

4391 74th Avenue North
Grand Forks, ND 58203
January 23, 2008

To: Advisory Commission on Intergovernmental Relations

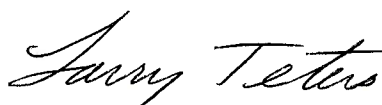
I would like to address the issue of city jurisdiction on land beyond two miles of boundary. There may be some good reasons for a city to have control farther out. However, the potential for abuse of the privilege should overrule any or all of these. My position for feeling this way is because as a rural resident I have no say or representation on decisions made by city officials. What may be good for the city may very well not be good for those of us not in the city limits.

I know that I have one of my township board members on some city committees. However, the voice can be heard but one vote doesn't do much against many representing the city. I can go to the meetings and voice my concerns, but again I am only at the mercy of the city. I didn't elect these people nor can I vote them out of office if I feel they haven't done the job for me.

There was an incident recently in my neighborhood that had to be resolved by the city of Grand Forks. They tried to turn the matter over to the county or township but those entities didn't have the authority to handle the matter. Because of this there was a delay in resolution of the problem.

In closing, I moved to rural Grand Forks County so that I could have the shop and storage building to fit my needs. I was aware of the two mile extra territorial jurisdiction so looked for property beyond that. Now I find that I am once again in the city's control. If I want to add to my storage I may very well be turned down due to my property already having more square footage of garage space than city code allows. So I would have to obtain a variance and whatever else the city demands. This is not right or just. If I want to remodel my home, I must have a city permit and be subjected to city code inspections. The county codes no longer apply. This isn't fair and that is all that I am asking for in this matter. Thank you for your time and effort on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Larry Teters".

Larry Teters

Legislative Testimony Extra Territorial Zoning

Rep. Kaldor, Sen. Anderson & committee members:

Thank you for allowing me time at the committee today. I am Shawn Kessel, City Coordinator for the City of Wahpeton and I am here in support of the Extra Territorial (ET) Zoning legislation that is in place.

It is no secret that the eastern 1/3 of ND represents a disproportionate share of the state's population yet several of the cities that are within this boundary are handicapped when it comes to ET zoning by our borders with other states or nations. These border issues effectively half the ET territory current legislation allows all other cities in North Dakota. This means growth is more focused and pronounced in the remaining land available.

For instance the City of Wahpeton has experienced a certain amount of success in attracting value-added agriculture businesses and jobs. Two of these large facilities are located to the north of our community and we hope to continue that trend. Growth to the south is essentially blocked by the airport which is the busiest non-commercial airport in the state and now capable of handling jets. Further impedance on the south side is a large break-out area. In times of high water, which unfortunately occurs fairly regularly in our area, the break-out area serves as natural connection between the Bois de Sioux river and the Wild Rice river - relieving some pressure on the soon to be erected levees within the City of Wahpeton. With our

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north blocked by industrial growth, our south blocked by floodways and the airport, our east blocked by the state border the only direction the City can grow commercially and residentially is west. Limiting our ability to plan that growth west would serve to delay residential and commercial growth.

Other areas of concern that the City of Wahpeton has with a limited ET zoning area are:

1. Retaining the ability to site needed but sometimes difficult City infrastructure (i.e. City Lagoons). According to the Citizen Survey we complete annually a quality of life issue that our residents are concerned about is the current location of our city lagoons and the industrial odors emanating from the plants and the disposal practices those plants utilize. We are very fortunate to have the value-added agriculture plants I mentioned earlier as a part of our community. A concern expressed by our residents last year was the application of plant waste to land immediately surrounding our community and the odors it created. This may sound like a minor nuisance that goes away quickly but the atmospheric and weather conditions at the time allowed this concentrated odor to exist for several weeks in our town and caused numerous complaints, poor pr for the industry, and hardship for the residents. The larger the physical buffer between industry and residents better.

2. Properly planned growth

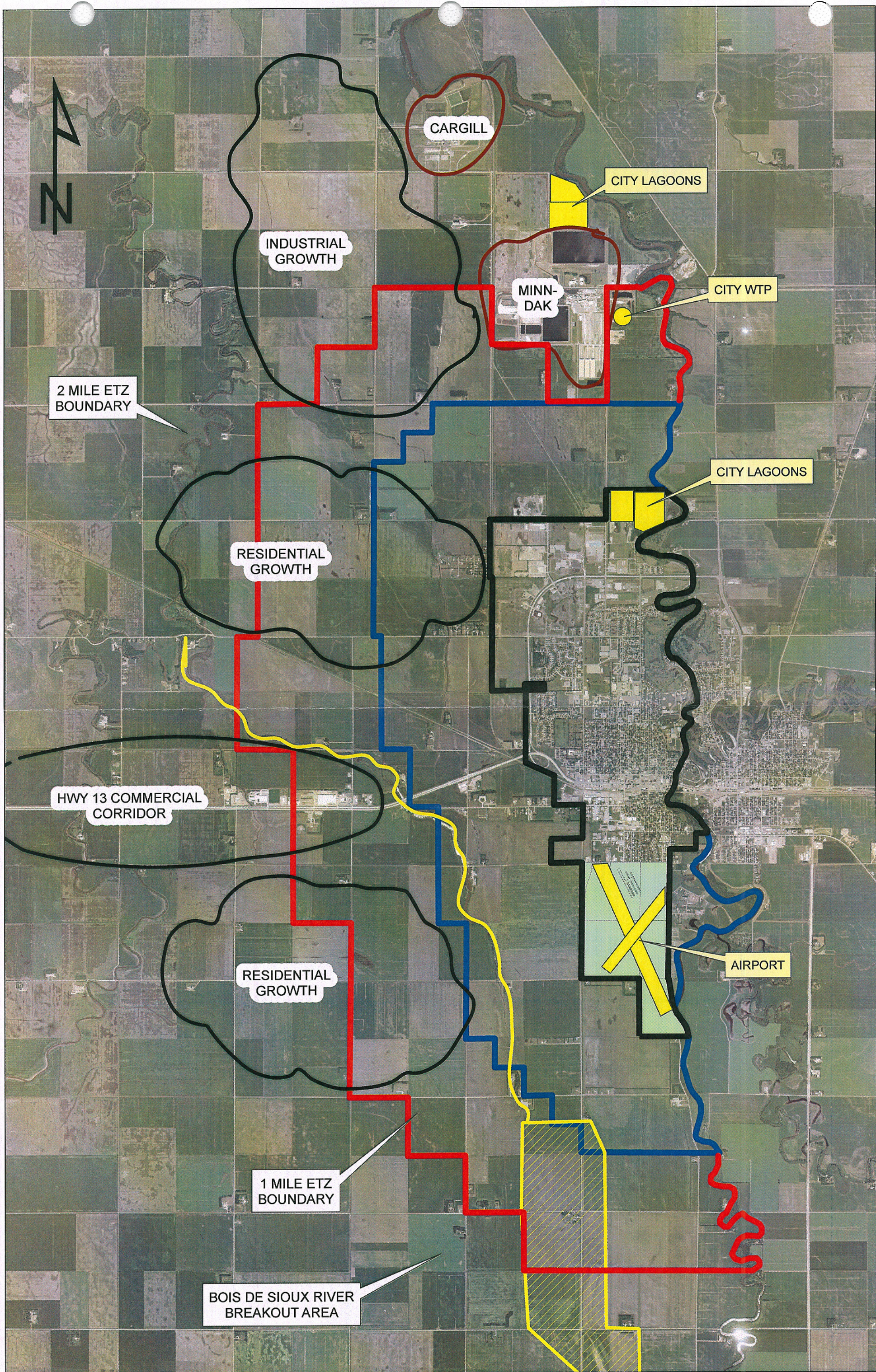
-The State of North Dakota is now an urban state. Population growth is occurring in our cities. Not having the ability to adequately respond on a timely basis to the needs of our residents or future residents means they may seek opportunities elsewhere. This concern may be no more prevalent than in those communities that lie on a border with other sister states or Canada. The 2000 census lists the City of Wahpeton with 8,586 residents. I have heard estimates as high as 12,500 for our day-time population because of the immigration that occurs when people commute to their jobs in Wahpeton. With other options for housing available in our sister cities like Breckenridge, we need the ability to plan residential growth well in advance of its actual occurrence.

-Having subdivision regulations in place in the ET area that allow for ease of hookups between water lines, roads, and other infrastructure means the transition for a rural subdivision to become a part of the City can be managed more quickly and be more cost effective for all involved.

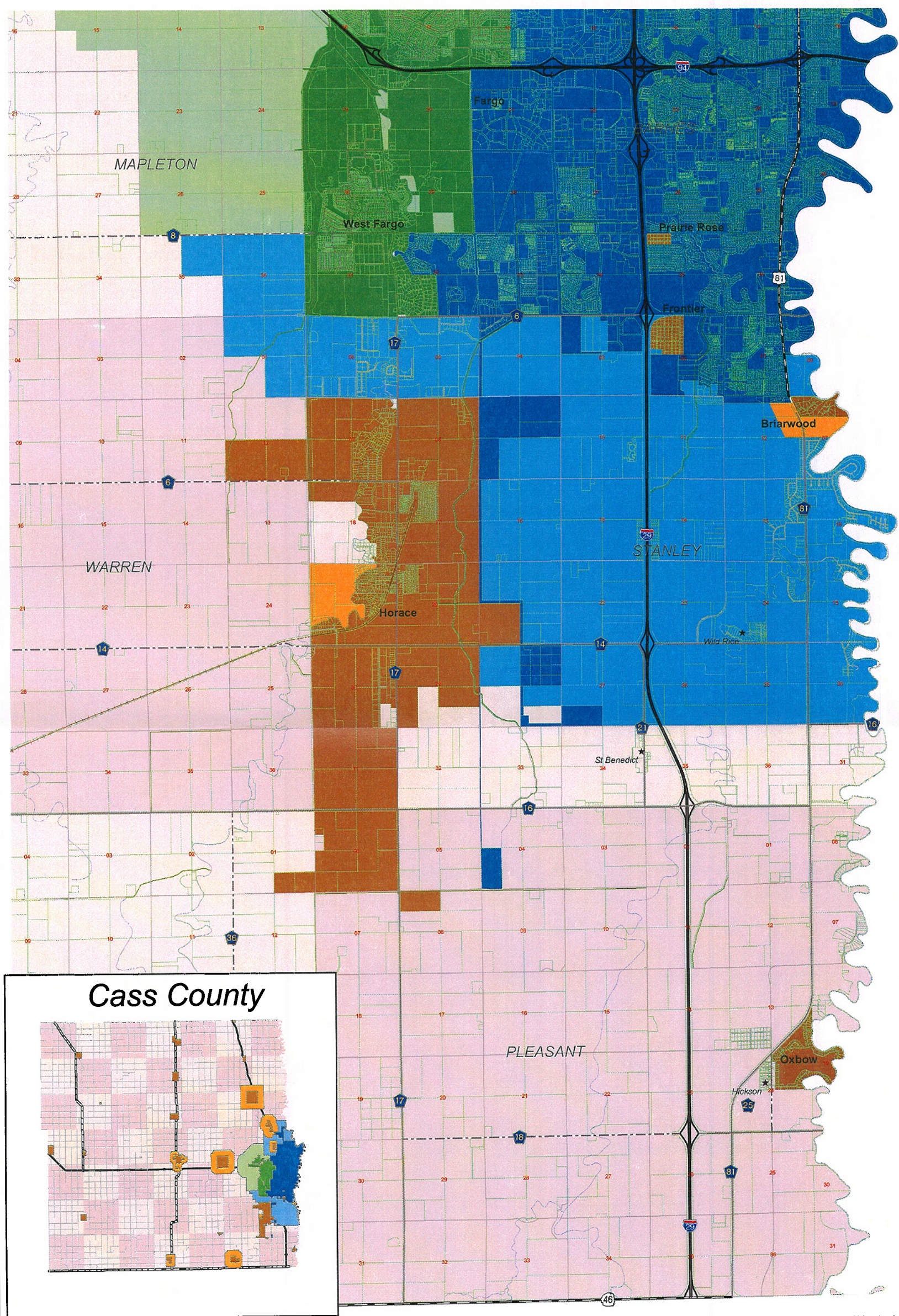
-We are lucky in Wahpeton to have good relationships with the surrounding township boards. The City was planning on taking advantage of the second mile the law allowed before the current freeze. We were working with both township boards to make sure all issues were discussed and a plan was in place so zoning was not dictated to us but mutually decided upon.

In Conclusion I would like to throw out an idea or at least something for the committee to consider. I have outlined the issues that the City of Wahpeton has to deal with when planning the future of our community. I do not think we are alone in our issues. The growth of the City is most likely going to occur almost exclusively to the west, in border communities which are denied $\frac{1}{2}$ of the ET territory all other North Dakota communities receive, a provision could be made that would allow the equivalency of that loss could be still be utilized on the remaining growth areas. In other words, North Dakota law has used various ET distances surrounding a community such as 1 mile, 2 miles, 4 miles forming concentric rings depending upon a community's size. In border cities that ring is now a half-moon. If a provision could be made that allows border communities to utilize some of or all of the lost ET land it would certainly be appreciated.

Thank you for your time.



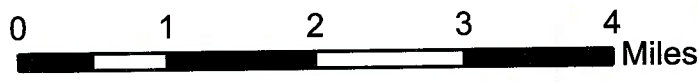
Incorporated City Limits and Extraterritorial Boundaries



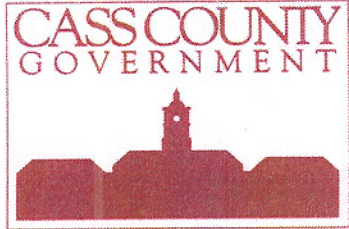
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City Boundaries

- | | |
|---------------------|---------------|
| Incorporated Cities | City ET |
| Fargo | Fargo ET |
| West Fargo | West Fargo ET |



DATE: 01/22/2008



Disclaimer: As with all public information derived from variable sources, this data may contain errors or faults. Therefore, Cass County does not provide any warranty, expressed or implied, as to the accuracy of this data. The recipient is encouraged to make an independent investigation of verification of the data. If an error is found, it is requested the County Engineer be advised of the particulars so the data can be examined and corrected.

Advisory Commission on Intergovernmental Affairs
January 23, 2008
Fargo, ND

My name is Doug Goulding and I am an attorney. I have been asked by the Grand Forks County Citizens Coalition (GFC3) to testify before this Commission regarding the unrestricted grant of extraterritorial zoning authority to cities, in particular with reference to the City of Grand Forks' 4-mile extraterritorial zone (ET zone). GFC3 is a grassroots organization interested in responsible local government, the protection of rural communities, and the protection of the land, air, and water resources in the Grand Forks area. GFC3's membership includes residents and landowners in the City of Grand Forks' 4-mile ET zone. GFC3 is an affiliate of the Dakota Resource Council.

GFC3's Position: We support limitations on extraterritorial zoning authority of cities. We urge the Commission to propose legislation which gives greater weight to the rights of ET zone citizens, who have been deprived of the right to vote and the right of local self-governance. ET zone citizens have no political influence over the city governments that dictate land use rules and make zoning decisions in the ET zone. ET zone citizens have no effective protection against a city making excessive land-use demands in its ET zone. We urge the Commission to propose legislation to address these imbalances.

Legislative Purpose: The legislature's purpose in delegating extra-territorial zoning authority to cities was to enable cities to plan for the orderly development of their adjacent fringe areas. Apple Creek Township v. City of Bismarck, 271 N.W.2d 583, 587 (N.D. 1978). The cities persuaded the legislature to give them extra-territorial zoning authority because, the cities argued, the neighboring townships and overlying counties could not be trusted to do the job right. From the testimony I have heard today, the cities' mistrust continues. The cities advocate broad extra-territorial zoning authority because, they claim, their neighboring townships and their over-lying counties cannot be trusted to draft appropriate land-use plans, enact and administer appropriate zoning regulations, and make appropriate permitting decisions. As an example, a city cannot trust a neighboring township to avoid issuing a permit for a feedlot adjacent to a city's residential subdivision.

While some statutory safeguards for the interests of ET zone citizens have been fashioned, such as the requirements for a zoning transition meeting and ET zone residents' membership on city zoning boards, the testimony today shows that these safeguards are flawed and ineffective. The cities are free to disregard a township's concerns presented at a zoning transition meeting. The cities are free to have city resident super-majorities on their zoning boards, ensuring that a city's self-interest will always prevail over a competing interest of ET zone representatives. The current statutory safeguards do not adequately protect the interests of ET zone citizens.

Scope of Zoning Authority: In the 30 years since the Apple Creek Township decision, the zoning authority of local governments has developed into a far-reaching power over land use with

almost unbounded governmental discretion. When reviewing local government zoning decisions, courts employ a legal standard that is highly-deferential to the decision-making body. Courts will not review the wisdom of a zoning decision. The only constraint on a local government entity making zoning decisions is political accountability, other than the U.S. Constitution, the North Dakota Constitution, and the North Dakota legislature. Unwise zoning decisions are subject primarily to the power of the citizens at the ballot box, to elect local government officers who will make wise decisions and throw out of office those who will not. The touchstone of responsible local government is political accountability.

Political accountability: There are virtually no constraints requiring a city to treat ET zone citizens fairly. Because city commissioners have no political accountability to ET zone citizens, a city government exercising ET zoning authority is free to disregard the legitimate concerns of ET zone citizens, is free to treat ET zone citizens unfairly, and is free to use city zoning powers in the ET zone to excessively promote city interests. Political accountability is required to protect ET zone citizens from the excessive use of extraterritorial zoning authority entrusted to the cities by the North Dakota legislature.

Example of Excessive Use of City Zoning Authority – the City of Grand Forks: Mr. Gengler, Planner for the City of Grand Forks (City), testified that the City has submitted a pre-application to the North Dakota Department of Health for a new municipal solid waste landfill facility. A municipal solid waste landfill facility is a high-impact land use. A landfill is a source of air pollution and water pollution, has heavy impacts on local infrastructure, and reduces property values in the area where it is sited.

The City plans to close its existing landfill and find a new site to bury municipal solid waste. The landfill is intended to serve the City of Grand Forks, the northeastern North Dakota region, and the northwestern Minnesota region. Six sections are candidates for the landfill site. Each of the candidate sections lies within the 2-4 mile band of Grand Forks' ET zone. The selection of candidate sites is driven by the City's self-interest in avoiding local zoning review, not by consideration of environmental data which would identify the safest site or citizen input regarding projected local impacts.

The zoning decision-making at the local level consists entirely of the City amending its zoning code to make a municipal solid waste landfill facility a permitted use in the ET zone. That means that the City Commissioners will decide where to put its landfill and operate its regional landfill enterprise without notice and an opportunity for a hearing for area residents and landowners, without an opportunity for area residents and landowners to provide input into a siting decision that will be considered by an objective decision-making authority, and without consideration of the imposition of conditions to protect area landowners and residents from the adverse effects.

Mr. Gengler testified that the North Dakota Department of Health and other state agencies will review the suitability of the landfill sites. However, state environmental laws are not a substitute

for local zoning, rather, they are a supplement to local zoning. State environmental laws are intended to work hand-in-glove with the exercise of local government zoning authority. State agency review is not comprehensive – it operates on the premise that siting considerations for solid waste management facilities will be reviewed at the local government level through a reasoned and fair local government zoning process. The State can grant a permit for a municipal solid waste facility, but it is not effective unless the applicant receives local government zoning approval.

Furthermore, the current grant of extra-territorial zoning authority gives cities the benefits of annexation with none of the burdens. The City of Grand Forks plans to site a landfill in an area where it has unbounded authority to regulate land use yet provides no police or fire protection, no water or wastewater services, no road maintenance services -- no services whatsoever. The site is, from Grand Forks' perspective, safely-located in the 2-4 mile ET band, an area which is unlikely to be annexed by the City of Grand Forks within the next one hundred years.

But, most importantly, the City proposes to site a landfill where the citizens right to vote for the persons making local land-use decisions has been taken away by the legislature. Without the grant of ET zoning authority to the City, the zoning process would have been under the authority of the Grand Forks County Commissioners – the ET zone citizens would have been afforded a permit application and review process and a siting decision by the County Commissioners under the Grand Forks County Zoning Code. The ET residents have the right to vote for County Commissioners; they do not have the right to vote for City Commissioners.

Legislative balancing of interests: The crux of the issue is the legislature's unrestricted grant of ET zoning authority to cities. The cities' interest in orderly development in their ET zones must be balanced with the ET citizens' right of local self-governance and right to vote. The rights of ET citizens to local self-governance and the right to vote for elected officials who wield power over them are fundamental and must be given substantial weight when the legislature considers ET zoning legislation. The ballot box has been taken away from the ET zone residents. The City of Grand Forks is exercising government power over state citizens who have no political influence over the exercise of that power. Therefore, there must be limits imposed which prohibit a city from using its authority to promote its own interests with no meaningful public input from affected citizens and no political accountability to affected citizens. The ET zone residents must be protected from the excessive demands of city interests. As shown by the City of Grand Forks example, that balance is sadly lacking in the current North Dakota statutes.

Recommendations:

1. Cities must be prevented from siting their high-impact uses in their ET zones with no meaningful safeguards provided to ET zone citizens. We advocate limits which prohibit a city from acting like the City of Grand Forks, which plans to site a high-impact, polluting use in the outer reaches of its ET zone with no local-government permitting process and no political accountability to affected citizens. There must be a balance that protects ET citizens' right to

have a voice in their governance but also serves the cities' interests in orderly development of ET zones. Our current legislation is flawed – it pays lip service to the rights of ET residents, but then writes the cities a blank check.

2. The 4-mile zone for extra-territorial zoning of cities with populations greater than 25,000 persons is too big. The size of the ET zone must be reasonably related to a city's valid growth-rate projections. The area contained in the ET zone must be projected for development and annexation within a reasonable period of time – not 100 to 200 years. There is no reasonable basis for defining a city's fringe area to encompass twice the area of a city's current territory, which is the situation in Grand Forks.

3. In an ET zone, the zoning regulations enacted and the permitting decisions made must be under the authority of an objective governing board with fair and adequate representation of ET zone citizens. The members of the governing board must be politically accountable to the citizens affected by its governance.

Bismarck City Administration

January 11, 2008

Honorable Lee Kaldor
Chairman
Advisory Commission on Intergovernmental Relations
PO Box 215
Mayville, ND 58257-0215

Dear Representative Kaldor:

The agenda for your meeting of October 3, 2007 in Bismarck included a discussion of current state law regarding extraterritorial zoning. Thank you for the significant time commitment allowed for this important discussion.

Toward the end of the zoning discussion a number of residents who live near Bismarck presented testimony about their concerns with the city of Bismarck extraterritorial zoning practices. To respond to these concerns at the meeting would have required excessive time so I am taking this means to respond to the comments I believe need explanation.

Mr. Gabe Brown appeared before the commission and said the city of Bismarck had rezoned his property for industrial uses without his approval. He said he felt the city was punishing him for not selling the property earlier for residential use. He also stated he had protested a land use plan for his property but it was adopted despite his protest. He alleged a 75% reduction in property value as a result.

Mr. Brown is confused about the zoning of his property. The only way a property in Bismarck's jurisdiction can be rezoned is by request of the property's owner(s) or at the request of the city. No rezoning has been initiated for this property. No change in use restrictions has occurred. There was no punishment for non-sale of the land and any diminution of value is highly speculative.

What did occur was Mr. Brown's property was included in a Bismarck area transportation study in 2007. The study included likely land use for property near the city and related that land usage to future roadway needs. Mr. Brown's property was included in an area designated for possible future industrial use but there has been no rezoning.

The city has not penalized Mr. Brown for not developing his property residentially. Bismarck is surrounded by residential subdivisions so the city has no particular concern if Mr. Brown uses his property for residential purposes. The city only needs him to properly zone and plat his property for his intended use. The zoning of the property will be determined if and when Mr. Brown chooses to plat the property and request a zoning change.

The committee also heard from Mr. Richard Hammond about his wish to deny any city extraterritorial zoning jurisdiction. This is not surprising since over the years, the city has requested Mr. Hammond to remove collections of unlicensed vehicles from his property on several occasions. He does not want anyone to change the way in which he chooses to live. However, many of his neighbors find his residential lifestyle objectionable and the city has concerns from a health and safety perspective.

Mr. Hammond also mentioned an alleged city rezoning of property near him to an industrial classification due to the airport. What actually transpired was a landowner's request for residential zoning on a parcel of land near Mr.

Hammond. This zoning was not allowed due to potential noise impacts from the Bismarck Airport crosswind runway. It was prudent not to allow noise-sensitive uses under this or any other runway approach. The denial of the requested zoning was litigated and appealed to the ND Supreme Court and the city's denial was upheld (Eck vs. city of Bismarck). Many airports and many residents living near airports across the country would wish for this type of forward-looking analysis.

Mr. Travis Anderson testified that he was delayed in obtaining a building permit due to the city's requirement for a plat. This concern was recently recognized by the city staff and it will likely be modified before the next building season. City staff is considering a proposal that would require platting only for major additions to structures or new principal buildings. A small addition or outbuilding could be done without this requirement. This change in policy is being considered because of several recent situations the policy has precipitated. The proposal will soon be offered for consideration by the Planning Commission and City Commission per existing policy.

Next to appear at your October 3, 2007 meeting was Ms. Cathy Mauch, an Apple Creek Township resident. Ms. Mauch expressed several concerns, the first being her inability to use old school buses for calving shelters. She also complained that she was not allowed motor vehicle parts storage outside a building. She repeatedly asserted that her property was a farm and that as a farm she should be allowed this latitude.

Ms. Mauch's assertion that she lives on a farm is interesting; if her property meets the definition of farm contained in the city and the county zoning ordinances which follow state law, then the property should be zoned agricultural rather than RR5 (rural residential) which is the zoning in C & L Estates.

The regulations from which she seeks relief are meant to apply to rural property not operated by farmers (typically a rural residential area). They are meant to reduce the opportunity for undesirable development to take place within the latitude offered to bona fide farmers. Using an agricultural zoning to allow unlicensed junk and salvage operations in rural areas destroys the quality of life and aesthetic attributes of rural living. It is not apparent to me at this time whether Ms. Mauch's property truly is a farm as envisioned by state law and local ordinance. I do know that under rural residential zoning, the only animals permitted are horses and 4-H project animals. A cow/calf operation would require agricultural zoning.

The answer to one question asked by Senator Cook contains a factual error. His question of Ms. Mauch was who would do inspections in her area if the city's inspector did not do them. The answer, "No one" is not correct. Burleigh Country contracts with the city's inspection department for health and sanitation inspections outside the city limits and has done so for years. The city inspection department responds to complaints in the county's rural areas where township zoning does not apply and that is the case in Ms. Mauch's situation.

Ms. Mauch also explained to the committee how Apple Creek Township lost approximately \$71,000 in building permit fees it applied to road maintenance when the city became the building permit issuing authority. Apple Creek Township has been levying only half of its authorized levy for roads so perhaps her suggestion that the township has been using building permit fees to subsidize road maintenance is correct. It is also correct that the township has unused levy authority specifically for road maintenance.

Ms. Mauch also called into question a building inspector's decision to require structural supports and footings under a temporary classroom. I think we all can agree on the need for safety for either temporary or permanent structures intended for instructional use.

Mr. Doug Schonert, a Burleigh County Commissioner, appeared next and asked that Bismarck's extraterritorial zoning jurisdiction be returned to two miles from the present four-mile limit. He alleged the only reason Bismarck took the four-mile jurisdiction was "because they could."

After looking through meeting records, it is clear that Bismarck considered whether to expand its jurisdiction for six years. The record shows that Bismarck expanded its jurisdiction only after Burleigh County failed to initiate an updated comprehensive plan for the areas outside the city limits. Such a plan is required by NDCC 11-33-03.

At this time the county has under contract a study to update its 25-year-old comprehensive plan and to coordinate with the city's planning efforts in areas influenced by city growth. The city is contributing one-third of the cost for this plan because it recognizes the importance of the planning effort. Both the restraint in adopting the four-mile jurisdiction and the emphasis on planning indicate the city had in mind more than a simple power move to take the full four-mile zoning jurisdiction.

The final testimony came from Mr. Brian Bitner. He expressed concern for the township's ability to care for its roads. This is the same concern Ms. Mauch mentioned. Mr. Bitner also expressed his displeasure at city platting requirements before a building permit can be issued. This is actually a Bismarck and Burleigh County requirement. It is not effective in townships issuing their own zoning. This is the same concern expressed by Mr. Anderson. The city is considering an easing of this requirement at this time.

The city of Bismarck is not in the habit of enacting regulations and walking away with fingers crossed. The entire land use program is monitored frequently by the City Commission, Planning Commission and staff to control problems and

to identify unanticipated consequences. The Planning Commission features representation from the townships and the county, as well as the extraterritorial area. This is not required by state law, it is a local initiative that recognizes the importance of local input.

It is my belief that Bismarck and Burleigh County work hard to identify areas of agreement and disagreement in advance of decisions so votes don't wind up divided on a rural-urban basis. The City Commission rarely disagrees with the Planning Commission's recommendations and when it does, it usually remands the issue back to the Planning Commission for review. Much of the Planning Commission membership from the rural area was initiated by the city of its own volition.

In summary – the city of Bismarck actively seeks agreement when working with policies and land use issues. At present city staff is reviewing the policy that requires platting prior to issuance of a building permit. It is the staff's consensus that this policy should be discussed and it may be appropriate to discard this requirement for minor modifications to a principle structure, small additions or outbuildings. This would help address Mr. Bitner's and Mr. Anderson's concerns.

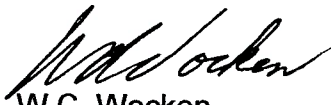
Also of note is a discussion the Bismarck City Commission will likely have in January to examine all aspects of its extraterritorial zoning jurisdiction. It was initially thought that an all-or-nothing approach to extraterritorial zoning was the least confusing, so the city took the full four-mile jurisdiction. The city added a zoning district to its ordinance so that existing county land use involved within this four-mile area could be more easily accommodated.

Since that time there has been discussion about the city's long range utility plans and the need to zone in areas far beyond the area the city might serve with its utilities for the foreseeable future. The city will be discussing the possibility of returning some areas outside its long range utility plan to the county

or township jurisdiction. This 20 to 30-year vision may be a better fit than the all-or-nothing approach that was initially felt to be best because it was the least confusing.

I hope this rather lengthy response will assist you in better understanding the city of Bismarck's approach to managing its extraterritorial jurisdiction. As always, the city will be more than happy to answer the commission's questions either in writing or in person.

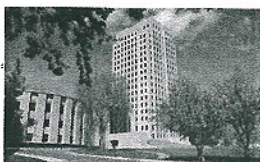
Sincerely,

A handwritten signature in black ink, appearing to read 'W.C. Wocken', written in a cursive style.

W.C. Wocken
City Administrator

WCW/lfb

pc: ACIR members
Legislative Council



HOUSE OF REPRESENTATIVES
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COMMITTEES:
Finance and Taxation
Political Subdivisions,
Vice Chairman

W. C. Wocken
City Administrator
Bismarck, North Dakota
January 22, 2008

Dear Mr Wocken

I am writing in response to your letter of January 11, 2008 to the Advisory Commission on Intergovernmental Relations. As you state, significant time has been allotted for discussion on extraterritorial zoning. Paid staff from the cities and the League of Cities has been given all the time they want to furnish information and opinions to the Commission. Citizens taking time out of their busy lives have also given information about their experiences, thoughts, and opinions of extraterritorial zoning.

These citizens are not politicians or bureaucrats and may not have always used the correct terms in their testimony and may not have correctly identified exactly which government authority was causing their grievance. However, I am confident the Commission members did understand the points they were making. A grievance is a grievance and the Commission members are versed enough to determine the origin of the grievance. One of the concerns the citizens have expressed is that they do not feel their voices have been heard. As a legislator the input from the citizens is very, very important to me. I sense a continuing attitude of ignoring and discrediting citizens by Bismarck City Officials.

I believe your letter contains attempts to discredit citizen's testimony by injecting their personal information. This also happened during the 2007 Legislative Session. I walked into the Senate Political Subdivisions Committee room and observed Commissioners Sprynczynatyk, and Tabor showing committee members pictures of private property owned by citizens who had earlier testified on extraterritorial zoning. The committee was not in session and the citizens being discussed were not present. At the October ACIR hearing a packet of alleged zoning violations by citizens was passed out. Whether violations occur is not an issue before the Commission. To attempt to embarrass or discredit citizens is not the proper role of government at any level.

Voter apathy is a huge problem in this country. Far too many citizens feel disenfranchised from their government. Citizens should feel their government is open and citizens who are willing to come forward and tell their story as they see it should be applauded, not attacked.

Your remarks about the temporary classroom distorted the point of the citizen's testimony. The temporary classroom discussion had nothing to do with safety unless you are implying there is a difference in safety requirements between areas outside and inside of the city limits.

You dispute testimony that Bismarck took over the extraterritorial zoning just because they could. If you dispute that notion it seems you would give other reasons for the action taken by the city. After reading and rereading NDCC 11-33-03, I find nothing to substantiate your inference that NDCC 11-33-03 was in some way a reason for taking such action. I have copied NDCC 11-33-03 below for easy review.

I applaud your suggestion that the City is reconsidering some of their previous decisions. I look forward to your positive input as we work toward a solution to the extraterritorial zoning problems.

Sincerely,

Representative Dwight Wrangham
District 8, North Dakota

pc: ACIR
Legislative Council

Note: NDCC 11 is the chapter that deals with county government

NDCC 11-33-03. Object of regulations. These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

1. To protect and guide the development of nonurban areas.
2. To provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
3. To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.
4. To lessen governmental expenditures.
5. To conserve and develop natural resources.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

Dawson, Tim J.

From: Cully Gause [cully.gause@gfschools.org]
Sent: Wednesday, January 23, 2008 9:22 AM
To: Dawson, Tim J.
Cc: Julie Gause
Subject: Legislative Commision Mtg Today 1pm

Mr. Dawson,

It is my understanding that you are touring North Dakota to hear grievances brought about by the extraterritorial zoning jurisdiction.

As a resident of Grand Forks, ND, and a potential land owner in Brenna Township, I am disappointed that the city of Grand Forks and the county cannot create a regional planning commission that would supersede the Grand Forks city Council.

This would be in the best interest of the rural residents and the city of Grand Forks planning and zoning. Currently, the extraterritorial jurisdiction has caused animosity among rural residents and the Grand Forks City. The landfill issue is also a no win situation for the city and more information should be available to the rural residents regarding the plight of this decision.

To have the Grand Forks City Council make decisions for rural residents without representation is a situation with lawsuits ready to happen. Is this the way to run an area government?

Respectfully Submitted

Cully Gause
Resident: Grand Forks, ND

To: Advisory Commission on Intergovernmental Relations

From: Claus H. Lembke
250 NW 57 Ave
Bismarck, ND 58503
opaoma@btinet.net

Chairman Kaldor and members of this committee,

I am unable to attend your meeting this 23 day of January 2008, but I have some comments regarding your discussions on extraterritorial jurisdictions. Thank you for allowing me to submit this information to your committee:

First I would like you to know that I was a Burleigh County Commissioner during the time that the city of Bismarck exercised the extension of extraterritorial zoning jurisdictions from 2 to 4 miles. Every Burleigh County Commissioner objected to such extension and we adopted a resolution to discourage the city of Bismarck from adopting this 2 mile extension. If Burleigh County had only marginal Zoning and developing procedures, such an extension by the city may be reasonable but Burleigh County has a good and working comprehensive plan in place. The county even employs the same professional staff under contract with the City. For years the City and County had scheduled regular meetings between these entities to address traffic and growth issues and it worked well whenever enough city fathers felt like showing up at these joint meetings. To me the facts are that there was no real need to extend the territory. No matter what City representatives may tell you they extended the territory simply because they could and felt like it.

We found that our city of Bismarck does not have any expertise nor has sufficient equipment to handle any road issues, approaches or typical rural services needed in these outlying areas. For example, the city requires all interior streets of new subdivisions to be paved which in itself may not be bad but it leaves either the county or the township with the responsibility and costs to pave the feeder roads leading to such new subdivision. We, the county (or any township to the best of my knowledge), were never consulted when such took place.

Over the 20 years as County Commissioner I received many calls for help from citizens in the 2 mile territory. I can not recall that the city ever fairly listened to me or any of my constituents outside the city. The answer was the same every time. Unless it is a "hardship" they would not be able to accommodate any variance. Burleigh County has a history that allowed variances if what it did constitutes a safety concern and did not harm the neighbors or public in general. The frequency of these types of calls for help increased greatly when the city extended its territory to 4 miles.

Mr. Wocken's January 11 letter to chairman Kaldor deserves a few comments on my part also:

He stated several instances where rural residents made their case. Please note that in every case there was something at fault with the people seeking relief and in a few cases he felt that the city would be able to address needed changes. The track record of the city shows otherwise.

Mr. Wocken stated that the city debated for 6 years over the 4 mile limit. The way I saw it, they tried for six years with the county urging not to do that. In the end they got tired of the objections and went ahead with it.

Mr. Wocken also stated that they took over the 4 mile area because Burleigh County "failed to initiate an updated comprehensive plan for the areas outside the city limits, as required by law". The fact is that Burleigh County was accused of not having a comprehensive plan 2 or 3 years after the city extended the territory to 4 miles.

A very noble attempt that I applauded at first was the changes that City Planning made when they allowed representatives from townships, county, 2 mile and 4 mile area to sit on their planning commission. The problem as I see it is that those voices for the township and outlying areas get out voted all the time. I have witnessed where the planning commission was short of a majority of city votes and a call was made to an absent city commission member just before a roll call vote was taken over the phone.

I had the pleasure of working with the City planning staff for many years and I gained a great deal of appreciation of their professional work. But often times it felt like the professional staff people had no choice as they were told what to do by city commissioners who is the employer and policy maker.

This process to take the extraterritorial area without checks and balances can not work. I urge the committee to draft legislation that requires a more participatory process where both side remain accountable and cooperative.

Thank you for allowing me to submit these comments.

text2

----- Forwarded Message -----

ONCE AGAIN UNCONTROLLED ANNEXATION BY THE CITY OF FARGO REARS ITS UGLY HEAD. WHEN WILL THE STATE OF NORTH DAKOTA AND OTHER GOVERNMENT AGENCIES SAY ENOUGH IS ENOUGH! FARGO'S EFFORTS TO CONTROL LAND MILES AND MILES FROM ITS CITY LIMITS IN ORDER TO IMPLEMENT ITS RULES AND REGULATIONS ON CITIZENS WHO ARE NOT IN THE LEAST BIT INTERESTED IN BEING CITIZENS OF FARGO MUST BE STOPPED IMMEDIATELY! FURTHERMORE IS THIS AN ATTEMPT BY FARGO TO PUT FORWARD THEIR BOONDOGGLE DIKE PROJECT ON A MAJORITY OF PROPERTY OWNERS SOUTH OF FARGO WHO ARE NOT IN FAVOR OF A DIKE SYSTEM. HOW MANY MORE DIKES HAVE TO FAIL AROUND THE UNITED STATES IN ORDER FOR FARGO OFFICIALS TO PULL THEIR HEADS OUT OF THEIR COLLECTIVE REAR ENDS AND REALIZE DIKES ARE A DISASTER WAITING TO HAPPEN. WE JUST WITNESSED IT AGAIN IN NEVADA THIS PAST WEEK WHEN OVER 400 HOMES WERE DESTROYED BY A FAILED DIKE. LET'S HOPE THAT SOMEHOW COMMON SENSE WILL PREVAIL BY REFUSING FARGO'S EFFORTS TO LEAPFROG ITS CITY LIMITS AND ENCROACH UPON TOWNSHIP AND SMALLER CITIES RULES AND REGULATIONS.
R.D. KNUTSON 2 BRIARWOOD BRIARWOOD ND. AND A RESIDENT OF STANLEY TOWNSHIP

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From: Schonert, Doug [mailto:DSchoner@CENTURY21MORRISON.COM]
Sent: Tuesday, January 22, 2008 1:55 PM
To: Wrangham, Dwight R.
Subject: RE: ACIR Agenda

I am sorry I will not be able to attend your meeting in Fargo. I truly did plan to attend as I wanted to hear and learn from other individuals as to their thoughts about this issue. As you know I have some strong feelings about it.

I am going to make this short as I have previously testified before the Legislative Committee.

When Bismarck decided to exercise its authority to establish a four-mile jurisdiction, the Burleigh County Commission strongly objected. There was no strong reasoning for this move as Burleigh County already had Zoning and Planning in place. In fact, Burleigh County contracted the services of the Bismarck Planning Staff. The City of Bismarck has about doubled in size in the last 50 years to a population of approximately 60,000. It has grown about three miles in each direction during this time. The City is experiencing very strong growth at this time but keep in mind that the radius is getting larger and larger and to grow four miles in the next 50 years would be astronomical. A two mile jurisdiction would be more that adequate.

Mr. Bill Wocken, the Bismarck City Administrator sent a letter to Mr. Lee Kaldor, Chairman of the Advisory Committee on Intergovernmental Relations stating:

"After looking through meeting records, it is clear that Bismarck considered whether to expand its jurisdiction for six years. The record shows that Bismarck expanded its jurisdiction only after Burleigh County failed to initiated an updated comprehensive plan for the areas outside the cit limits. Such a plan is required by NDCC 11-33-03. "

I feel this is a very poor excuse and shows a lack of communication and cooperation on the City of Bismarck's part.

Mr. Wocken also stated that I had alleged the only reason Bismarck took the four-mile jurisdiction was "because they could", That is a true statement and I stand by it.

Doug Schonert
Burleigh County Commissioner

Dawson, Tim J.

From: Berndt, Keith [BerndtK@casscountynd.gov]
Sent: Thursday, January 24, 2008 8:10 AM
To: Dawson, Tim J.
Subject: Advisory Commission on Intergovernmental Relations
Attachments: Cass Planning Commission.pdf

Tim,

Thanks for including me on the agenda for yesterday's meeting. One of the questions that came up during yesterday's meeting regarded county planning commission membership. I wanted to provide some follow up information. In Cass County, the Commission decided in 1995 to change the planning commission membership through a home rule ordinance to provide better rural representation. Under the statutory scheme in 11-33-04, we'd end up with 5 City of Fargo residents and 1 West Fargo resident on the planning commission since 3 of our commission district are in Fargo and the Fargo City Commission would appoint 2. Under the ordinance scheme it's as listed below:



Keith Berndt
701.298.2372
Cass County Engineer
1201 Main Avenue West
West Fargo ND 58078
berndtk@casscountynd.gov
www.casscountynd.gov

1/24/2008

SUBJECT: ORDINANCE #1995-1 (PLANNING COMMISSION MEMBERSHIP)

ADOPTED DATE: MAY 15, 1995

PAGE 1 OF 2

CASS COUNTY GOVERNMENT
ORDINANCE #1995-1

AN ORDINANCE TO CHANGE COUNTY PLANNING COMMISSION MEMBERSHIP

WHEREAS, Article 2, paragraph 3 of the Cass County Home Rule Charter contains language that enables the Board of County Commissioners to provide for county elected and appointed officers and employees, and the terms of county appointed officers and employees.

WHEREAS, in its opinion dated February 27, 1995, the North Dakota Attorney General determined that if a home rule county charter includes the authority, and that authority has been implemented in an ordinance, a home rule county may determine membership requirements for the county planning commission by the adoption of an ordinance, and that a home rule charter and ordinance will supersede state law in conflict therewith.

WHEREAS, it is the desire of the Cass County Commission to provide for fair voting representation of all of Cass County on the County Planning Commission.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Cass County, North Dakota:

The Planning Commission Membership and terms shall be as listed below. This supersedes North Dakota Century Code 11-33-04.

MEMBERSHIP

- 1 Cass County Commissioner, appointed by Commission annually
- 1 Fargo City Commissioner, appointed by City annually
- 1 West Fargo City Commissioner, appointed by City annually
- 1 County resident, nominated by Cass County Township Officers Association as an annual appointment
- 2 City of Fargo residents, appointed by County Commission
- 3 Rural County residents, appointed by County Commission--these members will not be bound by area or district, but it is preferred that the Commission endeavor to appoint 1 person from near north of the metropolitan area, 1 person from near south of metropolitan area and 1 person from west of the metropolitan area

SUBJECT: ORDINANCE #1995-1 (PLANNING COMMISSION MEMBERSHIP) 38.01

PAGE 2 OF 2

TERMS

4 year terms except City Commission, County Commission and Township Officers Association representative

ss/Bernie Ness
Chair, Board of Commissioners
of the County of Cass

ATTEST:

ss/Michael Montplaisir
Michael Montplaisir
County Auditor

First Reading:	4/17/95
Second Reading:	5/15/95
Final Passage:	5/15/95
Publication:	4/17/95
	4/24/95

(SEAL)

HISTORICAL REFERENCE DATE: MAY 15, 1995

HOUSE OF REPRESENTATIVES

*State of Colorado*

House Services Center
State Capitol
200 E. Colfax Ave., Room 271
Denver, CO 80203
Tel. 303-866-2904

Fax Transmittal Form

TO:

LEGISLATORS OF THE SENATE AND HOUSE OF REPRESENTATIVES:

(organization, department, business)

FAX #:

Tel #:

THIS RESOLUTION WAS ADOPTED DURING COLORADO'S SECOND
REGULAR SESSION OF THE SIXTY-SIXTH GENERAL ASSEMBLY. IT
IS BEING SENT TO YOU IN ACCORDANCE WITH THE STIPULATIONS
SET FORTH IN THE LAST PARAGRAPH OF THE RESOLUTION.

AGNES QUINN
CHIEF ENROLLING CLERK
COLORADO HOUSE OF REPRESENTATIVES

Date: _____

Number of pages, including cover sheet: _____

2008

**HOUSE JOINT RESOLUTION 08-1004**

BY REPRESENTATIVE(S) Todd, Fischer, Kefalas, Balmer, Benefield, Borodkin, Buescher, Butcher, Carroll M., Carroll T., Casso, Curry, Ferrandino, Frangas, Gagliardi, Gallegos, Garcia, Gardner B., Gardner C., Garza-Hicks, Green, Hodge, Jahn, Judd, Kerr A., Kerr J., King, Labuda, Lambert, Levy, Liston, Looper, Lundberg, Madden, Marostica, Marshall, Massey, May M., McFadyen, McGihon, McKinley, McNulty, Merrifield, Mitchell V., Peniston, Pommer, Primavera, Rice, Riesberg, Roberts, Romanoff, Rose, Scanlan, Solano, Sonnenberg, Soper, Stafford, Stephens, Summers, Swalm, Vaad, Weissmann, White, and Witwer;
also SENATOR(S) Williams, Bacon, Boyd, Brophy, Cadman, Gibbs, Gordon, Groff, Hagedorn, Harvey, Isgar, Johnson, Keller, Kopp, McElhany, Mitchell S., Morse, Penry, Renfroe, Romer, Sandoval, Schultheis, Schwartz, Shaffer, Spence, Takis, Tapia, Taylor, Tochtrop, Tupa, Veiga, Wiens, and Windels.

CONCERNING PARTICIPATION IN THE "LEGISLATORS STEP TO HEALTH" PROGRAM.

WHEREAS, As highlighted in a recent report by the Metro Denver Health and Wellness Commission, titled "Metro Denver 2007: A Report on the Health and Wellness of Our Community", 55% of Metro Denver area adults and a like percentage of Colorado adults were overweight or obese in 2005, with the percentage of Metro Denver area adults at an unhealthy weight increasing by nearly 10% between 1995 and 2005; and

WHEREAS, Almost 29% of children in both the Metro Denver area and throughout Colorado were overweight or at risk of being overweight during this same time period; and

WHEREAS, Obesity-related medical expenditures in Colorado were estimated to be \$874 million in 2003, including \$158 million in state Medicaid expenditures and not including costs related to lost productivity and absenteeism; and

WHEREAS, Obesity is a preventable condition and is directly implicated in the diagnosis of chronic medical conditions such as diabetes, heart disease, cancer, hypertension, and asthma; and

WHEREAS, State legislators are role models for their communities and are charged with creating and passing policy measures to help ensure the health and wellness of those communities and, as such, should set good examples relating to diet and exercise; and

WHEREAS, The "Legislators Step to Health" program is a health and wellness program designed to meet the specific needs of Colorado legislators with regard to their environment, nutrition, and physical activity level; and

WHEREAS, The goal of the "Legislators Step to Health" program is to have legislators step up their own health by increasing physical activity, choosing to eat healthy foods, and making choices such as these that lead to adopting behaviors that are sustained throughout their lives; and

WHEREAS, The program is a result of a partnership among the American Diabetes Association, AstraZeneca, America On the Move, the Colorado Department of Public Health and Environment, Kaiser Permanente, and Thrive; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-sixth General Assembly of the State of Colorado, the Senate concurring herein:

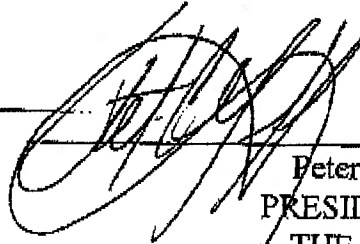
That Colorado legislators will be the leaders in encouraging health and wellness in their communities by challenging both themselves and their

colleagues across the country to participate in the "Legislators Step to Health" program.

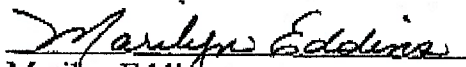
Be It Further Resolved, That copies of this Joint Resolution be sent to the legislatures of the other 49 states.



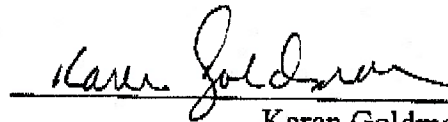
Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Peter C. Groff
PRESIDENT OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Karen Goldman
SECRETARY OF
THE SENATE