

**2019 HOUSE POLITICAL SUBDIVISIONS**

**HB 1297**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

1/18/2019

HB 1297

Job # 31069

Subcommittee

Conference Committee

Committee Clerk: Carmen Hickle

### Explanation or reason for introduction of bill/resolution:

Relating to zoning and subdivision authority; and to provide a contingent effective date

### Minutes:

Handouts 1,2,3,4,5,6,7

**Chairman J. Dockter:** Opens the hearing on HB 1297.

**Rep. Nelson:** (Handout #1). Introduces the bill by reading his testimony.

**Rep. Johnson:** You're not suggesting those subject to extraterritorial jurisdiction not in the city approve of an extraterritorial jurisdiction? You are suggesting that they approve to some degree any project because they are already in that extraterritorial jurisdiction?

**Rep. Nelson:** The zoning that is currently in effect would remain in effect until it changed. Those people living in the township will get to decide whether they have the city zone them or whether there in control or whether they have the city give the building permits but they have an approval process to oversee that. It's completely up to them.

**Rep. Johnson:** A zoning change would that require a majority of those residents in that extraterritorial jurisdiction?

**Rep. Nelson:** It would basically work how it works now. But there is some awkwardness in the transition in that people outside Bismarck has about 1000-page zoning ordinance. If the township decides not to participate anymore they might decide to keep part of it or not but it would be local control. This forces them to make to some of those decisions.

**Rep. Ertelt:** The cooperation that already exists are you speaking of joint powers of authority?

**Rep. Nelson:** We give our political subdivisions the right to make agreements with other political subdivisions. In extraterritorial zoning it allows it to move to a joint powers agreement. It allows more flexibility than the current code would.

**Rep. Hatlestad:** If we establish zoning boards and allowed representation from the surrounding political subdivisions would that take care of the problem?

**Rep. Nelson:** That has been done since extraterritorial started. There is no representation, if you are going to make people residents of the city, make them residents of the city. Then the city clearly has the authority. The city gets to put a housing development in the county and now the people live in the country but the city gets the business but they are not responsible to provide policing. They are not responsible for fire protection or to keep the roads open. Everything is zoned, everything is permitted by the city, but the city doesn't provide for services and those people have to call the township. The township doesn't provide some of the services. Unless we change the taxation capabilities of the township so it can provide the city services, simply providing them with a vote in the city does not fix the basic problems.

**Larry Syverson:** ND Township Officers Association. We thank the sponsor of the bill.

**Travis Zabloutney:** He stated he was a member of the planning committee for the city of Minot during the flood. There was people that voiced their discontent because they were not in the city limits subject to the extraterritorial zoning yet had no city services but had to follow the rules of the city.

**Bill Wocken:** League of Cities. (Handouts #2,3,4) Bill Wocken read his testimony. Handouts 2 & 3 were from interested parties that were not able to be in attendance. Mr. Wocken came in opposition to this bill.

**Rep. Ertelt:** You speak of dispute resolution procedure being used and being proven functional. Can you speak to examples of where that has happened?

**Mr. Wocken:** I am aware in Bismarck that the zoning decision was reached by the city, the dispute resolution gives the county the opportunity to ask the city

for an explanation. After discussion the county felt they understood the situation better after that. The zoning that was reached by the city was able to proceed.

**Rep. Ertelt:** You talk about negotiating a mutual agreeable hard boundary. I assume that means one political subdivision has zoning authority versus the other. Is that the case? Isn't that hard boundary already defined by the township and city boundary prior to extraterritorial zoning coming in to play?

**Mr. Wocken:** The use of hard boundary has a 4-mile jurisdiction; within the first 2 miles the city runs the zoning process the county or the township has the opportunity to ask questions of the city. If you can't come to agreement you go to mediation. In the outer 2 miles the county takes the lead on applications. If the county does something the city doesn't agree with then the city can ask for a discussion.

**Rep. Ertelt:** Are not all of these negotiations, isn't all of that already possible through joint powers agreement between political subdivisions?

**Mr. Wocken:** I am not familiar with all the possibilities that are allowed by joint powers agreements. The sections of the Century Code that deal with cities, counties and township are set sections of the Code. I don't know how much of that can be negotiated through a joint powers agreement. That is why we put the opportunity in the zoning sections.

**Rep. Johnson:** The bottom line is who has the sharpest teeth in the legal teeth. I'm guessing it is the city because the statute allows that there is the legal portion. If dispute resolution is proven functional and the mutual agreeable hard boundaries through negotiation what is the harm in this bill?

**Mr. Wocken:** The zoning jurisdiction that is granted by the Century Code that goes to the political subdivisions. We have made it more user friendly by allowing both jurisdictions to visit about individual land use opportunities. The dispute resolution allows for difference of opinions to be moderated.

**Rep. Hatlestad:** With dispute resolution would the next step be arbitration? Is that not included or is it not necessary?

**Mr. Wocken:** The mediation procedure in the statute would resolve any of the issues.

**Natalie Pierce:** North Dakota Planning Association. (Handout #5) Ms. Pierce read her testimony.

**Rep. Ertelt:** The ability for the city to zone in the extraterritorial zones, do you feel that the people who live within that extraterritorial zoning boundary should have the ability to decide how they want to be zoned?

**Ms. Pierce:** Yes, this is something planners are always advocating for a long range plan guide how we handle development application, how to prioritize development. We always want people to be part of that process. So the entire community has had a voice in where we want development to go. There is pressure from the exterior of the city because people want to live in the country and they want all the services.

**Rep. Ertelt:** Isn't the ability there without extraterritorial zoning? So annexation was available before this extraterritorial zoning was and it's still available. Why doesn't the city step up and offer these services to these people by offering to annex? If people want these services which they are not getting through extraterritorial, why not provide the services with their tax dollars through annexation versus extraterritorial zoning?

**Ms. Pierce:** If the developer comes along and the county allows them to go ahead. If the cost to provide services is more than you are going to get in tax revenue it might not benefit the city to annex that.

**Vice Chairman Pyle:** The land owners can petition to get into the city for services.

**Rep. Johnson:** Can the city say no to annexation?

**Ms. Pierce:** I believe they can.

**Rep. Johnson:** What's wrong with just saying no? The governor's main street initiative to grow up not out seems to support this current bill.

**Ms. Pierce:** In the short term that makes sense but over time and the city has rapid growth that can be costlier for the city to go around. It can be a complete barrier to expanding on that side of the city.

**Rep. Johnson:** Just stop violating people's rights to their property rights. I think that people should have a say in their zoning and that is not happening.

**Ms. Pierce:** If the state felt that it was appropriate to restrict that type of rural development it would take a lot of political burden off of local jurisdictions because that pressure is constantly there.

**Tim Solberg:** Director of Planning and Zoning in West Fargo; (Handout #6). Annexation is very expensive it cost three times as much as the tax taken in to remove snow from one home. We try to avoid annexing to protect the city limits. Extraterritorial Legislation allows us to protect those areas outside of our boundary without having to annex them.

**Rep. Fegley:** When you do your process and have farmers that built their infrastructure do you override the township zoning in that area? Or do you address the grandfather act from the fact that the townships had already for the people who had already build there? How do you handle that?

**Mr. Solberg:** If we have zoning jurisdiction and they existed prior to our taking zoning jurisdiction, there is a grandfather clause that allows them to continue to operate as a legal non-conforming use.

**Rep. Magrum:** I hear that people don't have a right to vote on city elections. Would you be for that if people could vote so that they have more of a say in their extraterritorial zones?

**Mr. Solberg:** For rezoning we notify the people living in that area and if 20% of those property owners object and sign a petition and hand it into me, it requires a super majority of our city commissioners to pass that.

**Rep. Johnson:** How does Frontier gets services?

**Mr. Solberg:** I don't know because I do not work for the city of Fargo but West Fargo.

**Rep. Guggisberg:** We provide no services for those outside of the city. The have to pay for private services. We are not allowed to respond to those areas. They are getting services just because they are surrounded by the city

**Keith Hunke:** City Administrator for the City of Bismarck. (Handout #7). Mr. Hunke read his testimony.

**Rep. Johnson:** I didn't hear the breakdown of your group.

**Mr. Hunke:** Our current composition has 11 members.

**Rep. Adams:** After something goes to the planning committee, it has to go to the city council for approval so people have the right to come and say no?

**Mr. Hunke:** Yes.

**Rep. Ertelt:** For the record for the majority is needed, where does the majority of these members lie?

**Mr. Hunke:** Given our 11-member composition, a majority of them are city of Bismarck representatives.

**Chairman J. Dockter:** Closes the hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

1/24/2019

HB 1297

Job # 31458

Subcommittee

Conference Committee

Committee Clerk: Carmen Hickle

### Explanation or reason for introduction of bill/resolution:

Relating to zoning and subdivision authority; and to provide a contingent effective date

Minutes:

**Chairman J. Dockter:** Opens the hearing for committee work. This is extraterritorial which involves planning and zoning.

**Vice Chairman Pyle:** Made a do not pass motion.

**Rep. Adams:** Second the motion.

**Rep. Simons:** Why are we thinking do not pass?

**Rep. Longmuir:** We just can't eliminate the ETA's. There does need to be some work done though. I like the idea of people being able to vote for the people on the zoning boards but to completely taking it out would be very detrimental, not only to the large cities but also the small ones. We did a joint operating agreement in my county.

**Rep. Adams:** I agree in Grand Forks just needs to know what's going on to plan ahead.

**Rep. Hatlestad:** When we looked at extraterritorial awhile back, the theory was the city needs planning infrastructures specifically. But I think cities have overstepped and exceeded initially what we anticipated they would do.

**Rep. Guggisberg:** Natalie summed it up well with, yes the city wants this to pass so they don't have to deal with the political pressure for expanding into other territories. Some of the examples we talked about during testimony are



reason it makes sense to use extraterritorial. In Fargo we have communities that are inside the city so there are services all around them, but they don't use any of those services.

**Rep. Magrum:** We have trouble with extraterritorial zoning because the city took over one-mile area but wanted the county to pay for everything but the city controlled it. And the people that lived on the edges couldn't vote so they were frustrated. I would like to just see it go away.

**Vice Chairman Pyle:** On one side of Casselton we have a feedlot, on the south side we have a grain elevator, on the west we have an ethanol plant. When we are growing the city and industries come in you have to have some type of planning.

**Rep. Ertelt:** If none of us are in an extraterritorial area, consider we are surrounded by the others states and Canada. Ask yourself how you would feel if any of those states or Provinces set the zoning requirements for North Dakota?

**Vice Chairman Pyle:** I live in an extraterritorial zone. I don't disagree with you but the diversion in Fargo is running into regulations from Minnesota. There are things happening with North Dakota and the different states and Canada already.

**Rep. Ertelt:** The result of the extraterritorial zoning is those who are setting the zoning on the extraterritorial zone they get the control and they have no responsibility.

**Rep. Fegley:** I definitely understand the conflict between rural and urban. I feel for the people in extraterritorial because they get told what to do. The township has to deal with the snow and all of the other things because the city doesn't give them any services.

**Rep. Simons:** Last year we had a lot of testimony this is a real issue over who controls it. I would like to see this issue go away, I think we should get rid of it.

**Chairman J. Dockter:** It's a moving target, people use it when it benefits them and people are against it when it doesn't benefit them. That's my real struggle with it.

**Rep. Simons:** I had a constituent that bought property and developed it and lives on it. The city took 3 or 4 acres from him which was worth \$25,000 to \$30,000 on low market. He said he was in the county and was told he will be in the county eventually. He was also told if he wanted to continue with his development he would need to agree. That was years ago and the city still has not done anything with the roads there.

**Rep. Johnson:** The base issue is things are happening to people without their say. Does HB 1210 that we will hear tomorrow take care of that?

**Rep K. Koppelman:** It doesn't remove ETA, can you help me out with this?

**Vice Chairman Pyle:** It doesn't remove existing authority.

**Rep. Ertelt:** The sponsor of the bill told us having a voice on the commission, it's diluted. The people that live in the ETA compared to what's in the city is insignificant, they are not going to affect the vote. The bill being offered is a step but is not achieving what you are after.

**Chairman J. Dockter:** You have to determine where you live, the area is the new high school on the other side of the road and these people live in a development from the 70's they have 2 and 3 acre lots. Now that person moved there a few years ago and if they should have realized they were close to the city limits in the ETA. Called the question.

**Vote: Yes 10, no 4, absent 0**

**Carrier: Rep. Adams**

Date: 1-24-19  
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1297

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Pyle Seconded By Rep. Adams

| Representatives    | Yes | No | Representatives | Yes | No |
|--------------------|-----|----|-----------------|-----|----|
| Chairman Dockter   | /   |    | Rep. Adams      | /   |    |
| Vice Chairman Pyle | /   |    | Rep. Guggisberg | /   |    |
| Rep. Ertelt        |     | /  |                 |     |    |
| Rep. Fegley        | /   |    |                 |     |    |
| Rep. Hatlestad     | /   |    |                 |     |    |
| Rep. Johnson       | /   |    |                 |     |    |
| Rep. Koppelman     | /   |    |                 |     |    |
| Rep. Longmuir      | /   |    |                 |     |    |
| Rep. Magrum        |     | /  |                 |     |    |
| Rep. Simons        |     | /  |                 |     |    |
| Rep. Toman         |     | /  |                 |     |    |
| Rep. Strinden      | /   |    |                 |     |    |
|                    |     |    |                 |     |    |
|                    |     |    |                 |     |    |

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Adams

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

**REPORT OF STANDING COMMITTEE**

**HB 1297: Political Subdivisions Committee (Rep. Dockter, Chairman)** recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1297 was placed on the Eleventh order on the calendar.

**2019 TESTIMONY**

**HB 1297**

HB1297#1

1-18-19

Good morning Chairman Dockter and members of the House Political Subdivisions committee

I am Representative Marvin Nelson, District 9

HB 1297 looks at a problem where control of one area of the state is taken away from the people living there and given to other people who do not live there, making residents subjects of nonresidents, it encourages sprawling development and creates problems in providing government services.

The political subdivisions responsible to provide services have very little say in the process whereby housing developments are placed in their area of responsibility. They are expected to provide roads, and police and fire protection for developments when they have no real say in developing the housing there.

We have also seen for instance where Grand Forks has used its extraterritorial zoning in order to put its landfill where it wanted to put its landfill.

We see Minot charging more for a building permit in the extraterritorial zone than it charges for the same permit inside the city. The people living there have no control over that decision.

We often hear of the American Revolution and the protest of taxation without representation, while this is not taxation, it certainly is taking control away from the residents and giving it to nonresidents of the area and making the residents subject to laws over which they do not have control. You and I certainly would not like that situation applied to us, yet we let cities, with no consent from those residents, take over regulation of a large part of their lives.

You probably hear that I am taking away extraterritorial zoning, nothing could be further from the truth. It changes extraterritorial zoning from a thing imposed upon residents by nonresidents to a mutual agreement, a cooperation. If cooperation is impossible, that is a real indication that people feel abused. If they have not been abused, the two years to reach an agreement should be enough time.

I would expect that in most cases, things will continue pretty much as they are. But in other cases, like say flood control, it doesn't make sense to have a city try to control it, a larger consortium or county zoning even through the cities makes more sense.

I would note that extraterritorial zoning would not be limited to 2 or 4 miles as is currently the case. You might have an adjoining township say here, do the whole township not just part of it.

Making extraterritorial zoning an area of agreement actually frees each area to reach solutions that fit their area.

Now one thing you might hear in objection is that without extraterritorial zoning, large confined animal feeding operations could be places right up against the city. Well in other countries they do them right in the city in some cases, the cheaper land in North Dakota means we don't see that here, but in any case, a township or county doesn't locate a feedlot, that is the state, and I believe the state could put a feedlot wherever it decides, but let's just realize it's not going to locate one right up against city limits.

#1 HB 1297  
1-18-97

Nothing in this bill changes the situation with feeding operations. Just like it doesn't change anything with oil wells, or radioactive waste.

I thought of coming with all kinds of maps and such to show problems, but whatever system we use will have individual problems, the real issue here is should residents of a political subdivision be subjects of another political subdivision or should they be allowed to control where they live and cooperate with their neighbors to work out those problems.

I believe residents have the right to have local control. I believe that while political subdivisions are indeed subject to the state, I don't believe it is right to make some political subdivisions subjects of other political subdivisions. That's the real issue and whatever else comes today that is your real decision. Let's make this a flexible voluntary law, not a law that subjects residents to nonresidents.

Testimony Presented on HB 1297 to the  
House Political Subdivisions Committee  
Representative Jason Dockter, Chairman

#2  
1-18-19

by

Nicole Crutchfield, Planning Director  
City of Fargo

January 17, 2019

Mr. Chairman and Members of the Committee,

On behalf of the Fargo City Commission, I am seeking your support of continuing extra-territorial zoning as it currently exists and seeking your opposition to HB 1297

Extra-territorial zoning is provided for in Chapter 40-47 of the North Dakota Century Code. This extra-territorial zoning grants a city the authority to extend its zoning and subdivision regulations into areas adjacent to the city as prescribed in the statute.

Why is this important? The Century Code and our previous leaders recognize that a city must make adequate provisions for transportation, water, sewage, schools, parks, and other public requirements (Section 40-47-03); that the land outside a city's boundaries bears a relation to the planning of the municipality (Section 40-48-08); that there is an inter-relationship and interdependence between a municipal corporation and areas contiguous or adjacent thereto (Section 40-51.2-02); and the importance of proper arrangement of streets in relation to other existing and planned streets (Section 40-48-20).

The extra-territorial zoning facilitates these principles of the Century Code, as it allows a city to comprehensively plan for infrastructure in areas adjacent to the city so that these areas would be contiguous with the city's existing infrastructure while at the same time protect the region's infrastructure. It also protects a land owner outside the city from unknowingly building in a location that is designated for future road or utility expansion.

Further, the ability to apply city zoning and subdivision regulations to areas adjacent to the city allows for technical and public review of development proposals. This review allows for a comprehensive approach of the management of land uses so that they are compatible to all stakeholders, including joint jurisdictions. The review ensures compatibility with the city's comprehensive plan.

Extra-territorial zoning is essential to create and implement comprehensive plans for the future of the City of Fargo and other cities in North Dakota.





#3  
1-18-19

January 15, 2019

Representative Jason Dockter  
House Political Subdivisions Committee  
600 E Boulevard Ave  
Bismarck, ND 58505

RE: HB 1297

Please accept this testimony in opposition to House Bill 1297 on behalf of the City of Williston.

The extraterritorial zoning jurisdiction (ETJ) is an important tool in implementing the City's long-term growth plan. The extraterritorial zoning jurisdiction ensures that areas important to the long-term growth of the City are developed in accord with the City's water and sewer plan, land development plan, transportation plan, and emergency services plan.

In times of rapid growth and expansion, incompatible structures and land uses have been established that are not consistent with a long-term build out pattern of development. These inconsistencies can conflict with City functional plans such as street access plans and sewer and water extension plans, making them costly and more difficult to implement. The ETJ provides oversight that large lot residential development as indicated on the future land use plan will be planned for in accord with the various City functional plans so that urban densities can be achieved in the future.

House Bill 1297 would remove the extraterritorial zoning jurisdiction from City regulation and management and would allow county subdivision regulations and jurisdiction up to the edge of the City.

The extraterritorial zoning jurisdiction is instrumental for the City in pursuing a long-term growth strategy that manages future growth and allows for the efficient extension of city infrastructure in the short and long term. I ask that you oppose HB 1297. Thank you for your consideration.

Respectfully,

Kent Jarcik  
Planning and Zoning Director  
City of Williston Planning and Zoning Department

Testimony in opposition to House Bill 1297  
House Political Subdivisions Committee  
January 18, 2019  
Bill Wocken on behalf of the North Dakota League of Cities

#4  
1-18-19

Good Morning Mr. Chairman and members of the House Political Subdivisions Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to House Bill 1297.

The first three sections of House Bill 1297 take references to extraterritorial zoning out of the feedlot regulations. Sections 4-6 omit extraterritorial references from planning and zoning commission membership while sections 7-10 remove extraterritorial references in the annexation statutes. Section 11 removes extraterritorial zoning sections from several chapters in state law.

Extraterritorial zoning, that is the regulation of land use and subdivisions within areas adjacent to the cities in our state, has been used by many cities for quite some time. These regulations are aimed at ensuring harmonious growth as lands adjacent to cities become part of the city's corporate limits. While many cities have seen their corporate limits expand through annexation, the larger cities are more prone to experience annexations. The extraterritorial areas vary in size to recognize this reality.

A lack of planning for areas adjacent to cities results in newly annexed areas not fitting into the city they are joining. It results in loss of land value for properties in the area as discontinuous streets and utilities that cannot be linked leave new properties with very expensive or impossible connections to the existing city. Proof of the effectiveness of extraterritorial zoning can readily be seen on the fringe areas of many cities.

The extraterritorial statutes have been revised several times since they were first included in North Dakota law. The most recent major revision I can recall was ten years ago. At that time, the extraterritorial areas were divided in half and a dispute resolution procedure was adopted to handle differences between the city who exercised its extraterritorial jurisdiction and the entity (township or county) who had previously exercised zoning powers in that area. To my knowledge this dispute resolution model has not been used heavily, but where it has been invoked it has proven functional.

Most importantly, the statutes were changed at this time to allow the zoning entities (cities and counties or cities and townships) to negotiate a mutually agreeable hard boundary between themselves. I am aware that this negotiation has been very successfully used by local zoning entities in many locations.

Mr. Chairman and committee members extraterritorial zoning works. It provides well planned neighborhoods and efficient growth opportunities. The statutes have been finetuned as issues have developed. We believe there is no compelling reason to change. The North Dakota League of Cities therefore requests a Do Not Pass recommendation on House Bill 1297.

## HB 1297

### North Dakota Planning Association Testimony

presented by Natalie Pierce

#5  
1-18-19

HB 1297 intends to eliminate the authority currently granted to municipalities to establish an extraterritorial area. The North Dakota Planning Association **opposes** HB 1297.

Cities must make adequate provisions for transportation, water, sewage, schools, parks, and other public facilities. Century Code recognizes that the land outside a city's boundaries bears a relationship to the planning for these facilities and grants cities the authority to review development proposals, approve building permits, and manage land uses within the ETA.

The practice of engaging in coordinated planning within the ETA:

- 1) Reduces sprawl and preserves farmland
- 2) Reduces cost to extend infrastructure
- 3) Avoids conflicts between land uses
- 4) Reduces impacts on rural landowners when city expansion occurs
- 5) Maintains potential for city expansion, as well as corollary economic development benefits to the city and the surrounding community

Existing legislation provides the flexibility for local communities to configure ETAs that align with local circumstances and needs. ET authority is not mandatory. Cities may choose to enact it or relinquish ET authority to an adjacent political subdivision(s). Some political subdivisions have negotiated specific ETA boundaries that are practical for their community. Surrounding political subdivisions are also allowed to relinquish joint ET authority to the city if they do not have the resources or the desire to manage land uses in the ETA.

Existing ET legislation includes safeguards to address issues that may arise. Century Code:

- 1) requires representation from counties and townships if a city enacts ET authority.
- 2) requires that there be a collaborative process between political subdivisions when ET authority is enacted or extended.
- 3) prescribes channels to mediate disputes between political subdivisions when issues arise.

Not only do ETAs provide a vitally important planning tool to support orderly growth and development, there is adequate flexibility built into the existing state law to make ETAs applicable to political subdivisions across the state. For these reasons, NDPA strongly **opposes** HB 1297.



#6  
1-18-19

**HB 1297  
City of West Fargo Testimony**

**Provided by Tim Solberg, AICP – Director of Planning and Zoning**

HB 1297 relates to extraterritorial authority (ETA) for zoning and subdivision purposes for cities and proposes to repeal all ETA. The City of West Fargo would like to go on record as being in opposition to the bill as written for the following reasons:

- West Fargo has experienced tremendous growth over the last several decades requiring much forethought to the layout of streets and the development of compatible uses. Much coordination has taken place with townships, Cass County, and City of Fargo to ensure that as growth occurs, that costly improvements and compatibility of uses are properly accommodated.
- The rationale for adding ET area in 1997 to the State Statute was to enable cities to better plan for the growth experienced by faster growing cities. Cities are well equipped with resources and advanced planning to handle development pressures adjacent to the city.
- The City of West Fargo has 8 members on its Planning Commission. Of this membership 3 members reside in the extraterritorial area and are appointed by the Cass County Board of Commissioners. Currently, the West Fargo Planning Commission is chaired by a resident of Mapleton Township.
- In West Fargo, all ET area applications are sent to the County and township(s) for review. Any comments/recommendations are weighed heavily in consideration of the application. The ETA has helped to conduct proper planning in growth areas, and has helped to properly administer floodplain regulations in flood prone areas.
- Without the ETA provided for in the current statutes, cities may consider premature annexation of bordering areas to control the proper planning for and timing of development. Premature annexation causes tax implications for property owners and should be avoided.
- The ETA statutes were well thought out and have been in place since 1975. The ETA was expanded in 1997 which raised some concerns. As a result the outer area of the ET was changed in 2009 to be considered joint jurisdictional area. The City of West Fargo coordinates effectively with Cass County, Reed, Raymond, Mapleton and Warren Townships and would like to go on record in support of maintaining the current statutes.

The City of West Fargo urges a **DO NOT PASS recommendation on HB 1297.**

House of Representatives Political Subdivisions Committee

Representative Jason Dockter, Chair

Representative Brandy Pyle, Vice-Chair

January 18, 2019

#7  
1-18-19  
HB 1297

Chairman Dockter, Members of the House Political Subdivisions Committee:

My name is Keith Hunke and I am the City Administrator for the City of Bismarck.

I am providing written testimony on behalf of the City of Bismarck in opposition to House Bill 1297.

The Bismarck City Commission voted unanimously at its January 8, 2019 city commission meeting to oppose HB 1297.

Currently, the City of Bismarck's Community Development Department has planning, zoning and building inspection authority within the City of Bismarck and its extra-territorial area (ETA).

On January 1, 2014, a revised extra-territorial area (ETA) boundary for the City of Bismarck went into effect (map attached). This ETA boundary was negotiated between the City and Burleigh County. The City also has negotiated ETA boundaries with Apple Creek Township and Naughton Township.

Currently, the Bismarck Planning and Zoning Commission is an 11-member advisory board to the City Commission. The Bismarck Planning and Zoning Commission includes the Mayor; five Bismarck residents appointed by the Mayor; a Burleigh County Commissioner; three members appointed by the Burleigh County Commission to represent the City's extraterritorial area; and the City Engineer, who serves as an ex officio member. In addition, for applications within the extraterritorial area, a township supervisor from the organized township in which the property is located participates as a voting member for that item. The Bismarck Planning and Zoning Commission hears requests for major and minor subdivision plats, zoning changes, zoning ordinance text amendments, annexations, special use permits and rural lot splits.

Our current zoning ordinances not only promote the health, safety and general welfare of citizens living within our corporate boundary but also those citizens living within the ETA. Our ordinances provide regulations, standards and guides for the orderly development within Bismarck's corporate boundary and the ETA.

HB 1297 will eliminate our authority, opportunity and responsibility to effectively manage development within the future growth area of Bismarck as defined in our negotiated ETA boundary with Burleigh County, and Apple Creek and Naughton Townships.

On behalf of the City of Bismarck, I urge you to give HB 1297 a DO NOT PASS recommendation.

Thank you for the opportunity to provide testimony in opposition to House Bill 1297.

Keith J. Hunke, City Administrator  
City of Bismarck  
701-355-1300  
khunke@bismarcknd.gov

