the population change from 10,000 to 25,000; we changed that back. The next one is Section 2, which provides for an interim over the next two years just the type of committee of the county or local township consider as the zoning authority and a small committee of elected officials from the city on both sides to expand their mileage. They can do this in the interim. It was kinds haphazardly put together, and I don't mean that in a poor way, but there was no study to say this is the way it should be done. It was just something to cover for the next two years in hopes that there is two studies that might give a little better guidance for what that should be so that may change in the next biennium. But it is a vehicle at this time. Another change dealt with the study, we should say shall study, not say shall contain a study. This is another study resolution and we think it is important to study this issue.

Rep. Kim Koppelman: I will just comment on the one provision; the commission idea. I think the Senate is aware of this. I know the House is. When we had a subcommittee and two of

the three member of that subcommittee are represented in the House contingent here from the House Political Subdivisions from this bill. We did some research on what other states do with regard to how they deal with extraterritorial zoning and how they deal with it. Particularly the concern that the original bill sponsor had, which was the rural voice or lack there of in both extraterritorial being exercised and there fore the right that the rural folks felt they were loosing to control their property and that sort of thing. One of the states we looked at was Wisconsin. They had something somewhat similar to this. They had a commission consisting of six people; three from the city and three from the township or county and that six member group was formed only for the purpose of deciding whether or not extraterritorial zoning would be exercised. By a majority vote they would do that and then it would be dissolved. The only difference; the senate had asked for that research, which I provided. I think the only difference between what Wisconsin did and what is in the Senate amendment was 5 out of 6 votes vs. a majority vote.

Senator Hacker: The reason for that is 5 out of 6 is when we looked at possibly doing extraterritorial zoning, we may have a county that does some zoning and a township so some of those folks are kind of split up so if you had this commission and if there was 3 with the Township County and city. The city would have their 3 and it was in hopes that you would have 2 from the county and 1 from the township or some such makeup like that and it would provide for a little more voice for everybody.

Rep. Kim Koppelman: Did you have testimony in the Senate. When there is a rural area that zoning is happening in and not extraterritorial zoning by the city, but some other sort of rules, is it an either or, in other words does the county zone it or if the township decides to zone do they have the authority or is it a mixed bag like I think you were describing?

Senator Cook: As I recall from Testimony Township's have it unless they give it to the county.

Rep. Kim Koppelman: If you give it to the county, does that mean that the township religiousness the authority and the county is the zoning authority in that area?

Senator Cook: The County is the zoning authority unless the township does their own zoning.

Rep. Kim Koppelman: So if that is the case, the desire to have sort of a mixed bag as you said, was back because the township has said to the county go ahead and zone and the county is going the zoning, which still have a township representative on the commission?

Senator Cook: It would be either or.

Rep. Dwight Wrangham: If I understood Senator Hacker correctly he said this six person committee would be made up of elected officials from those governing bodies. The committee would be made up of members appointed by the elected officials of those or did I misunderstand it?

Senator Hacker: The way I constructed it is a little bit loose. That is because if the city counsel wants to appoint their three people and who is going to be responsible ultimately to the counsel of the elected officials. And who the governor appoints to some position. Ultimately who is responsible for the area so it does cover some of the issues of those people in the rural areas don't get a voice.

Rep. Kim Koppelman: Just so I am clear on this. The commission that you have inserted in your amendment is not a commission to decide whether extraterritorial zoning authority is going to be exercised, which is what Wisconsin had, but it is instead a commission that would decide whether extraterritorial zoning authority will be exercised beyond the roll back limits that are in the bill. Is that correct?

Senator Hacker: Yes, that is correct. We are still going to have the extraterritorial zoning authority zoning so if they want to adopt it at that point in time they can. So if they want to

extend it beyond the two mile, under the roll back provisions they have formed this committee to decide this.

Rep. Lee Kaldor: I think what you are doing is making it very challenging for them to exercise that authority with a 5 out of 6 vote. I do have questions about the population break downs. If I remember right the reason we went the way we did was because we were rolling back the distance. We had considered actually consolidating those three into two once so we made the population tolerances a little bit less. What was the discussion on that issue?

Senator Hacker: The discussion that revolved on that issue. We never had any testimony why we should roll it back? We had not reason to make that change.

Rep. Kim Koppelman: We certainly can get into that point. That change, you obviously did not look at the original house bill very closely; you looked at the bill as amended in the House and sent to you. The original house bill actually took the three population categories down to two and also severely rolled back the distances. So what the House did is we put it back to three categories; we altered them somewhat from they are in current law, but it was really an alternation from a two tier population category call for in the original bill and severe roll back in distance. The feeling in the House was the subcommittee really worked with this. This is the first time that a bill has come in and I was opposed initially and by the time we were done with it I was over in the House testifying in favor of it. My point is I think the House subcommittee and Political Subcommittee divisions and the body really did a lot of work on this and felt it was a good product that left. I think we had good reasons to retain the provisions that the Senate has changed. Obviously I don't think we will resolve this in one meeting but I do want to get as many issues on the table as we can so we can move forward.

Rep. Lee Kaldor: I don't have a real problem with that. It really makes it very complicated to do a doubling of the territory. With the roll back there would have to be some kind of extreme

emergency; because really all we need is two votes against them that would stop it so I don't see a big problem with that.

Senator Cook: I think if you go back and take a look at the dates that are in this bill; the sunset date, what we basically did is we put a moratorium on it. We did it and we have a study and I think that is where the Senate ended up with this. Maybe once we do this study we will find out the best way to do this.

Rep. Dwight Wrangham: I think the legislative study is the key to this bill. I am having a little trouble understanding why would take out the requirement for the study and put a supposed possible cure for the problem unless we are looking at the cumulative cure for the problem.

My questions would be again, the number one thing is to get the study done because this may ultimately be the answer or it may not be. I think we may confuse the study by having this provision in section 2 in there. We may be telling the interim committee that well we think this is the solution, but we would like you to take a look at it. I would rather see us go into the study just open; without any suggestions of methods that may solve it. I think those methods are all on the table.

Rep. Kim Koppelman: Although I agree with what Senator Cook said. I begin calling this a moratorium and I think it consists of two provisions; a roll back, a freeze, and a grandfathering essentially. The three things that were changed in the Senate, I feel and the House feels, were pretty good provisions that the House had. There were reasons for the population change that we can visit about then as far as the pervasive vs. mandatory study. I think Rep. Wrangham has articulated that well. Some of the same folks that are in the room today were here for our subcommittee on the House and what we heard from them we are going to study this within the next two years because we don't want another bill like this in two years. So whether you study it, legislature or not, we will. So I think it is imperative that the legislature do

the study. I don't like mandatory studies any more than any of your do. Do we want the legislature involved or not? In this case we felt a mandatory was needed. As far as the commission issue. I agreed with what Rep.Dwight Wrangham said. We are sort of saying study the problem and come up with a solution, but here is our solution before we do the study.

Meeting adjourned.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1321

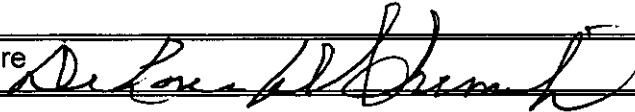
House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: April 16, 2007

Recorder Job Number: 6028

Committee Clerk Signature



Minutes:

Rep. Kim Koppelman opened the hearing on HB 1321. Roll Call taken: Rep. Kim Koppelman, Rep. Lee Kaldor, Rep. Dwight Wrangham; Senator Cook, Senator, Hacker, and Senator Warner all present.

Rep. Kim Koppelman: One thought I will just throw out for discussion. We had some of the House had talked some about the Senate amendment that dealt with the commission. The more I think about that I recognize that the commission is not as it was in the Wisconsin bill either by the way the vote goes or by the way it is structured. Instead it is just to deal with those places where a city would want to extend into the area that is affected by this roll back during this two year window. I am not sure I have a real strong resistance against that, but as we talked about it we said if that were the case, let's say for example there is a city and it wants to extend its extraterritorial zoning into a particular area. In order to get the kind of unanimity of opinion that would be required for a 5 out of 6 vote for a commission like that you would have to have the township or county, which ever is a rural zoning entity in that area on board with the city, saying unless we agree this is necessary and will concur with it. That being the case, if that is true would we still need the commission because would the county or township simply agree with the city and say we all agree this needs to happen. We will adopt

the kind of zoning the city would adopt if it were doing zoning in this extra area during this two year window. We were kind of talking in circles, would it even be necessary to have a safety value, but then again would it even be necessary if there were that kind of clarity of need.

Senator Hacker: You are exactly right. We had that discussion in the committee. What it does is provide a vehicle to use as we stated in our first meeting. This gives an option and here is a way to do this. You are going to have every body on board any and this would be my problem. What it does is addresses those concerns of those constituency living out in the rural area that do not vote for city council members that gives them a voice.

Rep. Kim Koppelman: As you study more it becomes apparent, which you did, it becomes apparent that you're talking about the use of that kind of a body only within this two year window for extending beyond the roll back area of authority and into the area that exists today so it is a little different. If you are saying well we want to do this to give the rural folks more say you are not doing that for example in the area where they would still be outside the authority because the commission would not be necessary there to accomplish this, but in for this two year window and if they did not exercise it already. That is where you would be giving this.

Senator Cook. I understand you have concerns with that area. What is your suggestion? Are you suggesting that we take this out and the Senate recede from this amendment and further amend so that we take this out and we are in agreement or are you suggesting that we change this or modify it somehow and then we are all in agreement?

Rep. Kim Koppelman: I am not suggesting either. I guess I was suggesting this is an area where we might have less difference than some of the other areas. We can talk about our areas of agreement first. I think we see your reasoning for why you thought this might be a good idea and I felt maybe there is some merit there and I am willing to talk about that.

Senator Cook: If this is the only area we had then maybe we could move forward. I am in agreement that from this point until we finish the study to come up to maybe any changes that might need to be made that there should be this moratorium. I think we are all in agreement there. What is left?

Rep. Kim Koppelman: As I saw the Senate amendments; and correct me if I am missing something, I saw three areas of substance that were amended. One was what we had just talked about; the distance; one was the question of whether it is a mandatory study vs. a suggested study and one was the population issue. J

Rep. Lee Kaldor: The only area that we haven't talked too much about is the three tiers and the population reverting back to the population's one half mile fewer than 5,000; the one mile fewer than 25,000 and the two miles of 25,000 or more. We had lowered those population thresholds a little bit because we had reduced the extraterritorial zoning. I am not so sure I have a problem with what the Senate did there. I would like to have a little bit more support for what they did and hear a little bit more about that. If it is because it is a moratorium that makes sense to me? I think that is what you said last week.

Rep. Kim Koppelman: The Senate should be aware of is what we originally looked at in the House, which is what you saw, if you look at the original bill is drastically changed the population levels. It did two tiers and it did half mile if the city had a population of fewer than 25,000 and one mile if the city had a population of 25,000 or more. So basically it took out the three tier structure we currently have and went to two; took out all the smaller delineations and said basically four cities in the state can go a mile and every one else can go a ½ mile. What we did in the House may have looked to you like it changed from current law, but it was really an amendment to the bill we had.

Senator Cook: They way it came from you folks to us. It was like a moratorium, did it treat every body the same? Did it treat every city and municipality the same?

Rep. Lee Kaldor: I think, Senator Cook by what you said, I think we did not treat them the same. That is what I am questioning. That our amendment here goes just a little bit further than a moratorium and you basically put it back to current law.

Senator Cook: That is exactly right. We looked at it and we thought if this is a moratorium it should treat every city the same. We felt it did not treat every city the same. We felt because of the changes in population there is one city that was not really affected by the moratorium and we did not think that was fair so we wanted to have every body treated the same. We think that maybe the change that you folks made over there regarding the population shift might be a pretty good position, but it should be a decision that is a result of the study to the wisdom on that.

Rep. Kim Koppelman: It is interesting that you say that because that is kind of how we felt about the commission. We were kind of putting the solution in front of the study. Your question was did it treat every city the same. If it is a pure question, no and neither is our current law treat every city the same so there are inequities there and that is part of what concerns a lot of people and part of what participates the bill. If your question is does it treat every city the same as to how this bill would change current law then I think Rep. Lee Kaldor response it a correct one. Any time we address an issue we are trying to look at what is the statue quo; is it reasonable or do we need to change it, and that is what the House did. Let me comment on one other point you made though. I want to hit this head on because I think it has been a behind the scenes issue and I think we should talk about it. You made the comment that one city would change and that is not true. We asked for and received what the populations of the cities in North Dakota. If you look at that if you are talking about the

difference between a 25,000 population threshold and a 10,000 population threshold you will see that there are four cities in ND that are over 25,000 in population. There are five more between 10 & 25,000 population so actually it affected five cities, if you want to look at it in that way. What I want to hit head on that this is an implication that maybe this is a West Fargo amendment and that isn't true. A lot of the cities that are here would be affected in the same way that West Fargo, Mandan, Williston, Jamestown, Dickinson; they are the five that are between 10 and 25,000 population. Some have suggested that the population change came from me, it did not. That was Rep. Lee Kaldor amendment. I did not collude to make it. It was a common sense thing I think he saw. Number two the question is how does this affect Fargo and West Fargo gets into another area that probably would be affective relative to Bismarck and Mandan, except for the Missouri River and that is the fact that it is cities that adjoin each other? That isn't addressed in this bill at all. I would like to see that addressed If we had the law in Minnesota has or if Minnesota had the law that ND has Minneapolis long ago would have been circled with suburbs generally have some sort of an equalizer that says you are going to have some equality when you are adjoining the cities. We don't have that in ND.

Senator Cook: First off West Fargo and Fargo vs. Mandan where we have the Missouri River. Under Subsection 5 we don't; where two or more cities where this is known as. Is that not how ND addressed the situation in which we have two cities that over laps and is this where you would definitely with population changes have to penalize Fargo. It would take an area right now that falls into this section and it would remove it.

Rep. Kim Koppelman: I don't believe Senator that is true. The more I have looked at this; what I should do is have a chart or something I can explain this. The laws the currently govern extraterritorial zoning came into being ten years ago in ND. In that session I actually had a bill that dealt with several issues including the one I just described. Several other people had

pieces of Legislation introduced and in a spirit of compromise we put them together in one bill.

I asked for my bill to be withdrawn; some of the provisions were amended into this bill; others were not. Backing up another moment; prior to 1997 the laws in North Dakota dealing with extraterritorial zoning specifically said that they related to non continuous cities. If you look back on our legislative history the laws had mostly recently been amended in 1983-85. It specifically referred to non continuous cities. The reason they did that I believe is most cities in North Dakota touched at that point. The legislatures could see that when cities touch each other all bets are off. You legislatures have to come back and make some laws that deal with that situation. We really did not do that. We did Senator Cook is right, we did create a process how cities next to each other mediate their differences, but we did not bring mediate how we would do that if one is larger etc. Some of this is not pertinent to this bill, but I am telling you all of this so you know some of the history and back ground. The city of Fargo, if you look on a map; look at the cities of Fargo and West Fargo and the cities of Horrace, Harlow and Mapleton and some of the others that surround that area you would see that Fargo and West Fargo; while next to each other, the city of Fargo has grown to the Southwest extensively. The reason for that is Fargo has four miles of extraterritorial zoning, by virtue of its size; West Fargo has two miles. So naturally if you exercise the provisions of subsection 5 and come to the negotiating table and you have twice as many marbles, guess where the negotiation is going to go. So in my view as a representative from West Fargo, that is the inequity we should address. This bill does not do that. It creates the moratorium they are talking about. The reason I don't think it is a threat to Fargo or any one else for that matter, is because it freezes what the current status is. With Fargo at a 4 mile jurisdiction and West Fargo having extending to a 2 mile I think they are pretty much gobbled up the extraterritorial zoning they are gong to be operating in probably in the next two years so it may not change at all. If it does, we would

still have Fargo with the built in greater jurisdiction that is currently has because of the grandfathering provision. So I don't see it as being a threat.

Senator Hacker: It doesn't matter which way we write this, it expires in two years, so even the changes of population expire if we are going to look at West Fargo if it is 2 miles if it is grandfathered; West Fargo is not going to be affected by the population change at all. We are trying to figure out why even has the population change if this grandfather change in this bill isn't going to affect most any of these cities. They have already extended the extraterritorial 2 miles so what I am trying to say so that is grandfathered so changing population does nothing with this.

Rep. Kim Koppelman: I don't believe what the bill does in the House version hinders any city or gives any city an advantage. That was my point. I think we should talk about the other cities that are affected. We have Williston, Jamestown, Dickinson and Mandan. If I look at the state of ND and we think about which ones are the major cities of ND certainly we would name these four, Fargo, Bismarck, Minot and Grand Forks. I would name other cities like Jamestown, Williston, Dickinson and Mandan etc. I think what the committee was looking at was is saying as these cities grow is it reasonable to have in our law a perimeter that only allows for very large cities to have a particular distance authority, whatever it is or should we treat more cities like our larger cities. Secondly some of our very fastest growing cities are in that tier between 10,000 and 25,000.

Rep. Lee Kaldor: As I review these numbers I am going to state that can understand the Senates position. The bill is doing a temporary roll back in spite of the fact it is a moratorium it does do a roll back for those cities who haven't exercised their extraterritorial zoning. The Senate said if you haven't exercised it and there is going to be a roll back, every body is going to be treated the same as they are in current law. What we did, we modified that and we

actually excluded a group of five cities from being affected by the roll back if they have not exercised their extraterritorial zoning to the limit. I am in agreement with what the Senate did. I think it is appropriate because what we created was exclusion. We said the roll back will affect Minot, Grand Forks, Bismarck and Fargo if they haven't exercised their extraterritorial zoning and it will affect Valley City, Devils Lake and Wapeton if they haven't exercised their extraterritorial zoning, but it won't affect West Fargo, Williston, Dickinson and Mandan and I am not so sure that is what we want.

Rep. Kim Koppelman: Any other comments on the mandatory vs. optional study issue. It was explained at the last meeting that we want mandatory because we felt with the cities and counties and townships stating that is going to be studies and it is going to result in suggested legislation, it makes a lot of sense for the legislature to be part of that study.

Senator Cook: It is pretty traditional when we see a study come over. We have people that will stand up on the floor every time there is a mandatory study and point out that this is a mandatory study and most times you will get a red vote or three because it is a mandatory study. I don't think it is an issue we would spend a whole lot of time on.

Rep. Kim Koppelman: I don't know if it is any more acceptable to the House as it to the Senate. The committee felt strongly about it and as we took it to the floor we made that point when we had the bill on the floor. We know that you don't like these but this is why.

Senator Cook: I agree. It is a study that has to happen. I know we have a sunset clause on this so is it almost like a mandatory study?

Rep. Kim Koppelman: What would happen is that if the study is not picked up; cities, counties, and townships come to us next session with a recommendation and let's say we don't like the recommendation. Then we say we don't have time in this legislative session to deal with all these complexities, so we better study it again. So we could be back again.

Senator Cook: That is why we have the mandatory study because there is a sunset on there. If you wanted a motion that the Senate recede and further amend and you want to take off that mandatory study?

Rep. Kim Koppelman: There are a couple of details I would like to discuss on the House sides so let's plan to reconvene at the call of the computer.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1321

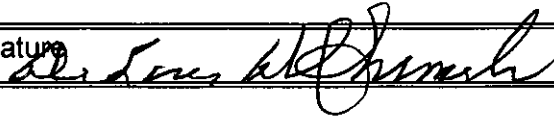
House Political Subdivisions Committee

☒ Check here for Conference Committee

Hearing Date: April 17, 2007

Recorder Job Number: 6087

Committee Clerk Signature



Minutes:

Rep. Kim Koppelman reopened the subcommittee hearing on HB 1321. Roll call: Rep. Kim Koppelman, Rep. Dwight Wrangham, Rep. Lee Kaldor, Senator Cook, Senator Hacker, and Senator Warner were present.

Rep. Kim Koppelman: Are there any further items to discuss? I think someone made the point during the last meeting that subsection 5 is sort of our states way of dealing with cities that have continuous borders. I would submit that is not true. What Subsection 5 actually deals with is as I see it, cities where the extraterritorial zoning authority of another city overlaps the other one. It does not mean the cities touch each other, it means that the extraterritorial zoning area overlaps. What could be the case that they touch or it could be the case where they don't. Rep. Kaldor represents an area, Mayville and Portland that are very close together, but those two cities, until recently did not touch. Despite the fact that one is three and a half the times the size of the other, they are in the same population category so as a result the provisions of subsection 5 work very well because they both have the same authority. They both have the same number of marbles as the other so they enter into negotiation and they come up with a conclusion that is reasonable and equitable. We have other areas where cities are touching or close and one has a two to one authority for advantage.

Senator Cook: I am the one who corrected subsection 5. That is where it comes into the city of Fargo and West Fargo and actually both.

Rep. Kim Koppelman: We were talking about 1997 and prior to the changes we made in 1997 in extraterritorial zoning law, the laws we had on the books in the state which dated back to the early and mid 80's specifically said they affected non continuous cities and the reason I would submit that the word continuous was in there because there were non that were continuous so back in the 80 s the legislature said when cities end up growing together the legislature needs to revisit this and come up with something that is going to work. I thought you said that subsection 5 was our answer to that. It really isn't because it only affects areas where extraterritorial overlaps.

Senator Cook: How does it work? Right now you live in the city and you have territory that overlaps other cities. Does it work alright?

Rep. Kim Koppelman: No, I think some of the things we put into laws in 1997 helps, but I don't think it works alright in Mayville and Portland because they have equal extraterritorial zoning authority even though one is three times the size of the other; they are in the same population category. In our community I don't think it does work because one city has a two to one ratio of greater extraterritorial zoning authority over the other. The inequity in authority is there when you set down at the table. If you are going to play a game of marbles and you get twice as many marbles as I do you are at a big advantage before the game starts even though the rules apply to both of us.

Senator Cook: We are trying to create a moratorium and the 20% of the moratorium should be on every body so you are saying that Fargo has got a 2 to 1 advantage over you. That creates and uneven playing field, but aren't we now with this moratorium creating a two year period where Fargo and West Fargo are even?

Rep. Kim Koppelman: No, because if we do a roll back as the bill calls for the roll back would be Fargo has a four mile extraterritorial area because of the size, rank and current population level in law. West Fargo has a two mile area. This would roll back to a 2 and 1 respectively, except in areas where we have already extended.

Senator Cook: I though because of the change in population you guys got to stay at 2.

Rep. Kim Koppelman: I don't think that is true. If the current law gives the methodically of how the population is determined I think it is in the last census which would be the 1990 census. It is still not there. My point is this should not be a discussion about Fargo and West Fargo because we are here to make public policy for the state. It should be what is the reasonable and fair thing to do for any two cities that happen to touch one another. There are other cities that we have not discussed, such as Horace.

Senator Cook: I think this entire discussion needs to happen in the study and I think what this discussion is that every one needs to be treated the same; all cities.

Rep. Kim Koppelman: I would ask the question where is that happening. Right now four of the largest cities in the state, by population have a 4 mile distance. We have a grandfathering provision in the bill so those that have extended into that 4 mile, in affect, would not be rolled back, except for further expansion beyond that during that window of time. One of those cities has not exercised this 4 mile authority even though it is in the law to do so. So we are saying in the next two years they can not go the 4 miles while the others in that category can't so we have inequity built into what we are doing to begin with.

Senator Hacker: I think the study part of this is the most important if we don't do anything at this time.

Rep. Kim Koppelman: There is a study resolution that has been passed already. I think we could kill this bill but it would not make some of the proponents of the bill very happy because

there is provisions that address the very issue for which it was brought, which was primarily the rural concerns. There are two areas of perceived inequity with regard to extraterritorial zoning in state law right now. One of those was brought by the rural folks who are saying we live in a rural area; we are not represented in regards to this, the city is zoning us, and we don't vote for the city commissioners and we don't have any say. The other point is the issue of cities with shared quarters. That is not addressed in this bill now right now. As you pointed it may be in affect in other cities on population, but my in affect happen. That is why I felt the House version of the bill was an attempt to put the scenario and come up with something in the study.

Rep.Dwight Wrangham: I guess if we look at the real basic differences between the senate Version and our version and stick to what those are I don't think the Senate version; I think our version came out with everything that the House felt was good. I don't think the senate versions accomplished.

Rep. Kaldor made a motion that recommends that the Senate recede from the House amendments. Seconded Made By Rep.Dwight Wrangham

Vote 3 Yes 3 No 0 Absent Motion Failed

Senator Cook: We have a mandated study. Is that something we can live with? No we have a mandated study. I think the big disagreement is again if we are going to have a moratorium it should affect all the cities the same. I am not concerned about the relationship with Fargo and West Fargo with the change that we make in these population gaps. But I think that we also need to be concerned about the relationship between West Fargo and Horace where I think that a bigger city is over a smaller city that it does not have right now.

Rep. Kim Koppelman: I think we should look at the city of Horace and there is a much better working relationship between the smaller of the two of the three cities you mentioned. And much more friction between either of those and the largest of those three cities, historically.

Senator Hacker: Is the issue of what we are doing with the change of population between West Fargo and Horace? It does change the relationship between the two.

Rep. Kim Koppelman: No, because Fargo and Horace are battling immediate reaction to that is no because right now the scenario is that Fargo and Horace are battling over various parcels of land. West Fargo and Horace, as I indicated cooperate very well. The effort currently is for the city of Fargo to move west between Horace and West Fargo to expand to the west so there is a sliver of land there that Fargo is laying claim to. That is really the battle currently. I don't think there is an area where West Fargo and Horace touch or overlap and I don't think there will be if Fargo extends between those two.

Senator Hacker: We did have a concerned citizen of Horace contact us on this bill and she really did not understand what was going on with the roll backs and population change? She had a great concern over the ET zoning power poll with Fargo and West Fargo. We explained to her that we are adjusting this so there will be a study and she was borderline happy with that. She represents people; she is an elected official that came and testified at our hearing.

Rep. Kim Koppelman: I think that the whole issues where borders overlap and ET zoning borders overlap I believe there should equality. I think it should be looked at and I don't want to overlook Horace and I would be happy to explain that to anyone that wants to talk about it.
Hearing adjourned.

2007 HOUSE STANDING COMMITTEE MINUTES

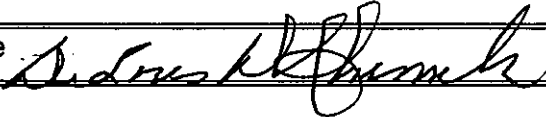
Bill No. HB 1321

House Political Subdivisions Committee

☒ Check here for Conference Committee

Hearing Date: April 19, 2007

Recorder Job Number: 6159

Committee Clerk Signature 

Minutes:

Rep. Kim Koppelman reopened the conference committee hearing on HB 1321. All members were present. We have had an opportunity to look at a few other maps. There is some confusing or incomplete information floating around. I think most of the committee members to look at some maps and have an idea where lines are and all of them. I don't think the bill really affects that in any event. There are agreements in place that would preclude any inequity that might be feared. So members of the committee we have the bill before us. We had tried a motion for the Senate to recede which was not successful. We have any other motions or discussions?

Senator Hacker: I am interested in seeing the agreement between Fargo and West Fargo, this ET zoning agreement that they had.

Rep. Kim Koppelman: If the committee would like to see this before we proceed I certainly respect that so that you are all aware some of you may or may not be aware of this. The map that is before you shows two things; the city limits of the cities of Fargo, West Fargo, Horace, Riley Acres, Harwood, several of the surrounding cities in the Fargo, West Fargo metropolitan area here. Explained the map to the committee. The question that has come up about West Fargo relative to Horace is really a mute point because it is really an issue below that line,

south of that line between Fargo and Horace. In fact the section of land that is stated there; that Fargo has begun a procedure to annex that land that the people living there did not want to be part of the city of Fargo so they petitioned the city of Horace to annex them. Therefore there is mediation going on right now between the cities of Fargo and Horace over that land. Senator Hacker: Depending on the agreement; the agreement deals with areas where there is overlapping between the ET zoning between West Fargo and Fargo. The agreement says that Fargo shall not go north of this point and West Fargo shall not go south. If we adjust the ET zones for 2 years you are looking to see on the southwest corner of the ET zoning where West Fargo is and the numbers 139 in there; that is the quarter section of land that you would roll Fargo inside of that. That red line on here; you would come back, if you count the squares it would be 4 squares.

Rep. Kim Koppelman: You are talking about the area directly to the west of the western most green block. Senator, just to bring the committee up to speed, the senator just raised this point to me and my opinion is the language in the bill says that any words in regard to its extraterritorial that the city has done prior to the effective date of the bill if grandfathered so it is not affected. I believe that would include the agreement. Senator Hacker has questioned whether that is true and I have said if there is any concern by the committee that that would be the case I would be agreeable to an amendment that would clarify that in the bill and it would say any prior ET zoning agreement that was in place prior to this date would also be grandfathered in. I will certainly adjourn the committee until we have an opportunity to do that.

Senator Cook: I will say this; there is no body here from Fargo or West Fargo and I have some concerns as to why we should give this special treatment, I think. Annexation problems down here. I would suggest you get me a letter from the mayor of Fargo and Horace that they

understand the provisions of this bill and they encourage us to pass it and I will vote for it in a heartbeat.

Rep. Kim Koppelman: Let's get a copy of the agreement that has been requested and we will reconvene.

Hearing adjourned.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1321

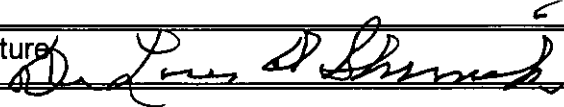
House Political Subdivisions Committee

☒ Check here for Conference Committee

Hearing Date: April 20, 2007

Recorder Job Number: 6211

Committee Clerk Signature



Minutes:

Chairman Kopplemen reopened the conference committee hearing on HB 1321.

Roll call: Rep. Kim Koppelman, Rep. Wrangham, Rep. Lee Kaldor, Senator Cook, Senator Hacker; present. Senator Warner; absent.

Motion Made by Rep. Dwight Wrangham that the house accede from the Senate amendments. Seconded By Rep. Lee Kaldor

Discussion:

None

Vote 5 Yes 0 No 1 Absent

Hearing closed.

1

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number HB1321 (, as (re)engrossed):

Date: 4-17-07

Your Conference Committee Political Sub

For the Senate:

For the House:

YES / NO				YES / NO			
<u>Sen. Cook</u>	<u>P</u>		<input checked="" type="checkbox"/>	<u>Rep. Heppelman</u>	<u>P</u>	<input checked="" type="checkbox"/>	
<u>Sen. Hatcher</u>	<u>P</u>		<input checked="" type="checkbox"/>	<u>Rep. Wrengham</u>	<u>P</u>	<input checked="" type="checkbox"/>	
<u>Sen. Warner</u>	<u>P</u>		<input checked="" type="checkbox"/>	<u>Rep. Kaldon</u>	<u>P</u>	<input checked="" type="checkbox"/>	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Kaldon

SECONDED BY: Wrengham

OTE COUNT 3 YES 3 NO 0 ABSENT

Forced

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number HB1321 (, as (re)engrossed):

Date: 4-19-07

Your Conference Committee Political Sub

For the Senate:

For the House:

YES / NO			YES / NO		
Sen. Cook ^P			Rep. Heppelman ^P		
Sen. Hatcher ^P			Rep. Wrentham ^P		
Sen. Warner ^P			Rep. Kaldor ^P		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT YES NO ABSENT

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1321 (as (re)engrossed):

Date: 4-20-07

Your Conference Committee Political Sub

For the Senate:

For the House:

	YES / NO		YES / NO
Sen. Cook ^P	✓	Rep. Koppelman ^P	✓
Sen. Hatcher ^P	✓	Rep. Wraggman ^P	✓
Sen. Warner	—	Rep. Kaldon ^P	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1340 - 1341

✓, and place 1321 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4-20-07

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Wraggman

SECONDED BY: Rep. Kaldon

VOTE COUNT 5 YES 0 NO 1 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1321, as engrossed: Your conference committee (Sens. Cook, Hacker, Warner and Reps. Koppelman, Wrangham, Kaldor) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1340-1341 and place HB 1321 on the Seventh order.

Engrossed HB 1321 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1321

#1
Wrangham, Dwight R.

From: Schonert, Doug [DSchoner@CENTURY21MORRISON.COM]
Sent: Tuesday, January 30, 2007 1:00 PM
To: Wrangham, Dwight R.
Subject: RE: HB 1321

Follow Up Flag: Follow up
Flag Status: Red

Yes, please pass this information to all the committee members.

Thanks

Doug

-----Original Message-----

From: Wrangham, Dwight R. [mailto:dwrangham@nd.gov]
Sent: Tuesday, January 30, 2007 12:39 PM
To: Schonert, Doug
Subject: RE: HB 1321

Can I pass out your testimony to the committee members?

-----Original Message-----

From: Schonert, Doug [mailto:DSchoner@CENTURY21MORRISON.COM]
Sent: Tuesday, January 30, 2007 10:55 AM
To: Wrangham, Dwight R.
Subject: HB 1321

Honorable Dwight Wrangham

I support this bill because as a Burleigh County Commissioner I feel the City of Bismarck extended its extraterritorial boundary far beyond what was necessary when they went from the two mile to the four mile boundary. The County already had a zoning jurisdiction in place that was responsible for that area. In fact the same zoning staff people are contracted to Burleigh County from the City of Bismarck. In the last 50 years the city of Bismarck has grown approximately three miles north, three miles south and one mile east. With a history of that type of growth rate it is not necessary to have a four mile extraterritorial boundary.

I will be out of town and unable to attend the hearing on HB 1321. I ask that you support this bill and recommend a Do Pass.

Thank you

Doug Schonert
Burleigh County Commissioner

Century 21 Morrison Realty

dschoner@century21morrison.com

HB 1321 Summary

Senator David P. O'Connell

A bill relating to extraterritorial zoning jurisdiction of cities.

A city may extend the application of a city's zoning regulations to any quarter section of unincorporated territory if a majority of the section is located within:

- One half mile
- If the city has a population fewer than 25,000
- One mile if the city has a population of 25,000 or more
- If the city exercises extraterritorial zoning authority, the zoning commission must include at least two individuals residing outside the corporate limits of the city if the city has a population fewer than 25,000
- If three individuals residing outside the corporate limits of the city if the city has a population of 25,000 or more.
- If the city exercises extraterritorial zoning authority, the planning commission must include two individuals residing outside the corporate limits of the city if the population is fewer than 25,000.

- If the city exercises extraterritorial zoning authority, the planning commission must include three individuals residing outside the corporate limits of the city if the city has a population of 25,000 or more.

Bill removes line items 19-23, pg. 2 in relation to the length of term each member of the commission may serve.

Testimony on 1321

From: Claus Lembke
250 NW 57 Ave
Bismarck/ ND 58503
O: 355-1010
H: 222-8628

February 1, 2007

Chairman Herbel and members of the House Political Subdivision Committee:
My name is Claus Lembke and I am testifying on my on behalf.
My residence is located outside the city of Bismarck in the so called 4 mile Extra territory. I also last December completed a 20 year term on the Burleigh County commission.

A couple of years ago the City of Bismarck decided to exercise its right to extend the Extra Territory jurisdiction from 2 to 4 years. All of the Burleigh County Commissioners strenuously objected to this change and we communicated such to the Bismarck City Commission. The commission did extend its Extra Territory Zoning and planning authority to 4 miles.

I personally do not object to one or two miles of extra territorial authority but 4 miles is not needed for these reasons:

- Burleigh County has a very good comprehensive planning and zoning plan with very good enforcement.
- Burleigh County shares the same Zoning and Planning Staff with the City
- Burleigh County still takes care of the roads and approach permits
- The City of Bismarck adds approximately \$7,000 to \$10,000 to the cost of a new home by their interior road paving requirement.
- A city simply does not have the expertise of a County when it comes to watershed engineering, road construction, snow fencing, approach construction and general country living conditions.

In closing I like to state that no city should be able to extend its extra territory jurisdiction beyond a mile or two unless the adjoining township or county does not have a comprehensive planning and zoning plan.

Amendments to 1321
Proposed by Claus Lembke

- On page 1 line 13: after the word kilometer remove the overstrike
- On page 1 line 14: remove the overstrike
- On page 1 line 15: remove the overstrike from ~~b~~—add One mile (1.61 kilometers and remove the overstrike on the remaining words after the word population.
- On page 1 line 16: remove the overstrike
- On page 1 line 17: replace the letter b with c, overstrike the words ~~One (1.61 kilometers)~~ and replace with Two (3.22 kilometers)

Ad a sunset clause that this legislation will expire 07/31/2009

This will gives two years time to (or forces to) Cities, Counties and Townships to work together in writing more workable legislation.

Trying to find a lasting solution in the last remaining days before crossover would be like planning a wedding after the water broke.

#4

Good Morning,

My name is Rod Ballinger and along with my wife, Sue and our youngest child, Sean, live in Fargo. I had no knowledge of this proposed bill and did not know its existence until I read about it in the Fargo Forum two weeks ago. I can only speak of my situation, from my perspective, as it relates to this bill and the city of Fargo.

Sue and I own the Bear Creek Winery south of Fargo. We had a dream twelve years ago of building a winery but had two obstacles to overcome. First, we bought some land south of Fargo, well beyond any city boundaries and extraterritorial limits. We went through the proper channels, applied for and received the building permit in Stanley Township of Cass County. We then built an architecturally style "turn of century" barn as our future winery. The second obstacle was getting a domestic wine bill in place here in North Dakota. We worked very hard and along with the owners of "Point-of-View" Winery in Minot, we were able to get the domestic wine bill passed through legislation. North Dakota was the last state in the country to get a domestic wine bill and all the people involved were very proud of it. Today, the "Bear Creek Winery" operates as a federal and state licensed bonded winery.

During the initial years, even though we were well south of Fargo's extraterritorial limit, I took upon my self to visit twice with the Fargo planning commission just to keep them informed of our situation. We realized that many years down the road the city would grow and we wanted them to know who we were and keep us in mind. There was no requirement for this, just a "good neighbor" policy. The meetings with the planners were very amiable. Domestic wineries were a new concept in this state and we just wanted them to know our intentions and that wineries could be fully compatible as the city grew closer some day. I've traveled extensively through-out the wine regions of the United States and it is very evident that wineries and municipalities do share a common compatibility.

Fargo did enact their rights as given to them by the legislative assembly under section 40-47-01 of the North Dakota century code and extended its extraterritorial rights that now included our winery operations. As the winery grew, I went to the Cass County commissioners to apply for a beer license that had already been created and given to another establishment that was zoned agriculture, as was our winery. I asked the county to give me permission to sell beer at the winery. This was just to compliment our wine tasting events such as groom's dinners, weddings, Christmas tasting events, anniversaries and others. The reason for this was that a few people at these events did not drink wine and wanted to know if they could bring or buy beer there. From a control perspective, Sue and I thought it would be a better idea if we could sell some beer to those people who didn't like wine. That way, the people who did enjoy wine could share the winery experience with their spouses, relatives and friends, who usually tried the wine, but preferred beer. The county, not the city has the authority to grant us the license. After a discussion at the meeting, the commissioners voted unanimously to grant us our license. However, one commissioner did raise the question of zoning as now we were in the extraterritorial rights of the city. Even though they did vote in favor of it, the final approval was pending an *opinion from* the Cass county states attorney.

After further review, the Cass County commission did at that time reject our permit based on discussions with the city. Even though our winery is an agricultural production facility and still miles from the city limits, we have not been granted the license. The city of Fargo says it's a zoning issue.

The second issue with the city was building permits, because any new building for the wine operations that I want to construct and now, with the four mile extraterritorial limits, also had to have Fargo's approval. The permit that I submitted to Fargo planning commission was also rejected. Sue and I wanted a three season gazebo and a storage shop. I had discussions with four different city planners to explain what I wanted to build, where I wanted build along with design plans and maps. We expressed our concern that our operations was in place before its inclusion in the extraterritorial zone. It still was not enough for them; they wanted to know - "What I was up to?" Well, here is what I told them - "What I was up to!"

1. We wanted a separate building with a "screened-in" area to get away from the mosquitoes, bugs, wind, rain or any other element it would shelter us from.
2. We wanted a building that people, who were at the winery, an additional area to enjoy the ambiance of the vineyard, trees and setting and also protection from the elements.
3. We wanted a storage shop to protect our vineyard and ground maintenance equipment that, as I speak, is sitting outside by the vineyard and fruit trees covered by snow.

Everything we asked for was necessary for the winery operations. We have lost a great deal of money and time because of their resistance.

Now, let me say in closing, I totally believe that it is essential that planning has its place as cities grow further into rural areas. However, inappropriate planning, without regard and concern for the people who live and work in the area, is not in anyone best interest.

We chose to live in Fargo. We love the city of Fargo and I know there are decent and hard working folks in the planning department here. I have talked with them often and maybe it's time for a reality check. Now, here lies the dilemma before you. 1. Rejection of this bill, with no change of attitude from the planning departments, will certainly have us back here at the 61st legislative assembly in two years. 2. Passage of his bill may hinder the planning department's ability to protect the people who were already in place living and operating before, and I say again before, the extraterritorial limits encompassed them. I hope some sensibility and common-sense will prevail in these areas as people are treated with respect and trust is once again regained. Thank you for you time.

#5

Testimony on House Bill No. 1321

TOWNSHIP

- * Governance
- * Restricted Development
- * Reasonable Growth
- * Landfill
- * Relocation

RURAL WATER DISTRICT

- * Service Agreement
- * Revenue Loss

FARMER/RANCHER

- * City Laws
- * 14th Amendment

Beau Bateman
701-775-8455

#6

Comments Supporting House Bill No. 1321

Richard Hammond - 701-223-5126
Bismarck, ND

My name is Richard Hammond and I support this bill as being a step in the right direction to return control of the planning and zoning decisions to more of the citizens who are effected by these decisions. Although this bill does not go far enough and entirely remove all extraterritorial authority from the cities, it is a step in the right direction. I live within the present extraterritorial zoning area around the City of Bismarck. We previously lived in a democracy. Now, I am not allowed to vote for those who make planning and zoning decisions for any of the property in my neighborhood.

There is no justification for the existence of extraterritorial zoning authority in this state. The original zoning statutes in this country allowing a municipal corporation to enforce city ordinances beyond its boundary were passed to allow some degree of law and order where there was no organized political subdivision in charge of those territories. That has never been the case here. We have a viable, working county government. These laws were never intended to allow one group of citizens to control another group of citizens against their will, and without any elected representation at all.

One must review how this extraterritorial zoning control came about and how this authority has been used over the past 30 years. It took three legislative sessions of intensive lobbying by the city's paid lobbyists before the first legislation was passed authorizing the cities to expand their zoning authority beyond their corporate limits. There was strong objection to the idea of extraterritorial zoning from the rural residents who were to be effected by it. Over the years the full time lobbying paid off and the municipal corporations got their way. The situation went down hill from there.

One of the requirements that the cities had to meet before formally taking over these areas was to hold "public hearings" to educate the residents as to what they were doing and why. I attended some of those meetings. The legislation was permissive, not mandatory. That means that the cities could take over the zoning authority, but they did not have to do so. At these meetings the Bismarck planners told the citizens that they were only doing what the legislature mandated and it somehow was not the city's fault. This degree of dishonesty is unacceptable. At the Apple Creek Township meeting, there was an angry group of citizens who simply shouted the city representatives out of the schoolhouse without even letting them finish their presentation. The situation has never improved over the next 30 plus years.

In the 70's the city used its zoning authority to delay and cripple the rural water cooperative in its early stages of organization. The city has always used its power in a negative manner to discourage rural development. The city should be making a positive effort to make the city more attractive and desirable so that citizens will voluntarily choose to live in the city rather than throwing as many roadblocks as possible in front of those who want to move into the rural area.

When zoning proposals are presented, one of the requirements is to determine if the proposal is in accordance with the city's "comprehensive plan". The city does not have

47
Federal Government had the right to control zoning, and that the Federal government had decided to delegate zoning to the various states based on population giving the larger state of Minnesota the right to control zoning 5 miles into North Dakota. Everyone here would have a problem with that scenario. Why is it so difficult to see what is wrong with the present situation?

The bottom line is that a Democracy is not a democracy when citizens cannot vote for the representatives who control their local affairs. My greatest frustration is with the legislature for the failure to recognize this fundamental problem for 30 years. Voters provide feedback to their elected officials. When there is no feedback provided to elected officials, those elected officials are not responsive to, nor accountable to, the citizens. This lack of accountability has been our experience. This is how extraterritorial zoning has worked, or rather not worked, for the last 30 years. If there is anyone in the state who should understand what is wrong here it would be those here serving in the legislature. Most citizens understand the right to vote and the one person, one vote standard. Just as important as is the will of the majority, are the rights of the minority. In the past, the legislature has understood the will of the majority, but has not understood the obligation to protect the rights of the minority from the tyranny of the majority.

There is a connection between power and authority, and duties and responsibilities. Along with the power to zone comes the duty to exercise that power in a responsible manner and respect the rights of all citizens of the state whether they are represented or not. The cities have accepted the power to zone and have rejected the responsibilities connected to that grant of power.

As legislators, any time you grant any kind of power and authority to the various boards, commissions, and political subdivisions, you have a responsibility to go back, to check, and to monitor how that power and authority is being used. When there is a finding that any grant of power and authority is being misused, it is the responsibility of the legislature to specify necessary changes to stop that abuse.

I request that this bill be given a "do pass" recommendation and consider the complete solution of removing extraterritorial zoning authority completely.

February 2007

#7

Landowners Association of North Dakota

DEDICATED

To the preservation of the **revenue generating** activities of our farmers and ranchers along with their most valuable, renewable resource - **Land**.
To the preservation of our wildlife, environmental, and soil resources through **voluntary and compensatory** programs.
To the **preservation** of private property rights.

PRESIDENT'S REPORT

By Roger Bischoff, LAND President

As we begin a new year, LAND is continuing to be vigilant on issues that affect property rights of North Dakotans. Our organization issued a formal stance on extraterritorial zoning at our annual convention in December. Information about this resolution was printed in your last newsletter. In the current ND Legislative session, House Bill 1321 has been introduced. This may provide an opportunity for some of our members to testify when it comes up for hearing.

One subject that hasn't been discussed by our group is the proposed changes to the Electoral College structure with the introduction of a bill in the ND Legislature to have our state's electoral votes go to the candidate who wins the popular vote nationally. My personal opinion is to not make this change. Any state with a small population will not attract any candidates to campaign here or pay any attention to our issues. In addition our vote for the President could realistically go to a candidate who the majority of the citizens in the state voted against. If this change is made, only a few states will control what happens for the entire nation. I feel our Founding Fathers put the Electoral College system in place for a very good reason - to allow the voices of smaller states, such as North Dakota, to continue to be heard amongst the voices of much larger states. Strictly looking at population numbers and the number of electoral votes allotted shows that North Dakota's citizens have more pull in the electoral system than much more populous states like California and I don't feel this is something that should be changed.

As always, if any LAND members see a need for us to be actively involved in any upcoming legislation or issues, either for or against, please contact me or any of the Board of Directors. We need to continue to be vigilant when it comes to our property rights.

What's Happening?

LAND will be selling raffle tickets again this year. Tickets are a \$1 a ticket. There is no age limit to purchase the tickets. Ticket holders need not be present to win. The drawing will be held on April 14th, 2007 at the Richard Volk residence, 6253 Hwy 20, Webster, ND.

1st Prize - \$400.00 Cash
2nd Prize - \$200.00 Cash
3rd Prize - \$100.00 Cash

Please contact the LAND office if you would like to purchase additional raffle tickets or if you have any questions.

Food For Thought

"Freedom has its life in the hearts, the actions, the spirit of men and so it must be daily earned and refreshed - else like a flower cut from its life-giving roots, it will wither and die."

~Dwight D. Eisenhower

The Taking of Prosperity?

Kelo vs. New London and the Economics of Eminent Domain

By Thomas A. Garrett and Paul Rothstein

Editor's Note: "The Taking of Prosperity" appeared in the January, 2007, issue of the *Regional Economist* published by the Federal Reserve Bank of St. Louis and is reprinted here in its entirety with permission from the publisher.

This article is an excellent discussion of the economics of economic development involving the use of eminent domain to acquire real estate as well as the entire concept of governments "robbing Peter to subsidize Paul" for the "public purpose" of economic development.

Our legislators should take note, especially of this statement: "...local governments should focus on creating a business environment conducive to risk-taking, entry and expansion rather than attempting targeted economic development through eminent domain or other means".

While our constitutional amendment now prevents the use of eminent domain for economic development in North Dakota, there is much work yet ahead to curb the practice of "targeted economic development" through "other means".

The U.S. Supreme Court's decision in *Kelo vs. New London* was an unlikely source of public outrage. After all, the court didn't overturn anything in its June 2005 ruling; it merely affirmed an earlier decision by the Supreme Court of Connecticut. The decision allowed the city of New London, which was officially designated as "distressed," to use the power of eminent domain to acquire 15 properties, one of which belonged to homeowner Susette Kelo. Although forcing the sale of homes always raises delicate issues, it is not an unusual event. Furthermore, nothing in the court's decision altered the ability of state legislatures to limit the practice of eminent domain. Viewed in this way, the decision in *Kelo* should have been one of the lower-profile decisions of the Supreme Court that year.

That's not how things went, however. The reaction against both the court and its decision was swift and furious. The U.S. House of Representatives passed a resolution denouncing the court. The House also passed a bill that would withhold federal development funds from states and political subdivisions that use eminent domain in certain ways. Since the *Kelo* decision, 34 states have taken action to limit eminent domain: 26 have passed statutes, five have passed constitutional amendments and an additional three have passed both. (Five of the seven states in the Eighth Federal Reserve District have passed statutes.) President Bush issued an executive order limiting the grounds on which the federal government can take private property. Finally, the Supreme Court of Ohio handed down a ruling in a case that, by the court's own assessment, raises social and legal issues similar to those in *Kelo*. Drawing on the reasoning of several dissenting judges in the *Kelo* case, the Supreme

Court of Ohio gave property owners the protection that was denied to Susette Kelo in Connecticut.

This brief survey of the response to *Kelo* suggests that its shock waves are likely to reverberate for some time. Nevertheless, we are far enough beyond the *Kelo* ruling that we can review the main issues with the knowledge that the most speculative and feared consequences of *Kelo*—free-for-all takings for economic development—have not yet occurred.

A History of Eminent Domain

The U.S. Supreme Court has long recognized in the federal government the power to acquire private property for public use. This is true even though the term "eminent domain" does not appear in the Constitution or the amendments. The power is limited, however, by two restrictions. First, as with any federal action, the use of eminent domain must be "necessary and proper" in accordance with the congressional powers enumerated in Article 1, Section 8, of the Constitution. Second, the use of eminent domain must obey the final clause of the Fifth Amendment, which states, "Nor shall private property be taken for public use, without just compensation."

The Fifth Amendment did not apply to state governments prior to the 14th Amendment. By the late 19th century, however, the due process clause of the 14th Amendment came to be regarded as requiring the states' use of eminent domain to be consistent with federal interpretations of public use and just compensation. A state is free to establish a more-restrictive concept of public use than the U.S. Supreme Court finds in the Fifth Amendment, just as a state could require "more than" just compensation for a taking, but not a less-restrictive concept. Although state governments have the legal ability to establish, to some degree, their own laws regarding eminent domain, local governments like that of the city of New London have only those powers granted to them by state constitutions and statutes.

Although Susette Kelo's house was in a distressed city, neither her house nor any of the other properties was in poor condition. Rather, the city acted under the authority of a Connecticut statute that (more or less) explicitly declared that the taking of land for purposes of economic development was a taking for public use. The city's economic development plan designated the parcels for office space, parking and retail services. This scenario highlights the central issues of the *Kelo* case: What is a "public use," and does the answer to this question given by a state legislature matter?

Public Use, Public Purpose and Judicial Deference

In its majority opinion, the U.S. Supreme Court stated in *Kelo* that the government can never take property from one private party for the sole purpose of giving it to another, even if just compensation is paid. On the other hand, the government can always do so if the general public acquires some actual use of the property. The court

has been defining the ground between these extremes since the late 19th century. From the start, "it embraced the broader and more natural interpretation of public use as 'public purpose,'" the court said in *Kelo*. More precisely, the court began to argue in the late 1800s that if property is taken to create a widespread benefit, then it is "put to" a public use and satisfies this requirement.

At the same time, the court developed the language and rationales for deferring to legislative declarations about public use and purpose. The majority wrote in *Kelo*, "For more than a century, our public use jurisprudence has wisely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power." In particular, if a state declares that the removal of blight serves a public purpose or land redistribution does the same, then the court would not subject those claims to close scrutiny.

Thus, following this line of thought, the court essentially declared that it would defer to legislative declarations about public use unless, in a particular application, they were transparently covering up a purely private transfer of property. The court decided this was not the case in *Kelo*.

The Economics of Kelo

Economist Patricia Munch provides an analysis of the economics of eminent domain. In her model, a land developer needs to assemble contiguous parcels of property. All parcels have identical characteristics, and there is nothing special about any particular location. The lowest price a property owner will accept (his "reservation price") for his property differs across property owners. Munch assumes that each developer offers all owners the same price for their properties and that this price is the (expected) maximum reservation price of all property owners. Munch then argues that the full additional cost of adding a parcel to a development is likely to be larger than just the cost of that parcel. The reason is that, if the developer only needs a few parcels, then he can easily find a cluster in which the maximum reservation price is low. Since the developer (by assumption) pays the maximum reservation price to each owner, it follows that the cost of each parcel is relatively low. The larger the number of parcels the developer needs to assemble, however, the more difficult it is to find a cluster with a low maximum reservation price. The general result is that, as long as the developer can do a little searching, the per-parcel cost will be strictly increasing with the number of parcels.

It is not hard to see that the result is likely to be inefficiently little land assembly. As in the standard single buyer story (what economists term a monopsony), assembling more parcels requires the developer to offer each homeowner the same (high) price. Assembly stops when the cost to the developer of adding a parcel equals the benefit to him from adding it. In other words,

assembly stops when there is no additional profit from adding parcels. The problem, however, is that if the developer could offer different sellers different amounts of money (i.e., he could price discriminate), he would probably offer them prices at which they willingly sell and at which he makes a larger profit. One could argue that the sellers and the buyer should figure this out, but it is expensive for the developer to deal individually with homeowners, and homeowners are reluctant to sell at prices below recent offers. As long as all parcels must sell for the same price, there are likely to be willing sellers whose homes are not purchased.

Now suppose the developer has the power of eminent domain. This makes the reservation prices irrelevant: Every homeowner is paid the market price for his home. Now, land assembly stops when the market price equals the benefit to the developer from adding the parcel. The problem in this case is that the market price is below the reservation price for some of these sellers. In other words, they are unwilling sellers. The result is too much land assembly under eminent domain.

Munch notes that the assumption that the developer is a single buyer is central to the analysis. If there is competition among developers, then some will develop better techniques for determining seller reservation prices. If communities choose these developers, then more-efficient land assembly will result.

Munch also briefly discusses the "holdout" problem. She notes that there is inefficiency when the owner of a parcel that has some unique value (perhaps as a location) tries to benefit financially from its uniqueness. The only genuine holdout problem she considers occurs if some sellers believe that other sellers did not capture all the rents that were possible to them in their transactions with the developer. Misinformation and speculation along these lines could, once again, prevent willing buyers and willing sellers from reaching a transaction.

The Public Good vs. Public Goods

Although the work by Munch suggests eminent domain can improve upon market outcomes under certain conditions, her analysis fails to address several economic issues involving eminent domain that have broader implications for economic development and growth. Specifically, any economic analysis of eminent domain as it relates to the Kelo decision must recognize the tradeoffs inherent in giving local governments this kind of power over local economic development. Those who approve of eminent domain as it was used in Kelo fail to recognize the difference between what economists call "private goods" and "public goods." They also fail to see the inefficiencies often generated from government intervention in private markets.

An understanding of the differences between a public good and a private good and the ineffectiveness of governments in providing a private good reveals an incorrect premise behind the Kelo decision. Private goods are both "rival in consumption" and excludable. Rival in

consumption means that one person's consumption of a private good denies others the opportunity to enjoy the good. The price of a private good is essentially a result of the good's scarcity—as additional resources are employed to produce more of the good, the opportunity cost and, thus, the marginal costs, of producing the private good rises. This increasing opportunity cost increases the price and, as a result, some individuals will be excluded from consuming the good because they are not willing to pay the higher price.

Unlike a private good, a public good is both non-rival in consumption and non-excludable. The textbook example of a pure public good is national defense; other examples of similar goods include parks and highways. One person's consumption of a public good does not deny others from consuming the good, and people can use the public good without paying for it. As a result, the marginal cost of an additional user of a public good is zero, and this suggests a market price of zero. Economists justify public (government) provision of public goods because too little of the good would be available (given a market price of zero) if production of the good was left to the private market.

Government provision of public goods and, thus, the taking of private property to provide these goods, can be justified under the narrow definition of public use, i.e., used by the community as a whole. However, the taking of private property from one person and giving it to another for economic development, even if one considers the holdout problem and payment of just compensation, is unlikely to create a net benefit to society. It is more likely to create economic inefficiencies and to reduce economic growth.

Historical anecdotal information and formal academic research show that, in general, countries with less government involvement in private markets experience greater levels of economic growth. The only possible exceptions in recent times are the Asian Tigers (e.g., South Korea, Taiwan and now China), but even there, markets are used extensively, and the strategies used by those governments have been difficult to replicate elsewhere. When governments interfere in the private market, whether it be a market for apples, cars or property, the likely result is greater economic inefficiency and less economic growth. The reason is that even the most well-intentioned policymaker cannot comprehend or replicate the complex interactions of buyers and sellers that occur in free markets.

Of course, there will be certain groups that do benefit from the taking of private property, such as developers, property managers and local politicians. Developers and property managers will gain income from developing the property. Many local politicians favor targeted economic development because of what they see as the immediate benefits from development, such as increased employment and tax revenue. These economic benefits also translate into political benefits for those politicians who pledge to improve local economic development. Not realized, however, is that the supposed immediate and tangible benefits from taking

private property for economic development are outweighed by the greater economic costs of government intervention in private markets.

Local Governments and Economic Development

The use of eminent domain for economic development as established by Kelo complements already existing economic development tools such as TIFs (tax increment financing), tax breaks, local development grants, etc. Local governments use all of these options to target specific projects in their area because of a perception, whether real or imaginary, that the local area suffers from a lack of growth. **All of these economic development tools, however, are unlikely to lead to an overall increase in societal welfare because each tool simply involves a transfer of income from one group to another, often resulting in a zero-sum gain.**

A simple example can illustrate the point. Suppose a local government takes \$10,000 from Peter and gives it to Paul, who plans to open a business. Paul then uses the \$10,000 to open his business, which creates tax revenue and jobs. From a social welfare point of view, Peter loses \$10,000 and the savings or consumption benefits of his \$10,000, Paul gains \$10,000 to open a business, and jobs are created. By taking the \$10,000 from Peter and giving it to Paul, the local government is essentially saying that Paul can create greater societal wealth with Peter's \$10,000 than Peter can. The same would be true if local governments paid Peter for his house and then gave the property to Paul for development purposes.

Of course, it is impossible for local governments to know if greater wealth would have been created by allowing Peter to keep his \$10,000 rather than giving it to Paul. Economic theory tells us that in the absence of incomplete information or externalities, free markets will result in the most efficient allocation of resources and greater economic growth. By replicating the above scenario across thousands or millions of individuals, the likely result is that the costs and benefits will average out to be the same, thus creating a zero-sum gain. Thus, the same level of economic development would have likely occurred if Peter kept his original \$10,000.

There is reason to believe, however, that a zero-sum gain is not the worst case outcome. In the face of a policy decision like eminent domain, individuals and interest groups on both sides of the issue will expend resources (e.g., campaign contributions, the cost of one's time in campaigning for an issue, etc.) to ensure that the policy decision will favor their respective position. This rent-seeking by opposing groups results in a net economic loss because both groups will expend resources to ensure a particular outcome, but only one outcome will occur. In the above example, even if the transfer of \$10,000 from Peter to Paul created a zero-sum gain, the resources Peter and Paul expended to influence the policy outcome will result in a total economic loss for society rather than a zero-sum gain. Most likely,

the policy outcome will be that desired by the interest group that has expended the greatest resources. As Justice Sandra Day O'Connor states in her dissent to Kelo, "The beneficiaries (of eminent domain) are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms."

What can governments do to promote economic development that yields positive economic growth? Rather than use eminent domain or other tools to target individual economic development projects, local governments should ask the fundamental question as to why the desired level of economic growth is not occurring in the local area without significant economic development incentives. For example, are taxes too high, thus creating a disincentive for business to locate to the local area? Do current regulations stifle business creation and expansion? All of the targeted economic development in the world will not compensate for a poor

business environment. From a regional perspective, local governments should focus on creating a business environment conducive to risk-taking, entry and expansion rather than attempting targeted economic development through eminent domain or other means.

Indeed, there is some risk for local communities that use eminent domain for economic development. One requirement for a well-functioning private market is secure property rights. Research has shown that without property rights, individuals will no longer face the incentive to make the best economic use of their property, be it a business or home, and economic growth will be limited. The Kelo decision essentially says that individuals can lose their property if the local government believes it needs the property to generate greater economic benefits. Potential residents and businesses may avoid communities that have a record of taking private property for economic development because of a greater uncertainty about losing their property to eminent domain.

Conclusion

The Kelo decision by the U.S. Supreme Court was met by great opposition from the public and many local government officials. Numerous public opinion polls taken immediately following the ruling revealed that the vast majority of Americans disagreed with the court's ruling. Supporters of Kelo argue that using eminent domain for private development will spur economic growth. Although a lack of sufficient data currently prevents empirically testing the economic effects of eminent domain described in this article, economic theory certainly suggests that eminent domain used for private economic development will likely result in a zero-sum gain and may actually hinder economic development in the local areas, as well as the region, rather than help.

About the Authors: Thomas A. Garrett is a research officer and economist at the Federal Reserve Bank of St. Louis. Paul Rothstein is an associate professor of economics and associate director of the Weidenbaum Center on the Economy, Government, and Public Policy at Washington University in St. Louis.

What is Private Property?

Part 2

By Michael Shaw

Private Property and Individual Liberty

The institution of private property makes possible three things essential to our liberty:

- It encourages productive activity, enabling us to turn our ideas into actions to realize the benefits of those actions.
 - It allows us to engage in voluntary trade with others, multiplying the benefits of individual action a thousand-fold.
 - It enables us to safeguard and develop our resources responsibly and to secure peace and prosperity as a result.
- To appreciate the importance of private property in your own life, you need only to consider the significance of these two facts:

- Private property represents everything you obtain through productive effort or voluntary trade.
- Its essence is your right to determine its use.

The Character of Private Property Productive Effort

Freedom to think and the freedom to express require the freedom to act.

We usually think of private property as the things in which we enjoy exclusive rights of ownership and use: principally our homes and their furnishings and the lots our homes stand on. But private property has a deeper significance. It is synonymous with individual self-ownership. It begins with our persons—our ownership of our bodies. And it extends to our thoughts, expressions, and actions: the productive actions that reflect our prior thought. Because private property is so intimately connected to our very beings, it is essential to our self-interest and self-esteem.

Liberty Garden began with a thought. I thought about how to improve the landscape

to create value, both as an achievement of my own expression and as a means to procure mutually beneficial trade with others. I wanted to create a place where people would come to enjoy the beauty of a stewarded California landscape. I determined that to best express that thought I ought to create a human-occupied landscape within an unusually productive and diverse native-plant wild land. The actions I took at Liberty Garden brought that expression to life, made the thought a reality. Motivated by the idea of achievement and prospect for trade, my productive effort at Liberty Garden transformed my original private property—a littered weed lot—into a property that expressed my idea of what the land could be.

Suppose, though, that government blocks productive activity by complicating or outlawing human uses of private property and threatens physical force for non-compliance. The effect of this threat is to destroy individual liberty and an individual's pursuit of being who one is. Such harm blocks the path for personal achievement and the societal gains that come from production and trade. When you know that your productive action will result in personal harm, you usually choose not to carry out that action. When thoughts can no longer find expression in action, thought becomes suppressed.

For precisely this reason, innovation and improvement did not occur in the Soviet Union. For the same reason, the innovation and improvement necessary to reverse the degradation of the American landscape are not occurring.

Voluntary Trade

Spontaneous order results from voluntary trade, causing mutual benefit and leading to societal gains.

Private property is freely created and freely exchanged. In a society rooted in private property, all the people who contribute to the manufacture, distribution, sale, and purchase of an item are each seeking personal gain. To achieve their goal, they must obtain the voluntary consent of those with whom they deal; no one can be forced to carry out his part of the bargain.

For instance, when you go to the market with a dollar in your pocket and a desire for a quart of milk, the trade that follows benefits you because you value the milk more than the dollar; the market's owner values the dollar more than the milk. Those engaged in the supply of milk also each seek personal gain: farmers, feed lot operators, distributors, truckers, equipment manufacturers, the suppliers of the resources used to make the equipment, the processors of those resources, the land managers where the resources came from, and so on through the dizzying series of interactions that enables you to give your child a glass of nourishing milk. Each achieved personal gain by contributing to the production of a quality product at a reasonable price. This uncoordinated cooperation is repeated in industry after industry for the benefit of each of us. This spontaneous order, which no government bureaucracy could successfully orchestrate, makes possible the ease and affordability of obtaining all the products we enjoy. The decentralized knowledge that produces such achievement can be accomplished only in a society operating within the institutions of individual liberty and their corollary, private property.

Productive effort and voluntary trade are the characteristics of private property that promote peace (voluntary consent-based interaction) and rising prosperity through the competitive efforts that cause improvement.

Check out the March newsletter for Part 3!

LAND MEMBER APPLICATION FORM

Members are encouraged to participate in one of the following categories:

1. **INDIVIDUAL:** \$50.00 = Any individual supporter of private property rights.
2. **BUSINESS:** \$100.00 = Any business or corporation supporting the free enterprise system and the principle of private property ownership.
3. **ASSOCIATE:** \$20.00 = Non-Voting membership for sportsman or hunters wishing to receive our newsletter.
4. **CONTRACTOR:** \$250.00 = Any land improvement contractor or their suppliers working to improve the value of land. Any member in this category must be eligible to hold membership in the Land Improvement Contractors Association (LICA) and a portion of their dues shall automatically be sent to LICA.

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BECAUSE our total membership does not adequately reflect the vital and far reaching contribution landowners make to conservation, the environment, and wildlife production, LAND asks that each of its members please fill in the total acres farmed by LAND members. New members are published in the newsletter unless otherwise noted. Individual acreage numbers, member addresses, phone numbers, etc. are held in confidence.

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www.legis.nd.gov/information/general/contact

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History does not
teach fatalism.
There are moments
when the will
of a handful of
free men breaks
through determinism
and opens up
new roads.

~Charles de Gaulle

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Special Report
"The Taking of Prosperity"
Economic Development & Eminent Domain
Page 2

The LAND Board welcomes any suggestions or comments!

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#8

HOUSE BILL 1321
FEBRUARY 1, 2007
9:00 AM
HOUSE POLITICAL SUBDIVISIONS COMMITTEE

Testimony in opposition to the bill by
Carl Hokenstad
City Planner
City of Bismarck, ND on the city's behalf

House Bill 1321 would limit extraterritorial zoning and subdivision regulation authority for cities in North Dakota. Since passage of the original legislation in 1975, we have been able to use this provision to help manage orderly city growth. I believe the existing law has worked well over the years.

I have several concerns with this proposed bill:

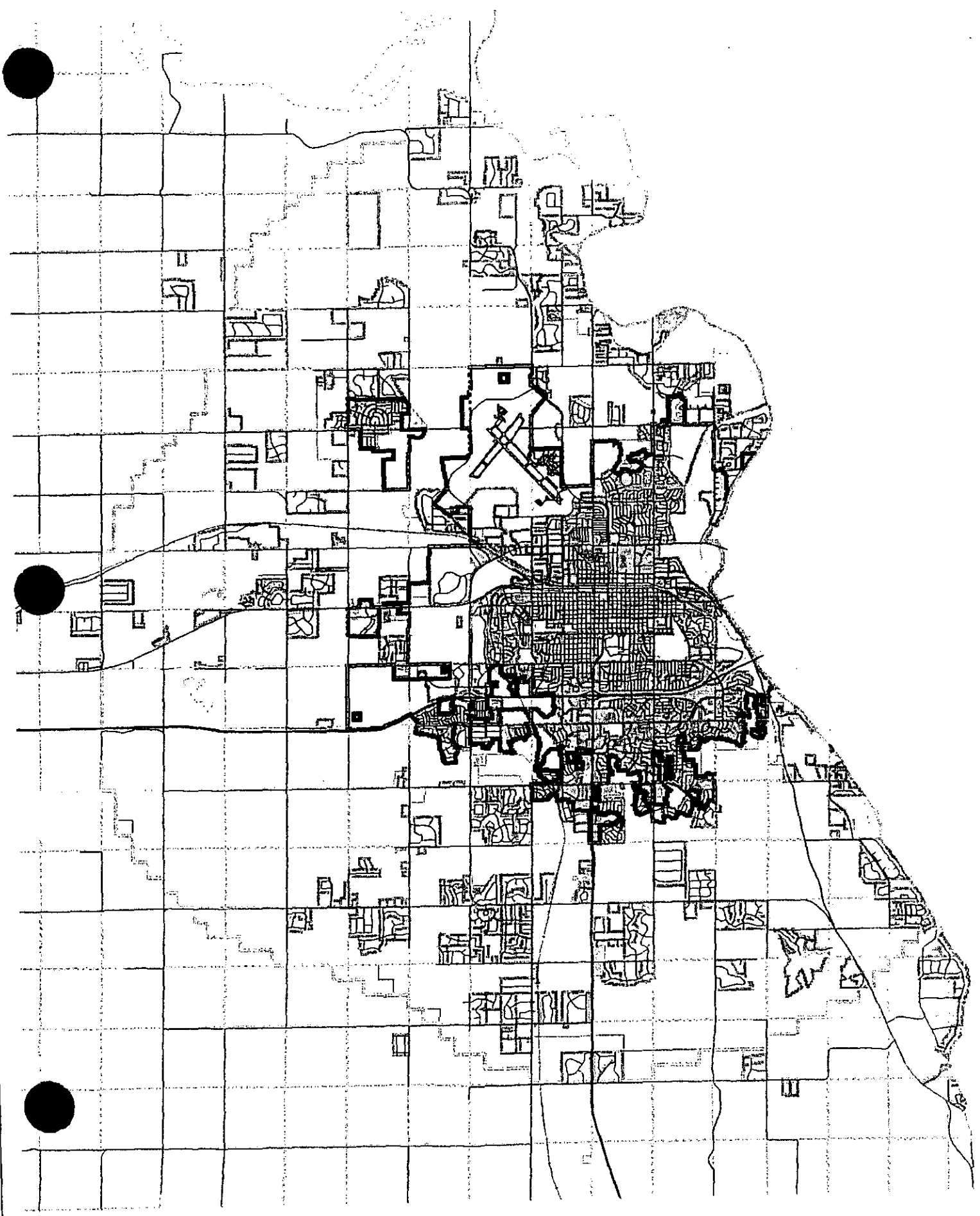
1. The intent of Section 1 of the bill appears to limit cities from thoughtfully administering zoning and subdivision authority in those areas that will eventually become part of a city's corporate limits and to prevent some sort of a "power grab" by a city commission or council. Many cities in North Dakota have never exercised extraterritorial zoning. I'm aware of only a few cities in North Dakota who have decided to implement the four-mile extraterritorial boundary. Bismarck studied the option of extending its zoning jurisdiction carefully. The legislation allowing cities of our size to extend our jurisdiction from two to four miles was passed in the 1997 Legislature. After completion of a growth management plan in 2003, Bismarck decided to enlarge its zoning jurisdiction to the four miles allowed by state law. After over a year of work, we completed the transition from county to city zoning. Because of requests from some of the residents during this process, we changed parts of our zoning and subdivision regulations to make them more compatible with county and township regulations.

2. Sections 2 and 3 of the bill relate to the appointment of members residing in the extraterritorial area to City Planning and Zoning Commissions. These sections would have little impact on Bismarck, since we have always included three members residing outside the corporate limits. These members are appointed by the Board of County Commissioners. Bismarck extended its extraterritorial jurisdiction from two miles to four

miles in 2004. Because of the enlarged area of jurisdiction, we decided to change our zoning ordinance in include more representation from those areas around the city. In addition to the three extraterritorial members, a county commissioner and township supervisors from those organized townships that are affected by the extended jurisdiction are members of the Planning Commission. The county commissioner is a permanent member. The township representatives participate and vote on items that are located in their particular township. Members from other jurisdictions on these commissions bring their particular perspective to zoning and planning decisions. I believe a more beneficial, comprehensive discussion on the issues takes place on decision making boards and commissions that include representatives from all areas of the community.

3. Section 4 of the proposed bill is particularly troubling. It states that "any extraterritorial zoning regulation in effect before the effective date of this Act which extends beyond the extraterritorial zoning authority provided by the Act is void". That would mean that all zoning that has taken place in $\frac{3}{4}$ of our jurisdiction, or over 80 square miles of land, would disappear. Bismarck originally implemented its extraterritorial jurisdiction in 1976 - 30 years ago. If the bill passed, does it mean that all the zoning changes in the extraterritorial area over the past 30 years would revert back to agricultural zoning? Or that all of the 350+ subdivisions approved in that same time period would become non-existent? Would the zoning somehow revert back to county or township zoning? What would happen if the county or township inheriting all these developments did not have comparable zoning or subdivision regulations? What would you tell a landowner who has relied on all of the rights allowed by a particular zoning designation that the rules have suddenly changed? Or that there are no rules protecting an owner's home or that govern the use of land next door to them? I don't know how all of the development approved over a long time period could simply be undone by passage of this bill.

Again, the existing extraterritorial zoning provision has worked effectively in the Bismarck area for many years. We have been prudent and thoughtful in using this important tool. On behalf of the City of Bismarck, I would ask that you give House Bill 1321 a **do not pass** recommendation.



#9

Testimony Presented on HB 1321 to the
House Political Subdivisions Committee
Gil Herbel, Chairman

by

Jim Gilmour, Planning Director
City of Fargo

February 1, 2007

Mr. Chairman and Members of the Committee:

I am here to speak on behalf of the Fargo City Commission in opposition to this bill that proposes a reduction to the extraterritorial zoning jurisdiction of cities.

The existing extraterritorial zoning jurisdiction has been very important to managing the growth of the City of Fargo. It allows the city to plan for the future, preserve corridors for future roadways, prevent inappropriate land uses, and require proposed subdivisions to be compatible with future urban growth.

The existing 4 miles of jurisdiction has been an appropriate distance for the City of Fargo. Ten years ago, Fargo had only two miles of jurisdiction, and now most of the land that was in the extraterritorial jurisdiction southwest of the city is already annexed into the city and much of it has been developed for housing and other urban land uses. The increase to 4 miles that was implemented ten years ago is still needed to properly plan for the future growth of the City of Fargo.

I encourage you to recommend a "Do Not Pass" for the bill.

#10

HB 1321

City of West Fargo Testimony

HB 1321 intends to reduce extraterritorial zoning authority of a city. The City of West Fargo would like to go on record as opposed to the bill for the following reasons:

- Extraterritorial planning and zoning authority for cities provides the means for West Fargo to plan for orderly growth for land uses and transportation systems.
- Through advanced planning within the extraterritorial areas, West Fargo has in the past avoided premature annexation of property. Without extraterritorial planning and zoning communities may need to consider annexation of bordering areas to prevent the development of incompatible uses and developments which would inhibit the proper design and location of streets.
- Premature annexation causes tax implications for property owners.
- The current statutes provides for multi-jurisdictional involvement on city planning and zoning commissions, because of the extraterritorial areas. This involvement is viewed as very positive for providing perspective to issues, particularly in the extraterritorial transition areas. The City of West Fargo values the involvement of our rural representatives.
- The current extraterritorial statutes were thought out well and have been in place for several years. West Fargo currently has an extraterritorial area of two miles which has helped to conduct proper planning in growth areas, and has helped to properly administrate floodplain regulations in flood prone areas.
- Current statutes better equip cities rather than counties and townships to address the development pressures adjacent to cities.
- The proposed legislation would undermine the progress that West Fargo has achieved over the years in properly planning for development.

The City of West Fargo urges the Legislature to **defeat HB 1321**.

#10

HB 1321

North Dakota Planning Association Testimony

HB 1321 intends to remove extraterritorial zoning authority of a city. The North Dakota Planning Association would like to go on record as opposed to the bill for the following reasons:

- Extraterritorial planning and zoning authority for cities provides the means for a community to plan for orderly growth for land uses and transportation systems.
- Through advanced planning within the extraterritorial areas, communities may avert premature annexation of property. Without extraterritorial planning and zoning communities may need to consider annexation of bordering areas to prevent the development of incompatible uses and developments which would inhibit the proper design and location of streets.
- Premature annexation causes tax implications for property owners.
- The current statutes provide for multi-jurisdictional involvement on city planning and zoning commissions, because of the extraterritorial areas. This involvement is viewed as very positive for providing perspective to issues, particularly in the extraterritorial transition areas.
- The current extraterritorial statutes were thought out well and have been in place for several years.
- Current statutes better equip cities rather than counties and townships to address the development pressures adjacent to cities.
- The proposed legislation would undermine the progress that cities have achieved over the years in properly planning for development.

Joel Quanbeck, President
ND Planning Association

TESTIMONY ON HOUSE BILL 1321

House Political Subdivisions Committee

Michael R. Brown, Mayor
City of Grand Forks, ND

February 1, 2007

Handed out
later.
2-2-07.
#11

Mr. Chairman and members of the Committee, my name is Michael R. Brown and I am the Mayor of the City of Grand Forks. I want to thank you for the opportunity to testify on House Bill 1321 and request your recommendation of a DO NOT PASS as it is currently proposed.

House Bill 1321 proposes to amend the existing extraterritorial zoning jurisdiction of cities. It is important to be clear that it is the overarching goal of any city government to provide for the needs of its residents and to manage the resources available to it both now and into the future. By reducing the jurisdiction from four miles to one, House Bill 1321 limits the city's ability to properly plan for and encourage growth and it negatively affects that ability of the entire regional area to remain strong and viable.

Extraterritorial zoning authority provides cities with the necessary tools that help ensure their communities can grow in an orderly and fiscally responsible manner. Through the adoption of proper zoning ordinances, cities such as Grand Forks are able to establish a sound growth management plan for the city and the surrounding extraterritorial zoning jurisdiction.

The growth management plan of the city of Grand Forks aims at ensuring this area remains strong and, moreover, has the opportunities and planning to grow stronger. To do that, the city must manage and direct growth and development, and build a sound fiscal foundation for the future. Having zoning authority over the four-mile area helps accomplish this goal.

In Grand Forks, we are also very proud to serve as a resource for residents from all around our region, providing services such as health-care, retail, employment and many other opportunities. This responsibility to properly plan and prepare for the future as a strong city and regional hub is one we take on very seriously. The city of Grand Forks must ensure that the Greater Grand Forks Area is a strong, viable economic entity offering a high level of quality of life that will encourage people to remain or relocate to the area. This population growth, of course, is a paramount goal of all North Dakota communities.

Key to the strength of the region is the strength of the regional hub. It must be strong in the employment opportunities, strong in the services provided, and strong because of continued expansion and population growth. Stagnation by the city has a ripple effect on all surrounding areas by stifling investment and failing to attract people and business that keep the region strong and competitive in the global marketplace. Cities provide services not only to their residents, but also to those who come from the surrounding areas to access health care and financial services and take advantage of shopping malls, entertainment venues and other quality of life opportunities.

Furthermore, one aspect of the growth management plan that is often missing from the conversation of extraterritorial zoning is the fact that proper zoning ordinances, to a great extent, help preserve and protect valuable farmland. Our agricultural zoning districts provide for the following:

- Preserve and protect agricultural land use and the activities that are associated with it.
- Direct non-farm development and urban-oriented growth into lands adjacent and/or contiguous to the city and to promote a compact development pattern.
- Preserve agricultural land and protect it from land use conflicts associated with non-farm development.
- Prevent non-farm rural development that will inhibit the city's ability to grow in an orderly manner in the future or that will cause future conflicts unforeseen to all parties involved with the non-farm rural development.

In 2006, the city of Grand Forks extended its zoning jurisdiction from a two-mile to a four-mile limit. A four-mile jurisdiction provides a continuity of regulations for the Growth Management Area. The four-mile limit enables the city to use the appropriate zoning tools that monitor growth and support preservation of agricultural uses in areas not adjacent to the city limits.

The four-mile limit incorporates the city's major transportation corridors into the proper review process and ensures that right-of-way preservation and land uses will complement

long—range transportation plans. As a specific example of how important this is, it provides non-farm developers with the knowledge of long-range transportation plans such that a property owner in this development is not faced with a future conflict of an expanded transportation corridor and, literally, a highway in their front yard.

In sum, the city of Grand Forks must ensure that the Greater Grand Forks Area is a strong, viable economic entity offering a high level of quality of life that will encourage people to remain or relocate to the area. This population growth, of course, is a paramount goal of all North Dakota communities. Key to the strength of the region is the strength of the regional hub. It must be strong in the employment opportunities, strong in the services provided, and strong because of continued expansion and population growth. This can only be accomplished with long-range planning and the tools to effect those plans.

The proposals of House Bill 1321, limit a cities ability to properly manage its current resources and provide appropriate long-range planning. It also seriously damages the ability to provide the services, infrastructure and quality of life that is critical to not only cities, but to the residents and communities in surrounding areas. It is for these reasons that I would ask for a DO NOT PASS recommendation of House Bill 1321.

Thank you for your consideration.

HB 1321 Testimony of Representative Dwight Wrangham
Mr. Chairman and Committee Members

This bill has nothing to do with whether there should be planning, zoning and permitting.

It has everything to do with how our citizens are governed. It is all about who will regulate our citizens. Communities should work together on planning, but one community should not trump the rights of the citizens of another community.

Under current extra territorial authority our citizens are being regulated by a governing body that does not answer to them at the polls. The regulated community has no vote in the election of those who are governing them. This is inherently wrong in our form of government.

HB 1321 as introduced would have moved the extraterritorial zoning authority of cities with a population of fewer than 25,000 back to 1/2 mile and 1 mile for cities of over 25,000 population.

The House Political Subdivisions Committee named a sub committee to explore a compromise on the issue. The bill before you today is the product of that sub committee.

As I understand the intent of the subcommittee, this bill would move the extraterritorial zoning authority back to 1/2 mile for cities under 5,000, 1 mile for cities between 5 and 10,000 and 2 miles for cities over 10,000 in population.

Section 4 of the bill calls for a legislative study. Section 5 of the bill states "any extraterritorial zoning regulation in effect before the effective date of this act which extends beyond the extraterritorial zoning authority provided by this act is not affected by reduction in the extraterritorial zoning limits in section 1 of this act."

As I understand the committee's intent, section 5 was meant to put a freeze on extraterritorial zoning regulations in areas outside the limits imposed by this bill. In other words the zoning done by a large city in the 2 to 4 mile portion would stay in effect but no new extra territorial zoning would take place in that area.

Section 6 renders sections 1 through 3 of this act ineffective after July 31 2009. My understanding is that means after July 2009 we would revert back to the law as it is in place today. My preference would be that the expiration date refer to 40-47-01, 40-47-06 and 40-48-03 instead of sections 1 through 3 of this act. That would assure that this section was re-enacted in the 61 legislative session. This would help keep all parties "feet to the fire" and assure serious work toward an acceptable reform of this section during the interim.

Committee members any improvements you make to the bill will be appreciated. However, I feel whatever happens an interim study is critical to a long term solution.

Triplett, Constance T.

att. #2

From: Bateman [4b8man@invisimax.com]
Sent: Wednesday, March 14, 2007 7:33 PM
To: Heitkamp, Joel C.
cc: P & D Miller; Triplett, Constance T.
Subject: Fw: HB 1321 (as amended) position paper

Senator Heitkamp,

Commissioner Perry Miller is a good friend and will vouch for my sincerity, and your co-sponsor Commissioner Triplett can attest to my residency adjacent to Grand Forks as well as my township's absorption into GF's 4 mile ET.

Below are talking points endorsing HB 1321. It has been amended to permit 2 mile ETs but is not retroactive. It also has provisions for an interim study of the problem.

- 4 key issues are at stake:
1. loss of private property rights (GF zoning forbids more than 4 homes/160 acres, along with other restrictions on rural landowners)
 2. loss of rural water service area (zoning restrictions block further rural developments)
 3. loss of rural school district growth potential (see 1 and 2)
 4. rural folks can't vote for the final zoning decision-makers ruling them (city council)

The North Dakota Legislative Assembly is the only body that can bring order back to the country, the only body that can alter city actions. Future planning is critical for our state's growth; it should be managed intelligently and with respect for the rights of all citizens, urban and rural.

We have had a family trip planned for many months which prevents me from speaking at the subcommittee hearing Thursday morning.

Thanks for your consideration of this communication.

Beau Bateman, Farmer
 Brenna Township Supervisor 701-775-8455h 701-741-1595c

House bill 1321

March 14, 2007

To: Members of the 60th Legislative Assembly

Re: HB 1321 (as amended) Reducing Extraterritorial Zoning Authority

Currently, cities over 25,000 in population are granted 4 mile ET authority (passed in late 1990's after several runs). Qualified and using 4 miles are Fargo, Bismarck, and Grand Forks. Minot qualifies but chooses to use 2 miles.

Problem: Growth in most areas around these cities will not fill a 4 mile ET zone for over 100 years, given present population trends and land usage. Rural Dakotan's private property rights are suspended until the city reaches their area.

3/15/2007

Solution: Use reasonable planning goals (20-30 years) combined with predictable population growth to determine how much land to take.

Problem: Regulation without representation. Rural folks cannot vote for the people passing laws on their homes and land.

Solution: County representatives (elected by all citizens) work with city representatives to reach mutually beneficial zoning solutions.

Problem: Permanent structures potentially located in future right-of-way.

Solution: City planners working with County planners through "ghost platting" using GPS to precisely site buildings on rural lots and not jeopardize future city plans.

Problem: Rural water district investment in infrastructure (anticipating rural growth) is lost when cities restrict rural growth (ie Grand Forks only permits 4 homes on 160 acres).

Solution: Ghost platting with GPS to place structures in development-friendly locations, so rural residents can join the city system in the future if they choose.

Problem: No new homes in rural school districts after 4 homes/160 acres are met (per Grand Forks zoning laws in 4 mile ET) restricts funding potential for the Thompson School District.

Solution: Permit homes to be built (and taxed) using ghost platting to place them around anticipated rights-of-way.

Problem: Retroactive chaos from a reduction to a 2 mile ET.

Solution: Minot uses 2 miles; Grand Forks only now approving their 4 mile zoning codes; Bismarck and portions of Burleigh County share the same planning staff; Fargo's northern ET is currently 1 mile and the southern ET is 3.5 miles. Transitioning from more restrictive to less restrictive should be as manageable as the original switch.

The legislature provided a well-intentioned tool that has been used bluntly on the rural citizens of North Dakota. It is appropriate for that same body to sharpen the tool, reinstate the rights of its citizens, and provide the opportunity for townships and cities to work with cities on a level playing field to develop appropriate zoning codes.

This bill has the support of the North Dakota Township Officer's Association, the Landowners' Association of North Dakota and the North Dakota Farm Bureau.

HB 1321 Summary

Senator David P. O'Connell

A bill relating to extraterritorial zoning jurisdiction of cities.

A city may extend the application of a city's zoning regulations to any quarter section of unincorporated territory if a majority of the section is located within:

- One half mile if the city has a population less than 5,000
- One mile if the city's population is 5,000 or more but less than 10,000
- Two miles if the city has a population of 10,000 or more
- If the city exercises extraterritorial zoning authority, the zoning commission must include at least two individuals residing outside the corporate limits of the city if the city has a population fewer than 25,000
- If three individuals residing outside the corporate limits of the city if the city has a population of 25,000 or more.

- If the city exercises extraterritorial zoning authority, the planning commission must include two individuals residing outside the corporate limits of the city if the population is fewer than 25,000.
- If the city exercises extraterritorial zoning authority, the planning commission must include three individuals residing outside the corporate limits of the city if the city has a population of 25,000 or more.

Bill removes line items 19-23, pg. 2 in relation to the length of term each member of the commission may serve.

Comments Supporting House Bill No. 1321

Richard Hammond - 701-223-5126
Bismarck, ND

My name is Richard Hammond and I support this bill as being a step in the right direction to return control of the planning and zoning decisions to more of the citizens who are effected by these decisions. Although this bill does not go far enough and entirely remove all extraterritorial authority from the cities, it is a step in the right direction. I live within the present extraterritorial zoning area around the City of Bismarck. We previously lived in a democracy. Now, I am not allowed to vote for those who make planning and zoning decisions for any of the property in my neighborhood.

There is no justification for the existence of extraterritorial zoning authority in this state. The original zoning statutes in this country allowing a municipal corporation to enforce city ordinances beyond its boundary were passed to allow some degree of law and order where there was no organized political subdivision in charge of those territories. That has never been the case here. We have a viable, working county government. These laws were never intended to allow one group of citizens to control another group of citizens against their will, and without any elected representation at all.

One must review how this extraterritorial zoning control came about and how this authority has been used over the past 30 years. It took three legislative sessions of intensive lobbying by the city's paid lobbyists before the first legislation was passed authorizing the cities to expand their zoning authority beyond their corporate limits. There was strong objection to the idea of extraterritorial zoning from the rural residents who were to be effected by it. Over the years the city's full time lobbying paid off and the municipal corporations got their way. The situation went down hill from there.

One of the requirements that the cities had to meet before formally taking over these areas was to hold "public hearings" to educate the residents as to what they were doing and why. I attended some of those meetings. The legislation was permissive, not mandatory. That means that the cities could take over the zoning authority, but they did not have to do so. At these meetings the Bismarck planners told the citizens that they were only doing what the legislature mandated and it somehow was not the city's fault. This degree of dishonesty is unacceptable. At the Apple Creek Township meeting, there was an angry group of citizens who simply shouted the city representatives out of the school house without even letting them finish their presentation. The situation has never improved over the next 30 plus years.

In the 70's the city used its zoning authority to delay and cripple the rural water cooperative in its early stages of organization. The city has always used its power in a negative manner to discourage rural development. The city should be making a positive effort to make the city more attractive and desirable so that citizens will voluntarily choose to live in the city rather than throwing as many roadblocks as possible in front of those who want to move into the rural area.

When zoning proposals are presented, one of the requirements is to determine if the proposal is in accordance with the city's "comprehensive plan". After over 30 years of

having this authority, the city does not have a comprehensive plan. When asked, the planning office responded that their "plan" was simply a collection of policies. The city of Bismarck has always made decisions, frequently behind closed doors, and then used the planning office to justify, or legitimize those decisions.

After the first few years, rural citizens became aware of how they were to be treated by a city government over which they had no control. Some residents chose the only legal remedy left to them which was to incorporate into a separate city to protect themselves from the tyranny of the larger city. Unfortunately, the legislature, under pressure from the larger cities in the state, simply stopped any new cities from incorporating. At that time, the legislature should have analyzed the situation to determine why these new incorporations were happening.

There is no reason to allow any extraterritorial zoning around any of the major cities in the state. For example, here in Bismarck, there is a working county government headed by the Burleigh County Commission. Commissioners are elected both from the city and the surrounding rural area. I am allowed to vote for members of the Burleigh County Commission. They represent all citizens in both the county and the city. There is a joint City - County planning office which serves as the planning advisors for both the City of Bismarck and the County of Burleigh. The city commission should vote on zoning matters within the city's corporate limits and the County Commission should vote on zoning matters outside the city limits. The citizens of the city are represented on the County commission. The citizens of the county are not represented on the city commission.

Several legislative sessions ago, the municipal corporations in the state pushed the legislature to extend the extraterritorial zoning authority from two miles beyond their city limits to four miles beyond their city limits. I attended a County Commission meeting where one of the county commissioners asked a representative of the planning office if the City of Bismarck was going to take a position on the bill. The representative from the planning office told the County Commissioners that the City of Bismarck was "neutral" on the matter. The very next day, here at a hearing on that bill, the same planning office representative testified that the City of Bismarck was in favor of that bill. I attended both meetings. This is the level of dishonesty and disrespect that rural residents have been subject to at the hands of the cities for the past 30 years. These city planners are simply paid lobbyists for the cities. They have somehow been able to present themselves to the legislature as some kind of a subject matter expert when in reality they are simply another special interest lobbyist.

House Bill 1321 addresses the number of token rural representatives on these advisory-planning boards. An advisory board has no power. When push comes to shove the city commission will, and has, ignored this advisory board. Having representatives on an advisory board is not a substitute for the right to vote.

In the 1970's, there was a court challenge by Apple Creek Township to Bismarck's extraterritorial zoning authority. In that case, extraterritorial zoning authority of the cities was upheld. The reasoning of the court was that; 1. The State had the right to control zoning. 2. The state had the right to delegate that zoning right to the cities. This was a legal stretch. What would the State do if we had a court decision saying that the

Federal Government had the right to control zoning, and that the Federal government had decided to delegate zoning to the various states based on population, thus giving the larger state of Minnesota the right to control zoning 5 miles into North Dakota. Everyone here would have a problem with that scenario. Why is it so difficult to see what is wrong with the present situation?

The bottom line is that a Democracy is not a democracy when citizens cannot vote for the representatives who control their local affairs. My greatest frustration is with the legislature for the failure to recognize this fundamental problem for 30 years. Voters provide feedback to their elected officials. When there is no feedback provided to elected officials, those elected officials are not responsive to, nor accountable to, the citizens. This lack of accountability has been our experience. This is how extraterritorial zoning has worked, or rather not worked, for the last 30 years. This authority is universally resented in the rural areas that are subject to the control. If there is anyone in the state who should understand what is wrong here, it would be those here serving in the legislature. Most citizens understand the right to vote and the one person, one vote standard. Just as important as is the will of the majority, are the rights of the minority. In the past, the legislature has understood the will of the majority, but has not understood the obligation to protect the rights of the minority from the tyranny of the majority.

There is a connection between power and authority, and duties and responsibilities. Along with the power to zone comes the duty to exercise that power in a responsible manner and respect the rights of all citizens of the state whether they are represented or not. The cities have accepted the power to zone and have rejected the responsibilities connected to that grant of power. The legislature gave the cities this enormous degree of power with the assumption that the cities would use this power reasonably, with restraint, and with due respect to the rights of the rural residents effected. This has not happened.

As legislators, any time you grant any kind of power and authority to the various boards, commissions, and political subdivisions, you have a responsibility to go back, to check, and to monitor how that power and authority is being used. When there is a finding that any grant of power and authority is being misused, it is the responsibility of the legislature to specify necessary changes to stop that abuse. It is encouraging to see that the house has finally become aware of the problems associated with this grant of authority. I look forward to testifying further on this matter before the interim committee.

At the House committee hearing, there were some questions as to whether some of the individual problems raised by citizens were isolated problems due to individual employees, or agents not properly applying the regulations, or are these problems part of a deeper fundamental flaw in the policy of giving cities this authority. The issues we have seen over the years are not limited to one or two unique situations, or to only one municipal corporation within the State. This was, and is, a fundamentally flawed plan.

When you consider testimony on this matter, It is important to give credence to the citizens who are testifying. Especially the citizens who have traveled, on their own time, and at their own expense, from the far edges of the state to be here. At least 4 of the Burleigh County Commissioners testified in favor of this bill at the House hearing. This is not a problem with just one city in the state. Also, when you receive testimony from

the city planners, it is important that you keep in mind that these planners are not simply unbiased professional experts giving their advice. These planners are lobbyists for the cities. They are being paid to be here. The underlying mistake that the legislature has made over the years was to consider these city planners as some kind of subject matter experts rather than the paid lobbyists that they actually are.

I request that this bill be given a "do pass" recommendation.

In support of HB1321

Good morning Chairman Cook and members of the Political Subdivisions Committee.

I am Larry Syverson a farmer from Mayville; I am the Chairman of Roseville Township of Traill County. I am also a District Director of the North Dakota Township Officers Association. NDTOA represents the six thousand township officers that serve our eleven hundred forty one dues paying member townships.

At our 2005 annual convention the members passed a resolution calling for the roll back of the extra territorial zoning authority that had been given to the cities.

The township residents that live within the ET of a city have no electoral power over those that regulate the property use of their homesteads, in many cases these properties have been in the family for decades or generations and now some board in a nearby town will tell them that they can not put up a garage on their property or add on to the old farm home.

It would be one thing to be in an area that a city is actually growing into, but ET zoning has been used by "cities" that are not growing and very few of them grow in 360 degrees.

The areas around cities are almost without exception under township or county zoning which is administered by a board elected by the population regulated, not by a town that might be four miles away.

If the cities of Minnesota, some with populations greater than all of North Dakota, can exist and prepare for orderly growth within a maximum ET of 2 miles; why does a North Dakota city need four miles?

Chairman Cook and Committee Members, that concludes my prepared statement.

I ask you to give HB1321 a do pass recommendation; I will try to answer your questions.

Brian Bitner
Att #6

HB 1321

Chairman Cook and members of the committee,

My name is Brian Bitner. I am representing myself and I am asking for your help.

The current four-mile Extraterritorial Jurisdiction of the City of Bismarck is causing problems in Apple Creek Township.

My concerns with the Extraterritorial Jurisdiction started due to a dusty gravel road.

My home on 10 acres was outside of the jurisdiction of the City when I purchased it twenty years ago. My property borders 80th St. SE which is a gravel township road. My neighbors and I have been trying for years to get something done about the constant dust from this gravel road as continuing development around our area has steadily increased traffic and the resulting dust from this road.

I took my concerns about the road to the City Commission where I was told that I could go ahead and pave the road myself, which I can't afford. Next I went to the Apple Creek Township board where I was informed that the Township would love to pave the road but that we cannot afford it. Why? We can't afford it because the township no longer receives revenue from such things as building permit fees which were used to maintain roads but now go to the City, and the township is basically broke. Township written building permits in 2006 were a whopping \$793, while building permit fees of \$71,256.81 with a new construction value of \$13,193,385.00 went to the City. This is substantial compared to the approximately \$30,000 annual budget of the township.

In the four-mile ETA for 2006 total building permit fees totaled \$258,535.70 with a new construction valuation of \$50,376,012.00.

Then I decided to add-on to my garage or put up a building so I had to go to the City instead of the Township for a building permit. I was **STUNNED** to find out that I cannot apply for a building permit without going through some City re-zoning process to include a new survey, sub-division platting, storm water management plan, etc. See Attached-

The city planning staff then informed me that if my home were to burn down, like my neighbors garage did a few weeks ago, I would not be allowed to re-build because I can't get a building permit. I am licensed as a ND Class A contractor and am on good terms with the local engineering firm of Swenson and Hagen so I asked them how to do this city sub-division process and was told that the process will cost between **SIX** and **TEN THOUSAND DOLLARS** and will take about six months.

Then I was informed that as part of this new sub-division plat the County Engineer wants additional property from me for a wider road easement despite Article 1, Section 16 of the State Constitution which states, in part, "Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner..." which has not been done by the City in this instance.

All of this in order to apply for a building permit to protect my property and vehicles from summer storms and this un-remitting gravel road dust.

Article 1 Section 1 of the State Constitution specifically guarantees the rights of a citizen to acquire, possess, and protect property, among other rights.

I don't live inside the city limits yet am faced with a huge financial burden because of the Extraterritorial Jurisdiction and I am not allowed to run for the office of City Commissioner or Mayor or even vote in the City. I know that increasing my property value will increase my property tax and I am okay with that, but jumping through City hoops while spending big money to do so is an abuse of my rights as a property owner outside of the corporate city limits. I am asking for your help to correct this situation now, not in the two years it will take for this issue to be before you again, after the proposed interim study by the Legislative Council.

Apple Creek Township has a building inspector and zoning regulations in place which should apply to my property in the Township.

The City could easily accommodate private property owners without treating all property as a new subdivision development by altering current policies so that a rural property owner is not faced with a huge financial burden for compliance with City policies. Property such as mine should, at the least, be grandfathered into the law similar to the grandfathering of the four mile jurisdiction allowed in engrossed HB 1321.

CO0012 REAL ESTATE MASTER FILE INQUIRY

Property Number 39 138 79 00 04 615
 Twnshp/City Name APPLE CREEK
 Subdivision Name APPLE CREEK TOWNSHIP
 Original Property Number

LEGAL DESCRIPTION LINES

1. PT SW1/4 BEG 386'N & 33' E OF SW 2. COR TH N 544',E504.5',S377',SW6DEG
 3. 168',W486' 4. #385437

Property Address 751 SE 80TH ST Additional Desc

Owners Name BITNER, BRIAN D & LORI K

Owners Add-Line 1

Owners Add-Line 2 751 80TH ST SE

Owners Add-Line 3 BISMARCK ND

58504-3816

Taxing District-> School 39

Fire BI

Ambulance

Credit Allowance-> Code % of Int. 00

Number of Acres 62597

Assessed Land Values-> Farm

Comm

Resid 10000

Assessed Bldg Values->

Comm

Resid 42400

Spec. Assesmnts-> Install

Prin

Bal

Leiu of Tax

Tax Code

Property Type

Tax Rate

Lot-> Front Feet

Square Feet

Purchase Price

Document Date

/ /

Confidential Sale

Multiple Prop Sale

Deed Type

ENTER=First Screen

F12=Previous Screen

F16=Permit Info

CO0012

REAL ESTATE MASTER FILE INQUIRY

Property Number 39 138 79 00 04 613

Twnshp/City Name APPLE CREEK

Subdivision Name APPLE CREEK TOWNSHIP

Original Property Number

LEGAL DESCRIPTION LINES

1. PT SW1/4 BEG 386'N & 33'E OF SW COR 2. TH E486',S346',W486',N346'.

3. 4. #389850

Property Address

Additional Desc

Owners Name BITNER, BRIAN D & LORI K

Owners Add-Line 1

Owners Add-Line 2 751 80TH ST SE

Owners Add-Line 3 BISMARCK ND

58504-3816

Taxing District-> School 39

Fire BI

Ambulance

Credit Allowance-> Code % of Int. 00

Number of Acres

38600

Assessed Land Values-> Farm

Comm

5600

Resid

Assessed Bldg Values->

Comm

Resid

Spec. Assesmnts-> Install

Prin

Bal

Leiu of Tax

Tax Code

Property Type

Tax Rate

Lot-> Front Feet

Square Feet

Purchase Price

Document Date

/ /

Confidential Sale

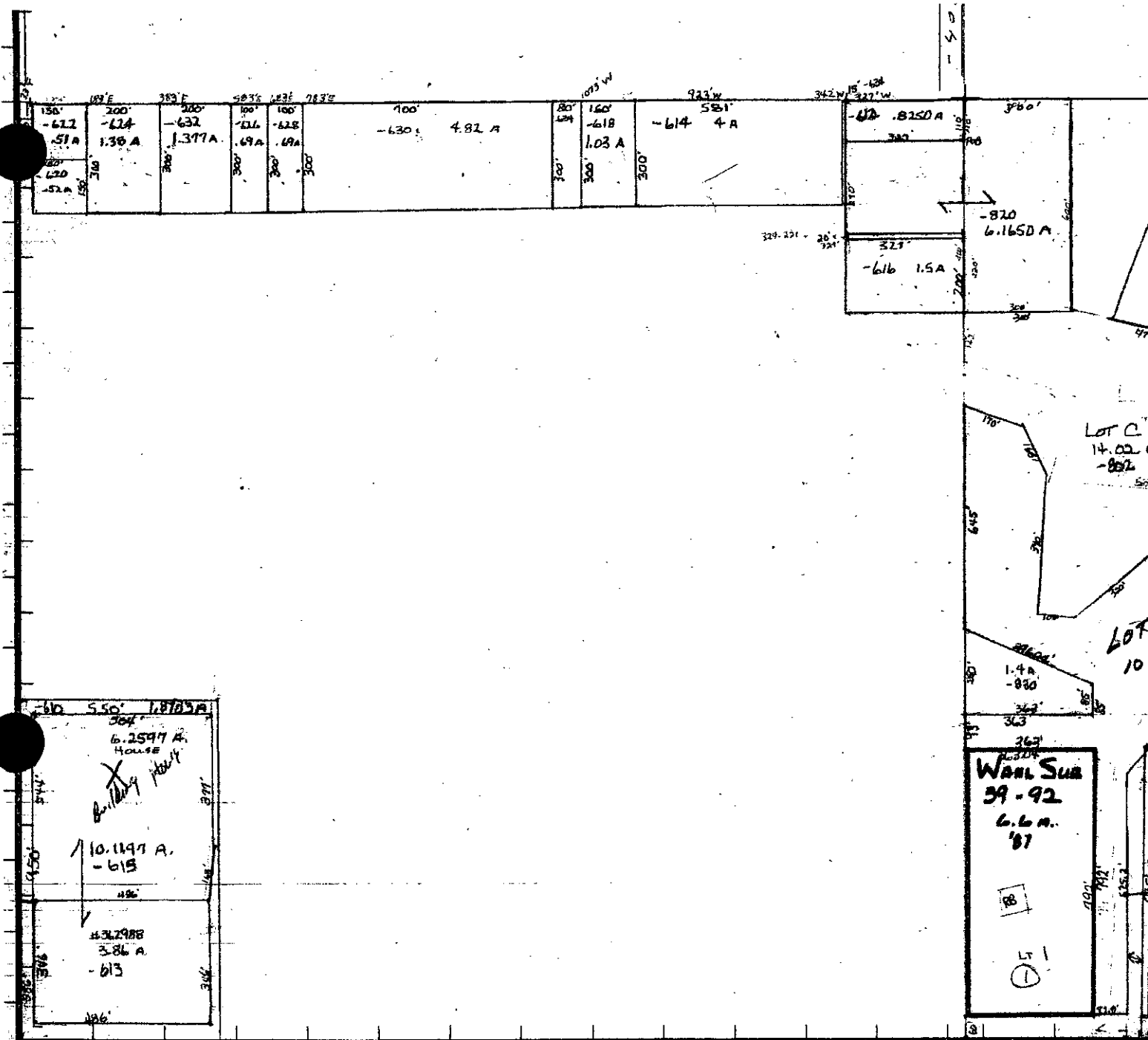
Multiple Prop Sale

Deed Type

ENTER=First Screen

F12=Previous Screen

F16=Permit Info



Section Scale 1" = 400' - Quarter Scale 1" = 200'

OWNERSHIP PLAT

Ownership

Description

**Testimony on HB 1321 to the
Senate Political Subdivisions Committee
Senator Dwight Cook, Chairman**

**By Jim Gilmour
Planning Director, City of Fargo**

March 15, 2007

The City of Fargo is opposed to provisions that reduce the extraterritorial zoning jurisdiction of cities.

1. The extraterritorial boundary limit currently afforded by the Century Code is one of the most important growth management tools available to Fargo. The extraterritorial boundary for cities allows opportunity for meaningful long-term planning. Reducing the extraterritorial boundary would have a crippling effect on Fargo's ability to establish sound long-term land use planning.
2. Long range planning can help a city identify issues that are important to citizens and help formulate policies and procedures that are fair and equitable to all citizens. It is clear that long term land use planning is important when establishing patterns, approaches, strategies, and visions for our community.
3. Long range planning is an essential part of establishing future facilities and services that are both timely and cost efficient. Corridor planning, sewer/water planning, storm water/flood protection planning all have long time horizons because of the cost and investment of infrastructure/distribution systems. Reducing Fargo's extraterritorial boundary would reduce the effectiveness of long-range planning. The costs of such action will affect all citizens as the city will be forced to retrofit facilities and services into areas with inappropriate land uses that were approved outside of the city's control.
4. Extraterritorial zoning and subdivision authority allow a city to ensure that this development is consistent with the outward growth of the city. No one wants development in the path of city growth to ultimately be negatively influenced by the presence of arterial roadways, commercial development or other incompatible features. The current extraterritorial boundary protects the individuals who buy and invest in these properties near the city.
5. Placing development responsibility in the hands of the city through extraterritorial zoning provides the property owner with the staff and the technical ability needed to solve issues

like floodplain development and drainage. Fargo works hard to accommodate the needs and desires of property owners in the extraterritorial area, whether they are farm families who are trying to build a second house on the farmstead, or whether they are developers who want to create a rural residential development.

6. Concentrations of population in the rural area, such as rural housing developments, benefit from city zoning administration. Fargo has the staff and technical expertise to respond to development pressures. For example, nuisance land uses can be dealt with so they are not problematic for these residents.
7. The use of extraterritorial zoning enables the city to allow a certain amount of development without the need to annex that land.
8. The current extraterritorial statutes were well designed in that they reflect the fact that larger cities influence a larger area, and smaller cities influence a smaller area.
9. The benefits of locating new urban growth in existing urban and urban-adjacent areas include preserving farmland, increasing urban densities, utilizing existing infrastructure capacity, and reducing public infrastructure costs. The four-mile extraterritorial boundary makes sense.
10. The proposed legislation will significantly reduce Fargo's ability to plan. A lot of time and effort by the city, citizens and stakeholders has been put into our community's Growth Plan update.

I respectfully urge the Legislature to study the issue of extraterritorial zoning, and not make major changes to the zoning jurisdiction until all the benefits are considered.

Att # 9

TO: Senate Political Subdivisions Committee – Chairman D. Cook
FROM: City of Minot
DATE: 10:15am Wednesday, March 15, Red River Room
RE: Hearing on House Bill 1321

I would like to begin by introducing myself, my name is Donna Bye and I am the City Planner for the City of Minot. I would also like to thank Chairman Cook and the committee for allowing me to submit this written testimony in opposition to this bill.

Our main concern of this bill is that it proposes to reduce the extraterritorial jurisdiction for a community greater than 25,000 from 4-miles to 2 miles. Our City has chosen to enact a 2-mile extraterritorial jurisdiction with option to expand to the 4-mile limit if necessary. We are pleased with the current limits that are in place and feel that we are providing the necessary service to the public.

This bill would be detrimental to future planning and zoning for the city. In the interest of improving the health, safety and quality of life for the public, the extraterritorial area options must be kept in place. In past years, the state allowed for the planning and zoning control of these areas in order to provide orderly smart growth for communities such as ours, as housing and growth trends are changing. We are seeing a shift in what people want to live by and near.

Not only does the extraterritorial limits improve the health and welfare of the residents of these areas, it also allows these areas to become partners in the planning process.

This has proven to be a good plan and has worked well. Why change it? Why take this huge step backwards in providing better health and quality of life for large numbers of ND citizens.

Who will provide the new control if cities do not? There is no provision in this bill for the state, county or township to take over this responsibility.

If this bill were moved to the Senate floor with a "do pass" recommendation from this committee, there would be a serious and detrimental effect on our city as well as other North Dakota cities and North Dakota itself.

If you look at past history it is clear that planning activity for our city is cyclic in nature. Building activity in our city has been at an all time high for the last two years.

If this bill were to be passed by the legislature, it most certainly would require additional administrative personnel and possibly additional planning employees by the jurisdictions impacted. Additionally, the efficiency of the Planning Divisions would suffer because of the squeeze it would cause.

Therefore, I encourage your committee to move this legislation to the floor of the Senate by recommending a "do-not-pass" on House Bill 1321.

Thank you again for allowing me to present this written testimony to the committee.

Dear Senator

My husband and me, urge you to amend House Bill 1321 to put the extraterritorial zoning back to TWO Miles and forget about the Interim Study.

We own a farming operation outside of Bismarck and for 20 years have fallen into the zoning jurisdiction of Apple Creek Township Board.

A couple of years ago, we heard about Bismarck hosting a hearing to extend the extraterritorial zoning authority from two miles to four miles outside of Bismarck.

We attended that hearing and NO ONE spoke in favor of the extraterritorial zoning authority going to four miles. The County Commissioner in attendance, spoke against it. The Township Board members from several affected Township Board spoke against it. Many land owners spoke against it. However when all was said and done, Bismarck did it anyway, because Legislation said they could.

There were a total of 117 permits issued by Bismarck in 2006 for Apple Creek Township with a new construction value of \$13,193,385.00. This equated for Bismarck to acquire \$71,256.81 in building permits that should have gone to Apple Creek Township Board for 2006. Instead Apple Creek took in a whopping \$793 in permits issued by the Township. How has this affected our township? Our board still has to maintain the gravel roads by grading and graveling them and provide snow removal in the winter. But literally almost ALL revenue from Building Permits now goes into the city of Bismarck and the Township has LITTLE TO NO INCOME to provide this service to the residents of our Township, while the city of Bismarck provides NOTHING.

The city of Bismarck has no tolerance for a farming operation and wants to treat an 80 acre farmstead just like a 75 x 150 lot in the city. They also think all of their rules are the only rules that exist and ignore state and federal rules which apply to small farms which are meant to exempt farming from rules. As an example, lots of farmers use old school buses for calf shelters. Bismarck wants us to get rid of ours because it does not meet their standards. I could go on and on with items that familiar on farms, however the city of Bismarck wants us to get rid of ours, because all of sudden we fall within the cities limits.

Who would think of a farm within the city limits? As stated this has already started to cause us legal problems. I'm waiting for the day that they say we have to have curb and gutters on our farm!

PLEASE put the Extraterritorial Zoning back to two miles. Forget about the Study because within another two years, to much damage will be already done.

Kathy and Terry Mauch
Taxpayers and Land Owners



www.westfargo.org

Sharon Schacher, Finance Director
Larry M. Weil, Planning Director
Wanda J. Wilcox, City Assessor
Dorinda Anderson, Business Development Director
Jim Brownlee, CPA, City Administrator

Engrossed HB 1321 City of West Fargo Testimony

The City of West Fargo would like to go on record as supporting the amended bill pertaining to extraterritorial planning and zoning authority for the following reasons:

- Extraterritorial planning and zoning authority for cities provides the means for West Fargo to plan for orderly growth for land uses and transportation systems.
- Through advanced planning within the extraterritorial areas, West Fargo has in the past avoided premature annexation of property. Premature annexation causes tax implications for property owners.
- Without extraterritorial planning and zoning, communities may need to consider annexation of bordering areas to prevent poorly planned development patterns (incompatible uses with surrounding areas, improperly designed streets, lack of consideration of environmental conditions, etc). Several subdivisions within our jurisdiction were approved years ago before we had extraterritorial jurisdiction. Some of these subdivisions were inadequate in design, have failing septic systems, and even have situations where contamination is taking place beyond the property lines. Because of this lack of planning in years past, a number of property owners and the larger community are now faced with resolving these problems. When development mistakes are made, these mistakes are with us for a long, long time. Every effort needs to be made to plan development in an orderly manner, and to utilize all of the resources available to get it right the first time.
- The current statutes and the proposed changes provide for multi-jurisdictional involvement on city planning and zoning commissions, because of the extraterritorial areas. This involvement is viewed as very positive for providing perspective to issues, particularly in the extraterritorial transition areas. The City of West Fargo values the involvement of our rural representatives.
- West Fargo currently has an extraterritorial area of two miles which has helped to conduct proper planning in growth areas, and has helped to properly administrate floodplain regulations in flood prone areas.
- Cities are better equipped than counties and townships to address the urban type development pressures adjacent to cities.

LANDOWNERS ASSOCIATION OF NORTH DAKOTA

BOX 38 BISMARCK, N.D. 58502-0038

RESOLUTION ON EXTRATERRITORIAL ZONING

WHEREAS;

OWNERSHIP OF PRIVATE PROPERTY IS A FUNDAMENTAL CONSTITUTIONALLY GUARANTEED RIGHT ENJOYED BY ALL CITIZENS OF THE UNITED STATES.

WHEREAS;

THE FOREMOST OF THE BUNDLE OF RIGHTS INCLUDED IN PRIVATE OWNERSHIP OF PROPERTY IS THE RIGHT TO CONTROL THE USE OF THE PROPERTY, AND

WHEREAS;

ZONING REGULATIONS DEPRIVE THE PROPERTY OWNER OF HIS RIGHT TO CONTROL THE USE OF HIS PROPERTY BY TRANSFERRING CONTROL OF THE USE OF PROPERTY TO A ZONING AUTHORITY; AND

WHEREAS;

THE STATE OF NORTH DAKOTA HAS, BY LAW, ALLOWED CITIES TO EXERCISE EXTRATERRITORIAL ZONING AUTHORITY THEREBY ASSUMING CONTROL OF LAND USE UP TO FOUR MILES BEYOND THE CITY LIMITS, AND

WHEREAS;

SUCH GRANT OF AUTHORITY HAS TAKEN A PROPERTY RIGHT FROM PRIVATE PROPERTY OWNERS OF THE STATE WITHOUT COMPENSATION; AND

WHEREAS;

THE AUTHORITY VESTED IN CITY BOARDS, TO DICTATE LAND USE DECISIONS FOR NON CITY PROPERTY OWNERS CONSTITUTES "REGULATION WITHOUT REPRESENTATION"

NOW, THEREFORE BE IT RESOLVED THAT LAND SUPPORTS LEGISLATIVE ACTION TO REPEAL EXTRATERRITORIAL ZONING ENTIRELY, THEREBY LIMITING CITY AUTHORITY TO AREA WITHIN THE CITY'S BOUNDRIES AND THUS RESTORING THE TRUE MEANING OF THE TERM "CITY LIMITS"

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

Page 1, line 3, remove "a legislative council study; to provide for", replace the second "provide" with "declare", and replace "expiration date" with "emergency"

Page 1, line 16, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 1, line 19, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 1, line 20, after "2." insert "Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.

3."

Page 2, line 1, overstrike "3." and insert immediately thereafter "4."

Page 2, line 10, overstrike "4." and insert immediately thereafter "5."

Page 2, line 26, overstrike "5." and insert immediately thereafter "6."

Page 3, line 28, overstrike "6." and insert immediately thereafter "7."

Page 4, line 1, overstrike "7." and insert immediately thereafter "8."

Page 4, line 5, overstrike "8." and insert immediately thereafter "9."

Page 4, line 19, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 4, line 20, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 13, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 14, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, remove lines 26 through 30

Page 6, replace lines 5 and 6 with:

"SECTION 5. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

March 22, 2007

Att # 18
3/23/07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

Page 1, line 3, after the first semicolon insert "and" and remove "; and to provide an expiration date"

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Page 5, line 14, remove the overstrike over "~~twenty-five~~" and remove "ten"

Page 5, line 27, replace "study" with "consider studying"

Page 6, line 1, replace "the" with "May 1, 2007,"

Page 6, line 2, remove "effective date of this Act"

Page 6, remove lines 5 and 6

Renumber accordingly

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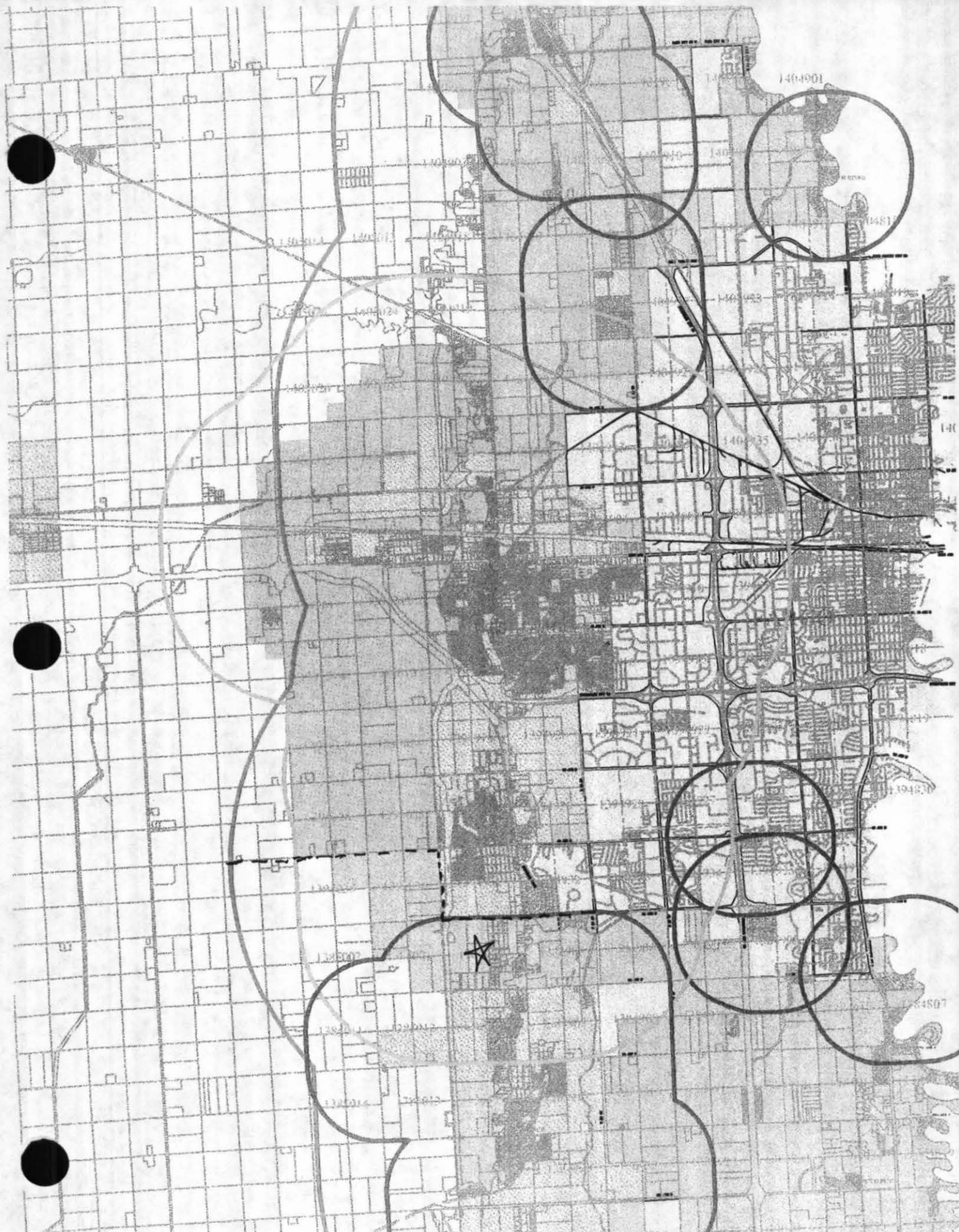
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Renumber accordingly





* Map in Mediation w/ Horace ----- = Agreement between F+WF Re ETZ + Annexation

Population City

580 Turtle Lake, ND
604 Portland, ND
606 Mapleton, ND
614 Kindred, ND
619 Richardton, ND
625 Fessenden, ND
637 Edgeley, ND
640 Harwood, ND
642 Pembina, ND
657 Minto, ND
659 Elgin, ND
678 Center, ND
707 Hatton, ND
711 Milnor, ND
713 Killdeer, ND
717 Gwinner, ND
738 Lidgerwood, ND
739 Dunseith, ND
761 Steele, ND
781 Lakota, ND
803 Hebron, ND
807 Wilton, ND
808 Mott, ND
812 Mohall, ND
812 Underwood, ND
857 Napoleon, ND
865 Glen Ullin, ND
866 Belfield, ND
882 Ashley, ND
913 Drayton, ND

Population City

917 Surrey, ND
938 New Salem, ND
944 LaMoure, ND
947 Enderlin, ND
959 Northwood, ND
981 Parshall, ND
1006 Thompson, ND
1049 Velva, ND
1053 Cooperstown, ND
1057 Walhalla, ND
1058 Hankinson, ND
1081 Kenmare, ND
1089 Crosby, ND
1096 Burlington, ND
1116 Beach, ND
1122 Wishek, ND
1125 Tioga, ND
1279 Stanley, ND
1307 Hettinger, ND
1318 Garrison, ND
1321 Linton, ND
1342 Cando, ND
1367 New Town, ND
1389 Washburn, ND
1417 Rolla, ND
1433 Larimore, ND
1435 Watford City, ND
1463 New Rockford, ND
1500 Horace, ND
1535 Park River, ND

Population City

1537 Cavalier, ND
1559 Ellendale, ND
1563 Hillsboro, ND
1600 Bowman, ND
1730 Lincoln, ND
1855 Casselton, ND
1953 Mayville, ND
1979 Oakes, ND
1989 Harvey, ND
2101 Langdon, ND
2268 Carrington, ND
2292 Lisbon, ND
2336 Bottineau, ND
2457 Hazen, ND
2939 Rugby, ND
3152 Beulah, ND
4516 Grafton, ND
6826 Valley City, ND
7222 Devils Lake, ND
8586 Wahpeton, ND
12512 Williston, ND
14940 West Fargo, ND
15527 Jamestown, ND
16010 Dickinson, ND
16718 Mandan, ND
36567 Minot, ND
49321 Grand Forks, ND
55532 Bismarck, ND
90599 Fargo, ND

5