

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1479

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1479

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1479

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 3, 2005

Tape Number	Side A	Side B	Meter #
1	x		21.7 to 24.8
Committee Clerk Signature <i>Lauren L. Zwick</i>			

Minutes: **Rep.Devlin, Chairman** opened the hearing on HB 1479, A Bill for an Act to amend and reenact section 11-33.2-03, subsections 1 and 2 of section 23-25-11, and sections 40-47-06, 40-48-03, 40-48-26, 40-51.2-05, 40-51.2-07, 40-51.2-11, and 40-51.2-13 of the North Dakota Century code, relating to the extraterritorial zoning authority of a city; to repeal sections 11-35-02, 40-47-01.1, 40-47-01.2, 40-48-18, 40-51.2-02.1, and 40-51.2-02.2 of the North Dakota Century Code, relating to extraterritorial zoning and subdivision regulation by cities; and to provide for application.

Rep.Devlin, Chairman : This is one of the bill that the sponsors we promised would be kept open as many of them were in Fargo (for the appearance of President George Bush). Anyone wishing to testify was welcomed to do so. No one appeared to speak in support of the bill.

Connie Sprynzynatak representing the North Dakota League of Cities appeared to present letters for the record from the cities of Grand Forks and from Williston both in opposition to the

Page 2

House Political Subdivisions Committee

Bill/Resolution Number HB 1479

Hearing Date February 3, 2005

bill. They did not plan to be present on February 4th. She withheld her testimony until the full hearing.

Rep.Devlin, Chairman recessed the hearing until February 4th (24.8) .

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1479 b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 4, 2005

Tape Number	Side A	Side B	Meter #
1	x		0.6 to end
1		x	3.4 to 8.0
Committee Clerk Signature <i>Lauren B. Zide</i>			

Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1479 which had been recessed from the previous day.

Rep. Wrangham representing District 8 prime sponsor of the bill introduced by saying that a lot of testimony would be being presented on a complex subject. Accordingly Rep. Herbal, Vice Chairman was restricting his presentation to allow those that follow to have sufficient time.

Rep. Kretschmar (1.5) inquired as to whether the bill would do away with extraterritorial zoning.

Rep. Wrangham In its present form the bill would do away with the extraterritorial zoning but if the committee in its wisdom wanted to change or amend the bill it had the right to do that.

Curly Haugland representing the Landowner's Association of North Dakota spoke in support of HB 1479 saying that the purpose of the bill was to restore property rights to the rightful owners of areas adjacent to cities in North Dakota. His point is that those who own land as Rep. Herbal,

Vice Chairman does within the extraterritorial areas near cities have their property rights restricted by zoning actions of the cities. A copy of his prepared remarks is attached.

Rep. Koppelman (6.8) What, if anything, does this bill have to do with annexation.

Curly Haugland : It has considerable to do with annexation. The part of the bill that deals with that is on page 4.

Rep. Koppelman (7.9) the things you talk about being infringements on private property rights with the exception of the last ones which you made relative to representations about property owners could be said about any action a city - council form of government ever took in annexation. You could make those same arguments -- is that true?

Curly Haugland : That is basically true. In an exchange of question and answers Rep. Zaiser and Mr. Haugland examined the question of where the city limits were and where the authority of the city should begin and end. The questions of public good and the differences between zoning property owners consent were discussed.

Mark Brodshaug (18.1) spoke in opposition to the bill. His hand written remarks are attached. There were questions of representation and appointments with some members serving on both (two) boards, etc.

Cindy Gray : City Planner for the City of Fargo testified in opposition to the bill. She answered questions about the practices and experience in the Fargo area. She pointed out the needs for planning traffic corridors, utility lines, etc. A copy of her prepared remarks is attached.

Greg Sund : City administrator for the City of Dickinson testified in opposition to the bill. A copy of his prepare remarks are attached.

Mr. Sund's testimony continued to the end of side A of the tape.

Side B tape 1 --Mr. Sund's testimony is continued.

Don Frey : Mayor of Carrington appeared to say that planning and coordination are necessary when done in cooperation with the County so as to provide the necessary rights of way for pipelines, street extensions, etc. (his testimony ends at 3.2)

Carl Hokenstad expressed his concerns with several sections of the bill. His assertion was that extraterritorial zoning has worked well in Bismarck and Burleigh county. A copy of his prepared remarks are attached. His recommendation was to not pass the bill.

Rep.Devlin, Chairman stated Rep. Herbal, Vice Chairman did not want to prohibit testimony but inasmuch that much of the testimony was becoming duplicatea of that which has already been testified -- therefore others wishing to testify should hand in there written testimony for the record.

Connie Sprynczynatyk representing the League of Cities chose not to testify but did want to hand in the written testimony from cities not present --- Williston, West Fargo - and **Rep.**

Wrangham added a worksheet for the record and for the Committee to use which setforth some projection numbers. **Rep.Devlin, Chairman** closed the hearing on HB 1479. **With people milling around the electrical plug was loosened from the wall. The remainder of the record is constructed from the clerk's notes.** There was not further discussion but the Chairman hastened to get in some committee works as many of the Committee were planning to leave for a funeral. (end at about 8.0)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1479 c

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
2		x	12.7 to 29.5
Committee Clerk Signature <i>Louise B. Fife</i>			

Minutes: **Rep. Herbal, Vice Chairman** in work session opened the discussion on HB 1479 for action.

Rep. Wrangham (12.8) proposed an amendment which was a 'hog house' amendment. His amendment -- lc 50613.0101 -- which used the current law but reduced the mile from corporate (city) limits for each of the city population categories. His motion to adopt his amendment was seconded by Rep. Dietrich. The motion carried on a voice vote.

Rep. Wrangham (25.4) moved a 'Do Pass as Amended' motion for HB 1479. **Rep.**

Kretschmar seconded the motion. On a roll call vote the motion failed **10 nays 1 aye 1 absent.**

Rep. N. Johnson moved a 'Do Not Pass as Amended' motion for HB 1479. **Rep. Koppelman** seconded the motion. The motion carried on a roll call vote **10 ayes 1 nay 1 absent.**

Rep. Koppelman was designated to carry HB 1479 on the floor.

End of record. (29.5)

House Amendments to HB 1479 - Political Subdivisions Committee 02/11/2005

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning authority of cities; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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 One-half~~ mile [~~1.61 kilometers~~ .80 kilometer] if the city has a population of less than five thousand.
 - b. ~~Two miles~~ One mile [~~3.22~~ 1.61 kilometers] if the city has a population of five thousand or more, but less than twenty-five thousand.
 - c. ~~Four~~ Two miles [~~6.44~~ 3.22 kilometers] if the city has a population of twenty-five thousand or more.

SECTION 2. APPLICATION. Any city exercising extraterritorial zoning or subdivision authority beyond the limits set forth in section 1 of this Act must relinquish that authority on the effective date of this Act."

Renumber accordingly

Date: Feb 10, 2005
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1479

House POLITICAL SUBDIVISIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Wrangham # 50613.0101
Amend - High house

Action Taken

D P

Voice - Carried

Motion Made By

Wrangham

Seconded By

Dietschman
Koppelman

Representatives	Yes	No	Representatives	Yes	No
Rep. Devlin, Chairman		✓	Rep. Ekstrom		✓
Rep. Herbel, Vice Chairman		✓	Rep. Kaldor		✓
Rep. Dietrich		✓	Rep. Zaiser		✓
Rep. Johnson		✓			
Rep. Koppelman		✓			
Rep. Kretschmar		✓			
Rep. Maragos		A			
Rep. Pietsch		✓			
Rep. Wrangham	✓				

Total

(Yes)

1

No

10

Absent

1

Floor Assignment

Failed

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

Date: February 10, 2005
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1479

House POLITICAL SUBDIVISIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Not Pass as Amended

Motion Made By

Rep. Johnson

Seconded By

Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Rep. Devlin, Chairman	✓		Rep. Ekstrom	✓	
Rep. Herbel, Vice Chairman	✓		Rep. Kaldor	✓	
Rep. Dietrich	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	A				
Rep. Pietsch	✓				
Rep. Wrangham		✓			

Total (Yes) 10 No 1

Absent 0

Floor Assignment

Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1479: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1479 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning authority of cities; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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~~ One-half mile [~~1.61 kilometers~~ .80 kilometer] if the city has a population of less than five thousand.
 - b. ~~Two miles~~ One mile [~~3.22~~ 1.61 kilometers] if the city has a population of five thousand or more, but less than twenty-five thousand.
 - c. ~~Four~~ Two miles [~~6.44~~ 3.22 kilometers] if the city has a population of twenty-five thousand or more.

SECTION 2. APPLICATION. Any city exercising extraterritorial zoning or subdivision authority beyond the limits set forth in section 1 of this Act must relinquish that authority on the effective date of this Act."

Renumber accordingly

2005 TESTIMONY

HB 1479

TESTIMONY ON HOUSE BILL 1479

House Political Subdivisions Committee

Testimony in Opposition from Mayor Michael R. Brown, City of Grand Forks

February 3, 2005

Mr. Chairman and members of the House Political Subdivisions Committee, thank you for the opportunity to testify on behalf of the city of Grand Forks in opposition to House Bill 1479.

House Bill 1479 appears to be an attempt to eliminate extraterritorial jurisdiction of a city, a practice that was put in place for approximately 30 years to promote public health, safety, morals, and general welfare through the zoning and planning activities within the extraterritorial jurisdiction of a municipality. This intent would seem to be valid yet today.

There are several reasons why House Bill 1479 should be opposed.

First, the removal of city planning or zoning jurisdiction in the extraterritorial area impacts the transportation system. There is no effective way for the municipality to plan for roadway, sidewalk, or bike path layout. There would also be little or no opportunity to preserve roadway or utility right-of-way and easements.

Second, in a similar fashion, utility layout and planning would be impaired. This is particularly true as it relates to the provision of municipal water, sanitary sewer, and storm sewer services. Without zoning or planning authority in the extraterritorial jurisdiction, the City would not be able to lay out its various needs for utility right-of-way or easements.

Third, many communities, including the City of Grand Forks, have ordinances restricting the provision of municipal services outside of the city's jurisdiction. If the extraterritorial jurisdiction was no longer authorized, municipalities may not be able to continue providing municipal services to those located within the extraterritorial jurisdiction.

Fourth, the bill expressly states that any zoning regulations previously in effect on the day of the adoption of this bill would be void. This raises significant questions as to existing developments within the extraterritorial jurisdiction. Does this bill affect setbacks, lot sizes, and related issues? Also, owners of developed property within the extraterritorial jurisdiction would be deprived of certainty and expectations created when zoning is granted. For instance, a new development for residential properties could be looking at a situation where there is no zoning whatsoever and any form of development could occur adjacent to their property. One plausible scenario would be that this

residential development could someday be neighbored by a heavy industrial operation. It is clear that zoning and planning activities do not exclusively benefit the municipalities. Property owners obtain rights and benefits from zoning and planning activities, not the least of which is consistency, reliability, familiarity, and compatible land uses.

Fifth, the elimination of extraterritorial jurisdiction could result in more annexations and more aggressive annexations by communities to ensure that they had the ability to plan for growth on the edges of their existing corporate limits. Presently, communities with extraterritorial jurisdiction do not have the same pressures for annexation if they know they can plan and zone within the extraterritorial jurisdiction, including the layout and obtaining of right-of-way and easements for roadways, utility easements, etc. This bill would remove such ability.

Sixth, if municipalities no longer have zoning authority within the extraterritorial jurisdiction, communities, such as Grand Forks, may be placed in an interesting predicament as to the identification, zoning, and enforcement of flood plain and floodway zoning requirements and regulations.

Seventh, the elimination of zoning in the extraterritorial jurisdiction clearly interferes with the goals of comprehensive and long-range planning. Such planning is necessary to accommodate growth, housing, utilities, flood protection, fire, police, and other public safety activities and needs as well as transportation, parks, recreation, and open space needs.

Finally, while this bill appears to be a direct effort to remove extraterritorial zoning jurisdiction from municipalities, there are not amendments to repeal related provisions regarding territorial authority for zoning regulations (NDCC 40-47-01.1), a requirement of a master plan for land outside a city's boundaries (NDCC 40-48-08), the planning jurisdiction and subdivision regulation over extraterritorial jurisdiction (NDCC 40-48-18), or the requirement of maps for acquisition of public streets to be adopted as part of a master plan within the city as well as areas outside of the city (NDCC 40-48-28). Without such amendments, the resulting inconsistencies and ambiguities would lead to massive confusion or uncertainty by property owners and municipalities.

For these reasons, I urge you to consider a DO NOT PASS recommendation from the committee on House Bill 1479. Thank you.



POST OFFICE BOX 1306
WILLISTON, NORTH DAKOTA 58802-1306
PHONE (701) 577-8100
FAX (701) 577-8880
TDD (800) 366-6888
(State Relay)

CITY OF *Williston* NORTH DAKOTA

January 31, 2005

House Political Subdivisions Committee
State Capitol
Bismarck ND 58505

RE: HB 1479

Dear Committee Members:

The City of Williston very much opposes HB 1479, which eliminates extraterritorial zoning for cities. The present law allows all stakeholders, city and rural, to work together to find common ground and build a consensus on the future development of the community. It encourages long range planning for orderly and safe development and smart growth. The present law has been an effective tool in eliminating hazardous as well as chaotic development.

We urge a "DO NOT PASS" recommendation for this bill.

Sincerely,

E. Ward Koeser
President
Board of City Commissioners
City of Williston

EWK:sk

HB 1479

Testimony of Curly Haugland, representing Landowner's Association of North Dakota
February 4, 2005
House Political Subdivisions Committee

Mr. Chairman and members of the committee;

HB1479 is a bill to restore property rights to their rightful owners in areas adjacent to municipalities in North Dakota.

This bill deserves your support because it will restore the right to plan for the future use of private property to the owners of the property.

This bill deserves your support because it will prevent future disputes that arise due to the usurpation of power by larger communities at the expense of both the smaller community and the property owners in areas where extraterritorial jurisdictions overlap.

This bill deserves your support because it will prevent future planned "takings" of private property by communities exercising extraterritorial jurisdiction.

This bill deserves your support because it will resolve the current improper vesting of the government's power to regulate land use in elected officials who are beyond the reach of the voters owning the land. The current situation could fairly be characterized as "taxation and regulation without representation".

Thank you very much for your consideration. LAND encourages a DO PASS recommendation on HB 1479

BISMARCK GROWTH MANAGEMENT PLAN

Advisory Committee

John Warford, Mayor and Committee Chair
Connie Sprynczynatyk, Board of City Commissioners
David Blackstead, Bismarck Planning Commission
Jan Wangler, Bismarck Planning Commission
Scott Johnson, Burleigh County Commissioner
Tim Atkinson, Burleigh County Planning Commission
Bill Daniel, Real Estate Broker
Tim Mueller, Bismarck Parks and Recreation District Board
Robb Sattler, Land Owner/Developer
David Patience, Land Development/Homebuilders Association

Technical Committee

W.C. Wocken, City Administrator
Carl Hokenstad, Director of Planning & Development
Kim Lee, Planner
Gregg Greenquist, Planner
Mel Bullinger, City Engineer
Jon Mill, County Engineer
Mark Berg, Traffic Engineer
Dale Heinert, Design & Construction Engineer
Keith Demke, Utilities Operations Director
Keith Hunke, Service Operations Director
Joel Boespflug, Director of Fire & Inspections
Bill Augustadt, Building Official
Michael Gunsch, Burleigh Water Resource District
Steve Neu, Director of Parks & Recreation
Charlie Whitman, City Attorney
Deborah Ness, Police Chief
Mike Dannenfelzer, Emergency Management
Mike Schnetzer, GIS Coordinator
Steve Saunders, MPO Transportation Planner
Dennis Schlenker, Investment/Finance Officer
Kathy Maier, City Assessor
Rena Walker, Bismarck Public Schools
Kim Kramer, City of Lincoln

Fargo, Horace face court

Judge's land dispute ruling advances case

Mary Jo Almquist
almquist@forumcomm.com

A Cass County judge has denied Fargo's request to dismiss the city of Horace's lawsuit over the proposed annexation of 1,342 acres of land between the two cities.

Instead, the ongoing land dispute will mean another day in court for Fargo and Horace.

The neighboring cities are vying for the same land between 52nd and 64th avenues south and 57th and 81st streets.

The Stanley Township property divides the two cities.

Horace filed a lawsuit against Fargo in November, saying it was first to lay claim to the land when the Horace City Council passed an annexation resolution in March.

Although Fargo passed its own annexation resolution two months earlier, the action was not valid because the township

land isn't contiguous with Fargo's city limits as required by law, Horace City Attorney Steve McCullough said.

Fargo did not file an accurate map with the county - also required by law - reflecting its new boundaries drawn after last year's controversial land battle with West Fargo, he said.

Therefore, if the land Fargo believed it gained during last

year's annexation is not officially in the city, then Fargo's new annexation process is not valid, and Horace would have been first in time, McCullough argued.

Although East Central District Judge Norman Backes' recent ruling didn't say which city has the legal right to annex the disputed property, McCullough said he takes the judge's

decision not to dismiss the case as "a very good signal."

The decision says a complaint should not be thrown out "unless it appears beyond doubt that the plaintiff (Horace) can prove no set of facts in support of his claim."

But Fargo City Attorney Erik Johnson said he is not discouraged by the outcome.

"It's important to know ... this is just a pre-answer motion," Johnson said.

LAND DISPUTE: Back Page

A10 Tuesday, February 10, 2004

THE BACK PAGE

LAND DISPUTE: Case will end up before mediator

From Page A1

It just means it moves on to the next step instead of being immediately thrown out, he said.

The next hearing date will likely be sometime in the next 45 days, McCullough said.

But the decision over who can claim the disputed property ultimately will be taken up by a state-appointed mediator - no matter which city is determined to be first in the land grab and no matter what the judge decides.

If the judge ultimately rules in favor of Fargo, the city will be able to move forward with its plans to annex the land.

That still will involve a mediator, though, because of overwhelming protests from people living in the disputed area.

If the judge rules for Horace, it would then be able to move forward with its proposed annexation.

However, since this land is in Fargo's extrajurisdictional zoning jurisdiction, Fargo

has the right to protest. The issue then would have to go to a mediator.

If the two cities can't reach a compromise during mediation, the issue will be decided by an administrative law judge. Fargo's annexation controversy with West Fargo was eventually settled through mediation.

Much like the current battle over Stanley Township land, Fargo fell victim to a legal technicality last time when it failed to use the proper procedure to begin its annexation.

The law states annexation begins with resolution by the City Commission, but Fargo started its process with the Planning Commission.

The West Fargo City Commission passed its required resolution before Fargo and was first to begin annexation.

In the final settlement between the two cities, Fargo was left with two quarter-sections of land and West Fargo gained 5 1/4 quarters.

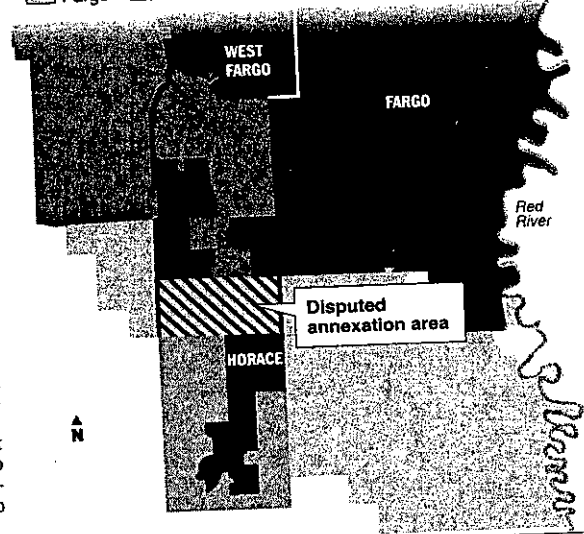
Readers reach can reach Forum reporter Mary Jo Almquist at (701) 241-5531

Land battle

Both Fargo and Horace are attempting to annex the 1,342 acres that separates the two cities. A Cass County District Court judge will decide which city has the right to go after the Stanley Township land.

Extraterritorial areas

■ Fargo ■ West Fargo ■ Horace



Source: City of Fargo

The Forum

to various growth locations of the community, usually at the intersection of two collector or arterial roadways that can be conveniently accessed from the nearby residential areas.

General Commercial

The general commercial designation is for commercial uses that provide a wide range of goods and services to the community. This designation is applied to two general locations within the growth area of the community. The area along Highway 83 from the current corporate limits north to Highway 1804 will provide an extension of the existing general commercial uses in that area. In addition, a general commercial area is provided at the intersection of Interstate 94 and 66th Street NE, although commercial development in this area would be contingent on the construction of an interchange at this location.

Industrial

The industrial designation provides areas for commercial and industrial uses that are generally incompatible with retail commercial areas and more appropriately located adjacent to other existing industrial areas. This designation is applied to two general locations within the growth area of the community. The area along County Highway 10 and Bismarck Expressway will provide an extension of the existing industrial uses in this area. An industrial area is also provided south of the intersection of Interstate 94 and 66th Street NE, although this area would not be suitable for either commercial or industrial development until an interchange is constructed.

Parks, Open Space and Public Land Plan

The Bismarck Parks and Recreation District has developed a parks, recreation and open space position paper for consideration during the development of this Growth Management Plan. This paper provides an overview of issues and opportunities, including the lack of parks and public open spaces in developing areas, the current demand for services, the need to preserve and protect natural resources, the equity involved in providing services to non-city residents, and the value of parks and open space.

The position paper also outlines a list of tools to create a quality park, recreation and open space system, which includes: 1) adopting a natural resource, open space and public facility plan; 2) adopting a public land dedication ordinance; and 3) expanding the Bismarck Park and Recreation District service area. A draft public land dedication ordinance was also prepared in conjunction with the position paper for consideration.

The position paper goes on to discuss the vision for the community based on the adoption and implementation of the natural resource, open space and public facility plan. The benefits and effects of such a plan are discussed and an argument is made for the adoption of a public land dedication ordinance as a way to enhance the quality of life in the community and increase property values.

DRAFT
5/19/03

Public Land Dedication

1. Findings and Purpose -

A. New development within the City and extra territorial area (ETA) increases population, adds employees and increases demand upon public services. The developer (subdivider) of every new subdivision or re-subdivision of property should either dedicate land to the public to meet these increased needs or pay a fee in lieu of land dedication. Said land or fee shall be used for parks, trails, open space, storm water ponding, school sites, infrastructure, safety facilities and other public uses.

B. The preservation and development of public land and facilities such as; parks, trails, open space, storm water ponding, schools, infrastructure, safety facilities and other public uses are essential to maintaining a safe, efficient, healthy and desirable environment for residents, visitors and area workers. The value and attractiveness of residential and non-residential developments to land owners, developers, purchasers, employers, and employees is significantly enhanced by the presence of such public lands, infrastructure, public safety facilities, schools, parks, recreation and open space amenities.

C. The protection of wetlands, water bodies, creeks, and steep slopes and other similar undevelopable land is in the best interest of residents, land owners and the public as well as beneficial to wildlife, recreation and open space character.

D. Century Code Title 40 allows municipal planning and subdivision regulations may require that a reasonable portion of any proposed subdivision be dedicated to the public or preserved for conservation purposes or for public use.

E. It is appropriate that each new subdivision or re-subdivision of property within the City and ETA contribute toward the public land system in proportion to the burden it will place upon that system. Therefore, these public land dedication regulations are established to require new developments and re-subdivisions to contribute toward the public land system at the time of subdivision in rough proportion to the relative burden they will place upon that public system.

2. Definitions -

Net Development Area - the land area of the proposed subdivision less undevelopable land.

Subdivision - the process of platting land into a lot and block description, splitting of land into smaller parcels or the re-subdivision of a previously subdivided parcel that results in a greater number of parcels.

Undevelopable Land - water, wetlands, creeks, rivers, floodplain, steep slopes over 25% and major utility or other unbuildable easements.

3. Dedication Process

A. Application. The provisions of this section shall apply to all new subdivisions and re-subdivisions approved after the effective date of this ordinance insert date of approval. Where land owners have previously dedicated land in advance of development, the City Commission will

determine if the dedication satisfies all or part of these requirements and what additional cash or land dedication is required, if any.

B. Procedure. The subdivider of property shall meet with the Park District and City to review the proposed subdivision and to review public land dedication needs prior to making a subdivision application. The District and City shall make a preliminary recommendation to the subdivider regarding public land dedication. The subdivider shall incorporate that recommendation into the subdivision plans and/or note cash dedication in lieu of land in a letter accompanying the subdivision application. The City shall notify the Park District of all subdivision applications and provide information on the proposed subdivision. The District will review the proposed subdivision and the land or cash dedication and shall provide a written recommendation regarding park, trail and open space dedication to the City and subdivider within 30 days of receipt of the subdivision information. The subdivider shall submit with the application for subdivision or re-subdivision a letter from the Park District indicating their recommendation for land dedication or cash in lieu of land dedication. When the subdivider has not submitted a letter of recommendation from the District the application shall be deemed to be incomplete.

The Planning and Zoning Commission shall consider the Park District recommendation, in addition to other public uses and facility needs identified by the City and other cooperating public agencies, when preparing their recommendation to the City Commission. Land shall be dedicated or cash in lieu of land payments made upon approval of the final plat. The City Commission shall have the final authority to determine whether land or cash dedication will be accepted.

C. Dedication of land on plat. The proposed land to be dedicated and any undevelopable land shall be shown on the preliminary plat and shall be dedicated on the final plat. Prior to approval of the final plat the subdivider shall provide a deed for the land dedication to the public entity that is to receive the land. If the plat is not approved, the deed shall be returned to the subdivider. The transfer of deed is final upon approval of the final plat.

D. Payment of dedication fee. Cash dedication dollar amounts shall be listed as a condition of approval of the preliminary and final plat and in subsequent development agreements. Cash payment in lieu of land dedication shall be paid at the time of final plat approval.

E. Combined land and cash dedication. The District may elect to accept a combination of cash and land as satisfaction of the public land dedication requirements. In such cases, the amount of land dedicated shall reduce the required cash payment by the proportional amount that the dedicated land satisfies the percentage of land dedication requirement in Section B above.

F. Phased development. In any subdivision which include outlots, the subdivider may pay the development's proportional share for the entire subdivision, including outlots, or the development's proportional share exclusive of the outlots. When such outlots are subdivided, the public land dedication requirement for that area shall be paid if not previously paid.

4. Dedication Rules -

A. Protection of undevelopable land. Undevelopable land shall either be dedicated to the public or protected through the placement of appropriate protective easements. Undevelopable land shall not be counted toward satisfaction of the public land dedication requirement. Public land dedication or cash in lieu of land shall be exclusive of dedication or protection of undevelopable land.

B. Land dedication. The amount of land to be dedicated by the subdivider shall be based upon the type of development and shall be based on the percentage of the net developable area to be subdivided according to the following table.

Mr Chairman, comm members Thanks for chance to speak.

MB - farmer from rural Fargo, Fargo Plan Com. and Warden Twp supervisor. I'm here to speak in opposition to House bill 1479.

ET Planning & zoning authority is an important intermediate step between township zoning with ~~county subdivision~~ and full annexation by a city. ET authority allows ^{residents} landowners and potential landowners to plan ahead with knowledge of potential city expansion before a full annexation by a city. Without ET authority a city would likely be more aggressive in annexing land in order to extend zoning ahead of sprawl developments. This would cause ~~land~~ residents to have increased city taxes sooner than necessary. ET authority allows a city to plan transportation and city service growth without residents of the ET area paying city taxes before they really have much access to city services. Cities are better equipped for longer range planning for their growth than counties because counties lack zoning authority while cities have both zoning authority and subdivision authority. Townships can do a good job of zoning but have limited resources to deal with development on the edge of cities and lack subdivision authority which is exercised by the counties. Planned growth by cities is likely to result in more affordable housing with lower

special assessments due to more efficient city services than if cities have to build around sprawling rural developments.

I urge you to recommend do not pass

Thank you, Questions?

Development will occur if the right economic conditions exist. Cities are the unit of government with the right tools to provide efficient delivery of services to new residents.

MARK BRODSHAUG

FARGO PLANNING COMMISSIONER

**Testimony on HB 1479 to the
House Political Subdivisions Committee
Representative William Devlin, Chair**

by the City of Fargo

February 4, 2005

House Bill 1479 proposes the removal of extraterritorial zoning authority of a city. The City of Fargo is opposed to the bill for the following reasons:

1. The presence of a city has a great amount of influence on the desire of rural property owners to develop their land. Extraterritorial zoning and subdivision authority allows a city to ensure that this development is consistent with the outward growth of the city. No one wants development in the path of city growth to ultimately be negatively influenced by the presence of arterial roadways, commercial development or other incompatible features. Extraterritorial zoning protects the individuals who buy and invest in these properties.
2. Placing development responsibility in the hands of the city through ET zoning provides the property owner with the staff and the technical ability needed to solve issues like floodplain development and drainage. Fargo works hard to accommodate the needs and desires of property owners in the ET area, whether they are farm families who are trying to build a second house on the farmstead, or whether they are developers who want to create a rural residential development.
3. Concentrations of population in the rural area, such as rural housing developments, benefit from city zoning administration. For example, nuisance land uses can be dealt with so they are not problematic for these residents.
4. Extraterritorial planning and zoning authority for cities provides the means for Fargo to plan for orderly growth of land uses and roadways.
5. The use of extraterritorial zoning allows the city to allow a certain amount of development without the need to annex that land.
6. The City of Fargo has three extraterritorial area representatives on our Planning Commission. We value the involvement and input from these Planning Commissioners, and the perspective they bring to the group.
7. The current extraterritorial statutes were designed very well in that they reflect the fact that larger cities influence a larger area, and smaller cities influence a smaller area. They also allow property owners a lot of flexibility as far as choosing which city they wish to be annexed into in cases where more than one city is involved.

8. Current statutes better equip cities rather than counties and townships to address the development pressures adjacent to cities.
9. The proposed legislation would undo a lot of work and effort the city has done to work with property owners and plan for growth.

The City of Fargo respectfully urges the Legislature to vote **do not pass** on HB 1479.

**Testimony of
Greg Sund
Opposed to
HB 1479**

Chairman Devlin and members of the House Political Subdivisions Committee, for the record my name is Greg Sund. I am the Dickinson City Administrator. I am testifying in opposition to HB 1479.

The extraterritorial zoning jurisdiction of a city is necessary to the provision of orderly growth and to protect property values of area landowners to the extent possible. By eliminating the opportunity to zone areas adjacent to cities, this bill creates the opportunity for urban sprawl and hodgepodge development. This fact is especially true today as more and more people decide to construct homes within a short distance of a city limits. For instance, people, who own houses just outside a city limits may have access to drinking water from a rural water authority, but they generally do not have access to wastewater collection and treatment systems. As the density of a housing area increases, the need for wastewater collection over septic systems becomes more necessary. Cities may be able to extend their water and sewer mains to new areas, but only when prior planning has made it economically possible to do so. Any area constructed without consideration of street layout and city utilities may create situations wherein it is too costly to extend streets and utilities at a later time.

It is common for people seeking to construct buildings to give no consideration to the need for future roads, storm water, wastewater, solid waste, police protection, or fire protection. These are all services cities address on a day to day basis. Through extraterritorial zoning, the efficient provision of these services when density justifies it, insures orderly and cost effective growth.

It is more and more common today for people living outside a city limits to be there primarily for residential purposes, not for agricultural purposes. At some point, it usually becomes necessary to address service needs for people in such areas.

Finally, I am concerned with a current requirement in NDCC 40-48-03, which this legislation proposes to modify slightly. The last line of that section reads "The executive officer, the engineer, and the attorney of the City shall must be ex officio members of the commission." I believe this requirement creates potential conflicts. One of the people named above, the executive officer, it likely to be an elected official on the city government board. As a member of both boards, there is a possibility that conflicts could arise as this person would have a stake pro or con on decisions made by the planning and/or zoning commission which the elected body must confirm or overturn. Likewise, the engineer is an appointed staff position, who should offer input on planning and zoning decisions when appropriate, but as a member of the board, this person could experience conflicts. How could that person adequately advise the elected body, when asked for a professional opinion regarding a decision in which he/she participated.

Finally, as a member of a board, how could an attorney then jump into a neutral position to advise the governing body on issues before them that were addressed by the Planning and/or Zoning Commission. I encourage the committee to strike this sentence of the above referenced section in order to avoid possible conflicts of interest.

I urge the committee to approve a "Do Not Pass" vote on this bill.

HOUSE BILL 1479
FEBRUARY 4, 2005
10:00 AM
HOUSE POLITICAL SUBDIVISIONS COMMITTEE

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

House Bill 1479 would eliminate extraterritorial zoning and subdivision regulation authority for cities in North Dakota. Since passage of the original legislation in 1976, we have been able to use this provision to help manage city growth. I believe the existing law has worked well over the years.

I have several concerns with this proposed bill:

1. The intent of HB 1479 appears to be to prevent cities from thoughtfully administering zoning and subdivision authority in those areas that will eventually become part of a city's corporate limits and to prevent some sort of a quick "power grab" by a city commission or council. Many cities in North Dakota have never exercised extraterritorial zoning. I'm aware of only a few cities in North Dakota who have decided to implement the four-mile extraterritorial boundary. Bismarck studied the option of extending its extraterritorial jurisdiction carefully. The legislation allowing cities of our size to extend our jurisdiction from two to four miles was passed in the 1997 Legislature. After completion of a growth management plan in 2003, Bismarck decided to enlarge its zoning jurisdiction to the four miles allowed by state law. After over a year of work, we are close to completing the transition from county to city zoning. Because of requests from some of the residents during this process, we have changed parts of our zoning and subdivision regulations to make them more compatible with county and township regulations.

2. The sections requiring that residents of the extraterritorial area be members of the city planning commission would be deleted. In Bismarck, we presently have three

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

3. Section 11 of the proposed bill is particularly troubling. It states that "any extraterritorial or subdivision regulation in effect before the effective date of this Act is void and zoning and subdivision authority must revert to the township and county that would have subdivision and zoning authority in that area. Does this mean that all the zoning changes we have implemented in the extraterritorial area over the past 29 years will revert back to agricultural zoning? Or that all of the 350+ subdivisions approved in that same time period would become non-existent? What would happen if the county or township inheriting all these developments did not have comparable zoning or subdivision regulations? What would you tell a landowner who has relied on all of the rights allowed by a particular zoning designation that the rules have suddenly changed? I don't know how all of that development approved over a long time period could simply be undone by passage of this bill.

Again, the existing extraterritorial zoning provision has worked effectively in the Bismarck area for many years. On behalf of the City of Bismarck, I would ask that you give House Bill 1479 a **do not pass** recommendation.

TO: House Political Subdivisions Committee
FROM: City of Minot
DATE: February 4, 2005
RE: House Bill 1479

Mr. Chairman and members of the committee:

I would like to begin by thanking Chairman Devlin and the committee for allowing the City of Minot to submit written testimony on this bill.

The City of Minot has been closely watching the development of this bill through contact with the North Dakota League of Cities. If this bill were passed by the Legislative Assembly, there would be a serious detrimental effect on the City of Minot, other North Dakota cities and the state itself.

This bill essentially removes the extraterritorial zoning responsibilities of cities to control development surrounding the corporate limits. Without extraterritorial zoning, North Dakota cities would not be able to adequately plan for the organized growth that allows the municipality to make proper decisions relating to the necessary infrastructure that will serve the growth areas in the future.

In addition, the bill destroys the cooperative function of city planning commissions that are currently comprised of representatives from other governmental entities within the metropolitan area.

Therefore, the City of Minot encourages your committee move this legislation to the floor of the House with a **"do not pass"** recommendation on House Bill 1479.

Thank you again for allowing the City of Minot to present this written testimony to the committee.

HB 1479

City of West Fargo Testimony

HB 1479 intends to remove extraterritorial zoning authority of a city. The City of West Fargo would like to go on record as opposed to the bill for the following reasons:

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

The City of West Fargo urges the Legislature to **defeat HB 1479**.

Estimated Forecast of years of Growth Necessary to Expand Into Extrateritorial Area

	Sq Miles	Acres
Bismarck 2004	28.09	17977.6
Bismarck 1985	23.97	15340.8
19 Year Growth	4.12	2636.8
Growth Per Year	0.21	138.7

2 mile extrateritorial	51.4	32947
4 mile extrateritorial	57.7	36930

At present growth rate it will take

237 years to fill 2 mile extrateritorial

At present growth rate it will take

503 years to fill 4 mile extrateritorial

Pres. Dwight D. Eisenhower