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ROLL NUMBER

DESCRIPTION

1490

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La Costa Richard
Operator's Signature

10/16/03
Date

2003 HOUSE POLITICAL SUBDIVISIONS
HB 1490

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Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1490b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: February 7, 2003

Tape Number	Side A	Side B	Meter #
2	X		0-50.8
Committee Clerk Signature <i>Mickie Schmidt</i>			

Minutes:

TAPE 2; SIDE A:

(0.0) CHAIRMAN GLEN FROSETH: Let's go to HB 1490.

(0.3) REP. KIM KOPPLEMAN: (Testimony in support) (See attachment #1 & #2- an amendment)

(6.5) CHAIRMAN GLEN FROSETH: Could you simply show us an illustration of section 3 of page 2 of the map.

(6.6) REP. KIM KOPPLEMAN: Explained the map. I think the process we put in law for mediation worked very well because Fargo and West Fargo did find a medium line on the mediation process and I think we are all pleased with it. That process wouldn't change. What would change is the distance in extraterritorial zones. Second is the taxable valuation and what it means is that it is based on acreage only. It should be based on taxable value. This Bill makes it fair for all.

Page 2

House Political Subdivisions Committee

Bill/Resolution Number 1490

Hearing Date: February 7, 2003

(9.0) REP. MARY EKSTROM: 52/40 is a fight. Has there been any consideration on what townships will go to Fargo and west Fargo?

(9.7) REP. KIM KOPPLEMAN: I don't know of any discussion like that. The problem is if you get them together on equal footing, then they're on equal commission to do that. Usually the smaller cities don't have a fair shot at it.

(11.0) SEN. JUDY LEE: (Testimony in support) (See attachment #3)

(13.3) REP. WES BELTER: (Testimony in support) (See attachment #4)

(14.6) RICH MATTERN; MAYOR OF WEST FARGO: (Testimony in support) (See attachment #5) The existing laws are basically very good laws. We believe that HB1490 is providing some minor changes that will enhance the existing laws by giving the people most directly effected by annexation, a better voice in the process. We do not believe that the Legislature is the place to air our disputes and differences.

(18.5) ED EISENBEISZ; RESIDENT OF WEST FARGO: (Testimony in support) (See attachment #6) I live in a rural subdivision between West Fargo and Horace.

(29.8) ERIK JOHNSIN; ASSISTANT CITY ATTORNEY: (Testimony in opposition) (See attachment #7)

(44.0) BILL WOLKEN; CITY ADMINISTRATOR FARGO: My concern is on page 5 of the Bill. We request the annexation to be taken out, then we will have no problem with the Bill.

(49.5) CHAIRMAN GLEN FROSETH: Further questions? Opposition? Seeing none we will close the hearing on HB 1490. We will open it next Thursday. **(50.8)**

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1490

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: February 13, 2003

Tape Number	Side A	Side B	Meter #
1		X	28.2-53.4
2	X		0.0-21.5
Committee Clerk Signature <i>Mickie Schmidt</i> 2-26-03			

Minutes:

TAPE 1; SIDE B:

(28.2) CHAIRMAN GLEN FROSETH: We will reopen the hearing on 1490. There are more people to testify today.

(29.3) DARRELL VANYO; CASS COUNTY COMMISSIONER: (Testimony in support)

(See attachment #1)

(34.7) CHAIRMAN GLEN FROSETH: Explain how that five year process would work.

(34.8) DARRELL VANYO: Basically it allows the city to poke through that annexation process of not officially have people annexed for five years paying taxes as a city for five years. Went on to explain what happened to the people of McMahon Estates recently. Please support this amendment language in HB 1490. It provides fairness to the smaller homeowner and forces cities to do more than just continue to grab more land.

La Costa Richard
Operator's Signature

10/16/03
Date

Page 2

House Political Subdivisions Committee

Bill/Resolution Number HB 1490

Hearing Date: February 13, 2003

(43.3) REP. RON IVERSON: Was it McMahon Estate, was that in Fargo extraterritorial or West Fargo extraterritorial expansion?

(43.4) DARRELL VANYO: Fargo extraterritorial expansion.

(43.5) REP. RON IVERSON: These residents of McMahon Estates knew that when they built there that this was in Fargo Extraterritorial area that sometime in the future something could be built there.

(44.5) REP. NANCY JOHNSON: You talked about the five year waiting period, I can't find that in the Bill. On section 2, lines 19 & 20, it says " may not be later than five years, it doesn't say you have to have five years.

(45.0) DARRELL VANYO: If you look at page four, the last sentence under #1. It says that it allows an annexation if that's what the city wants to do.

(45.8) CHAIRMAN GLEN FROSETH: If you read line 18, it could be 30 days up to five years.

(46.5) REP. RON IVERSON: What city was the first one to notify these residents that they were going to be annexed?

(46.8) DARRELL VANYO: Fargo, through the papers. The reason why was because there were stronger ties to West Fargo, to their kids going to school in the community and so forth. They went in that direction.

(50.3) REP. ALON WIELAND: When the subdivision was originally developed and started, was McMahon in any cities, extraterritorial there?

(50.9) DARRELL VANYO: No. They were not part of any extraterritorial development at the start. So sometime in the process the extraterritorial area was expanded to include those areas?

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House Political Subdivisions Committee

Bill/Resolution Number HB 1490

Hearing Date: February 13, 2003

(51.4) DARRELL VANYO: That is correct. In fact, West Fargo had already annexed to and include ????

(52.2) CHAIRMAN GLEN FROSETH: We are also setting state policy too, not just for Fargo. Any in opposition?

(53.4) CONNIE SPRYNSANATYK; ND LEAGUE OF CITIES: (Testimony in opposition)

TAPE 2; SIDE A:

(0.0) CONNIE SPRYNSANATYK: (Continued testimony) (See attachment #2) I have not heard a word about the first part of this bill. No one has looked at when cities look they are going to be grown together, the smaller should have the same ET building area as the larger. If you pass the Bill 1490 the way it is now, what you're doing is shifting the advantage for protest to the minority of the land, but because there is improvement, that gives that owner the trust. You only annex when you're ready to provide services.

(8.1) REP. ALON WIELAND: (See attachments #3, #4 and #5) I think we base valuation of properties that have homes at real value and we're going to value land at assessed value and that's not necessarily the case because the land value might very well in Fargo are complied to \$10,000 per acre, not \$680.00 per acre as they are assessed. So there will still be some valuation considerations in there.

(9.7) CINDY GREY; SENIOR PLANNER AND ZONING ADMINISTRATOR:

(Testimony in opposition) (See attachment #6)

(17.3) ROB LYNCH; FARGO CITY COMMISSIONER: (Testimony in opposition)

Boarderly annexation in trying to eliminate these small donuts and cutouts, to allow that to

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House Political Subdivisions Committee

Bill/Resolution Number HB 1490

Hearing Date: February 13, 2003

happen, really saddles future elected officials to try to undo what happens in the past. I passed out some amendments which our city attorney addressed last week.

(18.5) REP. KIM KOPPLEMAN: (Testimony in support) There are two ways to annex right now, one is when people outside the city ask to be annexed. The other is when a city seeks to have a scenario and those folks are allowed to protest.

(21.3) CHAIRMAN GLEN FROSETH: Any questions? Hearing none, we will close the hearing on HB 1490.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1490

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: February 13, 2003

Tape Number	Side A	Side B	Meter #
2		X	21.2-41.3
Committee Clerk Signature <i>Mickie Schmidt</i>			3-3-03

Minutes:

TAPE 2; SIDE B:

(21.2) CHAIRMAN GLEN FROSETH: We will open the hearing HB 1490. There were three amendments offered by a gentleman this morning. They were quite comprehensive, I think. It will take some investigation because there were a lot of changes.

(22.1) REP. WILLIAM KRETSCHMAR: I would be inclined to support sections #1 of the Bill, but not section #2. **I WOULD MOVE TO AMEND THE BILL BY REMOVING SECTION #2.**

(22.5) CHAIRMAN GLEN FROSETH: That would remove the five year annexation period after proceedings have been concluded.

(23.3) REP. DALE SEVERSON: I'm inclined to remove a portion of a section 2. I also would like to get rid of section 3 on page 5.

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Jo Costa Rickford
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10/16/03
Date

Page 2

House Political Subdivisions Committee

Bill/Resolution Number HB 1490

Hearing Date: February 13, 2003

(24.0) REP. WILLIAM KRETSCHMAR: I would withdraw my motion in favor of Rep.

Severson's motion.

(27.1) REP. DALE SEVERSON: I also agree with Rep. Kretschmar's amendment. It will begin on page four, line 20; change the five to ten. And then from line 21 on, on page four, delete all that page and all of page five. **(27.6) I WILL MOVE THIS AMENDMENT.**

(27.8) REP. WILLIAM KRETSCHMAR: I SECOND IT.

(27.8) CHAIRMAN FROSETH: We have a motion by Rep. Severson and Rep. Kretschmar to amend on page four, line 20; five to ten years. Then remove everything from the Bill from page 4, line 21 through page five. And then the title will have to change too. Any other discussion on the amendment? Ready for the vote? We will take a voice vote on the amendment. All in favor say I: 14-y; 0-n. The amendment is carried.

(29.1) REP. RON IVERSON: I WOULD LIKE TO MOVE ANOTHER AMENDMENT.

On page 2; line 2; change that to \$5,000 from \$2,000.

(29.7) REP. MARY EKSTROM: I SECOND IT.

(30.0) REP. DALE SEVERSON: I will have to resist that amendment. I think we should leave it at \$2,000.

THERE WAS COMMITTEE DISCUSSION:

(36.2) CHAIRMAN FROSETH: Any more discussion? I will have the clerk take a Roll Call

Vote on the Amendment: 5-y; 9-n; 0-absent; AMENDMENT FAILS.

(37.2) REP. DALE SEVERSON: I MOVE A DO PASS AS AMENDED.

(37.4) REP. ALON WIELAND: I SECOND IT.

Page 3

House Political Subdivisions Committee

Bill/Resolution Number HB 1490

Hearing Date: February 13, 2003

(37.6) CHAIRMAN FROSETH: Any discussion? There was discussion on Lincoln butting up with Bismarck, expansion in Fargo and West Fargo. I will have the clerk take the **Roll Call**

Vote: 9-y; 5-n; 0-absent; Carrier: Rep. Kretschmar.

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Richard Costa
Operator's Signature

10/16/03
Date

FISCAL NOTE STATEMENT

House Bill or Resolution No. 1490

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

John Walstad
Code Revisor

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Salvatore Riccio
Operator's Signature

10/16/03
Date

30437.0301
Title.0400

Adopted by the Political Subdivisions
Committee

February 13, 2003

VR
2/14/03

HOUSE

AMENDMENTS TO HOUSE BILL NO. 1490 Pol Sub 1-14-03

Page 1, line 1, replace "sections" with "section" and after the second "and" insert "subsection 1 of section"

Page 4, line 12, replace "Section" with "Subsection 1 of section"

Page 4, remove lines 14 and 15

Page 4, remove lines 21 through 31

Page 5, remove lines 1 through 20

Renumber accordingly

WRONG

Page No. 1

30437.0301

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10/16/03
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30437.0401
Title.0500

Adopted by the Political Subdivisions
Committee

February 13, 2003

VR
2/19/03

HOUSE

AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1490 Pol Sub 2-19-03

Page 4, line 20, replace "five" with "ten"

Renumber accordingly

Page No. 1

30437.0401

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Operator's Signature

La Costa Richard

Date

10/16/03

Date: 2-13-03

Roll Call Vote #: 4

*For Amendment
To pass*

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1490

House "POLITICAL SUBDIVISION" Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

*Amendment
Fails*

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Vice-Chairman Nancy Johnson		<input checked="" type="checkbox"/>			
Mike Grosz		<input checked="" type="checkbox"/>			
Gil Herbel		<input checked="" type="checkbox"/>			
Ron Iverson	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
William E. Kretschmar		<input checked="" type="checkbox"/>			
Andrew Maragos		<input checked="" type="checkbox"/>			
Dale Severson		<input checked="" type="checkbox"/>			
Alon Wieland		<input checked="" type="checkbox"/>			
Bruce Eckre		<input checked="" type="checkbox"/>			
Mary Ekstrom	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Carol A. Niemeler		<input checked="" type="checkbox"/>			
Sally M. Sandvig		<input checked="" type="checkbox"/>			
Vonnie Pietsch		<input checked="" type="checkbox"/>			

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Offered by Rep. Iverson -
pg 2; line 2; ~~change~~ 2,000 to 5,000*

Failed

Costa Richard
Operator's Signature

10/16/03
Date

Date: 2-13-03

Roll Call Vote #: 5

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1490

House "POLITICAL SUBDIVISION" Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO PASS AS AMENDED

Motion Made By Rep. Severson Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓				
Vice-Chairman Nancy Johnson		✓			
Mike Grosz	✓	✓			
Gil Herbel	✓				
Ron Iverson	✓	✓			
William E. Kretschmar	✓	✓			
Andrew Maragos	✓	✓			
Dale Severson	✓				
Alon Wieland	✓				
Bruce Eckre	✓				
Mary Ekstrom	✓	✓			
Carol A. Niemeler	✓				
Sally M. Sandvig	✓				
Vonnle Pietsch	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Kretschmar

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

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REPORT OF STANDING COMMITTEE (410)
February 19, 2003 3:39 p.m.

Module No: HR-32-3326
Carrier: Kretschmar
Insert LC: 30437.0401 Title: .0500

REPORT OF STANDING COMMITTEE
HB 1490, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1490
was placed on the Sixth order on the calendar.

Page 4, line 20, replace "five" with "ten"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-32-3326

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Yolanda Richardson
Operator's Signature

10/16/03
Date

2003 TESTIMONY

HB 1490

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10/16/03
Date

#1 2-1-03

From Rep. Kim Koppelman

NORTH DAKOTA HOUSE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Appropriations

Representative Kim Koppelman
District 13
613 First Avenue NW
West Fargo, ND 58078-1101
kkoppelm@state.nd.us

Testimony on House Bill 1490

Good Morning, Mr. Chairman and Members of the House Political Subdivisions Committee. For your record, I am Representative Kim Koppelman and I represent District 13, which consists of most of the city of West Fargo and a small surrounding rural area.

House Bill 1490 would be a real improvement to state law for orderly, cooperative development of metropolitan areas and property owners rights. It is rooted in fundamental fairness and seeks to protect the interests of all involved with extra territorial zoning and annexation.

North Dakota law in this area was designed to govern a rural state with small towns and some cities, which were few and far between.

Approximately seven years ago, I began researching the laws on extra territorial zoning and annexation. They then specifically referred to "noncontiguous cities". The Legislature, which had last amended those laws in the early-to-mid 1980's, clearly recognized that the day was coming when North Dakota would need to make law governing contiguous cities, but had chosen to cross that bridge when it came to it. Mr. Chairman and members of the Committee, we've not only reached the bridge, we've jumped over it.

We made some meaningful improvements to ET and annexation law in the 1997 and 1999 sessions, but improvement is still needed to better address growing areas. It's time that we, as a state, face the fact that we have metropolitan areas consisting of cities and suburbs and set parameters for governing them.

House Bill 1490 would basically improve existing law in three ways:

1. It would grant equal extraterritorial zoning authority to sizable contiguous cities.

This is the way states with metropolitan areas with cities and suburbs handle it. Examples are Minnesota, South Dakota, Wisconsin, and Colorado, to name a few. That's why Minneapolis doesn't encircle the adjoining suburbs of Bloomington or Edina, for example.

The procedure we placed in law a few years ago, for cities to reach agreements on extra territorial zoning and annexation and for resolving disagreements (which work very well) would remain unchanged. The difference would be that neighboring cities would come to the table with a level playing field on which to negotiate agreements, rather than one having a 2-1 or 3-1 advantage over the other.

Salvatore Riccardi
Operator's Signature

10/16/03
Date

- #1
2. It would allow cities to do planned, phased annexation over a period of up to five years.

This would allow for better planning and better notice and would avoid the "all or nothing" proposition which often confronts cities and areas proposed for annexation. It would also allow cities to clarify their intentions, with regard to annexation, and facilitate plenty of advance notice, when annexation is planned, and to proceed in a sensible, methodical fashion.

3. It would make state law consistent by basing annexation protests on the taxable valuation of land, just as it is now for property petitioning for annexation.

Striking a fair balance in this area is a challenge. Basing it on the number of property owners would clearly be unfair, as a farmer owning a quarter of land could be outvoted by two home owners, owning a quarter acre each. On the other hand, the current system based purely on acreage is also unfair because, for example, a single owner of a large parcel of unimproved land can dictate the future of the owners of many homes who have invested heavily in their property and improvements on it.

Using taxable valuation seems to strike the fairest balance.

Mr. Chairman and members of the committee, North Dakotans are neighborly people. They have a tremendous sense of fair play. This bill is not "for" or "against" any group. It seeks, instead, to improve state law in this important area and make it fairer for all concerned.

I respectfully urge a "Do Pass" recommendation on House Bill 1490 and would be happy to attempt to answer any questions you may have.

#2 30437.0200

Fifty-eighth
Legislative Assembly
of North Dakota

From
Rep. Kim
Koppelman

HOUSE BILL NO.

Introduced by

Representative Koppelman

- 1 A BILL for an Act to amend and reenact sections 40-47-01.1 and 40-51.2-07 of the North
2 Dakota Century Code, relating to the extraterritorial zoning authority of a city and annexation of
3 territory by a city.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 40-47-01.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative**
8 **law judge.**

- 9 1. A city may, by ordinance, extend the application of a city's zoning regulations to
10 any quarter quarter section of unincorporated territory if a majority of the quarter
11 quarter section is located within the following distance of the corporate limits of the
12 city:
13 a. One mile [1.61 kilometers] if the city has a population of less than five
14 thousand.
15 b. Two miles [3.22 kilometers] if the city has a population of five thousand or
16 more, but less than twenty-five thousand.
17 c. Four miles [6.44 kilometers] if the city has a population of twenty-five
18 thousand or more.
19 2. If a quarter quarter section line divides a platted lot and the majority of that platted
20 lot lies within the quarter quarter section, a city may apply its extraterritorial zoning
21 authority to the remainder of that platted lot. If the majority of the platted lot lies
22 outside the quarter quarter section, the city may not apply its extraterritorial zoning
23 authority to any of that platted lot.

Page No. 1

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Operator's Signature

Yolanda Rickford

10/6/03
Date

Fifty-eighth
Legislative Assembly

- 1 3. Notwithstanding subsections 1 and 2, if two or more contiguous cities, each having
2 a population of two thousand or more, have boundaries in which the extraterritorial
3 zoning authority of the cities may overlap, each city may extend its zoning
4 regulations to the distance established under subsection 1 for the largest city
5 involved.
- 6 4. A city exercising its extraterritorial zoning authority shall hold a zoning transition
7 meeting if the territory to be extraterritorially zoned is currently zoned. The city's
8 zoning or planning commission shall provide at least fourteen days' notice of the
9 meeting to the zoning board or boards of all political subdivisions losing their partial
10 zoning authority. The purpose of the zoning transition meeting is to review existing
11 zoning rules, regulations, and restrictions currently in place in the territory to be
12 extraterritorially zoned and to plan for an orderly transition. The zoning transition
13 meeting must take place before the city's adoption of an ordinance exercising
14 extraterritorial zoning.
- 15 4. 5. If two or more cities have boundaries at a distance where there is an overlap of
16 extraterritorial zoning authority under this section, the governing bodies of the cities
17 may enter into an agreement regarding the extraterritorial zoning authority of each
18 city. The agreement must be for a specific term and is binding upon the cities
19 unless the governing bodies of the cities agree to amend or rescind the agreement
20 or unless determined otherwise by an administrative law judge in accordance with
21 this chapter. If a dispute arises concerning the extraterritorial zoning authority of a
22 city and the governing bodies of the cities involved fail to resolve the dispute, the
23 dispute must be submitted to a committee for mediation. The committee must be
24 comprised of one member appointed by the governor, one member of the
25 governing body of each city, and one member of the planning commission of each
26 city who resides outside the corporate city limits. The governor's appointee shall
27 arrange and preside over the meeting and act as mediator at the meeting. A
28 meeting may be continued until the dispute has been resolved or until the mediator
29 determines that continued mediation is no longer worthwhile.
- 30 5. 6. If the mediation committee is unable to resolve the dispute to the satisfaction of the
31 governing bodies of all the cities involved, the governing body of any of the cities

Fifty-eighth
Legislative Assembly

- 1 may petition the office of administrative hearings to appoint an administrative law
2 judge to determine the extraterritorial zoning authority of the cities in the disputed
3 area. A hearing may not be held until after at least two weeks' written notice has
4 been given to the governing bodies of the cities involved in the dispute. At the
5 hearing, the governor's appointee who mediated the meetings under subsection 4
6 shall provide information to the administrative law judge on the dispute between
7 the cities involved and any proposed resolutions or recommendations made by a
8 majority of the committee members. Any resident of, or person owning property in,
9 a city involved in the dispute or the unincorporated territory that is the subject of the
10 proposed extraterritorial zoning, a representative of such a resident or property
11 owner, and any representative of a city involved, may appear at the hearing and
12 present evidence on any matter to be determined by the administrative law judge.
13 A decision by the administrative law judge is binding upon all the cities involved in
14 the dispute and remains effective until the governing bodies of the cities agree to a
15 change in the zoning authority of the cities. The governing body of a city may
16 request a review of a decision of an administrative law judge due to changed
17 circumstances at any time ten years after the decision has become final. An
18 administrative law judge shall consider the following factors in making a decision
19 under this subsection:
- 20 a. The proportional extraterritorial zoning authority of the cities involved in the
 - 21 dispute;
 - 22 b. The proximity of the land in dispute to the corporate limits of each city
 - 23 involved;
 - 24 c. The proximity of the land in dispute to developed property in the cities
 - 25 involved;
 - 26 d. Whether any of the cities has exercised extraterritorial zoning authority over
 - 27 the disputed land;
 - 28 e. Whether natural boundaries such as rivers, lakes, highways, or other physical
 - 29 characteristics affecting the land are present;
 - 30 f. The growth pattern of the cities involved in the dispute; and
 - 31 g. Any other factor determined to be relevant by the administrative law judge.

Fifty-eighth
Legislative Assembly

1 ~~6.~~ 7. For purposes of this section, the population of a city must be determined by the last
2 official regular or special federal census. If a city has incorporated after a census,
3 the population of the city must be determined by a census taken in accordance
4 with chapter 40-22.

5 ~~7.~~ 8. When a portion of the city is attached to the bulk of the city by a strip of land less
6 than one hundred feet [30.48 meters] wide, that portion and strip of land must be
7 disregarded when determining the extraterritorial zoning limits of the city. This
8 subsection does not affect the ability of a city to zone land within its city limits.

9 ~~8.~~ 9. For the purposes of this section, a quarter quarter section shall be determined in
10 the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase
11 "quarter quarter section" refers to the equivalent government lot.

12 **SECTION 2. AMENDMENT.** Section 40-51.2-07 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **40-51.2-07. Annexation by resolution of city.** The governing body of any city may
15 adopt a resolution to annex contiguous or adjacent territory as follows:

- 16 1. The governing body of the city shall adopt a resolution describing the property to
17 be annexed.
- 18 2. The governing body of the city shall publish the resolution and a notice of the time
19 and place the governing body will meet to hear and determine the sufficiency of
20 any written protests against the proposed annexation in the official newspaper
21 once each week for two consecutive weeks. The governing body of the city shall
22 mail a notice to the owner of each parcel of real property within the area to be
23 annexed at the person's last-known mailing address. The notice must inform
24 landowners of the resolution, the time and place of hearing, and the requirement
25 that protests must be filed in writing. The owners of any real property within the
26 territory proposed to be annexed within thirty days of the first publication of the
27 resolution may file written protests with the city auditor protesting against the
28 proposed annexation. No state-owned property may be annexed without the
29 written consent of the state agency or department having control of the property.
30 The governing body of the city, at its next meeting after the expiration of the time
31 for filing the protests, shall hear and determine the sufficiency of the protests.

Fifty-eighth
Legislative Assembly

- 1 3. In the absence of protests filed by the owners of ~~more than~~ one-fourth or more of
2 the territory proposed to be annexed or the owners of one-fourth or more of the
3 assessed value of the territory proposed to be annexed as of the date of the
4 adoption of the resolution, the territory described in the resolution becomes a part
5 of the city. When a copy of the resolution and an accurate map of the annexed
6 area, certified by the executive officer of the city, are filed and recorded with the
7 county recorder, the annexation becomes effective. Annexation is effective for the
8 purpose of general taxation on and after the first day of the next February.
9 However, the city shall continue to classify as agricultural lands for tax purposes all
10 lands in the annexed area which were classified as agricultural lands immediately
11 before the annexation proceedings until those lands are put to another use.
12 If the owners of one-fourth or more of the territory proposed to be annexed or the owners of
13 one-fourth or more of the assessed value of the territory proposed to be annexed protest, or if a
14 city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to
15 be annexed protests, the city may either stop its pursuit of the annexation or submit the matter
16 to a committee for mediation as provided in section 40-51.2-07.1.

#3 2-7-03

from Sen. Judy Lee

Page 1 of 2

(For Sen. J. Lee)

Scratch Pad for Bill: HB 1490

HB 1490

House Political Subdivisions Committee

February 7, 2003

Senator Judy Lee

Your committee may be interested in a little background on the current laws regarding extra-territorial zoning and annexation. In 1997 there were 3 bills submitted dealing with small areas of the law. Our Political Subdivisions Committees asked the sponsors if we might combine their concerns and examine thoroughly the entire statute concerning these issues, and they agreed that an update would be beneficial.

The task force included representatives from the League of Cities, Association of Township Officers, Association of Counties, city and county planners, city attorneys, the Attorney General's office, and others whom I may not recall. They met several times, discussed what was needed, put together proposals which were shared with their colleagues throughout North Dakota, considered any changes that were suggested, and ultimately put together a proposal which became the current law.

Under the old law, disputes could only be addressed by one political subdivision suing the other. The only way any property owners would have had any input into a dispute would have been if they had been called to testify by one side or the other.

The new law requires that a mediation panel be convened to try to resolve the dispute. Representation from all political subdivisions as well as any other group which has an interest in the issue must be represented. That is what recently took place in the dispute involving Fargo, West Fargo, and the landowners in rural Cass County south of West Fargo.

If the mediation panel cannot reach consensus on a solution, then the issue would go on to an administrative law judge.

The procedure which was put in place generally worked well and

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Richard
Operator's Signature

10/16/03
Date

allowed people to feel that they had been included in the decision-making process.

HB 1490 presents some enhancements to the law that would make the process more fair.

1. If two cities are contiguous, each will have the same extraterritorial outreach, which would be the distance that the larger city would have.
2. Annexation could be phased in over 5 years.
3. Voting would be based on assessed value of the property, not on acreage.

We have seen recently that the procedure which looked good in theory actually worked pretty well in practice. The changes in 1490 will only make it more fair to the property owners involved.

I encourage your favorable consideration of HB 1490.

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La Costa Richard
Operator's Signature

10/16/03
Date

#4 2-11-03

From
Rep. Wes
Belter

Proposed revised form of H.B. 1490
February 7, 2003

30437.0300
Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1490

Introduced by
Representatives Koppelman, Belter, DeKrey
Senators Klein, J. Lee, Polovitz

A BILL for an Act to amend and reenact sections 40-47-01.1, 40-51.2-02.1, 40-51.2-02.2, 40-51.2-05 and 40-51.2-07 of the North Dakota Century Code, relating to the extraterritorial zoning authority of a city and annexation of territory by a city.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-47-01.1 of the North Dakota Century Code is amended and reenacted as follows:

40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative law judge.

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:

- a. One mile [1.61 kilometers] if the city has a population of less than five thousand.
- b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but less than twenty-five thousand.
- c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more.

2. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.

3. Notwithstanding subsections 1 and 2, if two or more contiguous cities, each having a population of five thousand or more, have boundaries in which the

Proposed revised form of H.B. 1490
February 7, 2003

extraterritorial zoning authority of the cities may overlap, each city may extend its zoning regulations to the distance established under subsection 1 for the largest city involved.

4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

4-5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement ~~or unless determined otherwise by an administrative law judge in accordance with this chapter~~. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.

5- 6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities

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Involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4-5 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
- b. The proximity of the land in dispute to the corporate limits of each city involved;
- c. The proximity of the land in dispute to developed property in the cities involved;
- d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
- e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
- f. The growth pattern of the cities involved in the dispute; and
- g. Any other factor determined to be relevant by the administrative law judge.

6. 7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.

7. 8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land

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must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.

8- 9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

SECTION 2. AMENDMENT. Section 40-51.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-02.1 Annexation agreements.

The governing body of a city may enter a written annexation agreement with the governing body of another city regarding the annexation of property located within the extraterritorial zoning or subdivision regulation authority of the cities under chapter 40-47 or 40-48. An agreement is binding on the governing bodies of the cities for the term of the agreement unless the governing bodies agree otherwise or unless determined otherwise by an administrative law judge in accordance with this chapter. An agreement may not have a term greater than twenty years.

SECTION 3. AMENDMENT. Section 40-51.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-02.2 Annexation of land in the extraterritorial zoning or subdivision regulation authority of another city.

A city may not annex land located within the extraterritorial zoning or subdivision regulation authority of another city by ordinance or resolution unless:

1. Written consent is received from the governing body of the other city; or
2. ~~The annexation is ordered by an administrative law judge in accordance with this chapter.~~

2. For purposes of this chapter, areas identified under an extraterritorial zoning agreement or decision of an administrative law judge, under section 40-47-01.1, as being the territory or extraterritorial zoning authority of one city shall not be considered as being within the extraterritorial zoning or subdivision authority of

the other city.

SECTION 4. AMENDMENT. Section 40-51.2-05 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-05 Notice -- Petition of owners and electors -- Mediation.

1. The governing body may not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has mailed a notice of the time and place of consideration of the petition to the owner of each parcel of real property within the area described in the petition at the person's last known mailing address. The notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city, the governing body of the city must also mail the notice of the time and place of consideration of the petition to the governing body of the other city.
2. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city and written consent to annex the land area is not received from the governing body of the other city, the annexing city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1. If mediation does not resolve the matter, the office of administrative hearings may be petitioned to hear the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.

SECTION 5. AMENDMENT. Section 40-51.2-07 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-07. Annexation by resolution of city. The governing body of any city may adopt a resolution to annex contiguous or adjacent territory as follows:

1. The governing body of the city shall adopt a resolution describing the property to be annexed. The resolution must include the proposed effective date of the

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annexation and may provide for different effective dates for different parcels of the territory. The effective date for the proposed annexation may not be later than five years after adoption of the resolution.

2. The governing body of the city shall publish the resolution and a notice of the time and place the governing body will meet to hear and determine the sufficiency of any written protests against the proposed annexation in the official newspaper once each week for two consecutive weeks. The governing body of the city shall mail a notice to the owner of each parcel of real property within the area to be annexed at the person's last-known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of the resolution may file written protests with the city auditor protesting against the proposed annexation. No state-owned property may be annexed without the written consent of the state agency or department having control of the property. The governing body of the city, at its next meeting after the expiration of the time for filing the protests, shall hear and determine the sufficiency of the protests.

3. In the absence of protests filed by the owners of more than one-fourth or more of the territory proposed to be annexed ~~or the owners of one-fourth or more of the assessed value of the territory proposed to be annexed as of the date of the adoption of the resolution,~~ the territory described in the resolution becomes a part of the city. When a copy of the resolution and an accurate map of the annexed area, certified by the executive officer of the city, are filed and recorded with the county recorder, the annexation becomes effective, unless the resolution contains a later effective date. Annexation is effective for the purpose of general taxation on and after the first day of the next February. However, the city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately before the annexation proceedings until those lands are put to another use. If the owners of one-fourth or more of the territory proposed to be annexed ~~or the owners of one-fourth or more of the assessed value of the territory proposed to be annexed~~ protest, or if a city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to be annexed protests, the city may either stop

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its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1.

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La Costa Rickford
Operator's Signature

10/16/03
Date

Proposed revised form of H.B. 1490
February 7, 2003

Comments:

The foregoing contains proposed revisions to House Bill No. 1490. The modifications from the original H.B. No. 1490 that are proposed herein include the following:

- 1. Changes of Section 1 (40-47-01.1.) to allow cities of 5000 or more to have the same extraterritorial jurisdiction as a neighboring larger city, rather than cities of 2000 or more.*
- 2. Allows extraterritorial (E.T.) zoning agreements and annexation agreements to be binding upon the cities who enter into them. The current statute "permits" cities to breach such agreements, subject to a mediation and administrative hearing process. Cities should be required to honor their agreements. This does not eliminate the mediation and administrative hearing process for those cities who have not entered into E.T. or annexation agreements.*
- 3. Eliminates the language in H.B. 1490 that creates a protest of annexation by a landowner with one-fourth of the assessed value of the land being annexed. If passed as drafted, H.B. 1490, would give a few landowners who happen to have developed their land with commercial buildings or residences much greater protest power than undeveloped land, typically farm land. The "assessed value" language would be inconsistent with North Dakota's annexation law, the express purpose of which is to promote "orderly growth" of cities.*

La Costa Richard
Operator's Signature

10/6/03
Date



"Mitzel Glenn D"
<gmitzel@phoeintl.co
m>

02/06/2003 04:27 PM

submitted
by Rep. Koppelman

To: "glee@state.nd.us" <glee@state.nd.us>,
"wbelter@state.nd.us" <wbelter@state.nd.us>,
"vplatsch@state.nd.us" <vplatsch@state.nd.us>
cc: "jlee@state.nd.us" <jlee@state.nd.us>,
"kkoppelm@state.nd.us" <kkoppelm@state.nd.us>,
"awieland@state.nd.us" <awieland@state.nd.us>,
"elindaas@state.nd.us" <elindaas@state.nd.us>,
"oarsvol@state.nd.us" <oarsvol@state.nd.us>,
"onlemele@state.nd.us" <onlemele@state.nd.us>,
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"rmetoalf@state.nd.us" <rmetoalf@state.nd.us>,
"pmueller@state.nd.us" <pmueller@state.nd.us>
Subject: HB 1428 and HB 1490

Ladies and Gentlemen,

I am unable to attend the meetings on these bills on Friday, 07 February, 2003. Please consider the comments I present in this forum.

Regarding 1490:

I experienced first-hand the ill-written nature of the current law "annexation by resolution" law.

The City of Fargo attempted to use three quarter-sections of undeveloped land to annex one developed quarter section of land. The law as written allowed for this because it is "one acre, one vote" regarding counting protestations of the action. However, in terms of real property value, the value of the homes on the developed quarter far exceeded the value of the empty land.

This ploy was a pure and simple attempt to add tax base. It was "ballot stuffing" because the city knew they had the undeveloped land owner desiring annexation and they drew the annexation map so that the high value owners could not stop the process.

The "annexation by petition" law (where owners ask to be annexed) says 75% of VALUE must request. The law where cities try to take (by resolution) says 75% of the AREA must not protest. There is the impropriety. Valuation must supercede else the people most affected do not have a voice. One large acreage land owner "decides for them." This was the crux recent Fargo/West Fargo/McMahon mediated land dispute.

If it's valuation based protests when you want to be annexed, it should be valuation based protests when they (a city) try to take you.

Additionally, allowing city officials, that I never voted for (because I'm not in their city), to annex my home without having to even inform me of their intent is tyranny. It could be coined "(forthcoming) taxation without representation" because once they finish the process, your taxes go to city rates without you having had recourse along the way. Officials you never elected governing you is unAmerican. (That is the process that the City of Fargo attempted.)

Regarding 1428:

Would this mean that at some point in the future, as a hypothetical, the City of Fargo could quite literally annex the (currently unincorporated) section of land that Northern Cass High School sits on and children in that section would go to Fargo North HS, and yet children a mile further away, unannexed, would still be in Northern Cass district but attend a "Northern Cass" building sitting within the city limits of Fargo?

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Date

10/16/03

Sound absurd? Look at the proposed bill. It would force annexed land into the new city's school district even if it makes no sense (logistically) at all.

Actually, such "forced alignment" actions may harm your legislative ability to cause district consolidations in future dates. How could "two cities" ever exist in "one school district"?

School districts are separate taxing entities. There is absolutely no need to force "alignment" between "city limits" and "school district" limits. I've lived in other states and it is not done there.

Thank you for your time.

Glenn Mitzel
McMahon Estates
Barnes Township, Cass County, ND
(701) 281-0147 Home
(701) 451-3619 Work
(701) 371-4674 Cell

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

#5 2-7-03

From Rich
Mattern



Michael D. McLeod, City Auditor
Larry M. Weil, Planning Director
Wanda J. Wilcox, City Assessor

TESTIMONY FOR HOUSE BILL 1490
Rich Mattern, Mayor, City of West Fargo

Mr. Chairman, Committee members. Thank you for the opportunity to testify regarding House Bill 1490.

Much progress has been made over the last few years with regards to extraterritorial authority for city planning and zoning purposes and for annexation procedures within these areas. The existing laws are basically very good laws. We believe that HB 1490 is providing some minor changes that will enhance the existing laws by giving the people most directly affected by annexations a better voice in the process because to me annexation is not just about land, it's about people too. Just because a homeowner doesn't own a large chunk of land doesn't mean their voice should not be heard.

We do not believe that the Legislature is the place to air out differences or individual disputes; however, if we can better clarify existing laws or make changes to laws to better serve the citizens of communities within the State, now and in the future, coming before the Legislature is appropriate.

Over the last few months the cities of West Fargo and Fargo have had disputes over annexation of lands and extraterritorial jurisdiction. Our experience with the mediation process is that no one comes out sensing that they have won. On the contrary, everyone comes out with a feeling that they have been beat up and have lost something. On the positive side, parties can be brought to the table and have a say in the matter, and an objective third party is involved. However, we found that a large number of residents living in several subdivisions, and which involved a significant area (over 160 acres), would not even had a voice in the matter of annexation had not West Fargo been asked by those residents to annex them prior to Fargo taking their action. This was because significant acres of undeveloped land were being annexed, so by land area the 160 acres of developed land with houses and families were insignificant in the process. With the proposed changes in House Bill 1490, more weight would be given to the assessed valuation of property. This would certainly be more equitable than what is provided for in the current law.

Another provision of House Bill 1490 is that it provides for phased annexation. If property owners and a city are in agreement with annexation, but need some time to prepare for it, an annexation resolution can be adopted setting forth the dates on which the annexation would occur. An orderly annexation resolution would provide for sound community facility planning. Such a tool has been utilized in Moorhead, Minnesota, and has allowed for the phase out of septic systems and phase in of municipal utilities over time.

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La Costa Richard
Operator's Signature

10/16/03
Date

Testimony For House Bill 1490
Page 2

House Bill 1490 also provides for contiguous cities to extend their extraterritorial areas for an equal distance that allows for more opportunity to negotiate on a level playing field between each other. This may involve more area within extraterritorial jurisdictions. However, if these areas are disputed areas, the mediation process would allow for the involvement of others, i.e. county, township, and owners.

In conclusion, the existing law is a good one. We can improve on the existing law by providing more opportunity to property owners who have developed their properties. This only seems right. It is our understanding that the Bismarck area may be experiencing similar issues in the future, so the law and proposed changes in House Bill 1490 would be more far reaching than our area. The City of West Fargo supports House Bill 1490.

Jo Costa Richardson
Operator's Signature

10/16/03
Date

#6 2-7-03

from
Ed
Eisenbeisz

February 7, 2003

Re: HB1490

Glen Froseth
Committee Chair

My name is Ed Eisenbeisz. I live in a rural residential subdivision located halfway between the city of West Fargo and Horace ND. We were among the many innocent victims of a six months annexation battle between the cities of West Fargo and Fargo. This dispute was finally settled with a mediator, appointed by the governor. The people that had the most to lose were the residents caught in the middle. Now we are faced with future tax hikes years before anyone had imagined, just because the city administration of Fargo had the authority to abuse their powers, and we couldn't even vote for the elected officials that forced this situation upon us. This is taxation without representation at it's worst. We are also forced to change our lifestyles at the whim and arrogance of the city of Fargo.

The mediation process is now behind us but no more than two weeks went by and the city of Fargo was back at its same old antics. Fargo just announced that it will force annex another 1280 acres adjacent to the recent disputed land. All of the residents that I've spoken with in this area are opposed to the resolution. With all do respect the current ND Century Code is well written, but does have some gaping loopholes that favor the larger cities, large landowners and large developers. These loopholes must be plugged to prevent larger cities with Imperialistic and arrogant administrations such as Fargo from abusing their powers simply "Just because they can". It is for this reason that I urge your support of HB1490.

Fargo has accused West Fargo of poor planning and un-orderly growth. There is 4 miles of undeveloped property between the existing city limits in South Fargo and the newly proposed resolution to annex another 1280 acres. Yet Fargo calls this proper planning and orderly growth? As much as one half of this property is tied up with an existing contract between the city of Horace and Fargo to go to mediation if either city wants to annex this land. Once again the fate of the individual existing residential developments within this parcel lies in the hands of a few developers hoping to get the highest bid. If this developer happens to be for the city of Fargo he will control the destiny of the entire parcel.

I don't believe the intent of the existing law was written to allow a city to force annex large parcels of existing developments and lumping them together with a large undeveloped parcels of land. This gives an unfair advantage to the large landowners or developers wishing to be annexed into a city. In our case nearly 100% of the homeowners (125+ households) opposed the resolution. An individual homeowner should have just as much "Voting Power" as the individual who owns a large tract of undeveloped land. The current law bases the petitions for annexation on taxable valuation. It is for that same reasoning that it should allow protests against annexation based on taxable valuation, not just the acreage. That is why I urge your support of HB1490 to allow a protest out if the owners of one-fourth or more of the assessed value of the territory proposed oppose the resolution. It would make the process much fairer for all.

The abuse of this loophole became quite evident after the announcement from Fargo to annex the largest parcel of land in their history last summer. One of the major landowners voiced his opposition to the resolution and the next day the city of Fargo excluded his land to avoid a protest of 25% or more of the land. The only recourse at that time was for the homeowners to petition into West Fargo, to be heard in the mediation process set forth under current law. The mayor of Fargo openly admitted that he didn't want our rural development to stop the growth of Fargo and therefore the city carefully calculated the boundaries such that we only owned 12% of the land even though nearly 100% of the homeowners protested the resolution. We were in a no-win situation.

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10/16/03
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Just prior to the mediation process, West Fargo had a preliminary agreement with all of the existing residents that petitioned to West Fargo to be phased in over a 15yr period. As a result of a stipulation that Fargo forced upon the residents at the 11th hour of the second day of mediation, we were forced to be annexed into the city of West Fargo in 3 years or Fargo would then have the authority to annex all of us. It is for this reason that I urge your support of HB1490 to allow for a city to annex a parcel of land over a period of up to five years. This would provide for orderly and proper planning, and would allow a time period for the existing developments to adjust their lifestyles.

Failure to pass HB1490 could have devastating results to all of the people in smaller cities of a greater metro area when subjected to neighboring cities with administrations such as Fargo. Fargo has argued that they are trying to preserve long-term growth potential. If Fargo has its way with the existing Extra Territorial boundaries as they exist under current law, they will envelop the entire community of Horace and West Fargo in a matter of just a few years. Yet they have thousands of acres of undeveloped land adjacent to current city limits that have yet to be annexed into city limits. It is for this reason that I urge your support of HB1490 to allow for cities of 2000 or higher population which border one another, to have equal extra territorial zoning authority. This would prevent larger cities from eventually overtaking their smaller neighbors.

The city of West Fargo has exceeded Fargo in single-family building permits for the year 2002. This is primarily due to the fact that the cities of Horace and West Fargo as well as all of the landowners in between, made a huge leap of faith over a decade ago to invest in the Sheyenne diversion channel. Because of this investment the flood protected land has spurred much growth along this corridor. Is it right for the larger city to come out and grab this prime area just because they have a larger extra territorial zoning area? HB1490 would give the smaller landowner and existing homeowners a fairer voice to have more control of their own destiny.

Most rural residential homeowners live outside of the city limits for very specific reasons. And in our current situation many people would rather move to a neighboring rural community to seek the rural residential lifestyle, and that is not a good situation for any community when the residents are unhappy. In a period of only six months, Fargo has disrupted the entire corridor between West Fargo and Horace and action must be taken at the state legislature to stop this kind of activity! It has already caused irreparable harm and undue financial hardship on many homeowners who've enjoyed the rural lifestyles they chose to live in. Quite frankly we all like the peace and tranquility of our neighborhoods and should not be penalized for not having curbs, gutters, storm sewers, sanitary sewers, fire hydrants or sidewalks and then told that we do not have proper and orderly planning!! As parcels like ours become annexed, so along come the special assessments that will only cause more hardship as we've already paid for all of the services that any city could possibly provide.

I strongly urge your support of HB1490!

Sincerely,
Ed Eisenbeisz
6820 50th Ave S
Fargo, ND 58104
Home: 701-282-8167
e-mail: eeisenbeisz@netzero.net

Richard Costa
Operator's Signature

10/6/03
Date

#7 2-7-03

From Erik Johnson

Testimony Presented on HB 1490 to the
House Political Subdivisions Committee
Representative Glen Froseth, Chair

by
Erik Johnson, City Attorney
City of Fargo

February 7, 2003

Mr. Chairman and Members of the Committee: My name is Erik Johnson, Assistant City Attorney from Fargo. I am here today to speak on behalf of the City of Fargo in opposition to House Bill 1490 as it is currently presented.

I am going to speak about three areas of concern related to the amendments proposed as part of this bill. First, I wish to address the amendment that would allow any city with a population over 2,000 to have extraterritorial zoning authority equal to the largest city involved if their extraterritorial area overlaps. This could potentially result in cities with a population of 2,000 having a four-mile extraterritorial zoning authority. We believe it would be difficult for a smaller community with limited staff resources to undertake all of the extraterritorial responsibilities such as planning, platting, zoning, building permits and flood plain management. We suggest that the cut-off in population should at least be increased to 5,000 to be consistent with the population stratification as it is currently set up in the Century Code.

Another amendment proposed as part of this bill would allow a city to approve a resolution of annexation that sets the effective date of annexation out up to five years. We are concerned that this will encourage cities to annex land that they are not prepared to serve with utilities and services. We believe that a city should not annex land unless they are willing and able to serve it in a relatively short period of time.

Our strongest concern lies with the proposal to include assessed value of property as a means of protesting annexation. We believe that the current law regarding annexation purposely bases the protests on acreage – in other words, the percentage of the territory being annexed, because it allows a city to grow by annexing land in an orderly and logical manner. It allows open development land to be brought into city limits even if there is a small rural non-farm property in the path of annexation.

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Including assessed value as a means of protest could mean that a farm land owner, who has patiently waited for a city to grow out to his land, now stands to have annexation blocked or complicated, simply because land in the path of annexation has been developed in some way.

The attached map shows an example of how the use of assessed value as a means of protest could unfairly complicate the annexation of land. A quarter section (160 acres) is included in this example. One acre has been parceled off for a rural residence. The remaining 159 acres are still intact as a single parcel, and the farmer who owns the land now wishes to have the land annexed for urban development. The following would apply:

Parcel	Size of Parcel	Percent of Territory	Assessed Value	Percent of Assessed Value
Undeveloped Farmland	159 Acres	99 %	\$159,000	53%
Rural Non-farm Residence	1 Acre	1%	\$120,000	47%
Total	160 Acres	100%	\$279,000	100%

In this example, one house in the path of an annexation would have the ability to protest out a logical annexation that is desired by the owner of a piece of land that is ready for development. This would force the annexation either to stop for the purpose of removing the house from the annexation area leaving a hole in the annexed area or to go into mediation. The use of 25 percent of assessed value as a form of protesting out an annexation is not fair to the property owners who have waited for orderly development, nor does it foster orderly urban growth.

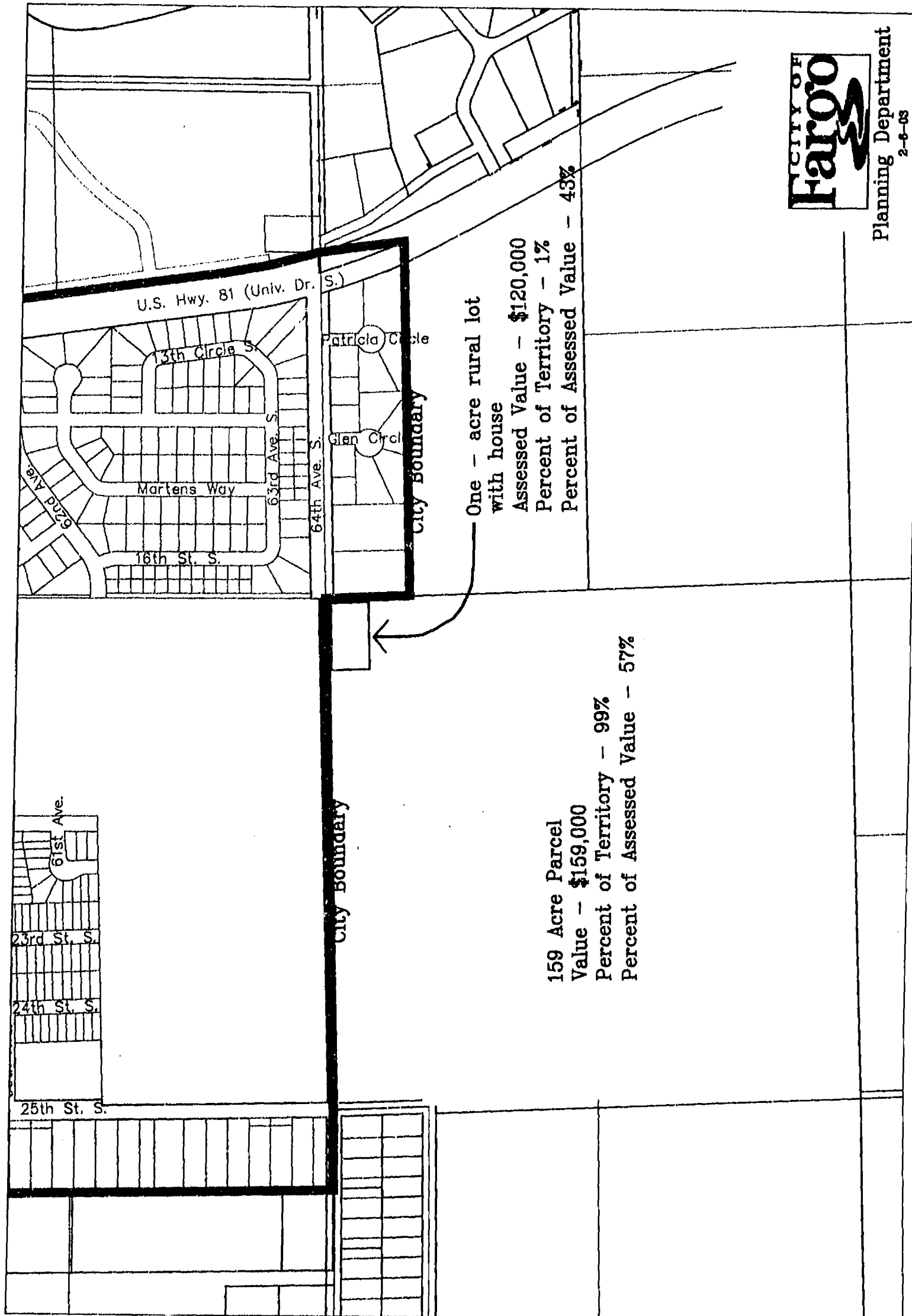
We also suggest that some additional revisions to the annexation laws would enhance orderly growth of cities. Under our current law, cities are authorized to enter into agreements for their extraterritorial zoning and subdivision authority and for future annexation; however, our current law does not allow these agreements to be enforced—a city may breach such agreements by annexing territory in violation of such an agreement,

and force the matter to a decision by an administrative law judge. There is little purpose for cities' entering into agreements if they cannot be bound by such agreements. We propose a simple change that states that cities who enter into agreements regarding extraterritorial zoning jurisdiction or annexation will be bound by such agreements. A breach of such agreements would not require mediation or hearing before an administrative law judge—they would be enforceable as any other agreement. Thus, if a form of H.B. 1490 does move forward, we suggest that it be revised to make such agreements binding upon the cities who have entered into them. Some draft language containing such revisions is being submitted herewith.

For all of the reasons I have addressed, I urge you to recommend a "do not pass" for House Bill 1490.

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10/6/03
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#1 2-13-03
HB 1490

Chairman Froseth, members of the committee, my name is Darrell Vanyo. I am currently a Cass County Commissioner, however, I am here today not on the county's behalf. But rather, I am here as a private citizen of McMahon Estates; the area most recently involved in the annexation battle between Fargo and West Fargo. I come before you to today to share some of my experience from having served 13 years on the West Fargo City Commission and from having been involved in many meetings concerning the annexation of McMahon Estates including the grueling 24 hours of mediation which took place this past December. I speak in favor of HB 1490.

I speak in favor of the amendments introduced by this bill for one simple reason -- fairness -- fairness to homeowners and fairness to smaller cities.

I speak in support of the Section 1 amendment; page 2, lines 1 through 5. This provides for an extraterritorial area to extend equally in those cases where there are two or more contiguous cities each having a population of two thousand or more. Let me explain why this is important to cities such as West Fargo and why West Fargo deserves to be on an equal playing field with Fargo where the extraterritorial area overlaps.

I served on the West Fargo City Commission from 1986 until 1999 when I moved south of West Fargo to the McMahon Estates development. During my time on the city commission, I was involved in several meetings to discuss the sharing of water treatment facilities, waste treatment, disposition of garbage, prioritization of road projects, economic development, and joint dispatch. Each time that these things were discussed, both cities have been, at times, long on rhetoric, but short on a truly cooperative spirit to make any joint venture succeed.

1A

This has been and always will be the case as long as there are school district boundary and city annexation battles. These battles bring about wounds that do not heal very quickly. They build mistrust and deep rooted feelings similar to the Hatfields and McCoys. As much as newly elected officials try to put the past behind them and attempt to build upon a cooperative spirit; I suspect you will not see West Fargo and Fargo elected officials sitting around the campfire, holding hands, and singing Kumbaya anytime in the near future.

So what does all this have to do with the extraterritorial language? Based upon my past experience, the previously failed attempts at joint ventures, and the now current westward direction of expansion; I believe strongly that Fargo will continue it's city expansion efforts until it has completely encircled West Fargo. The current language allowing an extraterritorial zone of 4 miles for Fargo and 2 miles for West Fargo will only aid Fargo in this process. Fargo may say this isn't there intent. But if it isn't, then why should they have any fear of the language in this amendment? Everyone should have the same opportunity to expand zoning authority to areas where future city boundaries may yet be in question. If equal opportunity is not given, West Fargo (and other cities in the future) will be forced to fight for their rights and future city expansion with one hand tied behind their backs. Please support this amendment language in HB1490. It provides fairness to the smaller cities.

I speak in support of the Section 2 amendment; page 4, lines 17 through 20. This provides for a phased in annexation. Why is this important? In areas of rapid expansion such as the West Fargo/Fargo area it is extremely important to home owners who may have recently built or are in the process of building; to provide a few years to recoup some of their own infrastructure expense and to get accustomed to the idea of a 20+% increase in property taxes.

2A

Keep in mind that when people buy property they are not told specifically when annexation will take place but only that it may take place in the future. Many dollars are spent in septic systems and roads, and investing in perhaps a larger home because of not having city taxes. To then be part of a city within months, can be devastating if a person's budget is stretched to the limits already. Providing a few years can make the difference in people accepting or protesting annexation.

Let me explain what happened to the people of McMahon Estates recently. When Fargo and West Fargo became embattled over annexation, the McMahon residents discussed a phased in approach for the very reasons that I previously mentioned. West Fargo was very open doing this. It allowed them to bring along their infrastructure in a planned and orderly fashion while providing the residents of McMahon a few years to get accustomed to the idea of being in a city. West Fargo offered annexation in 5 years to an area closest to their existing city limits, annexation in 10 years for those further away, and finally, annexation in 15 years for those furthest away. Everyone was happy with this – both West Fargo and the McMahon Estates residents.

Fargo came along later and in a meeting with McMahon Estate residents, offered a 10 year phased in annexation. Through the process of mediation, however, Fargo saw fit to force West Fargo to annex McMahon Estates in 3 years rather than the 10 years that they themselves had offered to the same residents. Doesn't this sound a little strange? It was okay for Fargo to promise a 10 year phased-in annexation one day, but when they gave this area to West Fargo through the mediation process; they demanded that West Fargo annex the area within 3 years. Was this just a coincidental and sudden change of heart? A change in values? Or payback to those who stood in the way of Fargo's expansion efforts?

3A

What I am telling you is backed up by documents given to McMahon residents and by the word that dozens and dozens of residents heard from Fargo officials.

The bottom line is this, let the amended language in HB 1490 explicitly state what phased annexation can be and don't let happen to others that which happened to the residents of McMahon Estates. Please support this amendment language in HB1490. It provides fairness to the smaller landowner who gets caught in the middle on annexations and annexation disputes. I ask your support of HB 1490.

I speak in support of the Section 2 amendment, page 5, lines 5 and 6. This provides for protesting out annexation based upon land acreage or assessed value if 25% or more protest. The reason I believe that this is important is this. Cities already have the upper hand in annexation matters – it is only fair to protect homeowners from being bowled over by cities who calculate well in advance what it will take to ensure annexation does not get protested out. In cases, of undeveloped land this new language does not effect any change whatsoever. But let me give you an example of what can happen when an already developed area becomes the target of annexation.

Fargo was asked by some developers to be annexed so that their undeveloped land would have the necessary infrastructure of a city rather than a rural development. Since this area was contiguous to McMahon Estates, Fargo included this area in the annexation resolution as well. In fact, Fargo went even further and included some additional undeveloped land west of McMahon Estates. When the news came out that Fargo was going to be annexing around 2800 acres in this area, people began talking. Then the undeveloped land owners west of McMahon petitioned West Fargo to be annexed. The people of McMahon Estates did the same.

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10/6/03
Date

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Fargo now realized that they were going to have over 25% of land acreage protesting, so they carved out the large undeveloped land owners to the west of McMahon. NOTICE – THEY DID NOT CARVE OUT THE PEOPLE OF MCMAHON.

If one looks closely at this, it is not difficult to understand why the smaller homeowner wasn't carved out! It's because once they carved out the undeveloped land owners who were going to protest, they had enough undeveloped land acreage left to overcome the protests of McMahon, even though nearly 100% of the McMahon residents did protest. Is this fair? I understand a city's need to grow and the fear of having areas within the city that are not part of the city. But is there not any protection for the smaller homeowner? What about their fears? Why don't cities do a better job of promoting the advantages of being in a city? Do cost comparisons of city and rural development living – if they dare. Shouldn't the promotion of city living help in getting homeowners to eventually see that with a city growing around them, there is a time to get on board? But this will only be evident to the small homeowner if the city has reasonable property taxes, good cost-effective infrastructure, and city officials who treat rural development residents as human beings and not as someone who just stands in the way of their expansion efforts. Why not place the burden on cities to be good stewards and promote the policy of communicating positively with potential city residents rather than using existing laws to force themselves upon people, with all the power in their favor, bringing about a non-communicative process during any annexation proceedings.

Please support this amendment language in HB1490. It provides fairness to the smaller homeowner and forces cities to do more than just continue to grab more land. Let us not be fooled into thinking that the annexation battle over McMahon Estates was unique and won't be repeated. It will happen again between Fargo and homeowners near Horace. It will happen again between Fargo

5-A 2-13-03

and West Fargo as land further west becomes the target of development efforts. It will happen again between Fargo or West Fargo and the people closer to Mapleton as expansion reaches even further westward.

Annexation laws should have as many concerns for the common person and smaller cities as it does for the larger cities! Let us never forget the human element in any of our laws. Thank you for this opportunity to speak in support of HB1490.

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10/6/03
Date

#2 2-13-03

HOUSE BILL 1490

House Political Subdivisions

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

February 13, 2003

Mr. Chairman and members of the committee, my name is Michael R. Brown and I am Mayor of the City of Grand Forks. Thank you for the opportunity to submit this testimony on behalf of the City of Grand Forks in opposition of House Bill 1490.

This legislation has two particular issues that cause Grand Forks to have concerns and ultimately be in opposition to its passage.

First, regarding section 40-51.2-07(1), the legislation reads "the effective date for the proposed annexation may not be later than five years after adoption of the resolution." We believe there is no sound planning reason to limit a City's ability to develop future annexation time lines. The time lines in place are working.

Furthermore, this section would limit the City's ability to develop annexation agreements that suit the individual needs of differing situations.

The second issue is in regards to section 40-51.2-07(3). This section adds language that creates two methods of protest annexation, violating the "simplicity" rule of legislative intent. It also will encourage cities to annex undeveloped land, resulting in high value, developed land sitting alone as virtual "islands" within a city.

For these reasons, I strongly encourage the committee to recommend a DO NOT PASS on House Bill 1490.

John Costa Richardson
Operator's Signature

10/16/03
Date

#3 2-13-03



"Shelley Eisenbeisz"
<seisenbeisz@netzero.net>

02/09/2003 08:31 PM
Please respond to
"Shelley Eisenbeisz"

To: "Froseth, Glen" <gfroseth@state.nd.us>
cc: "Lee, Gary" <galee@state.nd.us>, "Belter, Wesley" <wbelter@state.nd.us>, "Eisenbeisz, Edwin J" <edwin.eisenbeisz@cnh.com>, "Maragos, Andrew" <amaragos@state.nd.us>, "Kretschmar, William" <wkretsch@state.nd.us>, "Herbel, Gili" <gherbel@state.nd.us>, "Iverson, Ron" <riverson@state.nd.us>, "Grosz, Mike" <mgrosz@state.nd.us>, "Severson, Dale" <dseverso@state.nd.us>, "Johnson, Nancy" <njohnson@state.nd.us>, "Wieland, Alon" <awieland@state.nd.us>, "Pletsch, Vonnle" <vpletsch@state.nd.us>, "Ekstrom, Mary" <mekstrom@state.nd.us>, "Sandvig, Sally" <ssandvig@state.nd.us>, "Niemeier, Carol" <onlemele@state.nd.us>, "Eckre, Bruce" <beckre@state.nd.us>, "Zabel, Lori" <lori.zabel@corptech.net>, "Pergande, Angie" <bmozey@aol.com>, "Garaas, Jonathan" <jtgaraas@cablone.net>, "Vanyo (home), Darrell" <dvanyo@hotmail.com>, "Fischer, Tom" <tfischer@state.nd.us>, "Lee, Judy" <jlee@state.nd.us>, "Koppelman, Kim" <kkoppelm@state.nd.us>

Subject: Fw: HB1490 Committee Hearing

Dear Chairman Froseth, members of the committee.

Thank you for the opportunity to testify last Friday regarding HB1490.

I would like to respond to some comments that were made in opposition to the bill. Specifically from Eric Johnson, an Attorney representing the city of Fargo and Bill Wocken, Bismarck City Administrator. Mr. Johnson used the analogy of a quarter section of land with a one acre farmstead blocking the growth of a city because his one acre with dwellings is worth more than the remaining 159 acres. Therefore city services would have to go around such areas. I can't argue against that analogy, but HB1490 doesn't prevent the landowner of the remaining 159 acres from petitioning his land into the city. It is also my understanding that existing law permits existing farmers meeting certain criteria to be exempt from some of the taxes assessed by the city, should he decide to build a new dwelling on his farm land. This provides the farmer who was encroached by the city a fair balance, and gives him incentive to work with the city to provide proper planning and orderly growth on the remaining land.

The recent annexation attempt by Fargo was a much different situation than that presented by Mr. Johnson or Mr. Wocken. As I said in earlier testimony, more than 125 disadvantaged households (probably over 400 people) were affected by Fargo's actions against the will of nearly everyone except 4 or 5 advantaged developers. The developers are usually treated as a class of their own, and almost always get favorable tax advantages and deferments by the city at the expense of the existing citizens, both in and outside of current city limits. The amendments proposed would still allow for the landowner/developer to petition their undeveloped property into the city and I don't have a problem with that. The current language for petitioning land into a city would not change. The amendment would give the small landowner his fair say in what is now a very disadvantaged position, and I don't think anyone can deny that fact!

Our development, like most of the existing rural developments have homeowners associations and/or covenants to govern and promote orderly growth, and establish minimum building standards. They also have all of the necessary utility services in place. Rural developments are required by law to have a minimum acreage to allow for septic fields, thereby causing the front footage to be much larger than a typical city lot. When a city forces annexation, the cost to bring these services are much higher than a typical city lot. It's like a form of city induced condemnation of our property, because the value is depreciated by the amount of the higher special assessments, and the property becomes less attractive for resale. This issue is compounded even more if the rural lot has 2-5 acres of land like many of them do

Richard Costa
Operator's Signature

10/16/03
Date

with several outbuildings. Many residents can't afford to be annexed into the city, and would be forced to sell. Please review the attachment of the property tax comparison prepared by the Cass County Highway Department in a recent corridor study along Cass County Hwy 17. One look at the bottom line speaks for itself!

For a city to force new services against those that don't welcome them is pure economic waste, and costs more for all of the citizens of that city in the long run. This bill is not about blocking orderly growth or proper planning, we all benefit from the growth of a community. This bill is about fairness, it's about preventing economic waste, it's about fiscal responsibility, it's about preserving lifestyles and it's the right thing to do!

There have been attempts by opponents to ammend HB1490 already, please support HB1490 in it's original form.

Very truly yours,
Ed Eisenbelsz
McMahon Estates Resident
6820 50th Ave S
Fargo, ND 58104



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Date

#4 2-13-03



"Jonathan and Jill
Garaas"
<jtgaraas@cableone.net>

To: "Kim Koppelman" <kkoppelm@state.nd.us>, "Alon Wieland"
<awieland@state.nd.us>, <jlee@state.nd.us>
cc: <edwin.elsenbelsz@cnh.com>
Subject: House Bill No. 1428/House Bill No. 1490

02/06/2003 09:04 PM

Dear Senator Lee, Representative Wieland, and Representative Koppelman:

I am writing as an attorney, a property owner in Fargo's targeted area of annexation, and as a citizen of Fargo, North Dakota.

In all three capacities I write **in opposition to House Bill No. 1428** which will lead to economic waste, and inappropriate jurisdictional fighting between competing school districts. It also will not promote appropriate development of land surrounding existing cities. If given sufficient time, I believe that I could present many arguments in favor of cities only being allowed to annex land, and exercise its jurisdiction within areas previously determined to be within the existing school district's boundaries when the school district is identified as being the congruent with the city.

In all three capacities I write **in support of House Bill No. 1490**. Recent attempts at annexation by Fargo have disclosed the inequitable treatment it provides to the advantaged class of developers -- all in violation of existing State statutes and a Constitutional provision requiring uniform application of the laws. I have personally examined an agreement on file with the Fargo City Auditor which provides for inappropriate tax advantages to a favored few -- which costs every other non-favored citizen of Fargo. I believe the amendments proposed will help establish a larger voice for affected citizens and adjacent cities such as Horace and West Fargo. The area that I own property in is oriented toward Horace and West Fargo -- annexation by Fargo is not only unwelcome, but imposes costs upon the citizens of Fargo which are hidden from immediate view. Please pass the proposed amendments as a beginning of a more even-handed methodology for orderly annexation when it is welcomed by the affected landowners -- not shoved down their throats. I am more than eager to expand upon my comments should such be necessary, or appropriate.

Very truly yours, Jonathan T. Garaas, President of Horseshoe Bend, Inc., 1314 23rd Street South, Fargo, North Dakota 58103, and a Fargo resident living at 62 Prairiewood Drive, Fargo, North Dakota 58103.

Colin Bickford
Operator's Signature

10/16/03
Date

2-13-03

85

Written Testimony on House Bill 1490

House Political Subdivisions Committee
Representative Glen Forseth, Chair

BY Brian Neugebauer, City Attorney
West Fargo, ND.

February 11, 2003

Mr. Chairman and members of the Committee. I am submitting this written testimony in response to the testimony given by Erik Johnson, City Attorney for Fargo. I just saw the written text of the testimony, and must respond to certain statements made to your committee.

First I will comment on the proposed language allowing a City and landowners to agree to a phased annexation plan. This amendment would allow landowners and a city to agree to a plan which under current law would have to be imposed by a administrative law judge. Why not let the landowners and City come to an agreement, and avoid the cost of mediation and an administrative law judge? There are very good reasons to allow the landowners and city to reach such an agreement. For example, there are landowners outside of West Fargo but in the West Fargo extraterritorial zoning jurisdiction (and in fact covered by an annexation agreement of limited duration with Fargo and West Fargo) whom would like to be sure they end up in West Fargo, but do not immediately have a need to be in a city. They now have the choice of annexing into West Fargo in the very near future, or if they do not, being forcibly annexed by Fargo at the expiration of the annexation agreement. Allowing a phased annexation agreement with a city, allows the landowner the right to choose which city, without forcing them to immediately be annexed. If this law had been in place prior to last year, the annexation fight between West Fargo and Fargo may never had occurred.

Fargo opposes this language, but really states no valid reason for its opposition. What is wrong with allowing landowners and cities to work together to come up with a plan which is acceptable to both? It would avoid the cost of mediation and administrative law judges, and the dilemma caused by the current law providing only for annexation immediately or nothing. The proposed language does put a limit of five years on any such plan, which is a realistic time frame for future development. One could argue, if there was no time limit, a hypothetical situation in which such an agreement could be used as a defensive measure against another City. But, with a five year time limit, such possible abuse is eliminated.

Richard Costa
Operator's Signature

10/16/03
Date

West Fargo would like the opportunity to work with its rural neighbors to come up with a mutually acceptable annexation plan. This bill would allow us that opportunity. Fargo has displayed its total lack of interest in what their rural neighbors desire, and want the ability to force landowners into Fargo at any cost. Do not let their disinterest, and disdain, for working with their neighbors keep you from passing the proposed bill, which would have a positive impact on the annexation process for all cities statewide.

Second, I must most strenuously object to Erik Johnson's testimony on extraterritorial zoning agreements that stated the "current law does not allow these agreements to be enforced - a city may breach such agreements by annexing territory in violation of such an agreement". That statement is patently false, and shows a complete ignorance of the present law. It is also a false accusation that West Fargo breached an extraterritorial zoning agreement with Fargo in the latest dispute between Fargo, West Fargo and rural residents.

What Erik Johnson is failing to do is differentiate between annexation agreements and extraterritorial zoning agreements. The ND Legislature has specifically provided for both types of agreements, which serve different purposes. Section 40-51.2-02.1 NDCC sets forth the law whereby cities may enter into binding annexation agreements. Section 40-47-01.1 (4) NDCC sets forth the law whereby cities may enter into binding extraterritorial zoning agreements. The second agreement only deals with extraterritorial zoning, not annexation. Cities, under the law may enter into extraterritorial zoning agreements, without entering into an annexation agreement, and later, legally may annex into another city's extraterritorial zoning jurisdiction. The law provides that if a city does so, the city who has extraterritorial zoning authority must be given written notice, and may protest the annexation. If a city does protest, then the matter goes to mediation and, if that does not resolve the issue, to an administrative law judge. That is what happened in the Fargo West Fargo case and the law in that regard worked.

What Fargo is proposing in its requested amendments to this bill, would convert extraterritorial zoning agreements into annexation agreements. The Cities of Horace, Harwood and West Fargo all entered into extraterritorial zoning agreements with Fargo. If the proposed amendments of Fargo were adopted, those agreements would all be converted also into annexation agreements without the consent of Harwood, Horace or West Fargo, which clearly was not the intent of the cities at the time the agreements were entered. Even the minutes of the City of Fargo Commission meeting at which the extraterritorial agreement with

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West Fargo was approved by Fargo clearly show Fargo knew this difference when they approved the agreement. It is outlandish for Fargo now to attempt to mislead this committee on the current law in North Dakota, and to deceive the legislature into converting extraterritorial zoning agreements into annexation agreements, much to the detriment of West Fargo, Horace and Harwood. Simply stated, the current law having separate agreements for extraterritorial zoning and annexation works and should not be changed in that regard.

Erik Johnson also commented on the language of the bill which allows assessed valuation to be a factor in protesting annexation. There are now two methods of annexation, one commenced by landowners by petition in which area and assessed valuation are factors, and a second method initiated by a city in which only area is a factor. Fargo used this second method to gerrymander an annexation area, in which four large developers not protesting could allow Fargo to annex over 100 homes and platted lots, 90% or more, which protested. Probably 80% to 90% of the total assessed valuation protested, but were annexed into Fargo with no legal recourse or review. That injustice was corrected when a district judge through that part of the annexation invalid, ruling that West Fargo had started its annexation proceeding first. If West Fargo had acted six hours later, Fargo would have been successful with its gerrymandered district, with no legal recourse at all for the 90% of landowners who were fiercely opposed to the annexation.

The example Erik Johnson gives in his testimony, on the other hand, is a hypothetical situation. Furthermore, under current law there is a remedy to his example. The protest under his example would prevent automatic annexation, but in no way would prevent the City from seeking a mediator and ultimately an administrative law judge to hear the matter. Thus, a neutral person could review the facts and allow annexation if it made sense. The problem of not considering assessed value leads to attempted annexations like Fargo attempted, and over which the landowners have no right to have a mediator, or an administrative law judge review the matter. If assessed value were added, as in the proposed bill, in the Fargo case, Fargo would have received more than 25% protests, but still could have had the matter brought to mediation and an administrative law judge. The fact of the matter Fargo knew their proposed annexation was outrageous, and that they did not want to give the landowners the right to have a neutral person review the matter.

In conclusion I would urge you to adopt the bill as proposed, and reject the proposed amendments by Fargo.

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#6 2-13-03

Testimony Presented on HB 1490 to the

**House Political Subdivisions Committee
Representative Glen Froseth, Chair**

**by
Cindy Gray, Senior Planner & Zoning Administrator
City of Fargo**

February 13, 2003

Mr. Chairman and Members of the Committee: My name is Cindy Gray, Senior Planner responsible for growth and development issues for the City of Fargo. I am here today to speak on behalf of the City of Fargo in opposition to House Bill 1490 as it is currently presented.

I do not want to repeat the information presented to you by our City Attorney, Erik Johnson on February 7th. However, I do want to re-emphasize the important issue of how annexations are protested. Fargo has annexed rural subdivisions in the past, when they have been adjacent to other annexations and in developing areas. We typically work out cost sharing arrangements and delay installation of utilities that would be costly to the neighborhood until such time as the residents need those utilities. One of the rural subdivisions that the City annexed years ago still has road ditches instead of curb and gutter. In another case, the city is picking up half the cost of future roadway improvements and utility installation because of the costs of serving the large-sized lots of those rural lots. What I am saying is that annexation is a local issue. Annexation needs to be tailored to suit each particular situation, and each particular community based on their growth trends.

Fargo has taken some actions that we understand have created a huge amount of bitterness amongst the involved rural residences. We acted based on what we felt, and still feel, was the best approach to take from the standpoint of planning for orderly growth and development. We are a growing community. We have to deal with that and do it effectively, or we stand to be criticized in other ways. In the past, Fargo has annexed rural residences and worked out the kinds of agreements that were mentioned above. In this most recent situation, things were different, because both cities were involved in annexing the same land. There was a sense of urgency that caused actions to

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be taken before those kinds of discussions could occur with property owners. We understand that local issue between Fargo, West Fargo, and the residential subdivisions has been viewed from a completely different perspective than our own. We understand that property owners felt they had limited options. As a result of what happened with the previous annexation, Fargo has initiated a follow-up annexation, where our intent is to work very closely with the residents to determine when they feel they will be ready to come in, and when they feel they will need city services. We are more concerned about preserving our window of growth area than we are about the timing of annexation.

I want to make two main points today. First, annexation is a local issue, and by placing more restrictions on it, it will become less of a local issue, and more of a legal issue and a state regulated issue. Secondly, I want again clarify the problem with using assessed value as a means of protest. Farmland in North Dakota is purposely valued at less than market value. The assessed value remains the same whether that land is located in a developing area or is farther away from an urbanizing area. On the other hand, a developed piece of land has an assessed value that is much closer to market value. So, for example, a half section of farmland may be valued at \$650 per acre (320 acres x \$650 = \$208,000). One average priced new home on one acre would have an assessed value of approximately \$150,000. Therefore one home could easily exceed 25% of the assessed value of an annexation area. There are farmers and property owners in our area who have waited patiently to develop as the city has grown out to them, and we believe they should not be placed in a position where the very rural development that they allowed by selling off a lot or two comes back to complicate annexation of their land.

With respect to a five-year delayed annexation, the State of Texas requires that an annexed area be excluded from the city if the area has not been served within two years of annexation. We would be very comfortable with such a requirement, as we would not annex any area that we cannot reasonably expect to serve with utilities within a two year period.

Thank you for your attention. We urge a "do not pass" on HB 1490 as presented, and ask that you consider the amendments discussed by Commissioner Lynch.

HOUSE BILL NO. 1490 - Proposed Amendments

1 A BILL for an Act to amend and reenact sections 40-47-01.1, 40-51.2-02.1, 40-51.2-02.2, 40-
2 51.2-05 and 40-51.2-07 of the North Dakota Century Code, relating to the extraterritorial zoning
3 authority of a city and annexation of territory by a city.
4

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**
6

7 **SECTION 1. AMENDMENT.** Section 40-47-01.1 of the North Dakota Century Code is
8 amended and reenacted as follows:
9

10 **40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative**
11 **law judge.**

12 1. A city may, by ordinance, extend the application of a city's zoning regulations to any
13 quarter quarter section of unincorporated territory if a majority of the quarter quarter
14 section is located within the following distance of the corporate limits of the city:

15 a. One mile [1.61 kilometers] if the city has a population of less than five
16 thousand.

17 b. Two miles [3.22 kilometers] if the city has a population of five thousand or
18 more, but less than twenty-five thousand.

19 c. Four miles [6.44 kilometers] if the city has a population of twenty-five
20 thousand or more.

21 2. If a quarter quarter section line divides a platted lot and the majority of that platted lot
22 lies within the quarter quarter section, a city may apply its extraterritorial zoning
23 authority to the remainder of that platted lot. If the majority of the platted lot lies outside
24 the quarter quarter section, the city may not apply its extraterritorial zoning authority to
25 any of that platted lot.

26 3. Notwithstanding subsections 1 and 2, if two or more contiguous cities, each having a
27 population of five thousand or more, have boundaries in which the extraterritorial zoning
28 authority of the cities may overlap, each city may extend its zoning regulations to the

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1 distance established under subsection 1 for the largest city involved.
2 4. A city exercising its extraterritorial zoning authority shall hold a zoning transition
3 meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning
4 or planning commission shall provide at least fourteen days' notice of the meeting to the
5 zoning board or boards of all political subdivisions losing their partial zoning authority.
6 The purpose of the zoning transition meeting is to review existing zoning rules,
7 regulations, and restrictions currently in place in the territory to be extraterritorially
8 zoned and to plan for an orderly transition. The zoning transition meeting must take place
9 before the city's adoption of an ordinance exercising extraterritorial zoning.
10 4-5. If two or more cities have boundaries at a distance where there is an overlap of
11 extraterritorial zoning authority under this section, the governing bodies of the cities may
12 enter into an agreement regarding the extraterritorial zoning authority of each city. The
13 agreement must be for a specific term and is binding upon the cities unless the governing
14 bodies of the cities agree to amend or rescind the agreement. ~~If a dispute arises~~
15 concerning the extraterritorial zoning authority of a city and the governing bodies of the
16 cities involved fail to resolve the dispute, the dispute must be submitted to a committee
17 for mediation. The committee must be comprised of one member appointed by the
18 governor, one member of the governing body of each city, and one member of the
19 planning commission of each city who resides outside the corporate city limits. The
20 governor's appointee shall arrange and preside over the meeting and act as mediator at the
21 meeting. A meeting may be continued until the dispute has been resolved or until the
22 mediator determines that continued mediation is no longer worthwhile.
23 5-6. If the mediation committee is unable to resolve the dispute to the satisfaction of the
24 governing bodies of all the cities involved, the governing body of any of the cities may
25 petition the office of administrative hearings to appoint an administrative law judge to
26 determine the extraterritorial zoning authority of the cities in the disputed area. A hearing
27 may not be held until after at least two weeks' written notice has been given to the
28 governing bodies of the cities involved in the dispute. At the hearing, the governor's
29 appointee who mediated the meetings under subsection 4-5 shall provide information to
30 the administrative law judge on the dispute between the cities involved and any proposed
31 resolutions or recommendations made by a majority of the committee members. Any
32 resident of, or person owning property in, a city involved in the dispute or the
33 unincorporated territory that is the subject of the proposed extraterritorial zoning, a
34 representative of such a resident or property owner, and any representative of a city

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otherwise by an administrative law judge
in accordance with
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involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
- b. The proximity of the land in dispute to the corporate limits of each city involved;
- c. The proximity of the land in dispute to developed property in the cities involved;
- d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
- e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
- f. The growth pattern of the cities involved in the dispute; and
- g. Any other factor determined to be relevant by the administrative law judge.

6. 7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.

7. 8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.

8. 9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

SECTION 2. AMENDMENT. Section 40-51.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

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1 40-51.2-02.1 Annexation agreements.
2 The governing body of a city may enter a written annexation agreement with the governing body
3 of another city regarding the annexation of property located within the extraterritorial zoning or
4 subdivision regulation authority of the cities under chapter 40-47 or 40-48. An agreement is
5 binding on the governing bodies of the cities for the term of the agreement unless the governing
6 bodies agree otherwise. An agreement may not have a term greater than twenty years.

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otherwise by an administrative law judge
in accordance with this chapter

7 SECTION 3. AMENDMENT. Section 40-51.2-02.2 of the North Dakota Century Code is
8 amended and reenacted as follows:

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9
10 40-51.2-02.2 Annexation of land in the extraterritorial zoning or subdivision regulation
11 authority of another city.

12 A city may not annex land located within the extraterritorial zoning or subdivision
13 regulation authority of another city by ordinance or resolution unless:

- 14 1. Written consent is received from the governing body of the other city.
15 2. For purposes of this chapter, areas identified under an extraterritorial zoning
16 agreement or decision of an administrative law judge, under section 40-47-01.1, as being
17 the territory or extraterritorial zoning authority of one city shall not be considered as
18 being within the extraterritorial zoning or subdivision authority of the other city.
19

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2. The annexation is ordered by an
administrative law judge in accordance
with this chapter

20 SECTION 4. AMENDMENT. Section 40-51.2-05 of the North Dakota Century Code is
21 amended and reenacted as follows:

22
23 40-51.2-05 Notice -- Petition of owners and electors -- Mediation.

- 24 1. The governing body may not take final action on a petition presented by owners and
25 qualified electors until the petitioners have given notice of presentation of the petition by
26 one publication in the official newspaper of the city as provided by section 40-01-09 and
27 the governing body has mailed a notice of the time and place of consideration of the
28 petition to the owner of each parcel of real property within the area described in the
29 petition at the person's last known mailing address. The notice is not required to be sent
30 to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-
31 51.2-04. If the land area petitioned to be annexed to the city lies within the extraterritorial
32 zoning or subdivision regulation authority of another city, the governing body of the city
33 must also mail the notice of the time and place of consideration of the petition to the
34 governing body of the other city.

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2. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city and written consent to annex the land area is not received from the governing body of the other city, the annexing city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1. If mediation does not resolve the matter, the office of administrative hearings may be petitioned to hear the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.

SECTION 5. AMENDMENT. Section 40-51.2-07 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-07. Annexation by resolution of city. The governing body of any city may adopt a resolution to annex contiguous or adjacent territory as follows:

1. The governing body of the city shall adopt a resolution describing the property to be annexed. The resolution must include the proposed effective date of the annexation and may provide for different effective dates for different parcels of the territory. If the area included in the proposed annexation is the subject of an annexation agreement, as provided under section 40-51.2-02.1, and an extraterritorial zoning jurisdiction agreement, as provided under section 40-47-01.1, then the effective date for the proposed annexation may be extended to a date not later than ten years after adoption of the resolution. If the area included in the proposed annexation is the subject of neither such an annexation agreement nor extraterritorial zoning jurisdiction agreement, then the effective date for the proposed annexation may not be extended beyond one year from the date of adoption by the governing body of the resolution of annexation.

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2. The governing body of the city shall publish the resolution and a notice of the time and place the governing body will meet to hear and determine the sufficiency of any written protests against the proposed annexation in the official newspaper once each week for two consecutive weeks. The governing body of the city shall mail a notice to the owner of each parcel of real property within the area to be annexed at the person's last-known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of the resolution may file written protests with the city auditor protesting against the proposed annexation. No state-owned property may be annexed without the

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1 written consent of the state agency or department having control of the property. The
2 governing body of the city, at its next meeting after the expiration of the time for filing
3 the protests, shall hear and determine the sufficiency of the protests.
4 3. In the absence of protests filed by the owners of more than one-fourth or more of the
5 territory proposed to be annexed, the territory described in the resolution becomes a part
6 of the city. When a copy of the resolution and an accurate map of the annexed
7 area, certified by the executive officer of the city, are filed and recorded with the
8 county recorder, the annexation becomes effective, unless the resolution contains a later
9 effective date. Annexation is effective for the purpose of general taxation on and after the
10 first day of the next February. However, the city shall continue to classify as agricultural
11 lands for tax purposes all lands in the annexed area which were classified as agricultural
12 lands immediately before the annexation proceedings until those lands are put to another
13 use. If the owners of one-fourth or more of the territory proposed to be annexed protest,
14 or if a city that has extraterritorial zoning or subdivision regulation authority over the area
15 petitioned to be annexed protests, the city may either stop its pursuit of the annexation or
16 submit the matter to a committee for mediation as provided in section 40-51.2-07.1.
17
18

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1 **Comments:**
2 **The foregoing contains proposed revisions to House Bill No. 1490. The modifications from the**
3 **original H.B. No. 1490 that are proposed herein include the following:**
4 **1. Clarifies the bill by removing the word "contiguous"—cities that have adjoining boundaries**
5 **are "contiguous" but when two cities have cross-sectioning ET jurisdictions are not**
6 **"contiguous".**
7 **2. Changes of Section 1 (40-47-01.1.) to allow cities of 5000 or more to have the same**
8 **extraterritorial jurisdiction as a neighboring larger city, rather than cities of 2000 or more.**
9 **3. Allows extraterritorial (E.T.) zoning agreements and annexation agreements to be binding**
10 **upon the cities who enter into them. The current statute "permits" cities to breach such**
11 **agreements, subject to a mediation and administrative hearing process. Cities should be**
12 **required to honor their agreements. This does not eliminate the mediation and administrative**
13 **hearing process for those cities who have not entered into E.T. or annexation agreements.**
14 **4. Eliminates the language in H.B. 1490 that creates a protest of annexation by a landowner**
15 **with one-fourth of the assessed value of the land being annexed. If passed as drafted, H.B.**
16 **1490, would give a few landowners who happen to have developed their land with commercial**
17 **buildings or residences much greater protest power than undeveloped land, typically farm land.**
18 **The "assessed value" language would be inconsistent with North Dakota's annexation law, the**
19 **express purpose of which is to promote "orderly growth" of cities.**
20 **5. Modifies the language in H.B. 1490 to allow a deferral of annexation for up to ten years**
21 **(rather than 5 years) if the land which is the subject of agreement is the subject of an**
22 **annexation agreement and ET jurisdiction agreement between two cities. This allows phased**
23 **annexation agreements, but does not allow cities to engage in "pre-emptive" annexation**
24 **(annexation merely to protect land from being annexed by neighboring city). Such**
25 **"premature" annexation would be in violation of the public policy of our annexation statutes**
26 **which are to encourage orderly annexation.**

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Testimony Presented on HB 1490 to the
House Political Subdivisions committee
Glen Froseth, Chairman

by

Rob Lynch, City Commissioner
City of Fargo

February 13, 2003

Mr. Chairman and Members of the Committee:

I am Rob Lynch, a member of the Fargo City Commission. I am here today to speak in behalf of the Fargo City Commission on this bill that proposes changes to the extraterritorial zoning jurisdiction and annexation statutes of the state.

This proposed change will create problems for growing cities. First, it will allow small landowners to delay or stop annexations. Second, it would allow cities of slightly over 2,000 in population up to 4 miles of zoning jurisdiction, which is more than they need. Third, the legislation would allow one city to initiate a delayed annexation in the zoning jurisdiction of another city.

The City of Fargo agrees that changes need to be made in the annexation and zoning jurisdiction laws of the State. Our annexation in 2002 had to deal with two cities annexing the same land, rural residents not knowing where they will be in the future, and a mediation process that was time consuming yet failed to resolve long term planning issues. Before any changes should be made to annexation and zoning laws, a change needs to be made to require cities to live by the agreements they make. We are suggesting amendments that make zoning jurisdiction agreement binding, instead of allowing them to be ignored and appealed to judges.

If these concerns are addressed, then the following changes should be made in the bill.

First, if the Committee feels that some additional cities should have a greater zoning jurisdiction of 4 miles, I would suggest it apply only to cities of over 5,000 population adjacent to cities over 25,000 population, or give this jurisdiction to all cities over 15,000 population. Second, if delayed annexations are to be provided for under the law, then they should be limited to where cities have agreed upon zoning and annexation jurisdictions.

While these changes would eliminate some concerns we have with the bill, the change giving small land owners greater ability to block annexations will only delay annexations or leave small cities surrounded by a city. An owner of a single house would be able to block or delay an annexation of 320 acres. Cities will have to initiate legal action on most annexations, which will be costly and time consuming. The other option would be to leave out small lots, creating small pockets of land surrounded by a city. These "islands" within cities will be served by different fire departments, different waste haulers, and will not contribute to road maintenance, parks, or other city services that they benefit from. This proposed change would make it more difficult for cities to grow and provides an unfair tax break to some city residents.

It is important to leave annexation decisions to local governments and not hinder city growth. I encourage you to amend HB 1490 to address these concerns.

Jo Costa Richardson
Operator's Signature

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Date