

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1554

## 2009 HOUSE STANDING COMMITTEE MINUTES

### Bill No. HB 1554

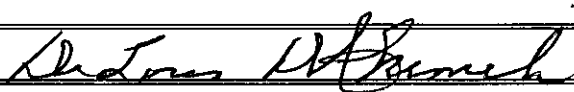
#### House Political Subdivisions Committee

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Hearing Date: February 5, 2009

Recorder Job Number: 8875

Committee Clerk Signature



Minutes:

**Chairman Wrangham:** opened the hearing on HB 1554.

**Rep. Damschen:** Introduced the bill. Explained the bill sets the extraterritorial limit at half a mile for any city regardless of size. Another significant change is on page 5; where it states that a city exercising its extraterritorial zoning authority cannot adopt any regulation other than the regulation adopted by the governmental entity exercising subdivision or zoning authority in the area before the extension of the cities authority. Otherwise just extending the extraterritorial authority does not give the city the right to override the existing authority in that area. This bill really speaks about consideration of the rights of the property owner. I appreciate the work of the interim committee that looked long and hard at extraterritorial zoning. I think if anything was overlooked in the current law it is the rights of the property owner. Everyone else is considered and the constitution doesn't say that we have to reimburse the property owner for taking unless it happens to be a city doing the taking. It doesn't specify any exemption for that other than the government is going to take it and the private land owner is suppose to be compensated. I think as law makers we are sworn to uphold this basic right. I don't think it takes away the ability to plan. It may not make it dimplier, it may make it more complicated; but the constitution doesn't say either that our form

of government has to be simple. I hope there are some experts that are going to speak in favor of this bill. I can try to answer questions if you have some.

**Rep. Klemin:** On page five what is the affect of the change? The way this reads the city cannot adopt any regulations other than a regulation adopted by the governmental entity exercising authority in the area before extension of the cities authority. For example there was a county regulation that applied in that area. Does that mean that the city can only adopt a regulation that was equitant to the counties regulations?

**Rep. Damschen:** That is the way I understand it. I don't think it precludes the possibility of the two entities working together for some changes.

**Rep. Klemin:** So if there isn't any regulation that wasn't adopted by the county the extension of the extraterritorial zoning authority would that then mean that the city could not adopt any regulation there?

**Rep. Damschen:** I don't read it that way. I read that they would or could exercise the authority to the full extent, but we are not limiting this to county regulations; it could be township.

**Rep. Klemin:** I understand that. If the only regulation you can adopt is the regulation that was already there; and if there was no regulation there before you could not adopt one?

**Rep. Damschen:** I am not an attorney, and I believe you are? I won't try to match legal analysis with you. There may be a need for some change in the wording. To accomplish the intent. The intent was if it is a city exercising their territorial zoning authority in another half mile would not override a township or county that had already made rules there.

**Rep. Zaiser:** this planning and zoning of often contentious and one of the ideas that is often forgotten is there is two sides of the property rights argument and you mentioned the property owner of the actual property. One of the responsibilities whether that be the township or

county or the city is to protect surrounding property owners from certain things like another owner wanted to put in a cement mixing plant or salvage yard; too many people would want to live next to that. Also where men or women would dance without clothing; that would not be something that would be an asset to the neighborhood. I think you recognize that and so that is why the cities go out and try to do some planning that fits where they live.

**Rep. Damschen:** that is a good point and I understand that. You don't want a toxic waste dump next to you. In rural areas we face similar issues with hog farms and concerns about that. It makes a difference whether you build a house next to a hog farm or they build a hog farm next to the house. That always had to be taken into consideration. We have regulations that do regulate as far as safety and health and those types of issues. I think the grey area comes when something you don't appreciate is going to affect you and making the decision on whether you are not going to allow that because it makes one person uncomfortable or you are going to allow it because of the rights of the person that wants to do it you exercise your right of free enterprise and ownership of the land or whatever. If it is not harmful health wise and in other areas someone has to make the decision. I think you have to protect the rights of the landowner within what he does is not harming someone else. I think we limit all our rights in that manner.

**Rep. Conrad:** My district is east Minot, Surrey and the five townships in between. So I represent an area that has been zoned under the extraterritorial for the city of Minot and I don't have any complaints. In Minot we only have two miles. Would you be willing to exempt Minot from this?

**Rep. Damschen:** I would not like to exempt any city from it.

**Rep. Koppelman:** Last session we put a moratorium in place in terms of a distance the cities could extraterritorially zone, which we had doubled in the 1997 session, if memory serves me



correctly. We said if they had already extended their territory into that extended area they could continue to do it, but they could not do something new if they hadn't. This bill seeds to say rather than staying with those rules that we enacted last session, your bill would roll everything back to half mile and then it would say you could only extra zone for half mile because you can't do anything other than what that rural entity has already done. Why don't we just do away with extraterritorial zoning? Sounds like it doesn't allow you to do it. Is that correct?

**Rep. Damschen:** I guess yes if you want to amend and do away with it completely that would be fine. I was thinking this would allow cooperative work between the two entities and considering the landowner that owns the land that is being included here.

**Rep. Koppelman:** I am told there is a bill in the Senate that does call for some kind of cooperation. Have you looked at that?

**Rep. Damschen:** I have not looked at it. I do want to bring up the point that one of the problems with the extraterritorial zoning is that those people; land owners and residence, are under those rules, but they have no vote. They don't elect the leadership and they don't have a vote.

**Chairman Wrangham:** As I read the language on page 5 I interpret it to say the city or entity who is going the extraterritorial authority would have authority for regulation, but they would not be able to export their ordinances or regulation beyond their cooperate limits.

**Brian Bitner:** I support almost any change in the extraterritorial law. (Testimony #1)

Concerned about not having a vote. As a county commissioner I can understand the things that affect the city. I have the city of Bismarck growth management plan; the Bismarck

Burleigh County Fringe Area Road Master Plan, I have the Bismarck-Mandan Metropolitan Area Long Range Transportation Plan; the Bismarck Mandan Regional Future Land Use Plan

and various maps. I have a 2001 Waste Water Plan that basically shows the plan for the infrastructure for sewer or water. As a commission I can understand the value of planning and how we can cooperate with the city. I don't think there is any need for the citizens to have a situation where they are disenfranchised from their right to vote for elected representation. As a County Commissioner I can do literally next to nothing for my citizens that live in that ET area if there is a question about zoning and subdivisions and I would like the opportunity to represent my citizens.

**Frank Matejcek:** (see testimony #2). I am here to support this bill in some form. We have to something with the extraterritorial area. When Grand Forks decided to go from 2 to 4 miles they said it was for good planning only. A couple days later we find out they are going to site a landfill in that area once they change the code. They changed the code, when there was a 2 mile ET there was no mention of a landfill anywhere in the code. It became part of the code when they decided to expand from 2-4. There are other things that changed in Grand Forks as well. Use to be able to build on a 2.5 acre lot. If they did not have their lot platted they couldn't build. Their family couldn't build on it and they decided they need to have one house for 40 acres. I handed out a lot of history on the abuses for you to review.

**Rep. Conrad:** When you had 2 miles ET it worked?

**Frank Matejcek:** There were problems in the two mile zoning you had to have a five acre lot per house. As the city kept growing out we kept running into non conforming uses which would be a 2.5 acre lot. So the city changed the ordinance at that time and you could have a 2.5 acres lot. However when they went from a 2-4 mile range they decided to make it one house in 40 acres.

**Randal Coeslie: Grand Forks Trail Water:** Our board of directors and I know the value of planning. We planned along with the city to be outside their dike area and their city flood

protection. In 2000 we signed an agreement with the city of Grand Forks stating the exact area that was theirs and the exact area that was ours. That basically was the outside of the two mile zone. When this landfill issue came up; that is not our issue. We have built infrastructure in the 2-4 mile zone to accommodate new customers. That is our planning and that is our growth. We planned out for 20 years to be able to serve customers out in that area. Now after the 40 acre rule came into effect from the 2-4 mile it basically leaves that infrastructure there going to be unused. We have investment in that and we had in good faith signed that agreement in 2000 with the city. Now they changed the rules. An agreement should be really be good. We have been told we were speculating? We did not think we were speculating when we had a signed agreement with the city that that was our territory. When they said we could only have one house for 40 acres that basically put us out of business.

**Rep. Conrad:** Besides the issue of the 40 acres and the landfill; are there any other issues that have come up when you went from 2-4?

**Randal Coeslie:** The landfill isn't really our issue. The main issue is the 40 acre restriction. REC's plan ahead 10-20 years and they have the ET to protect them. We thought we had enough protection with the agreement with the city without going to court. We do not want to do that; we want the Legislature to give us relief.

**Rep. Klemin:** when you say you put in infrastructure you mean like water lines?

**Randal Coeslie:** Yes, we put in 8" water mains south of the city and parallel to the zone we agreed to.

**Rep. Klemin:** Was it designed with 5 acre lots in mind?

**Randal Coeslie:** We designed it to accommodate the future growth of 500 rural residences in the 2-4 mile zone.

**Rep. Klemin:** The 500 acres lots were based on less than 40 acres?

**Randel Coeslie:** Yes they were based on the 2.5 acre lots that were being developed.

**Randal Coeslie:** Not if we don't have customers for it and we won't have customers if they have to build on 40 acres; not on \$5000 acre land.

**Lynn Bergman:** I worked for the City of Yuma, Arizona and the city of Colorado Springs, CO. late in my career as well as earlier for the city of Grand Forks and Bismarck. In other states it is very typical for the ET area to represent about 1.5 times the land area of the city involved. I looked at Denver the other day and it is almost exactly 1.5 times the land area that is in the ET zone. The half mile is much closer to that requirement so I support it. As I worked with cities and would typically get requested within the ET zone for building permits. What we did was attach 6 or 7 requirements to that permit that took away a lot of those rights those people had and took away the potential for future monetary rewards. We would ask them as a condition to building a new barn, first to put it in the right place. Second, the right away for a new six lane arterial. Maybe five years later when we built that arterial we would go to their neighbor who is slightly outside that ET zone and we would go through emend domain and pay that neighbor rather richly and there was really some hard feelings for actions like that. It took away a lot of rights those people had and took away any monetary rewards. So keep the ET down to a half mile like we say here. Don't give the city any more authority than the county because then you truly will get the two entities working together to come up with good sound logical solutions.

**Rep. Koppelman:** You asked about the ratio of 1.5. Was there any differential for sizes of cities?

**Lynn Bergman:** yes that factor of 1.5 if something that is a good target for any city of any size because it is more logical than if you use 4 miles for Denver and then used 4 miles for Bismarck. Four miles is a long ways for a city of Bismarck. It is pretty close for the city of

Denver because they built things like city airports. I don't mean to criticize the half mile, but it is a lot closer for it to be 1.5 times than the 4 miles that is currently in place.

**Rep. Koppelman:** Discussed the concept of sizes versus distance?

Lynn Bergman: When we are talking about the need for ET we are talking about the cities of 25,000-50,000 anyway. We are talking about Valley City, Fargo, Minot, and Bismarck. The smaller towns are not going to be building nearly the infrastructure that these larger cities are. I actually prefer setting distance rather than having two different criteria. Quite honestly the first two mean nothing to those communities anyway.

**Rep. Kretschmar:** I am concerned about the rights of the citizens in the ET area not being able to vote for the city council people. Do you have any solution to that problem which will still be existence in the half mile or whatever the miles it. Those people still won't have a voice in the election process for the leaders of the city.

**Lynn Bergman:** I believe that if you are going to have an ET area and give the city more power than the county over that area that you should allow those people in that ET area to vote in the city elections. If you are going to leave the situation where the city and county have to work things out together and they are on equal footing then I don't see the need to extend that voting privilege.

**Sandy Clark: ND Farm Bureau:** We stand in support of this bill. Farmers and ranchers who live in these areas are severely impacted by the decisions made by the city. Most of our members can co exists with residential subdivisions, but they do object to city officials imposing restrictions on where they live and where we farm.

**Rep. Conrad:** Have you had any complaints from your membership about the Minot area?

**Sandy Clark:** No.

**Rep. Klemin:** Is there a requirement on how and where they can farm?

**Sandy Clark:** things like buildings, and zoning regulations. If the city imposes things like noise or dust regulations those are a real concern.

**Ski Kostman:** (testimony #3).

**Jonathan Garaas:** (testimony #4 and #5). I have lived with ET zoning in Fargo for 38 years or since it came into being. (Said would leave copy of the blue folder from Stanley township). I have never once met a township supervisor who was not representative of his township.

**Rep. Koppelman:** It appears that the bill would take that right away. In those ET areas; people living there don't have the rights and are compromised because they can't vote for people in the city who are exercising zoning authority outside the city etc. It calls for cooperation in those areas in another bill. Do you favor that and do you think this bill does that?

**Jonathan Garaas:** I have read that Senate bill and it is a disaster. Actually what the Senate bill does it says the person who lives in the rural area outside the city limits is subject to two conflicting sets of regulations. So if the city of Fargo says to a rural person in Stanley Township you have to have a house and fence that is this high and Stanley Township says you can't have a house or fence that is greater than this; the landowner is subject to both of those laws. You cannot have two different masters.

**Rep. Kilichowski:** You said Stanley township organized their planning and zoning in 2005?

**Jonathan Garaas:** That was an update from prior ordinances. We did it immediately when it became law and it has been revised at least twice since that time.

**Curley Haugland:** (see testimony #6). We are aware of a problem in the Minot area. It seems the city of Minot approved a storage facility for explosives in the ET jurisdiction so it does happen in Minot too. I attached a series of articles from the internet that is relative to this

issue. Partially the Oregon experience with measure 37 which deals with regulatory takings with the lack of compensation.

**Beau Bateman:** Township Supervisor in Rye Township directly west of the city of Grand Forks. (Testimony # 7 & 8). They say we are not as competent as they are to interrupt their zoning. Our farm became Bateman Farm a year after ND became a state. Charlotte, NC has a population of the state of ND yet they exist with a 3 mile ET. In addition if they wish to exercise their 3 mile ET they have to ask the area they wish to move into if they will accept it and if they won't it doesn't happen. When the city of Grand Forks took their ET of 4 miles we asked to see the rules under which we would be subject. If you are a zoning township and want to bring in new laws you have to show it to your electric for their criticism and change. We did not get it. The county held a moratorium until the rules were established, but the city did the moratorium and then took the 4 mile within 5 minutes so we did not get to see those rules. Discussed the North Carolina rules and how they work over because they have been doing it 100 years more than we have. Explained the problems with Grand Forks due to the ET zoning. When you took out ET and gave it to the cities you gave them a gun and you can't negotiate with someone with a gun if you have a stick. If you want the responsibility to zone, instead of freezing our widow's land; you show us where you want your mains and streets and we will put a house out there that won't interfere with your plan. You can then sell a 2.5 acre lot and we then would be complying with the city plan. Accountability; American's vote for those who govern them and we need the restoration of our voting and property rights. We need retro activity of this law.

**Larry Syverson:** (testimony #9).

**Clarice Liechty:** Jamestown. Individual property owner: Farmland and city property.  
**Major of Jamestown.** In Jamestown we have the 1 mile ET and we have a planning

commission that has an attitude that we can do whatever we want to in the zone. A property owner asked me to tell them how rude planning commissioner people are to the property owners of the ET zoning area. I realize you cannot legislate kindness, but this is what is happening in the smaller towns like Jamestown. In a small town you don't have the planning or input. The people in the ET zone do not have anyone to represent them in that area. The county commissioners have to appoint someone to the City Commission of a city, but those people have to live in the ET zone. When I contacted our city attorney who contacted our county commissioners they just thumbed their nose at this. So they are not following the law in that case if there is a law. I am in favor of this bill because it cuts back the area where a planning and city council can override anything that the property owners in that area want to do with their own property. If people are willing to put their money into an area it will grow.

**Rep. Koppelman:** Jamestown has a stable population. Why did Jamestown decide to go out a mile?

**Clarice Liechty:** No, I do not know that. I am here as an individual; not the Major of Jamestown. Maybe it was the planning commission.

### **Opposition:**

**Jim Gilmour: Planning Director, City of Fargo:** (see testimony #10).

**Keith Berndt: County Engineer, Cass County:** (testimony # 11) I am charged with supervising Cass County's associated planning activities and work closely with our planning commission and supervisor and county planner in that role. The Cass County Commission supports Extraterritorial Zoning of up to 4 miles per cities over 25,000 and 2 miles for cities between 5,000-25,000.

**Rep. Jerry Kelsh:** If a bill passed and you had one half mile around Fargo; how long would it take to fill that up with your normal growth and how often can you go another half mile?



**Keith Berndt:** I cannot predict how long it would take Fargo; normally they have been going to the South over other directions. One large development could fill a half mile in a year.

**Rep. Jerry Kelsh:** Even if it is 4 miles; how often can you go another 4 miles?

**Keith Berndt:** Once the city has annexed they can then go through their process to again extend their ET area.

**Rep. Conrad:** If this bill were passed and a township wanted to continue to have your services is there a process they could go through for that?

**Keith Berndt:** Under current statues in those areas outside those ET areas there is a shared responsibility regardless of any township action the county has to regulate subdivisions. If a township would chose to give the county commission the other half of the pie; the zoning part of it, they could under ND statue relinquish their authority to the county and then the county could assume building and zoning authority.

**Rep. Zaiser:** what are the requirements for your voting members that are in the ET area? What authority do county commissioners have to appoint them? Do they have to live in a certain area?

**Keith Berndt:** the objective of the county commission to get those people that live in the ET zoning areas. We have a very difficult time filling those positions. The commission has stayed liberal on the requirements for that reason.

**Rep. Zaiser:** So they don't have to?

**Keith Berndt:** In my 16 years there has never been someone that did not live in the ET area.

**Rep. Koppelman:** In a rural area the zoning authority; and you mentioned that is primary the county, cooperating with the city. We recognize the property rights of the people that live there and that is what we are trying to balance. Do you see a problem with some sort of formula that would allow for shares authority for zoning in those areas?

**Keith Berndt:** I think administratively it poses some problems that is an ideal solution. We have enjoyed an outstanding relationship with our cities as well as our townships or tend to work cooperative regardless of the law mandates.

**Rep. Koppelman:** In talking about Horace earlier you said this is what happens when cities don't do ET zoning there is premature annexation. If the city is not doing that the only way to control that area is to expand into is to annex it? Can you tell us the reason Horace is as long as you say it is?

**Keith Berndt:** I can speculate. I cannot tell you why Horace has chosen to annex as much land as they have.

**Chairman Wrangham:** Your constructive information in the past has been helpful and I want you to know it has not gone unnoticed. Part of your testimony deals with metropolitan planning organization and this goes back to a question I asked earlier. We had some discussion about arterial roads and things like that. Do you think it is better for a city to plan the arterial roads or county and a metropolitan organization, which may include several cities? I think yours does go way out to Dilworth in your area. Isn't that really the best entity to do the planning for those arterial roads and streets?

**Keith Berndt:** Yes I would agree with you 100%. In our metropolitan area we had this organization undertake a study to adopt excess standards to try to develop for these mile line roads, which we know from the history will become the future arterials. We adopted standards what should the setbacks be on both sides of the river? The county went out and posted big red and white signs; future arterial corridor just to try to warn those folks that lived out there that it might be 20-30 years away. The problem we have had is those roads that are cities and counties we can control. If they are under the townships control doesn't participate in that

planning process. They can do whatever they want to do. Unfortunately when it comes time to change the taxpayers end up footing the bill.

**Bill Wolken, City Administrator for the city of Bismarck:** Before that I was city/county planner for 21 years. I have written township zoning regulations as well as comprehensive plans for townships. (See testimony #12).

**Rep. Jerry Kelsh:** I think there needs to be some protection of the people that the zoning ordinance would cover that have no other rights? How would you change that language back again to make it so they have some rights out there? Is that something that is negotiable?

**Bill Wolken:** I think there are two answers to that question. I think we have heard some problems with ET jurisdiction in and around Bismarck and we have tried to resolve those issues. I think it can be done without a law by changing platting jurisdiction. If the law is necessary some of the alternatives that have been discussed in 2027 might be considered. That would be like giving the townships the opportunity to appeal a decision that is made in their area. Having joint jurisdiction. I think there are several opportunities.

(Handed out testimony #13, no one here)

**Richard Hammond** (testimony #14).

**Curt Kruen:** (testimony #15).

**Rep. Koppelman:** The current law doesn't prohibit that it doesn't necessary facilitate it either. Is there something we can do in changing the current zoning law that would give that kind of authority to the cities and governing area via townships and counties outside the city to encourage that kind of cooperation. You seem to be cooperating, but you are doing it with the goodness of your own heart to try to avoid problems. Legally you don't have to. Can we give each side a stick and make this work?

**Curt Kruen:** we would be more than happy to able to come back and give you some more information and assistance.

**Chairman Wrangham:** As we move forward that might be helpful.

**Rep. Kilichowski:** Are there townships in these zones have planning and zoning or are they county commission?

**Curt Kruen:** Most of them are under the county planning and zoning. They might be one or two townships that have some portion of the planning process. At this point in time no they are not.

**Rep. Jerry Kelsh:** I know they were supposed to have done it years ago or they had to go under the county.

**Curt Kruen:** Several years ago we had some of those and we are incorporating some of those into this draft and that is what we indicated were going to have the township supervisors at this meeting with the county commissioners, PAZ and City PAZ as well.

**Rep. Jerry Kelsh:** they weren't in on the initial planning?

**Curt Kruen:** No they were not. The townships have been involved in pre draft idea so we have involved all the townships that were interested; the commission of the county and city.

**Rep. Corey Mock:** they referred to the landfill in Grand Forks in the township. What happened? What happened was when it was extended from 2-4 this was retroactive.

**Curt Kruen:** The zoning started way before the landfill became the issue of where it is now. I don't want to get into that debate.

**Larry Weil:** (see testimony #16). There have been some testimony that some cities are better equipped to address urban type problems associated with development pressures adjacent to cities. I think that is the case primary because we are faced on a daily basis by developers who have their plans that may or may not be in the best interest of the community. Often

time's townships and counties don't have that perspective. We can work with them and help them to address some of these issues and work collectively in developing a better community. I think the proposed legislation would under mind much of the progress West Fargo has made. We urge a do not pass on this bill. We have grown 22% per decade. Since 2000 we have had lots of challenges. We need to work together collectively with engineering, planning etc. West Fargo is going mostly to the South. Some of the statues that were put in place in 1997 helped us to work with Fargo in administrating the ET area. Those areas that are outside the diversion that are heavily flooded; we had the townships working with us on a continue basis because they believe we are better equipped and staffed to work with the applications that are coming in. They know we involve them in the process and there is a trust relationship.

**Rep. Koppelman:** Is there is something we can do in state law? I think West Fargo has done it right. We have heard a lot of stories today about areas where at least eligibly that has not occurred. Is there something we can do in law where we can foster than kind of cooperation?

**Larry Weil:** I think all of us need to work together. I think communication is vital. There is nothing perfect in this world. I think we need to make sure all parties are involved in this process early on.

**Connie Sprynczynatky: ND League of Cities:** Has a chart to show the process. The blue is what exists in state law; the yellow is what we are proposing to put into place with 2027; the red dash line means on the point of public outreach. (See testimony chart #17). I think you should be looking at these planning and zoning laws periodically. This is not a perfect process and there is no clear and perfect answer to all our questions that have been raised today. I think if we can amend 2027 we can get further down the road on involvement. Doreen Redman wanted to testify on behalf of the ND Builders Assoc. She had to leave so here is her testimony. (Testimony #18).

**Rep. Jerry Kelsh:** Are you still on the city commission?

**Connie Sprynczynatky:** I am.

**Rep. Jerry Kelsh:** You were probably involved in the ET requisition. Some people have testified here that weren't treated well. Have you gotten that straightened out? Did you have to give up some things, if you did?

**Connie Sprynczynatky:** No, not a perfect process. When we made this move a number of years ago we said that we were going to watch carefully how things were implemented and change as wrinkles developed. One of the things we are doing is working with Apple Creek Township to determine what areas of the 4 mile going out that direction. Bismarck realistically isn't going to be in development for quite some time so can we give pieces back. We have already worked with the city of Lincoln because we have a budding territory like Fargo and West Fargo. We have had some concerns about platting requirements. They do probably place a burden on people; but that is not fair. Let's go back and rework that. We are working on it.

**Carl Hokenstad: City Planner of Bismarck, ND:** (see testimony #19). We have looked at our zoning regulations as a result of some issues that came up with ET zoning. We are currently in discussion with Apple Creek Township, which is just to the SE of Bismarck. Talking about drawing back out ET boundary to 2 mile.

**Chairman Wrangham:** How is that going by the way?

**Carl Hokenstad:** We got a good start on it. It was the townships request that we recess the discussions until the end of the Legislative Session. Hopefully we will pick up where we left off. We have looked at our zoning regulations as a result of some issues that came up with ET zoning. We have made some amendments to our regulations and we are looking at some further amendments to try to respond to some of the issues that we have heard. I tried to look

at this bill as a staff member how would I implement the provisions of this bill if it were approved? Section 2 of the bill refers to that any zoning and subdivisions regulation beyond ½ mile would essentially be voided. In Bismarck's case we have over 350 subdivision plats within the 4 mile ET area and the accompanying zoning that went with it. Since 1975 on the passage of this original ET zoning bill we have gone through 100s of zoning changes and plat approvals and other sorts of applications and it has been a very transparent process; numerous public hearings; planning commission considerations, governing body approvals and it appears in reading this that if it is passed as written that all of that work would somehow be voided; anything beyond the half mile. It would be difficult if not impossible to implement it and how would we tell owners out there that have relied on a certain set of zoning regulations for 30 plus years that they are something else.

**Chairman Wrangham:** What about the people that live out there and relied on zoning of the township for 70-80 years and all of a sudden when ET authority was exercised over them seems like life continued?

**Carl Hokenstad:** It seems in one swoop a lot of zoning and platting work is going to be undone. I see that this bill would be very difficult to implement. It does place the burden on cities to implement and enforce; not only their own regulations, but possible regulations of the other jurisdictions that does not recognize growth management needs based on different sizes of cities and growth rates. I think it unfairly impacts landowners. I ask that you give HB 1554 a do not pass recommendation. During the past two years state planners and League of Cities, citizens and others have worked very hard with the ACIR committee to come up with a reasonable bill that addresses some of the concerns that you have all heard over the years with ET zoning. That is Senate Bill 2027.

**Chairman Wrangham:** You are aware of the HCIR bill proposed to the senate. Do you support that bill as it came from the Senate from HCIR?

**Carol Hokenstad:** The bill as written extends jurisdiction for the entire ET area. It is the possession of the planners and League of Cities that we believe a more reasonable approach would be shared jurisdiction. In the outer half of the ET zoning put a sunset clause on it and try it for two years and see how it works; bring it back at a later time and see if it has worked out well. We think it is a good step toward that goal.

No Neutral.

Hearing closed.



# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1554

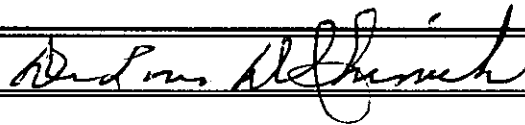
### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9797

Committee Clerk Signature



Minutes:

Chairman Wrangham reopened the hearing on HB 1554.

**Motion Made by Rep. Nancy Johnson to do not pass.**

**Chairman Wrangham:** I had an amendment I was hoping to offer.

**Rep. Nancy Johnson:** withdrew her motion.

**Chairman Wrangham:** This bill has had considerable discussion. In my opinion we need to keep this subject moving forward. It is necessary that something be done. The amendment simply makes our present law permanent. This amendment; before last session it was 4 miles; 2 miles and 1 mile. Last session a bill passed which cut it down to 2 miles; 1 mile and ½ mile as a temporary fix for two years. We have lived under that language for two years. It is effective to July 31, 2009. Basically what this amendment does is it takes out the effective through July 31, 2009. It makes what we have done the last two years state law. I don't think it really hurts anything we have not been doing. This is my vehicle to get it over to the Senate. This application #2 again should be removed, page 7; 15-18.

**Motion Made to move amendment .0202 by Rep. Conrad: Seconded By Rep. Jerry**

**Kelsh:**

**Rep. Koppelman:** You said the amendment would keep in place what currently is in law, but I think what is currently in law also is that there is a grandfathering in of any activity that cities have exercised. Does this continue or does this undo that?

**Chairman Wrangham:** This would continue that so if the city prior to two years ago had extended the 4 miles it could still operate in that four mile limit.

Voice Vote carried

**Rep. Conrad Made a Motion to Do Pass As Amended; Seconded By Rep. Headland:**

**Rep. Pietsch:** where is the companion bill in the Senate at? It has passed in the Senate.

**Vote: 12 Yes 1 No 0 Absent Carrier: Chairman Wrangham:**

Hearing closed.

Date: 2/16  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1554

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS DO NOT PASS AS AMENDED

Motion Made By Rep. Johnson Seconded By Rep. \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Rep. Karl Conrad		
Rep. Craig Headland, Vice Chairman			Rep. Jerry Kelsh		
Rep. Patrick Hatlestad			Rep. Robert Kilichowski		
Rep. Nancy Johnson			Rep. Corey Mock		
Rep. Lawrence Klemin			Rep. Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Carrier: \_\_\_\_\_

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

Withdrawn

VR  
2/16/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1554

Page 1, line 2, remove "; and to provide for application"

Page 1, line 6, overstrike "(Effective through July 31, 2009)"

Page 4, overstrike lines 14 and 15

Page 4, line 16, overstrike "1. A city may, by ordinance, extend the" and overstrike "city's zoning"

Page 4, line 17, remove "authority" and overstrike "to any quarter quarter section of unincorporated territory if a majority of"

Page 4, line 18, overstrike "the quarter quarter section is located within" and remove "one-half mile"

Page 4, line 19, remove "[.80 kilometer]" and overstrike "of the corporate limits of the city"

Page 4, line 25, overstrike the period

Page 4, overstrike lines 26 through 30

Page 5, line 1, overstrike "3. A city exercising its extraterritorial", remove "subdivision or", and overstrike "zoning authority"

Page 5, line 9, remove "cannot adopt any"

Page 5, remove lines 10 through 14

Page 5, line 15, remove "enforce those regulations for that area" and overstrike the period

Page 5, overstrike lines 16 through 30

Page 6, overstrike lines 1 through 31

Page 7, overstrike lines 1 through 10

Page 7, line 11, overstrike "8. For the purposes of this section, a quarter quarter section", remove "must", and overstrike "be"

Page 7, overstrike lines 12 through 14

Page 7, remove lines 15 through 18

Renumber accordingly

Date: 2/16  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1554

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 0202

Action Taken DO PASS DO NOT PASS AS AMENDED

Motion Made By Rep. Conrad Seconded By Rep. Kelsh

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Rep. Kari Conrad		
Rep. Craig Headland, Vice Chairman			Rep. Jerry Kelsh		
Rep. Patrick Hatlestad			Rep. Robert Kilichowski		
Rep. Nancy Johnson			Rep. Corey Mock		
Rep. Lawrence Klemin			Rep. Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Carrier: \_\_\_\_\_

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

*Vote  
conced*

Date: 2/16  
Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1554

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

DO PASS

DO NOT PASS

AS AMENDED

Motion Made By

Rep. Conrad

Seconded By

Rep. Headland

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman	✓		Rep. Kari Conrad	✓	
Rep. Craig Headland, Vice Chairman	✓		Rep. Jerry Kelsh	✓	
Rep. Patrick Hatlestad	✓		Rep. Robert Kilichowski	✓	
Rep. Nancy Johnson	✓		Rep. Corey Mock	✓	
Rep. Lawrence Klemin	✓		Rep. Steve Zaiser	✗	✓
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 12 No 1

Absent 0

Carrier: Rep Wrangham

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

**REPORT OF STANDING COMMITTEE**

**HB 1554: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1554 was placed on the Sixth order on the calendar.**

Page 1, line 2, remove "; and to provide for application"

Page 1, line 6, overstrike "(Effective through July 31, 2009)"

Page 4, overstrike lines 14 and 15

Page 4, line 16, overstrike "1. A city may, by ordinance, extend the" and overstrike "city's zoning"

Page 4, line 17, remove "authority" and overstrike "to any quarter quarter section of unincorporated territory if a majority of"

Page 4, line 18, overstrike "the quarter quarter section is located within" and remove "one-half mile"

Page 4, line 19, remove "[.80 kilometer]" and overstrike "of the corporate limits of the city"

Page 4, line 25, overstrike the period

Page 4, overstrike lines 26 through 30

Page 5, line 1, overstrike "3. A city exercising its extraterritorial", remove "subdivision or", and overstrike "zoning authority"

Page 5, line 9, remove "cannot adopt any"

Page 5, remove lines 10 through 14

Page 5, line 15, remove "enforce those regulations for that area" and overstrike the period

Page 5, overstrike lines 16 through 30

Page 6, overstrike lines 1 through 31

Page 7, overstrike lines 1 through 10

Page 7, line 11, overstrike "8. For the purposes of this section, a quarter quarter section", remove "must", and overstrike "be"

Page 7, overstrike lines 12 through 14

Page 7, remove lines 15 through 18

Renumber accordingly

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1554



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1554

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/12/09

Recorder Job Number: 10794

Committee Clerk Signature

*Katie Oliver*

Minutes:

Chairman Dever called the committee to order. Roll was taken and all members were present. Representative Damschen was there to introduce the bill.

**Representative Damschen:** This legislation is nothing to do with disliking cities what I do have a dislike is any government entity taking private property without compensation. I believe that extra territorial zoning, when you can apply zoning laws to an area that has no vote and no representation. My interest in extra territorial zoning has nothing do with trying to stop cities from expanding, they can still expand.

**Representative Dwight Wrangham:** See attached testimony #1

**Senator Oehlke:** Do you have that amendment in front of you?

**Dwight Wrangham:** Yes.

**Senator Oehlke:** There is a line through some of the amendment, and with it crossed out it doesn't really make sense.

**Dwight Wrangham:** I felt the same way.

**Senator Nelson:** I am confused by the second part of the amendment. Can you explain it?

**Dwight Wrangham:** I am afraid I can't. This doesn't change that, it is already in current law. All this does is move the mileages over to the extra territorial zoning section.

**Richard Hammond:** Burleigh County. See attached testimony #2.

**Richard Gross:** Former priest, now a farmer. I was at a hearing in Fargo and the city moved to dismiss the lawsuit. At the end, Ron Fischer, the city attorney, said to the judge, "That is Fr. Gross; he says that he has no representation. I saw him testify in Bismarck, that is his representation." The judge said, "I suppose it is the legislature that caused this, they can undo it if they want."

I do not know where else to go. The second issue is the abuse that is happening. An old couple bought part of the family farm; they have kids that want to move back to North Dakota. They were going to divide the land between the kids and now they can't do this. We have been told that we don't need to give any more information beyond; 'because we can' I have a neighbor who sold his family farm. Part of his retirement plan was to subdivide the property.

The city tells him they can't. I could go on. I am depending on you to give us back what is ours. Finally the third thing, I agree that the city needs to plan, I would like you to ask them how many years ahead they plan. I think that it a pertinent question. Can you plan in all 4 directions for the next 250 years? It seems to me that 2 miles out and 25 years is plenty.

**Senator Horne:** Where do you live?

**Richard Gross:** A little less than 4 miles southwest of Grand Forks in Allendale Township, past Merrifield.

**Senator Dever:** Before it said half mile, now it says 2 miles. Is it a question of no or how much?

**Richard Gross:** That is the question I am asking of you.

**Senator Dever:** Representative Wrangham said the cities have the staff to do that and the other entities don't. North Dakota Builders Association gave us the amount of dollars and building permits that were issued in the cities in the past several years and I think that the

permits that were issued for the 4 mile annex was \$20,000,000 and Bismarck's total was \$60,000,000 so it is a significant amount. I think an argument in support of planning by somebody is a good idea.

**Richard Gross:** I think that I would be willing to allow joint jurisdiction into the 4 mile zone. But I think that the governing body should be the more equal partner. The jurisdiction in the inner 2 miles is the city and let the outside govern the area.

**Senator Horne:** Senate Bill 2027 gave the city the authority to govern the inner 2 miles and the outer miles go to the county. Do you like that?

**Richard Gross:** I don't like it. The city zone stands. Second I think that the county commission is a political unit and they represent us. As one of the commissioners said, 'well no what is good for the city is good for the county.' That kind of decision is better not made in the political arena. I think that the issue should be decided by law, not politics.

**Frank Matejcek:** About 20 years ago I was appointed to be the the extra territorial representative on the city planning and zoning commission. The extra territorial area of Grand Forks was 0-2 miles and remained that way until 2006, and then it was moved to 4 miles. There was no representative for extra territorial residents. Grand Forks is a good growing city and expanding its industrial park. The property that the waste facility is being built on is owned by an elderly woman, she would like to pass the land on to her children. She was offered \$1,300 an acre for the land. The landfill is developments just like and industrial park that is why you must set back the territory to 2 miles.

**Senator Dever:** You said that the city of Grand Forks extended the 4 miles only for the purpose of sighting the landfill.

**Frank Matejcek:** Yes, that is what the city commissioner said. The underlying reason was to find a sight in the landfill.

**Senator Dever:** When was that?

**Frank Matejcek:** I am not sure.

**Randal Loeslie:** Grand Forks Traill Water District. See attached testimony #3.

**Senator Cook:** In Grand Forks, where they won't do a lot size of 40 acres, is that the issue that Fr. Gross was talking about?

**Randal Loeslie:** Not sure.

**Senator Cook:** Have rural water tried to find a solution to that problem?

**Randal Loeslie:** We are seeking legal action.

**Senator Cook:** Have they said what they would do in the outer 2 miles?

**Randal Loeslie:** The first time we heard about it was at a hearing a few weeks ago.

**Senator Horne:** The outer 2 miles would be governed by the county. Is that a good solution?

**Randal Loeslie:** I don't think so. I think that the authority should be the township because they are the people that live there.

**Senator Horne:** Can you point out where the proposed landfill is?

**Randal Loeslie:** Section 13.

**Bob Bahm:** Minot has changed with the oil boom. With things changing that fast some things are good and some are bad. 10 years ago we were going to build a house. I needed to get a building permit from the city. They charged me twice as much if I had built in Minot. We have expansion coming in our area, and I had no input in that at all. Everything that keeps coming up is the same issue. Even on the county side there is only one county commissioner.

**Beau Bateman:** Brenit township supervisor. This bill is about distance and dispute resolution. There are a number of states that have extra territorial laws. Other states have extra territorial laws maybe the thread of it is that they are western states, like us. Fargo has the smallest extra territorial and Grand Forks and Bismarck have the largest. The city of Grand Forks is

ready to sign an agreement with the county commissioners. Looks at Fargo, there is little extra territorial. Not much dispute there. What is appropriate distance?

In the agreement that the city had with the county it was a 60 day agreement and either party could walk away at any time. They would not sign with a township but would with the county. They wanted 400 feet and then took it away. Frank was talking about zoning and its challenges. It is hard to tell what is going to happen out there. Grand Forks Harold had this on the blog on the February 20<sup>th</sup>, 2007: 'city council member Christenson said as things transpired they were left with little choice but extend the jurisdiction from 2 to 4 miles and did that when they saw that the county was about to deal with its zoning rules. And that we were left with little choice but to try and protect our zoning jurisdiction so that in the unfortunate event that we were to lose litigation we had to have that opportunity and that is why we extended the jurisdiction 4 miles.'

If a city takes a 4 mile extra territorial, and enforces 1 house per 40 acres, is it legal? Isn't that what the Supreme Court was trying to do and North Dakota disagreed with? You can't take something just because you can make more money off it than the original. Fargo and West Fargo have equal rights in the extra territorial zoning. You don't have negotiation in the townships, if they do something to us in that 0-2. We need the ability to negotiate on a level playing field; extra territorial is perpetual. You are subjecting the rule of law to majority rule. That is why an admin law judge is necessary. Don't place that on the county commissioner's plate.

**Sandy Clark:** North Dakota Farm Bureau and we are here to stand in support to house bill 1554, our policy opposes extra territorial zoning but if we are going to have it we support representation for those that live in the extra territorial area. Our preference is 2 mile, 1 mile, and a half mile.

**Larry Syverson:** Chairman of Roseville Township of Triall County. See attached testimony #4.

**Curly Haugland:** North Dakota Land Owners Association. Most of the points that we want to make have already been made. Follow the money, money for building permits are being issued to areas that want to grow. When cities start modifying the limits, people want to leave. Unfortunately the greenies have been involved and they think that they want 180 acres. Be aware of that because it is real.

**Senator Dever:** It seems that the half, mile, 2 miles depends on how the city is growing and where they are headed in the future. Annexation moves city limits.

**Ken Yantes:** Executive Secretary for the North Dakota Township Officers Association. I have worked with the ACIR since 1988. The reason I am here is to emphasize the effort that the citizens put in to testify. The pleas for help should be heard. Many participate; please consider the wants and needs of the citizens of the state.

**Brian Bitner:** Burleigh County Commissioner. There is a possibility that there will be a problem if the cities don't zone. If you read them you will see that they are almost the same. During the advisory hearings I asked Fargo's city planner and they seem to have the same situation in Fargo. There will not be chaos. Burleigh County and the city of Bismarck are the same. Responsible growth management is a big thing to all of us.

**Senator Horne:** What is your goal for extra territorial zoning?

**Brian Bitner:** No goal with the zoning. I think that joint jurisdiction makes sense. I don't like anybody having authority over people that don't have the right to vote for them.

**Brian Bitner:** That would depend. Everyone is interested in the overall wellbeing of Bismarck.

**Larry Weil:** Planning Director, City of West Fargo. See attachment #3.

**Senator Horne:** Under this bill, if it was enacted, would West Fargo be pulled back to a 1 mile extra territorial zone?

**Senator Dever:** But West Fargo is the fastest growing city in North Dakota

**Senator Cook:** Do you have a rural fire district?

**Larry Weil:** Yes we do.

**Senator Cook:** Then you work well with them, correct?

**Larry Weil:** I think that it is very difficult for jurisdictions to overlap. Rural water is good to work with. There are a number of constituents that feel the need is there. When they have made the investment, they have a right.

**Senator Cook:** Why does it work well in some places and not in others? Is it just a matter of getting to the table to talk it out?

**Larry Weil:** I think that the Senate bill tries to create a coordinating environment.

**Senator Nelson:** What year did they put the diversion in?

**Larry Weil:** 1993, it was a 3 year project.

**Senator Nelson:** When you were working on it, there must have been a lot of communication with the township.

**Larry Weil:** I cannot take all the credit because I got here in 1990 and the communication has gone on for 20+ years before that.

**Senator Nelson:** But the instillation of that diversion has greatly advanced your ability to expand from 1,000 to 24,000

**Larry Weil:** There is no question. It has enhanced the city of Horace and provided benefit to the property owner's in-between.

**Donna Bye:** Minot City Commissioner's Office was there to hand out testimony.

**Don Siebert:** See attached testimony #4

**Mike Vendsel:** See attached testimony #5

**Bruce Christenson:** See attached testimony #6.

**Dana Larsen:** See attached testimony #7.

**John Zimmerman:** See attached testimony #8.

**Randy Conway:** See attached testimony #9.

**Rita Curl-Langager:** See attached testimony #10.

**Tim Solberg:** See attached testimony #11.

**Curt Kreun:** See attached testimony #12.

**Senator Horne:** The agreement that was reached with the city and county talks about a 400 foot jurisdiction on both sides of the center line of paved roads. What is the purpose of that?

**Tim Solberg:** You are going to need a certain amount of frontage for utility, cable, water, ect. If you go back to the residential area it goes back to a lesser amount

**Senator Cook:** Has the water dist approached the city of Grand Forks?

**Tim Solberg:** We have an agreement with them. The issue is that the future potential loss if there is any. There is no sense in coming to an agreement before knowing what the ET will be.

**Senator Cook:** The 40 acre lots, has the water district ever approached the city of Grand Forks and had a discussion as far as the financial loss that that decision had on them?

**Tim Solberg:** We have an agreement with them that is similar to the one that was brought up earlier. The issue that we have that has not been able to be resolved is the future potential loss of what could happen that is what the issue is at this point in time.

**Senator Cook:** Has this been discussed officially?

**Tim Solberg:** I am pretty sure that the county would have jurisdiction and the county would have 2 ½ acres in that area.

**Marv Abraham:** From rural Burleigh County. I live 10 miles out of Bismarck why should the city be able to tell me what I can do out there.

**Dennis Johnson:** Dickenson City Commission. See attached testimony #13.



**Kelvin Hullet:** Bismarck/Mandan Chamber of Commerce. I am going to register my opposition to 1554. 2027 is a better solution.

**Bill Wocken:** Bismarck City Commission. Similar zoning ordinance to Burleigh County, no transition provisions line 8-16.

**Connie Sprynczynatyk:** North Dakota Association of Counties. Mrs. Spryncanatyk was there to answer the questions that were not answered earlier in the hearing.

How many years ahead should we be planning?

We were looking at planning 40-50 years. There are issues that require a longer planning horizon. Because of development allowed many decades ago, 4 mills local money was needed to reconfigure the bridge. Flood control projects, how does Fargo protect that area? Will there be chaos? It depends. Not all planning capacities are created equal. In the east there are many organized townships. There are differences throughout the state. I am not sure we need to require the same planning capacity of urban areas and township areas.

Is ET all about permit fees?

No, what cities do with permit fees is to reflect the part of the function. The decision was made in Minot in the 80's.

Is ET control about Green Revolution?

I don't know. 78% of our population lives in a city. We tried to figure out how to do that in the interim? I would like to know because in my other life that is what I do. Are there problems? Yes. Can we fix them? Yes, but 1554 does not accomplish that.

With that there was no further discussion and Chairman Dever closed the public hearing on HB1554

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1554

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/12/09

Recorder Job Number: 11345

Committee Clerk Signature

*Kathy Oliver*

Minutes:

Chairman Dever opened the committee work on HB1554.

**Senator Cook:** HB1554 I think that we should have amendments drafted that turn it into 2027.

Our only choice would be a do not pass or put into the form that we passed.

**Senator Dever:** I am wondering if we can do something for the woman in Grand Forks.

**Senator Cook:** We don't know if we have the full story or not. I can speculate what the middle of the road truth is but if you have one person saying willing buyer and one person saying it is emanate domain. I think that we have the option of calling commissioner to come back and talk about that under oath. Maybe it would be appropriate to ask for a response saying that we have received the email.

**Senator Dever:** The other thing is that Grand Forks city was talking about negotiating withdraw from the outer 2 miles and retaining 400 feet on either side of roads.

**Senator Cook:** The issue becomes moot if we pass 2027 the only way we can have 400 feet is if the county agrees. There is no negotiating on in the outer ring. That is what they are thinking that they will do of the law stays the same. That will go out the window if we pass 2027.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1554

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/12/09

Recorder Job Number: 11667

Committee Clerk Signature

*Kate Oliver*

Minutes:

**Senator Cook:** HB1554 to SB2027 just as we passed it out. The effective date is July 31, 2011. We think it is the right fix but re visit in 2 years.

**Senator Nelson:** Administrative hearing

**Senator Cook:** That is in the part that is no longer effective.

**Senator Dever:** That refers to conflict between two cities.

**Senator Nelson:** Where does it say that the county will cover the outside half?

**Senator Horne:** If I remember right, what we passed is a bill to create 2 rings up to 2 miles, city control first ring, county control the other ring. If there is a dispute the county would decide the solution

**Senator Cook:** It is in the bottom of page 3.

A motion was made to consider the newest set of amendments by Senator Cook with a second by Senator Nelson. There was no discussion and the motion passes 5-0. Senator Cook then made a motion for a do pass as amended with a second by Senator Nelson. There was no discussion and the motion passed 5-0 with Senator Cook carrying the bill to the floor.

March 31, 2009

*JB*  
4-2-9  
lofs

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1554

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

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

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

**40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One-half mile [.80 kilometer] if the city has a population of fewer than five thousand.
  - b. One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand.
  - c. Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.
2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and

- g. Any other factor determined to be relevant by the administrative law judge.
- 7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

**(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge.**

- 1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One mile [1.61 kilometers] if the city has a population of ~~less~~ fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction beyond one-half mile [.80 kilometer] with the political subdivision that would otherwise have jurisdiction.
  - b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction beyond one mile [1.61 kilometers] with the political subdivision that would otherwise have jurisdiction.
  - c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction beyond two miles [3.22 kilometers] with the political subdivision that would otherwise have jurisdiction.
- 2. The zoning and subdivision regulations of the city govern the entire extraterritorial area assumed by the city.
- 3. An application for a zoning change or subdivision plat or any change in zoning or subdivision regulation in an area of joint jurisdiction must be submitted to the governing body of the city. Upon receipt of the application, the governing body of the city shall notify the governing body that would otherwise have jurisdiction and provide that body with a copy of the application. After the governing body of the city takes action on the application, the governing body that would otherwise have jurisdiction has fifteen days to object to the city's decision or the decision becomes final. If the governing body that would otherwise have jurisdiction objects, the governing body of the city shall submit the issue to the board of county commissioners for a final decision. The board of county commissioners

shall make a final decision and issue findings based on the record and the comprehensive plans on file from the city, township, and county.

4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
- ~~3.~~ 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
- ~~4.~~ 6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
- ~~5.~~ 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has

become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

5 of 5

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
6. 8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
7. 9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
8. 10. For the purposes of this section, a quarter quarter section ~~shall be~~ is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2011, and after that date is ineffective."

Renumber accordingly



Date: 4  
Roll Call Vote #:

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1554**

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amendments

Motion Made By Cook Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Dick Dever	x		Dwight Cook	x	
Dave Oehlke	x		Carolyn Nelson	x	
Robert M. Horne	x				

Total Yes 5 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date:  
Roll Call Vote #:

Carrier  
Cook

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1554**

Senate Government and Veteran's Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Cook Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Dick Dever	X		Dwight Cook	X	
Dave Oehlke	X		Carolyn Nelson	X	
Robert M. Horne	X				

Total Yes 5 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

**REPORT OF STANDING COMMITTEE**

HB 1554, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1554 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 section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; and to provide an expiration date.

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

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

**40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One-half mile [.80 kilometer] if the city has a population of fewer than five thousand.
  - b. One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand.
  - c. Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.
2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning

transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
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  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;

- e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
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  - g. Any other factor determined to be relevant by the administrative law judge.
7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
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Renumber accordingly

2009 HOUSE POLITICAL SUBDIVISIONS

CONFERENCE COMMITTEE

HB 1554



# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1554

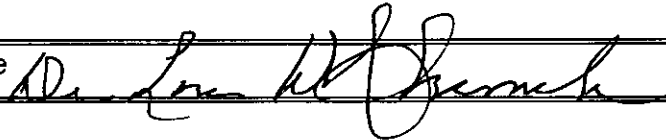
### House Political Subdivisions Committee

☒ Check here for Conference Committee

Hearing Date: April 21, 2009

Recorder Job Number: 12060

Committee Clerk Signature



Minutes:

**Rep. Koppelman** opened the conference committee hearing on HB 1554.

Roll call taken with the following members present: Rep. Koppelman, Rep. Headland, Rep. J. Kelsh, Senator Cook, Senator Dever, Senator Horne.

**Rep. Koppelman:** this bill deals with extraterritorial zoning and it is the same subject matter as SB 2027. We had one meeting already on that bill and we have the same conferees on both. I asked the House Majority scheduler to try to schedule them back to back because we are dealing with the same issues. I think we are planning on coming out with one bill. Please explain the amendments on 1554.

**Senator Cook:** Handed out #1 to discuss. This email discusses the problems we could have if we eliminate the grandfathering in on the Senate version of the bill. I have not had time to read this either. Mr. Hjelmstad please takes the podium and discusses this.

**Rep. Koppelman:** Mr. Hjelmstad if you would like to take the podium and discuss this.

**Jerry Hjelmstad:** Discussed the email. Jeff Klein thought there would be an impact on the National Flood Insurance Program.

**Rep. Koppelman:** when you roll back that you referred to is a little bit different, but it is what we have experienced for a couple of years because we have had a roll back with the

moratorium with a sunset clause which is currently in affect. Are those circumstances in jeopardy now different than they have been for the last two years?

**Jerry Hjelmstad:** Basically we had a moratorium and we viewed any increase in ET zoning; there was no roll back as far as those cities were to assume.

**Rep. Koppelman:** What you are referring to a roll back now is what the house has proposed in its amendments to 2027 which basically deal with two part system in the outer ring of the ET zoning area. In other words the additional zoning granted in the 1997 session of legislation. I understand that it basically grandfathers in the areas where the cities have platted and there is some discussion on whether site plans are in effect. In those areas where it has not occurred the counties or township would be in charge of zoning. So it is the area where the city has taken no action; that is rolling back. Is that correct?

**Jerry Hjelmstad:** Yes there is the roll back.

**Rep. Koppelman:** I had an email this morning from our West Fargo city planner Larry Wild on this same issue. My first reaction was as we have discussed this in the House committee, a version of the bill that is, in areas where townships and cities work very well together? What about if the cities and townships work very well together; what about those things if the House bill was to pass? The response we got from council has been they can do that under their joint powers agreement. I did print out his response because he said there seemed to be some statutory questions about whether townships could actually relinquish their authority in those areas under one statue so I took the liberty of forwarding that to Tim Dawson and his response is what I have handed out. (#2). Basically it says technically he is right in terms of relinquishing control and therefore those joint powers agreements that would be drawn up if that bill would become law, would need to be carefully worded to make sure that it would work that way. If that bill does pass and that version does become law I would encourage those

folks to look at these things and maybe we can do that as we draft the final version of the bill to ensure the joint powers agreements are allowed. Handed out email from Sheila and Scott Bichler (see testimony #3). Discussed what they have experienced with ET in their community and they are folks that are outside the community and are basically retirement age and have put their life savings into their property and now can't see it because of the 40 acre restriction that has been put on by the city. I think the two things we have been given gives a good example of the two extremes that we are trying to bring together and say how do we make this work in a way that good public policy prevails so I think that is the challenge before us.

**Senator Dever:** I don't understand how the issue would be any different in the outer ring than the inner ring?

**Rep. Koppelman:** technically you are right, but what I think happened is that since the inner ring zoning has been done by these cities since 1975 it is a well established law in North Dakota. The people that live in that radius are use to it and it seems to have worked well.

What we heard in testimony in the house is that the legislation which I supported in 1997, but the negative impacts we are hearing about today almost exclusively are issues that are in that outer ring. Typically they arise because those folks are rural. If one side or another has an issue and one side controls it and the other side has not recourse or representation that is their argument or debate. I don't know if any of our versions of the bill totally solve that. I think we need to be aware of that. In the House amendments to 2027 particularly is to try to find some balance on that.

**Senator Horne:** the outer ring is a 4 mile territorial zoning allows.

**Rep. Koppelman:** Some of us have discussed this issue on the other bills so we are using terminology here is sort of shop talk. Before 1997 cities depending upon their population, could do ET zoning; either out ½ mile if they were a small city; out a mile if they were medium

● sized cities and then out 2 miles if they were the largest city. We made several changes in the ET law in 1997 and one of those major changes was doubling that distance.

**Senator Cook:** I think it was the second intern committee hearing we had in Fargo and we had a packed house in the Fargo city commission. One person after the other stood up to the podium and 90% of them from Grand Forks and they all had the same solution. Move this back two miles. They talked about price and flea bargaining. What is the difference between the outer or inner ring? I think you are right it has been going on for a long time. When I look back to the 1997 session when we passed the bill, I probably supported it. For the most part of the state it has worked fine. In your community of West Fargo representatives from the township that meet with them stood up and said we have no problems. As I listened to testimony through this whole process; Fargo has the flood issues and that is one of the ● reasons why you had to have ET zoning for flood control and that is a pretty good justification for using the outer ring, depending on how the water comes across Cass County. Bismarck had a couple issues that arose at the first meeting and they took care of it. The City Commission, after they heard your concerns, they took care of it. Jamestown had a unique issue which was exactly the opposite where the city did not take anything and dropped any protection hat they had and they shouldn't have given people in that ET zone. The two big issues that really grabbed us is the 40 acre sighting in Grand Forks County and the landfill. That was it. There are some small issues out there, but common sense people can work this out. In the Senate version we tried not to take a slug hammer to this. We worked hard with the League of Cities. It is representation that is the issue.

**Rep. Koppelman:** I agree with what you have said. People that live in the outer ring have ● issues. The problem we have with this issue is practically on one side and fundamental rights on the other. Are the rights of the people on the inner ring the same as the people in the outer

ring? Yes they are. Should we do away with all ET zoning and just have none because of that. I don't think so that is why all of us are trying to come together with a solution that will work. Here you have rural people who do not live in the city limits; they do not pay city taxes; they don't vote for city officials and they are not represented by city officials and yet you are taking one of their most precious rights as Americans and you are regulating them by someone else. How would I feel about Moorhead doing ET zoning in West Fargo? I don't think I would like it very well. It does illustrate the point. We have to balance that interest to the cities to say hey we are going to grow; we have a compelling interest to see if we do that how highways match up; how zoning works; how highways match up. The other issue is this is my property and they are telling me what I can and can't do. That is not right and that is not fair and I don't have a representative to call to say that.

**Senator Cook:** I agree with you. When we talk about property rights the challenge is when you have two neighbors both depending their property rights. A sheriff told me three things that can cause neighbors to pull guns: fence lines, water and dogs. They are defending their property rights so when I look at that in the background I look at this as the neighbors I see as cities, counties and townships. As we try to balance property rights I look at as the rights of political subdivisions to work on this challenge.

**Rep. Koppelman:** the subcommittee that worked on this bill in the house, which is the three of us, worked very hard on some of those issues. One of the things we tried to do we did not feel that an individual should have the right to object, we felt that if we craft something that gives representation to the rural folks; maybe the county or township doing the zoning in that area, but even in those areas we would grandfather in, the city would still be doing its ET

zoning, we are saying, it is the rural government entity that has to object, not the individual.

So if you live there and your property is being zoned and you are in that outer ring and the city is still doing the zoning because it is a grandfathered area, or under your bill it would be all of the area, but either way in our version it says that government entity can object so then the landowner would have to go to his township officers or county commissioners or whatever it might be; and say I have a problem and they would have to weigh that and make a recommendation. It basically said that the amendment that he used is one that would say that a sight plan or a plat would be grandfathered in an area only if it was initiated by the property owner or someone having an interest the property being platted or something to that effect. I think the intent there was so a city could not say will we want to plat this area without consulting the people who actually own the property. The city can say we are going to plat a subdivision and they do a plat now if you own some of that land I assume you would be consulted, but later on you might come in and buy some property or whatever in a typical city situation where it has been platted a long time ago.

**Senator Cook:** what is this takes place and I go out and buy a piece of property on that because I know what this platted to do and suddenly they change that plat plan?

**Rep. Koppelman:** I don't remember how the suggested amendment was worded. I think it was language that to the affect that without consulting so I assume it would be whoever owned it at the time of the platted plan was done, not subsequent owners.

**Senator Cook:** What direction are you hoping we move? That we take one of these bills and further amend it?

**Rep. Koppelman:** My objective is that we come out with one bill that we can all live with. I don't have any pride of ownership on either side. One of the biggest differences between the

House and Senate is the idea in the Senate version that the city would control all the zoning in the inner and outer tier going forward. The people in the rural areas have some heartburn over

that. The difference I see with the House version of the amended 2027 and the Senate version of 1554 is that the House versions takes a approach that we want to preserve and respect what the cities have already done; but we want to give authority back in areas where the cities haven't already acted and then put a procedure in place that would foster the kind of neighborly working together that you just referred to.

**Senator Horne:** Asked about the inner and outer procedures now.

**Rep. Koppelman:** I think the language says the city will control all zoning in the entire area.

**Senator Cook:** If someone wants to change the result, where do they go?

**Rep. Koppelman:** the difference we would have is that in the outer ring in the house version in the unplatted areas etc. the township would do that. Unless there is some joint powers agreement or there is an agreement between the township and the city.

**Rep. Headland:** the language you referred in 2027 gives the city the zoning authority. I think some of the rural resident feel that doesn't help them in any way. I think that is why in moving forward the language we have been looking at in the house, addresses the needs of both city and rural residence; where the rural residents don't feel their needs have been addressed in some places.

**Senator Dever:** I think a lot of the objection was that they don't vote for the people in their areas and thus have no representation.

**Rep. Jerry Kelsh:** There are three or four reasons why just the county shouldn't make that decision. The first one being there may not be a township. Maybe between the city and the county. Is that fair to the county? In our situation 3, 4 or 5 members of the commission could be elected from within the city limits. I don't know if county commissions want to get between two other political subdivisions. They have to work with both of them from that point on. I think you have to at least give them the opportunity to refuse to do it. Grand Forks has four of their

county commissioners live within the city. Bismarck has three of them and elected within the city. They are going to have a little trouble not leaning one way or another. That is my fear.

You can go directly to district court on any of those law suits, but the object was to get them to set down and talk to each other and have the knowledge that they can go on to district court and it is going to cost someone some money and the loser is going to have to pay.

**Rep. Koppelman:** I have a suggestion to make. Would it be a good idea to have both sets of clerks set in on both meetings until we dispense with one of these? What happens now is technically we should all be adjourned and going down to the Missouri River room.

**Senator Cook:** We have two sets of bills so as of now we will work that way.

Hearing closed.



## 2009 HOUSE STANDING COMMITTEE MINUTES

### Bill No. HB 1554

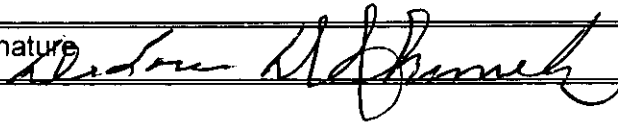
#### House Political Subdivisions Committee

☒ Check here for Conference Committee

Hearing Date: April 27, 2009

Recorder Job Number: 12275

Committee Clerk Signature



Minutes:

**Rep. Koppelman** opened the conference committee hearing on HB 1554.

The following committee members were present: Rep. Koppelman, Rep. Headland, Rep. J. Kelsh, Sen. Cook, Sen. Dever, Sen. Nelson.

**Rep. Koppelman:** My understanding was the Senate amendment for HB 1554 is back to the original bill 2027 so maybe we could ask the Senate to comment on the thinking in amending it that way.

Senator Cook: I think 1554 as it was introduced simply took out ET laws to pre 1997. As I looked the difference between 1554 as it was introduced and 1554 as it is now we still have the full 1-2 and 4 mile; but in that outer half 1554 was going to eliminate we simply still have it, but allow the county to have veto authority. When I look back over the whole issue of ET zoning that is a major compromise from where it is today. It is a major step in the right direction and personally that is a step that will not get everyone out there in agreement. But it will certainly going to help and I believe if we go home with as it is right now and the problems that we have seen surface in particular areas of this state that they still continue to surface and arise, I think that it will be back here next session and probably the right thing to do if this doesn't solve the problem, is take a serious look at 1554 as it was introduced. I know the body

added a lot more things to it. We looked at it as getting confused and we decided to put it to rest. You live in a community that has rapid growth and yet it works fine. I live in a community that has some growth and I haven't heard of any problems and there are other places where there have been a few problems, but I think most cities are willingness to work and communicate; that is what it all comes down to. Political subdivisions being good neighbors and communicating. This started in 1973 so it has been a long issue and the soon as we put this to bed the sooner we can?

**Rep. Koppelman:** We had two major bills on this issue during the session. We have disposed of one of them. I think the House amendments to 2027 really represented the Houses most comprehensive look at the issue this session. When 2027 came over we had more time and we did assemble a subcommittee that worked very hard on the issue and presented a bill to our whole Political Subdivision committee which the members believed it was a comprehensive look at it. I do differ slightly on one point and that is too see this as an issue where we say well gee if this doesn't fix it we'll be back in two years. This is a more major issue than that. I think it is something we need and owe it to the cities and citizens of ND to pass a law that hopefully they can rely on for awhile. We did that in 1997 and now there are a lot of people that argue that there are some flaws with that statute; that is why we are here.

That was twelve years ago and it has been on the books for a while and given a chance to work and in the last few years, as you indicated Senator Cook some issue have come up in regard to the laws and that is what gave rise to the study last session. Along with that session was moratorium so we did that two years ago. I saw this session as a time when we could get together and try to do something comprehensive sort of the way we did in 1997 which was a time when there were several bills floating around and they were merged into one and ended

up with one piece of pretty comprehensive legislation. I would hope we could do something similar in efforts this time so we would not have to come back here in two years. My only disagreement with you Senator is that maybe we ought to give this a little more effort than just saying let's dispose of this and get out of here. Maybe we should give a little. I know we are not going to please everyone.

**Rep. Headland:** I believe there are more areas of contention in Jamestown, Grand Forks, and Bismarck. I don't think the senate versions of 2027 that they put into 1554 really address the concerns. I have a real concern with lack of representation in the outer ring where the contention lies. Their version of 2027 that is now in 1554 does nothing to address that so I don't think 1554 as it now is really does anything. I have an amendment prepared that I would like to offer at some point.

**Rep. Jerry Kelsh:** I heard all that Senator Cook said but I do know there are some further areas of contention? I think our biggest problem is how to handle that outer area. I am not so sure it would make any difference that has priority zoning authority as long as there is a remedy in place. I voted for 2027 as it was amendment the other day and I think it was a pretty good bill actually. Maybe there are some things people did not like, but it is too late on that one now. If we just come up with something that in that 2-4 miles that makes the township people happy. I think you have said it before; there is farmland out in the corner, there is going to be farmland for 200 years at least from now. Let's find a way to leave that alone. We have to do something there and be able to get the services to those areas. There is no sense in arguing out there; there is going to be farmland forever. I don't think we were that far apart the other day. If we can get back pretty close to there we have a bill. Let's protect that outer area because there are only a few places that there is a real problem there.

**Rep. Headland:** I do have an amendment. (Handed out proposed amendment 90228.0303).

Basically what the amendment will do is it is easier to find points of contention that the senate has disagreement with us and amend this bill than it would be to amend our points of contention into the Senate version. There are a couple of minor changes in Subsection 3 on page 4. I decided to go with an amendment that you had offered at our last meeting on the other conference committee as to eliminating site plans and the putting in a date that the city would have had to have presented a plat. Other than that the amendment essentially is 2027 as we passed out. **Rep. Headland moved the amendment; seconded by Rep. Jerry Kelsh.**

**Rep. Koppelman:** Senator Nelson, I know that you were out since Senator Horne subbed for you for awhile. We certainly can give you time. I do think what we have before us now in terms of the amendment that has been moved and the Senate version of 1554, which is essentially the version of 2027 I think we rely, do have our different versions on the table. So we can talk about our different points of contention is and how we might be able to move closer and find something that will work. I would not consider that final version of this if it is the intent of the committee to continue to work on it. I will only take the committee report once we decide to do that. If you chose to adopt it the other option would be to defeat it; but we still have it to look at. The third option would be to just suspend this motion for awhile and let us take another look and visit with some of the other folks and see and get back together and talk some more. What are the wishes of the committee?

**Rep. Headland:** My biggest point of contention is in the outer ring; the cities are going to maintain control. In allowing them the zoning rights the citizens that live out there have no representation. That is my contention that I struggle with and I believe it would be easier to work off this version of the bill with the Senate to put in their points of contention or take out

what is contentious to them than it is to work with my point adding it to their bill and that is why I brought this forward.

**Rep. Jerry Kelsh:** I was wondering if Rep. Headland would tell us the changes he made in Subsection 3 so we can pick them our real quick.

**Rep. Headland:** In subsection 3 in the second line we have taken out sight plan and on the third line we have added the language presented a plat before April 1, 2009. Similar to what Rep. Koppelman discussed at the last conference committee hearing on the 2027 bill. That is essentially the only change.

**Rep. Koppelman:** Your amendment however, does not include the pathway to the grandfathered dots. I did not adopt the full amendment; just a little language. The basic thing the House did in this version was to grandfather in the areas that had been platted; the original version talked about sight plans also. The full committee one of the members brought up the sight plan idea and that was adopted but really wasn't part of the subcommittee's work and if there are any concerns that have been brought up and that is why I had chose to use them as well. So the difference between the House and the Senate, as I see it at this point, is in the outer ring in the Senate version the cities continue to zone completely even in those Ag areas that Rep. Kelsh was referring to but there would be without objection. In the House version in the inner ring of the city continue to zone in both versions. The difference in the outer ring of the House version is that the house would grandfather in the platted areas and the other more rural areas where the cities have maybe zoned and haven't taken any other action in terms of development, the townships or counties or whoever is the rural zoning subdivision.

**Senator Cook:** First I think I heard a comment that those people living in the outer half under the Senate version of 1554 don't have any say. I would say they have the final say. They all know that it is the county commissioners in that outer half and those are people who are

electd by the county so I question that statement. I can understand you are trying to get this back into 2027 I would remind this body that when we had 2027 in this conference committee that we did offer amendments to 2027 that we would accede to it and offered a compromise on 2027 that we would be willing to take that bill to the floor and pass it with the vast majority of the House members on the bill. I believe it was the 3 Senate members and Rep. Kelsh was the only four that voted for it so they were rejected. That bill now has been disposed of. There were some people that supported it on the Senate floor; the rest voted nay so I think as we move forward we should reject these amendments. I will vote against them. If you call the question at this meeting and I think we should reject any and I think as we meet again we need to focus on what we have before us HB 1554 and the changes we might make to that bill and find your position on agreement then. I am comfortable if you call the question.

**Rep. Koppelman:** Just a comment as we do, I would hope that this doesn't become a jockeying for position scenario. I think what happened in our last committee meeting on SB 2027 is that you offered an amendment, as I recall, and it failed. I think it was an effort at compromise and I think we should look at some of those provisions and maybe build on them. I offered an amendment, and it also failed. It was also an effort toward compromise so I don't think it is a scenario that the Senate or the House being dug in on a particular position. The House has also rejected this because we rejected the original version of 2027. If we are going to posture we can save both chambers get both versions to look at so with that to the question of where are we on the issue? How do we resolve the issue? I would hope that we would focus on that. Some good ideas have been flushed out here and I realize we are not going to get all we want, but I think the intent is to compromise with something that is workable and liveable and better for the state of ND.

**Senator Dever:** I appreciate Rep. Kelsh bringing these amendments but I intend to support the defeat of these amendments. Rep. Kelsh made a comment about those farmland areas out there that will never be zoned. One of the things we recognize as we have this conversation is that cities don't grow evenly in all directions and so to say arbitrary four miles and that is it. One of the provisions of the amendment that was offered by the Senate allowed for a written agreement between partners for the decisions of increasing those and I think that is an important step. I think we should move in that direction. What really impressed me was the City of West Fargo that whatever we ended up with here; their approaching that 25,000 threshold where they are going to be doubling their zoning authority. I think that kind of growth is what we are really talking about. There needs to be planning outside the city limits; however it is done.

**Rep. Koppelman:** West Fargo has had issues with ET zoning in the past. I don't think we do with rural folks that you are talking about primarily in our discussions so far here. That is because we work very hard to be good neighbors and so on. I am proud of that, but we have all heard the stories of other places in the state where it hasn't been quite so good. I think we need a law that addresses all those circumstances. Your point about having a mechanism whereby the rural people that Rep. Kelsh referred to can give some of that area back to rural representation; rural zoning, I think is really where a lot of the folks that have been here all session and all intern have really been saying. The question I would have about the amendments offered in the last meeting, the question I would have about that is that is good, but it still puts the city in the driver's seat, if in fact you give the city the continuing authority to zone in that area and you say will they can agree to give some of it up if they want to; that is it they do nothing they keep it. The question is how do we deal with that area? The difference with what the House proposed was give it back. I realize there is complexities to that, but the

problem you have with grandfathering in the whole rural area is that essentially unless there is a good relationship between the rural entity and the city we end up with those contentious staying there and not being resolved. Senator Cook said there is a county commission involved; however we have received emails from some folks that say don't let the county commission do this because all our county commissioners live in our city so we have that to deal with.

**Rep. Jerry Kelsh:** there has to be a remedy before the county commission. That is the point I wanted to make. The point I wanted to make is I don't care what kind of bill we come up with or whose name is on it or what I just want it to be fair to as many people as possible. Let's not just put our head down and say it has to be just exactly what our way.

**Rep. Koppelman:** I can address that issue at the next meeting. We do not have time today.

Before we adjourn we do have a motion on the floor so let's ask the clerk to call the roll on a motion for the amendments offered by Rep. Headland #90228.0303.

**Vote: 3 Yes 3 No 0 Absent Failed**

Hearing adjourned.



## 2009 HOUSE STANDING COMMITTEE MINUTES

### Bill No. HB 1554

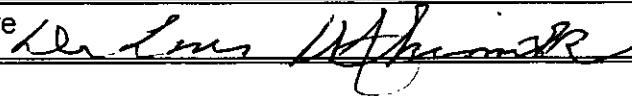
#### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: April 28, 2009

Recorder Job Number: 12323

Committee Clerk Signature



Minutes:

**Rep. Koppelman** reopened the conference committee hearing on HB 1554.

The following members were present: Rep. Koppelman, Rep. Headland, Rep. Kelsh, Senator Cook, Senator Dever, and Senator Nelson.

**Rep. Koppelman:** I think several of us have visited with folks from the League of Cities about another idea they are thinking about. I believe Senator Cook was thinking of having some amendments drawn for that. I took the liberty of doing that; not necessarily to have them moved right now, but just have something for us to look at. Presented proposed amendment 90228.0306. I will attempt to explain some of what the amendment says. The main idea is that the cities are proposing if a good step toward compromise and that is how the inner and outer ring will work. The cities are proposing what if we grandfather in a section of land where platting sight has occurred. To me that makes a lot of sense. Mr. Wolken has a map of these areas in Bismarck.

**Bill Wolken** presented the map of the Bismarck showing the different ET zoning areas and explained it. Around Bismarck the yellow sections that is the proposal that the city would

maintain jurisdiction over and the lavender are sections that the county or township would have jurisdiction over.

**Senator Cook:** What would happen if you took that first purple one off on top there; what would happen if the land owner there, which is not zoned agricultural now, suddenly wanted to put a development in there so he would go to the township or county and that is where he would go to get the authority to change the zone to do what he wants to do, correct?

**Bill Wolken:** Yes that is right.

**Senator Cook:** once the county or township gave him the authority and he developed a subdivision out there and put in 10 homes on 2 acre lots, does it stay under the control of the county?

**Bill Wolken:** I am not sure how to handle that particular case. It would depend upon whether it would be continuing or grandfathered at one time as the bill goes into effect. As 1554 is I understand that would then go to the city because there would then be a subdivision within that section. I believe that 1554 continuances the two mile and four mile so this would terminate the four mile so if you are using that rational this would be part of the city.

**Senator Cook:** so if they were in the township or county they would approve the sight plan and whatever zone change they needed to do and the city would have the opportunity to object?

**Bill Wolken:** That is the way I understand it.

**Senator Cook:** After that was approved then that area would go into the cities jurisdiction as far as any other changes in that section. Is that correct?

**Bill Wolken:** That could be written in that way, yes. It would need to be clear.

**Senator Dever:** The two jagged lines that I see are that the 2 and 4 mile?

**Bill Wolken:** Yes, explained the areas to Senator Dever.

**Senator Dever:** Every section is accounted for in the outer ring?

**Bill Wolken:** Yes, everything in the 2 to 4 mile is covered by posted notes here.

**Rep. Koppelman:** the amendment before you will be explained by Tim Dawson. This works off the amendment that Rep. Headland presented yesterday. It incorporates the House version of 2027 with this idea incorporated into it. On page 3 it changes it talks about the distances. One of the things we have to decide is whether we want the 2-4 mile zone; that outer ring, to be temporary and we are just allowing it to go away. We are essentially rolling back where cities have acted in those outer rings or whether we want that full 97 distances to continue indefinitely. This amendment says as the city expands its incorporated territory, the area of joint jurisdiction does not expand, but the area of sole jurisdiction expands until the area of sole jurisdiction encompasses the area that was joint jurisdiction. Basically it says the outer ring is grandfathered and as the city extends the city limits it essentially the ET zoning is the inner ring and so that outer ring eventually gets eaten up and eventually the city would be up to that distance and then the zoning beyond that would be regular distances that were there. Mr. Dawson is in the room and would you explain the other differences in this amendment that has been drafted from the one that has been looked at yesterday?

**Senator Cook:** It is 1554 that we have before us that he explains these amendments regarding the differences that are in 1554? The version that we have before us which is the version with the amendments as it was passed out of the House. Just so I understand what you will be using to compare it with. I want to know what the difference is.

**Tim Dawson:** I am looking at all of these as hog house amendments so there isn't any line by line figure to throw anyone off. So this amendment before you is a hog house amendment so it stands on its own as an original bill almost. Page 7 subsection 14 is new. That is just to clarify that issue. Explained the four mile area and how the two mile area is going to grow into the four mile area until it eats it up and then it is just going to be basically cut back to the 1997

levels for its ET zoning. Even though it says 1, 2 & 4 mile over time the idea is we would only have ½, 1 mile and 2 mile.

**Rep. Jerry Kelsh:** You are saying that the four mile out there; the city would take in the last two miles, but where they have something going on in a section; but with that that four mile does not grow unless they annex it, say ½ mile say and then nothing grows? Is that what you are saying? The two miles grows until it meets the four miles and then the four mile is no longer than and they are one of the same; and from then on out in time it will be 2 miles so it will be cut in half.

**Tim Dawson:** It is growing back to the pre 1997 level. Up till then the grandfathered part will be there.

**Rep. Jerry Kelsh:** Until the full second half is filled up they can't zone anymore beyond the four miles. Is that right?

**Rep. Headland:** this is the way I understand it. They have four miles until they annex the inner two miles. At that point they will have two miles where they can go another two miles. They never will have the ability to go out four miles after we pass this other than what is grandfathered and they will have the right to object in the joint jurisdiction. Is that correct?

**Senator Dever:** We are growing pretty rapidly to the north.

**Rep. Koppelman:** What we are talking about if this was adopted the two would expand as the city expands and the four mile would just kind of go away would likely happen at some point in Bismarck before too long. Maybe to the south it may never happen.

**Senator Dever:** I don't think we have a growth plan for a specific area? We don't have to be full in any section.

**Rep. Jerry Kelsh:** then the growth plan would get out the four miles north of Bismarck; only then could they go out another ways. Is that your understanding?

**Rep. Koppelman:** My understanding of the way it would work is let's looking at that outer ring to the north; Bismarck is here and the inner ring is here and Bismarck annexes a half mile north, let's say. What happens is that two mile border moves also a half mile north into what is now the four mile; so in affect the city of Bismarck's authority would also extend that half mile. So that little slice that is the four mile becomes the two mile and therefore the city has at that point sole jurisdiction within that two. It continues to retain the two mile authority no matter how much it grows. The difference is the four mile is a grandfather in temporary step to getting back to the two mile eventually.

**Senator Dever:** So when you get out to the two mile you say, well we should have had further jurisdiction.

**Tim Dawson:** I think you could read it two ways but the way it is; you don't fill in the whole area is the future growth so it goes out in specific areas so there might be one place around the circle if you hit the outside area and you just go two miles from that point. They go in a circle and encompass that whole area. In terms of circles this isn't going to be a circle, this is going to be a blob. Their maybe some heartburn on what the word the area means. Whether that means the entire area or just that particular area, but it is meant to be a particular area, not the entire band so you don't have to fill up that whole outer two miles. You can go two miles more the second that thing grows.

**Senator Cook:** I would at some point like Mr. Dawson to explain exactly these amendments what these amendments do. I heard a whole lot of discussion of what people thing they are going to do, but I have not heard Mr. Dawson explain to me what they will do. I think that is important. I don't think we have time to do it today.

**Rep. Koppelman:** He can come back at the next meeting and do that. We only have a few minutes left today. Tim, would you prefer that?

**Tim Dawson:** Yes I would prefer more time. I want to point out one other thing. On page 4, at the bottom it says on 3. In addition, under this jurisdiction the city may adopt, modify, and enforce and zoning designation of regulation and approved before April 1, 2009. That is a major change.

**Rep. Jerry Kelsh:** would that protect Grand Forks and speaking of the landfill adopt and purchase that has gone to the health department to get all the work done. Before April 1 they would not have the land purchased. Would that protect something like that? They would then be able to go back to the township and have a dispute with them and remedy with them with that sentence that is in there?

**Tim Dawson:** Yes.

**Rep. Koppelman:** I did that as a proposal for us to consider. It is because we have talked a lot about this question of, if we do go with this concept of grandfathering something where the city has taken action. How do we define what action is and our subcommittee came up with the idea of platting as being sort of the trigger point. If you have a plat you have gone out there and spent some money and designed something and maybe you are already buildings there and there is a subdivision or whatever. In our political subdivision committee someone raised the point; well what about a sight plan? Since we have a lot of input from people saying don't use sight plans? The other issue that is addressed; it is also on item 3 page 4; that first part of putting a date and basically the purpose of that is to say I don't think it is to prevent actions from taking place quickly so it would sneak in under the radar before the rule goes into effect.

**Rep. Jerry Kelsh:** there is a dispute remedy for that.

**Rep. Koppelman:** The reason we put this language in the bill is so that in those areas so we don't get tangled up wondering whether sight plans is the right wording; we would give joint

jurisdiction; we would give both parties the opportunity to protect something you disagree with and that is why we have a dispute resolution procedure and we thought the fairest way to do that is get them negotiating.

Hearing closed.

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1554

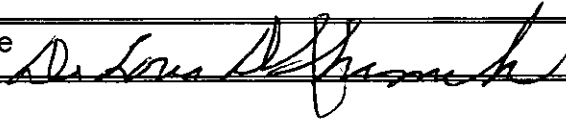
### House Political Subdivisions Committee

☒ Check here for Conference Committee

Hearing Date: April 29, 2009

Recorder Job Number: 12379

Committee Clerk Signature



Minutes:

**Rep. Koppelman** reopened the hearing on HB 1554.

Members of the committee present: Rep. Koppelman, Rep. Headland, Rep. J. Kelsh, Senator Cook, Senator Dever and Senator Nelson.

**Rep. Koppelman:** If any of you have amendments that you would like to present or comments on the amendments we handed out for review last time. We certainly entertain that; otherwise the two things I would like to mention. I have taken the liberty of preparing a service sheet that I thought might be helpful to us as we look at all the nuances and changes that we have been talking about on this issue. I think this outlines the differences and agreement and discussion on how we handle most of the other issues. I think this outlines the differences and agreement and discussion on how we handle most of the other issues. I am told that folks representing the cities and the townships are actually speaking with one another and things are progressing so we want to give them a little more time to do that. So with that in mind I have asked the we will be scheduled again at 4:00 PM today.

**Senator Cook:** these amendments you offered yesterday, are they off the table?

**Rep. Koppelman:** No I believe they are on the table. They have not been moved yet. I gave them to you to review. I expected there would be things in them you wanted to discuss.



**Senator Cook:** I these amendments are still on the table I think it am important for the three of us to understand exactly what they do. When we left we had Mr. Dawson up at the podium trying to explain these amendments. I would like Mr. Dawson to explain them to us.

**Tim Dawson:** Discussed the amendments .0306. This also relates to the map that Bill Wolken showed yesterday. If you start on page 3, that is where most of the distances start and you see that they are 1 mile, 2 miles and 4 miles of ET zoning jurisdiction. I will use the four mile and I won't elaborate on the each one, I will just talk about the four mile one. In subsection 2. Joint jurisdiction is better described as primary jurisdiction. Explained the dispute resolution which is: negotiation, mediation, arbitration, and unification. There is going to be joint jurisdiction in the outside half; the inside half is city. In that outside ring of joint jurisdiction you are going to grandfather in the development that has already been done by the city in Subsection 3. That is not sub standing subsection 2 which is the joint jurisdiction in the outside half. In a section in which there would otherwise be joint jurisdiction if there had been presented a plat before April 1, 2009 the city has jurisdiction. That means the city has primary jurisdiction; not sole jurisdiction because in order to have sole on the inside ring; the others can be primary with a dispute resolution technique as stated earlier. It also puts in the steps for negotiation that can be used when a dispute arises. Subsection 4 is the steps of arbitration.

**Senator Nelson:** Made before the date of the act. How far back?

**Tim Dawson:** 1997 which is the beginning of time. I would like to point out that in these factors throughout the changes that have been made that are major changes since the factors came out in the intern committee would be that as you can see right before you get into the factors substantial weight was given to factor a. which would be the growth plan. Also any mention of the comprehensive plan has been removed from those factors. Although the other factors were touched on are things that would be in a comprehensive plan. The new

subsection 6, 7 and 8 deal with equalizing the authority of two cities that came up next to each other like Fargo and West Fargo in their disputes between them over ET zoning. It is a separate issue from what I have been talking about before.

**Senator Cook:** This is an issue right here that was never an issue during the intern and I don't believe I have seen it in an issue in any of the versions of either 2027 or 1554 to this point. Is that correct?

**Tim Dawson:** Correct.

**Rep. Koppelman:** It was talked about in the House version of 2027 in conference committee which you defeated or did not concur in the House version. Then Rep. Headland presented these amendments has included these amendments so it is not the first time you have seen them.

**Senator Cook:** they were not in either bill that was first introduced 2027 or 1554.

**Tim Dawson:** That is correct. I think the other important aspect is the use of the term "other political subdivision" in subsection 15. If you look at subsection 2 the application section just restates the way it works. The city right now would have the ET zoning authority in the outside half. This is going to roll back and make them secondary in the outside half and make them primary in sections of the outside half.

**Senator Cook:** If a property owner inside the city, there is a situation where the city wants to change the zone of my property that I own inside of a city and I don't want it to happen, can they do that? I believe the answer is yes they can. Is that correct?

**Tim Dawson:** I am not an expert on that. I think that is a fair statement.

**Senator Cook:** I believe they can and I believe the issue they would have to have on their side if they were is health and safety. My second question is what rights do I have when I am

unhappy with any financial loss I might have or think I have because of that change, do I have any rights to take this to court again?

**Jerry Hjelmstad:** I think making a change within the city there would be a zoning hearing to make that change. If you are going to change an existing use they would have to do it for health and safety reasons. If they were going to change an area around them it would be grandfathered in with the city because of health and safety reasons. If they didn't grandfather in that individual would have a claim against the city for taking.

**Rep. Koppelman:** So when I drive through towns there might be an old house in an area zoned commercial is that the kind of thing that occurs when maybe at one time it wasn't zoned at all or was residential and now they are changing it but not.

**Jerry Hjelmstad:** More than likely it would be the other direction where it is residential and now the city is using it for commercial use and they may have more intense uses.

**Senator Cook:** Is there a particular statute that states my right to take this to court or is it just supplements constitution or case law or what do we have here?

**Jerry Hjelmstad:** It is state law that a person has the right for compensation for that taking.

**Senator Cook:** That's my rights as a property owner inside of the city. Is that the same for a property owner in an ET area? All the questions I just asked for property owners inside the city; do they apply for the ET area? Is health and safety the only way the city could change use or zone in that ET area when the property owner did not want it changed? Does that property owner have the right to take it to court?

**Jerry Hjelmstad:** It would be the same.

**Rep. Jerry Kelsh:** when they zone a new area that is not only health and safety is it? That is to expand the city? They go out and take that and zone it; that is just for city expansion. You don't have to use health and safety to do that do you?

**Jerry Hjelmstad:** Yes they would be grandfathered in.

**Senator Cook:** I believe if there are any zoning changes by a city you have a zoning hearing.

**Rep. Koppelman:** I am not sure you are going with that, but the one thing that is a little bit different on what we are considering than one property owner being concerned; although we certainly have heard a lot about that. The House was careful to do this in both the amendments before you and the way we amended 2027 is that the protest cannot come from an individual. In the beginning it can, but an individual if this amendment were to pass and become law, a rural property owner could not just tell the city I don't like what you have done. The rural property owner would have to go to his her township or county; whoever is doing the zoning. That entity would make a decision on whether he has a point or not, and they can go to the city. So it really is two political subdivisions that we are dealing with here, not the individual that would generate it under these disputes.

**Senator Cook:** I was just trying to get a question clarified in my mind. I think that the dispute that we see here or the chances where there would be a dispute is when you have a property owner who wants to change his zone to something that is other than what neighbors want that zone change to be. That is the issue that I think there is a property owner out there that would probably want to bring in rural development and neighbors that doesn't necessarily want that particular change.

**Rep. Koppelman:** I think that could happen under any zoning that we are talking about.

**Rep. Jerry Kelsh:** could we hear from either the county or township; where they are at and what they are thinking?

**Connie Sprynczynatyk:** ND League of Cities: We are trying to go back to the beginning and actively working with the counties to how we share local authority. We are going back to basics. We have essentially four elements that we are looking at right now. 1. How to resolve

a dispute without putting so much process in place that anybody can really use the process because it is just overwhelming. 2. What is the effective date of changes? 3. How we implement in section by section in the share area 4. How we grandfather in all this? So we are really trying to focus on those things. We can promise you that we can come back with a solution for your 4:00 PM meeting. We promise we cannot solve all the objections that have come out in all of this. We will come up with a way to share that authority in that outer portion. We will have a dispute mechanism in place that is practical and is proven that people can really feel comfortable using. We will have an effective date and an emergency clause on it.

**Rep. Koppelman:** What Connie just outlined really are many of the things on this sheet. I did want to hit the last one. The continuous city is an issue and I don't want there to be any question of why that is included in some of our House versions. First of all it had nothing to do with Fargo and West Fargo; that battle is over. Because of population size and where we are going that is done and because of the dispute resolution that we have in current law. The reason it is in this bill is that during that process it became very clear to me that we have an inequity in state law and I thought this was the time to bring it forward as we try to craft a comprehensive ET zoning bill for better or worse so we would have something in law that addresses that issue. If you look at the laws as they existed in 1997 they said non continuous cities. They said these ET laws apply to cities that don't touch each other. When I started researching it in the mid 90s I looked at it and thought that is an interesting thing; I wonder why they have the word non continuous in there. The reason was obvious, they could see the day when cities would touch and the legislatures back then said when that happens all bets are off. Go back to the drawing board and craft a law that works. In 1997 we did that; we had a great mechanism on how do we resolve disputes and it is much like we have talked about and it has worked. The problem is when we get the population strictly by population and don't offer some

kind of a balancing factor when they touch one another and one becomes the is stronger than the other so it is wrong. I feel comfortable bringing it forward now because it is not my vehicle and I think it is an inequity in law.

Hearing closed.

## 2009 HOUSE STANDING COMMITTEE MINUTES

### Bill No. HB 1554

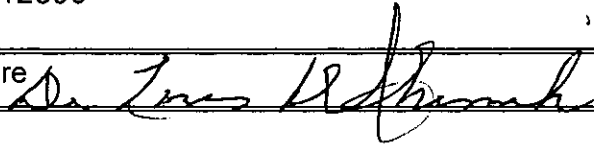
#### House Political Subdivisions Committee

☒ Check here for Conference Committee

Hearing Date: April 29, 2009

Recorder Job Number: 12390

Committee Clerk Signature



Minutes:

**Rep. Koppelman** reopened the conference committee hearing on HB 1554.

The following members were present: Rep. Koppelman, Rep. Headland, Rep. J. Kelsh, Senator Cook, Senator Dever and Senator Nelson.

**Rep. Headland:** Did not explain the proposed amendment since he had just gotten it. We compromised and agreed upon between the cities and townships.

**Tim Dawson:** (handed out proposed amendment 90228.0307). The main changes of this start on page 3 and it has the one mile, two mile and four mile; however there is joint zoning authority in the outside half. Joint authority in the outside half means that other political subdivision takes the lead on it and before their decision can be final they have to give notice to the city. The city may request negotiations. If they do not come to an agreement then there is mediation, and if it is not mediated then it goes to the board of county commissioners. That is in subsection 2; that procedure. Subsection 3 says then says notwithstanding subsection two, then we go to the sections that are inside the city and in that case they are primary and the township is secondary and the same dispute resolution negotiation mediation county commission comes into play. I think it is important to look at the new b. and c. in Subsection 1 at the bottom of page 3 and the top of page 4. I will read those because I do not know if they

were considered by this conference committee before. Now the city has four miles of grab and now they are going to have two miles of grab and two miles of joint jurisdiction. They will retain the jurisdiction the areas they have developed on the outside half. That is the idea of what that section is trying to get across.

**Rep. Jerry Kelsh:** I had the concern expressed and again today about the Grand Forks situation; would their landfill that they have just gotten a permit from the health department and they didn't plat it; does this take care of that? Is there anything in this bill that does that?

**Tim Dawson:** In that subdivision b. that I just read it says a sight plan before the effective date of this act. I think they do have a sight plan.

**Rep. Koppelman:** In the House Political Subdivisions committee Rep. Mock indicated that there is a sight plan for that area. That is why the language was added in the house version.

have a question about Subsection 2; this is by section that we are grandfathering, is that correct?

**Tim Dawson:** Yes that is correct. The other new addition is subdivision c which basically agrees to do whatever they want. If the townships, political subdivisions and cities they can come to an agreement and agree to do what works. The factors have been removed and there has been a legislative intent statement added on page 6, an effective date and an emergency clause to make that effective May 1, 2009.

**Senator Cook:** Administrative law judge is removed?

**Tim Dawson:** Correct.

**Rep. Koppelman:** Remember we had quite a bit of discussion about the dispute resolution mechanism and the reason the House adopted what it did it is in current law and it does deal with the adjoining cities issue. I have a question about the effective date? The way this is drafted it gives it an effective date of May 1; however I assume what if this doesn't pass both



chambers by May 1st. Does it require an emergency clause to carry in order to have that effective date?

**Tim Dawson:** Correct it would need that otherwise would be August 1.

**Rep. Koppelman:** From a drafting prospective is the intent of the committee to make that an effective date should be in the bill instead of the effective date of the action.

**Tim Dawson:** It just makes it clear that it is there.

**Rep. Koppelman:** You are saying if the emergency clause does not carry then the effective date would still stand the way it is written?

**Tim Dawson:** No you are correct. We should put in the effective date in the bill and then we could get rid of the emergency clause. We could get rid of both of those and put it in the statute.

**Senator Nelson:** Section 1 says it is effective through July 31, 2009 and on page 3 you say effective after and then we start with these other dates?

**Rep. Koppelman:** On page 1 is current law and that is what we enacted last session. It is in effect through July 31 that will automatically go away in July. What we see beginning on page 3 is what would govern from then forward.

**Senator Nelson:** Found different locations in the amendment to put the effective date in.

**Rep. Koppelman:** I think we should put the effective dates in the bill.

**Tim Dawson:** Located places the effective date could be changed to May 1, 2009. In subsection 3 you are dealing those squares that would come into effect upon the roll back and if the city is going to make a decision about something in that square, it is going to be primary and it would be a decision made after then.

**Rep. Koppelman:** Bear in mind we have this moratorium in effect until July of this year. So the cities cannot take any new action in that zone?

**Connie Sprynczynatyk:** This is in regard to the ET zoning so I think we are talking about two different things.

**Rep. Koppelman:** You are right. They can still take action. Any other questions for Tim?

I think this language came from the League of Cities and township officer's maybe we can hear from each of them.

**Jerry Hjelmstad: ND League of Cities:** We have worked with the townships on this and came to a compromise and hopefully it will be effective for both parties.

**Rep. Koppelman:** You feel that you can work with your neighbors?

**Jerry Hjelmstad:** That is the goal.

**Larry Siverson:** We have been working throughout the day with this and I think this is a step in the right direction.

**Rep. Jerry Kelsh:** We are putting the counties on the hook on this. It can be changed in two years if we need to.

**Rep. Koppelman:** I am willing to forgo the contiguous cities issue however I do want it on our radar because it is not a debate between two cities are currently having a battle. It is good public policy and it is inequity that we should fix at one point.

**Motion Made By Rep. J. Kelsh that the Senate recede from the Senate and the conference committee further amend as follows .0308; Seconded By Senator Cook.**

**Discussion:**

**Rep. Koppelman:** Let me clarify the changes that have been made to what is before you; on page 3 under b on the third line we are striking the effective date of this and inserting May 1, 2009. We are doing the same thing on the following line. On page 4; Subsection 3; the end of

line 3 beginning on line 4 again the effective date of this act goes away and May 1, 2009 is

inserted. About four lines below that the same thing. Section 3 & 4 the effective date and the emergency clause would come out as well.

**Senator Cook:** Why can't we leave the emergency clause on there?

**Rep. Koppelman:** We have an effective date specified.

**Senator Cook:** I would like to have the emergency clause left on it and hopefully we will get the necessary votes and if we don't we don't.

**Rep. Koppelman:** We do want to remove Section 3.

**Vote count**    6    Yes   0   No   0   **Absent. Motion carries.**

Hearing adjourned.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1554

That the Senate recede from its amendments as printed on pages 1310-1314 of the House Journal and pages 1120-1124 of the Senate Journal and that Engrossed House Bill No. 1554 be amended as follows:

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

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

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

**40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law Judge.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One-half mile [.80 kilometer] if the city has a population of fewer than five thousand.
  - b. One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand.
  - c. Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.
2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially

zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;

- f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
  8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
  9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

**(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One mile [1.61 kilometers] if the city has a population of ~~less~~ fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
  - b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
  - c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.
2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, then the dispute must be submitted to a

committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, then if the dispute is between a city and a township and upon acceptance the board of county commissioners for the area in dispute within that county, the dispute must be resolved by that board of county commissioners. However, if the board of county commissioners does not accept the dispute, either party may petition the office of administrative hearings for a hearing by an administrative law judge. In addition, either party may petition the office of administrative hearings for a hearing by an administrative law judge before the board of county commissioners holds a hearing on the dispute. If the disputed regulation is in an area that does not have an organized township, the board of county commissioners may not hear the dispute and either party may petition the office of administrative hearings for a hearing by an administrative law judge. The party that does not prevail is liable for the costs of the administrative law judge.

3. Notwithstanding subsection 2, in an area in which there would otherwise be joint jurisdiction and in which the city has been presented a plat before April 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city adopts, modifies, and enforces any zoning designation or regulation and approves any subdivision plat or regulation. For a decision of the city to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, then the dispute must be submitted to a committee for mediation. The committee must be composed of one member appointed by the governor and two members of the governing body of the city and two members of the governing body of the political subdivision that would otherwise have jurisdiction. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, then if the dispute is between a city and a township and upon acceptance the board of county commissioners for the area in dispute within that county, the dispute must be resolved by that board of county commissioners. However, if the board of county commissioners does not accept the dispute, either party may petition the office of administrative hearings for a hearing by an administrative law judge. In addition, either party may petition the office of administrative hearings for a hearing by an administrative law judge before the board of county commissioners holds a hearing on the dispute. If the disputed regulation is in an area that does not have an organized township, the board of county commissioners may not hear the dispute and either party may petition the office of administrative hearings for a hearing by an administrative law

judge. The party that does not prevail is liable for the costs of the administrative law judge.

4. Upon petition, the office of administrative hearings shall appoint an administrative law judge to resolve the dispute. A hearing by an administrative law judge or the board of county commissioners may not be held until after at least two weeks' written notice has been given to the governing bodies of the jurisdictions involved in the dispute. Each governing body and any person affected by the regulation may appear at the hearing and present evidence on any matter to be determined by the administrative law judge or the board of county commissioners. A decision by the administrative law judge or board of county commissioners is binding on all jurisdictions involved in the dispute and remains effective until the governing bodies in the area of joint jurisdiction agree to change the zoning or subdivision regulation. The administrative law judge or board of county commissioners shall enter an order setting forth what the administrative law judge or board of county commissioners determines to be fair and reasonable terms and conditions. In all cases, the administrative law judge or board of county commissioners shall set forth in writing a decision, including findings of fact, reasons for the decision, and an order. The decision must include the factors upon which the decision is based. Within thirty days after receipt of the administrative law judge's order or the board of county commissioners' decision, any interested party dissatisfied with the decision may appeal to district court under the procedures in section 28-34-01. In making a decision under this subsection, the administrative law judge or board of county commissioners shall consider the following factors and shall give substantial weight to the factor described in subdivision a:
  - a. Whether the proposed change is consistent with a projected growth plan;
  - b. The impact of the proposed change on the present and planned uses of the area under review;
  - c. The impact of the proposed change on the health and safety of the residents of the area;
  - d. The effect of the change on the ability of the affected jurisdiction to adequately staff and enforce the change;
  - e. The economic, physical, and social relationship of the inhabitants, businesses, and industries in the area affected by the change and the effect of the change on other political subdivisions;
  - f. The economic impact of the proposed change on the property owners in the area of the proposed change and the economic impact on the city of a decision to deny the change; and
  - g. Any other factor determined to be relevant by the administrative law judge or board of county commissioners.
5. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
6. Where two or more contiguous cities with populations of two thousand or more have boundaries at a distance where there would be an overlap of



zoning authority under this section, the cities' zoning authority is divided along a line equidistant between or among the cities.

7. Where two or more cities, each having a population of two thousand or more, have city limits that are contiguous, and one city is larger than the other, based upon the classification in subsection 1, the larger city shall exercise the same authority as the smaller city where the cities are contiguous under this section.
8. Where two or more cities, each having a population of two thousand or more, have city limits that are contiguous, an annexation of property by one of the cities does not affect the zoning authority previously established under this section.
- ~~3-~~ 9. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
- ~~4-~~ 10. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
- ~~5-~~ 11. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 10 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute

and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
- 6- 12. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 7- 13. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 8- 14. For the purposes of this section, a quarter quarter section ~~shall be~~ is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
15. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

**SECTION 2. APPLICATION.** This Act applies to the exercise of extended zoning and subdivision regulation by a city before the effective date of this Act except the city continues extended zoning and subdivision regulation for areas for which a plat was presented to the city before April 1, 2009. The zoning districts and regulation of those districts of the city remain in effect and are the districts and regulations in an area of joint jurisdiction until modified or different districts and regulations are adopted by another political subdivision under this Act."

Renumber accordingly

# REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number 1554 (, as (re)engrossed):

Date: 4-27-09

Your Conference Committee Pol. Subs

For the Senate:

For the House:

YES / NO		YES / NO	
<u>Sen. Cook</u> ✓	✓	<u>Rep. Koppelman</u> ✓	✓
<u>Sen. Dever</u> ✓	✓	<u>Rep. Headland</u> ✓	✓
<u>Sen. Nelson</u> ✓	✓	<u>Rep. Ketch</u> ✓	✓

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

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

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

✓, adopt (further) amendments as follows, and place 90228.0303 on the Seventh order:

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

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

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

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

MOTION MADE BY: Rep. Headland

SECONDED BY: Rep. Ketch

NOTE COUNT 3 YES 3 NO 0 ABSENT

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1554

That the Senate recede from its amendments as printed on pages 1310-1314 of the House Journal and pages 1120-1124 of the Senate Journal and that Engrossed House Bill No. 1554 be amended as follows:

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

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

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

**40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One-half mile [.80 kilometer] if the city has a population of fewer than five thousand.
  - b. One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand.
  - c. Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.
2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially

zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;

- f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
  8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
  9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

**(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One mile [1.61 kilometers] if the city has a population of ~~less~~ fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision. As a city expands its incorporated territory, the area of joint jurisdiction does not expand but the area of sole jurisdiction expands until the area of sole jurisdiction encompasses the area that was joint jurisdiction. When the area of sole jurisdiction has encompassed the area that was joint jurisdiction, the joint jurisdiction has ended and the city may extend regulation one-half mile [.80 kilometer].
  - b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision. As a city expands its incorporated territory, the area of joint jurisdiction does not expand but the area of sole jurisdiction expands until the area of sole jurisdiction encompasses the area that was joint jurisdiction. When the area of sole jurisdiction has encompassed the area that was joint jurisdiction, the joint jurisdiction has ended and the city may extend regulation one mile [1.61 kilometers].
  - c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision. As a city expands its incorporated territory, the area of joint jurisdiction does not expand but the area of sole jurisdiction expands until the area of sole jurisdiction encompasses

the area that was joint jurisdiction. When the area of sole jurisdiction has encompassed the area that was joint jurisdiction, the joint jurisdiction has ended and the city may extend regulation two miles [3.22 kilometers].

2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, then the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, then if the dispute is between a city and a township and upon acceptance the board of county commissioners for the area in dispute within that county, the dispute must be resolved by that board of county commissioners. However, if the board of county commissioners does not accept the dispute, either party may petition the office of administrative hearings for a hearing by an administrative law judge. In addition, either party may petition the office of administrative hearings for a hearing by an administrative law judge before the board of county commissioners holds a hearing on the dispute. If the disputed regulation is in an area that does not have an organized township, the board of county commissioners may not hear the dispute and either party may petition the office of administrative hearings for a hearing by an administrative law judge. The party that does not prevail is liable for the costs of the administrative law judge.
3. Notwithstanding subsection 2, in a section in which there would otherwise be joint jurisdiction and in which there has been presented a plat before April 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. In addition, the other political subdivision may request negotiation for a decision made before the effective date of this Act. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, then the dispute must be submitted to a committee for mediation. The committee must be composed of one member appointed by the governor

and two members of the governing body of the city and two members of the governing body of the political subdivision that would otherwise have jurisdiction. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, then if the dispute is between a city and a township and upon acceptance the board of county commissioners for the area in dispute within that county, the dispute must be resolved by that board of county commissioners. However, if the board of county commissioners does not accept the dispute, either party may petition the office of administrative hearings for a hearing by an administrative law judge. In addition, either party may petition the office of administrative hearings for a hearing by an administrative law judge before the board of county commissioners holds a hearing on the dispute. If the disputed regulation is in an area that does not have an organized township, the board of county commissioners may not hear the dispute and either party may petition the office of administrative hearings for a hearing by an administrative law judge. The party that does not prevail is liable for the costs of the administrative law judge.

4. Upon petition, the office of administrative hearings shall appoint an administrative law judge to resolve the dispute. A hearing by an administrative law judge or the board of county commissioners may not be held until after at least two weeks' written notice has been given to the governing bodies of the jurisdictions involved in the dispute. Each governing body and any person affected by the regulation may appear at the hearing and present evidence on any matter to be determined by the administrative law judge or the board of county commissioners. A decision by the administrative law judge or board of county commissioners is binding on all jurisdictions involved in the dispute and remains effective until the governing bodies in the area of joint jurisdiction agree to change the zoning or subdivision regulation. The administrative law judge or board of county commissioners shall enter an order setting forth what the administrative law judge or board of county commissioners determines to be fair and reasonable terms and conditions. In all cases, the administrative law judge or board of county commissioners shall set forth in writing a decision, including findings of fact, reasons for the decision, and an order. The decision must include the factors upon which the decision is based. Within thirty days after receipt of the administrative law judge's order or the board of county commissioners' decision, any interested party dissatisfied with the decision may appeal to district court under the procedures in section 28-34-01. In making a decision under this subsection, the administrative law judge or board of county commissioners shall consider the following factors and shall give substantial weight to the factor described in subdivision a:
  - a. Whether the proposed change is consistent with a projected growth plan;
  - b. The impact of the proposed change on the present and planned uses of the area under review;
  - c. The impact of the proposed change on the health and safety of the residents of the area;
  - d. The effect of the change on the ability of the affected jurisdiction to adequately staff and enforce the change;



- e. The economic, physical, and social relationship of the inhabitants, businesses, and industries in the area affected by the change and the effect of the change on other political subdivisions;
  - f. The economic impact of the proposed change on the property owners in the area of the proposed change and the economic impact on the city of a decision to deny the change; and
  - g. Any other factor determined to be relevant by the administrative law judge or board of county commissioners.
5. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
6. Where two or more contiguous cities with populations of two thousand or more have boundaries at a distance where there would be an overlap of zoning authority under this section, the cities' zoning authority is divided along a line equidistant between or among the cities.
7. Where two or more cities, each having a population of two thousand or more, have city limits that are contiguous, and one city is larger than the other, based upon the classification in subsection 1, the larger city shall exercise the same authority as the smaller city where the cities are contiguous under this section.
8. Where two or more cities, each having a population of two thousand or more, have city limits that are contiguous, an annexation of property by one of the cities does not affect the zoning authority previously established under this section.
- 3- 9. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
- 4- 10. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued

until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.

6- 11. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 10 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

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

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

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

8- 14. For the purposes of this section, a section or quarter quarter section shall be is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752].

When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

15. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

**SECTION 2. APPLICATION.** This Act applies to the exercise of extended zoning and subdivision regulation by a city before the effective date of this Act except the city continues extended zoning and subdivision regulation for sections in which a plat was presented before April 1, 2009. The zoning districts and regulation of those districts of the city remain in effect and are the districts and regulations in an area of joint jurisdiction until modified or different districts and regulations are adopted by another political subdivision under this Act."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1554

That the Senate recede from its amendments as printed on pages 1310-1314 of the House Journal and pages 1120-1124 of the Senate Journal and that Engrossed House Bill No. 1554 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; to provide legislative intent; to provide an effective date; and to declare an emergency.

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

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

**40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning -  
Mediation - Determination by administrative law judge.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One-half mile [.80 kilometer] if the city has a population of fewer than five thousand.
  - b. One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand.
  - c. Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.
2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations,

and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;

- e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
  8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
  9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

**(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.**

1. a. 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- (1) One mile [1.61 kilometers] if the city has a population of ~~less~~ fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
  - b- (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
  - c- (3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.
- b. Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before the effective date of this Act remains subject to the zoning designations and the regulations in place on the effective date of this Act unless changed as allowed under this section.

5/1/09

c. The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.

2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

5/1/09  
3. Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before the effective date of this Act, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city made after the effective date of this Act to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the

majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.

- 3- 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
- 4- 6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
- 6- 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;



- b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
- 6- 8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 7- 9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 8- 10. For the purposes of this section, a section or a quarter quarter section shall be is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
11. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly that land use regulations under consideration by local governments be readily available to the public. Local governments are encouraged to jointly discuss their land use regulations and consider the cumulative impact of local regulations.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on May 1, 2009.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

YR  
4/29/09  
1086

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1554

That the Senate recede from its amendments as printed on pages 1310-1314 of the House Journal and pages 1120-1124 of the Senate Journal and that Engrossed House Bill No. 1554 be amended as follows:

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

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

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

**40-47-01.1. ~~(Effective through July 31, 2009) Extraterritorial zoning—~~  
Mediation—Determination by administrative law judge.**

1. ~~A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:~~
  - a. ~~One half mile [.80 kilometer] if the city has a population of fewer than five thousand.~~
  - b. ~~One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty five thousand.~~
  - c. ~~Two miles [3.22 kilometers] if the city has a population of twenty five thousand or more.~~
2. ~~Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.~~
3. ~~If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.~~
4. ~~A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting~~

must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

5. ~~If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.~~
6. ~~If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:~~
  - a. ~~The proportional extraterritorial zoning authority of the cities involved in the dispute;~~
  - b. ~~The proximity of the land in dispute to the corporate limits of each city involved;~~
  - c. ~~The proximity of the land in dispute to developed property in the cities involved;~~
  - d. ~~Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;~~
  - e. ~~Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;~~

- f. ~~The growth pattern of the cities involved in the dispute; and~~
- g. ~~Any other factor determined to be relevant by the administrative law judge.~~
- 7. ~~For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.~~
- 8. ~~When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.~~
- 9. ~~For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.~~

**(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.**

- 1. a. 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. (1) One mile [1.61 kilometers] if the city has a population of less fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
  - b. (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but less fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
  - c. (3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.
- b. Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and the regulations in place on May 1, 2009, unless changed as allowed under this section.
- c. The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.
- 2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose

administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

3. Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before May 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city made after May 1, 2009, to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

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

3- 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of

the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

4. 6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
6. 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;

- e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
- 6- 8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 7- 9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 8- 10. For the purposes of this section, a section or a quarter quarter section shall be is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
11. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly that land use regulations under consideration by local governments be readily available to the public. Local governments are encouraged to jointly discuss their land use regulations and consider the cumulative impact of local regulations.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

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

Bill Number 1554 (, as (re)engrossed):

Date: 4/29/09 4PM

Your Conference Committee Pol. Subs

For the Senate:

For the House:

YES / NO			YES / NO		
Sen. Cook	✓	✓	Rep. Kappelman	✓	✓
Sen. Rivera	✓	✓	Rep. Haddad	✓	✓
Sen. Watson	✓	✓	Rep. Kilsh	✓	✓

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

the (Senate/House) amendments on (S/HJ) page(s) 1310 - 1314

✓, and place \_\_\_\_\_ on the Seventh order.

✓, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

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

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

DATE: 4-29-09

CARRIER: Rep. Kappelman

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

MOTION MADE BY: Rep. G. Kilsh

SECONDED BY: Sen. Cook

OTE COUNT 6 YES 0 NO 0 ABSENT



**REPORT OF CONFERENCE COMMITTEE**

**HB 1554, as engrossed:** Your conference committee (Sens. Cook, Dever, Nelson and Reps. Koppelman, Headland, J. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1310-1314, adopt amendments as follows, and place HB 1554 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1310-1314 of the House Journal and pages 1120-1124 of the Senate Journal and that Engrossed House Bill No. 1554 be amended as follows:

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

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

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

~~40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning—  
Mediation—Determination by administrative law judge.~~

- ~~1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:~~
  - ~~a. One half mile [.80 kilometer] if the city has a population of fewer than five thousand.~~
  - ~~b. One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty five thousand.~~
  - ~~c. Two miles [3.22 kilometers] if the city has a population of twenty five thousand or more.~~
- ~~2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.~~
- ~~3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.~~
- ~~4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of~~

~~the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.~~

5. ~~If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.~~
6. ~~If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:~~
  - a. ~~The proportional extraterritorial zoning authority of the cities involved in the dispute;~~
  - b. ~~The proximity of the land in dispute to the corporate limits of each city involved;~~
  - c. ~~The proximity of the land in dispute to developed property in the cities involved;~~

- ~~d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;~~
- ~~e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;~~
- ~~f. The growth pattern of the cities involved in the dispute; and~~
- ~~g. Any other factor determined to be relevant by the administrative law judge.~~
- ~~7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.~~
- ~~8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.~~
- ~~9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.~~

~~(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.~~

- 1. a. 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. (1) One mile [1.61 kilometers] if the city has a population of less than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
  - b. (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but less than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
  - c. (3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.

- b. Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and the regulations in place on May 1, 2009, unless changed as allowed under this section.
  - c. The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.
- 2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.
- 3. Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before May 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city made after May 1, 2009, to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued

mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
- 3- 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
- 4- 6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
- 5- 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective

until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
- 6- 8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 7- 9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 8- 10. For the purposes of this section, a section or a quarter quarter section ~~shall be~~ is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
11. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly that land use regulations under consideration by local governments be readily available to the public. Local governments are encouraged to jointly discuss their land use regulations and consider the cumulative impact of local regulations.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Engrossed HB 1554 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1554



#1

Chairman Wrangham and members of the committee.  
My name is Brian Bitner and I am asking for your help.

The current Extraterritorial Jurisdiction law is causing problems in Apple Creek Township, Burleigh County, and North Dakota.

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

My home on 10 acres was outside of the jurisdiction of the City when I purchased it twenty-one years ago. My property, which is now 12 acres, borders 80<sup>th</sup> St. SE which is a gravel township road, and Apple Creek Road which is paved.

My neighbors and I have been trying for years to get something done about the constant dust from this gravel road as continuing development around our area has steadily increased traffic and the resulting dust from this road.

I took my concerns about the road to the City Commission where I was told that I could go ahead and pave the road myself, which I can't afford. Next I went to the Apple Creek Township board where I was informed that the Township would love to pave the road but that we cannot afford it. Why? We can't afford it because the township no longer receives revenue from such things as building permit fees which were used to maintain roads but now go to the City, and the township is basically broke. For single family residential, detached garage, and additions and remodeling, Township written building permits in 2006 were a whopping \$793, while, according to the City of Bismarck web site and the Township Assessors list, building permit fees for this category had a total of \$71,256.81 with a new construction value of \$13,193,385.00, which went to the City. This is substantial compared to the approximately \$32,000 annual budget of Apple Creek Township.

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

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

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

Then I was informed that as part of this new sub-division plat the County Engineer wants additional property from me for a wider road right of way easement despite Article 1, Section 16 of the State Constitution which states, in part, "Private property shall not be

taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefore be first made in money or ascertained and paid into court for the owner unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies, or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located", which has not been done by the City or County in this instance, thus bypassing the State Constitution and circumventing eminent domain law.

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

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

I don't live inside the city limits yet was faced with a huge financial burden because of the Extraterritorial Jurisdiction. I am not allowed to run for the office of City Commissioner or Mayor or even vote in the City. I know that increasing my property value will increase my property tax and I am okay with that, but jumping through City hoops while spending big money to do so is an abuse of my rights as a property owner outside of the corporate city limits. I am asking for your help to correct this situation.

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

I was informed at a city commission meeting that if I didn't like it I should take it to the Legislature. I am asking for your help to either change or eliminate the current ET law.

ET- Absolute Authority vs. Right to Vote  
Brian D. Bitner

The ND Advisory Commission on Intergovernmental Relation (ACIR) studied extraterritorial jurisdiction (ET) during the 07-09 Interim. I had the honor and the privilege of representing all ND citizens on the ACIR as the "Governor's designee". I currently serve as Burleigh County Commissioner. I served on the Bismarck Planning and Zoning Commission as a representative of the ET area and as the Apple Creek Township road supervisor before being elected to the County Commission.

The many hours of testimony before the ACIR made it clear that the existing ET law needs changing to better represent the interest of all ND citizens.

City planners say cities need zoning authority outside the city limits for such things as water, sewer, and street extension planning. They don't mention the various fees collected from the ET area such as building permits, plat fees, etc. Townships and counties have statutory authority for zoning and subdivisions, respectively, in all areas not in a city or the ET.

While the reasons used to justify ET have some merit, no reason is compelling enough to override the constitutional rights of citizens. We live under a constitutional system that was established to protect the rights of the citizen in all governmental matters. Government of the people, by the people, and for the people is a concept we all understand as American citizens.

The current ET law allows city government absolute authority over citizens outside the city limits while those citizens have no corresponding right to vote for, or against, the elected members of that government. That is just plain wrong under our American system of elected representative government.

As a former United States Marine I know that a law which takes away the right to vote is not an example of what I was willing to fight and possibly die for, especially when I consider that so many good Americans died while fighting to establish that right.

The ACIR forwarded an amended draft proposed by the League of Cities that would provide for joint jurisdiction and dispute resolution in the whole ET area between cities, counties, townships, and citizens. Regardless of the final outcome of the debate over ET it is important that all citizens rights be restored and protected above all else.

The ET debate has little to do with zoning or planning and everything to do with constitutional rights. Legislators need to do the right thing and either change or eliminate the current ET law.

#2

February 5, 2009

Testimony Re: H1554 to Political Subdivisions Committee

Frank W. Matejcek

Grand Forks, N.D.

I have been a county representative on the Grand Forks City Planning and Zoning commission for nearly 20 years. I am a past Chairman of the Commission. My wife and I farm and raise cattle within the city's extraterritorial area.

Enclosed, find the following:

1. Grand Forks re-written code (since claiming the 4-mile ET authority) for A1 and A2 zones.
2. The 2-4 mile ET zoning map
3. Grand Forks Herald article of 1/22/07
4. Grand Forks Planning and Zoning minutes of 12/5/07
5. Grand Forks City Council minutes of 12/4/07
6. Grand Forks 2-mile and 4-mile annexation points
7. Letter from Scott and Sheila Bichler

Thank you for the opportunity to address the committee.

Frank Matejcek  
4150 N. Columbia Rd.  
Grand Forks, ND 58203  
matejceks@redriverangus.com

February 5, 2009

Testimony to House Political Subdivisions Committee Re: H1554

Frank Matejcek

1. History of Extraterritorial Zoning by the City of Grand Forks

City stacked the Planning and Zoning Commission with city officials when 3 ET representatives were mandated by State law. They increased the Commission to 15 members to include the Mayor, the City Engineer, two City Council reps, a School Board rep, a Park Board rep with the rest appointed by the Mayor.

The 4-mile ET vote was: Planning and Zoning Commission - 10 in favor; 3 opposed. At City Council, the vote was 5 in favor; 2 against.

Some city officials deceived rural residents about the intent of the 4-mile ET by saying it was only for good planning purposes and had nothing to do with siting a landfill.

2. Example of abuse of 4-mile ET: Landfill issue

a. Under the previous ET rules, there was no zone in which a landfill was allowed. There was no conditional use permit, no permitted use, no mention of a landfill whatsoever.

When the 4-mile ET was taken, the city rewrote the code. We rural reps fought the change, but the city made a landfill (called a municipal solid waste facility) a permitted use in A1 or A2 zones. By writing it in as a permitted use, no public hearings need to take place. See enclosed examples of new code.

b. Annexation point system. With the 4-mile ET, the city also rewrote its criteria for annexing property, making it much easier to annex. See enclosed point systems.

## Smart Growth

Cities typically assert their ET zoning jurisdictions with a mantra of "Smart Growth."

Smart Growth needs to be more than discouraging development in a zone around the city. Smart Growth needs to be equitable growth.

Smart Growth displaces lower-income families. It drives up the price of land. It raises concerns about increasing housing costs due to diminishing supply. It interferes with the ability of the market to provide affordable housing. The majority of land contiguous to Grand Forks is controlled by a handful of developers who see little profit motive in constructing affordable housing.

As a case in point, Grand Forks suffered a loss of affordable housing due to the 97 flood. Many low income families relocated in rural areas because affordable housing could not be found in the city. Some left the area altogether. Many homes in GF that could not be reoccupied due to federal restrictions were moved to areas outside the city's zoning jurisdiction. In some cases, rural subdivisions were created. Now, with the city's further incursion, more leapfrog development may occur with no concern for infrastructure investment in rural areas.

Finally, Smart Growth should reduce conflicts, not cause them.

Thank you,  
Frank Matejcek  
Grand Forks  
1/23/2008

## 18-0206 A-1 Agricultural Preservation and A-2 Agricultural Urban Reserve DISTRICTS

The following regulations shall apply in all A-1 Agricultural Preservation and A-2 Agricultural Urban Reserve districts:

(1) *Statement Of Intent of A-1 Agricultural Preservation District.*

The intent of the (A-1) Agricultural Preservation District is to preserve and protect agricultural land use and the activities that are associated with it. The A-1 District recognizes that the proximity of the land within the Grand Forks Urbanized area strongly influences land use decisions. Therefore, the intent of this district is also to direct non-farm development and urban orientated growth into lands adjacent and/or contiguous to the city and to promote a compact development pattern which:

- (A) Preserves agricultural land and protects it from land use conflicts associated with non-farm development.
- (B) Prevents non-farm rural development that will inhibit the city's ability to grow in an orderly manner in the future.
- (C) Conserves travel distances, energy consumption, and makes public transportation feasible.
- (D) Maximizes the efficiency of future extensions of city utilities and services.

(2) *Statement of Intent of A-2 Agricultural Urban Reserve District*

The intent of the (A-2) Agricultural Urban Reserve District is to preserve and protect agricultural land use and the activities that are associated with it. The A-2 District recognizes that the proximity of the land within the Grand Forks Urbanized area strongly influences land use decisions. Therefore, the primary intent of this district is preserve and protect agricultural land use by directing non-farm development and urban oriented growth into lands adjacent and/or contiguous to the city and to promote a compact development pattern. A secondary intent of this district is to establish the means by which a limited amount of non-farm development may occur, provided that:

- (A) Primary use of the land for agricultural uses shall be preserved and protected.
- (B) Non-farm rural development shall be carried out in a manner that does not inhibit the city's ability to grow in an orderly manner in the future.

- (C) Non-farm rural development shall be carried out in a manner that is consistent with the City of Grand Forks Comprehensive Plan.

(3) *Use Table.*

Table 18-0206 lists the uses allowed within the A-1 and A-2 zoning districts.

(A) **Use Categories**

The use categories listed in Table 18-0206 (3) are explained in Section 18-0204. The second column of the use table contains an abbreviated explanation of the respective use category. If there is a conflict between the abbreviated definition and the full explanation contained in Section 18-0204, the provisions of the full explanation will control.

(B) **P – Uses Permitted by Right**

A “P” indicates that a use category is allowed by-right in the respective zoning district. These permitted uses are subject to all other applicable regulations of this Land Development Code.

(C) **C – Conditional Uses**

A “C” indicates that a use category is allowed only if reviewed and approved as a Conditional Use, in accordance with the Conditional Use review procedures of Section 18-0703. Conditional uses are subject to all other applicable regulations of this Land Development Code.

(D) **/C – Uses Subject to Specific Conditions**

A “P” or a “C” that is accompanied by the symbol “/C” indicates that the listed use type is subject to use-specific conditions. The standards are listed in this Section after Table 18-0206.

(E) **– Uses Not Allowed**

A “-” indicates that a use type is not allowed in the respective zoning district, unless it is otherwise expressly allowed by other regulations of this Land Development Code.

(F) **New or Unlisted Uses**

If an application is submitted for a use type that is not listed in the use table, the Planning Director shall be authorized to make a similar use interpretation based on the use category descriptions of Section 18-0204, and based on a finding that the proposed use is fitting and compatible with the permitted uses in the zoning district. If the Planning Director determines that the proposed use does not fit any of the use category descriptions of Section 18-0204 and is not fitting and compatible with the zoning district, no similar use interpretation shall be made. Such interpretations may be appealed to the Planning and Zoning Commission using the notice and review procedures required for zoning changes.



Table 18-0206 (3)

Use Category	Definition	Specific Use Type	Zoning Districts	
			A-1 Agricultural Preservation	A-2 Agricultural Urban Reserve
Agriculture	Raising, producing or keeping plants or animals	Animal Feeding Operations up to 40 animals [G]	P/C	-
		Animal Wintering Operations up to 250 animals [H]	P/C	-
		Farming/Crop Production and farm/crop storage	P	P
Residential				
Household Living	Residential occupancy of a dwelling unit by a household	House, detached	P	P
		House, Attached	-	-
		Duplex	-	-
		Multi-Dwelling Structure	-	-
		Manufactured Home [I]	P/C	P/C
Group Living	Residential occupancy of a structure by a group of people who do not meet the definition of “household living”		C	C
Home Occupation [M]			P/C	P/C
Institutional				
Parks and Open Space	Natural areas consisting mostly of vegetative landscaping, such as wildlife areas, game refuges, forest preserves, natural outdoor areas or community gardens		P	P
Cemeteries			C	C
Utilities, Basic	Infrastructure services that need to be located in or near the area where the service is provided	Examples include water supply buildings, lift stations, reservoirs, wells, drainage ditches,	P	P

		elevated tanks, wind energy conservation systems, flood control and watershed structures, substations, and similar essential public utility and service structures		
Utilities, Major Public	Public infrastructure needed to serve a growing urban area.	Land Fill, Waste Water Treatment, Water Treatment	<del>P</del>	<del>P</del>

Use Category	Definition	Specific Use Type	Zoning Districts	
			A-1	A-2
Commercial				
Golf Course	Public or private golf facility		C	C
Vet Clinic	Large or Small Animal		P	P
Bed and Breakfast [J]			P/C	P/C
Wireless Communication Facilities	Commercial wireless communication antennas located on a structure and as regulated by Section 18-0310.1		P/C	P/C
	Non-commercial wireless communication towers and antennas as regulated in Section 18-0310.2		P/C	P/C
	Commercial accessory wireless communication towers and antennas as defined in Section 18-0204(2)		C/C	C/C
Recreational Vehicle Park [K]			-	P/C
Commercial kennels [L]			C/C	C/C

Commercial or private riding academies and stables			C	C
--	--	--	---	---

P = Use Permitted By-Right. P/C = Use Permitted By-Right but Subject to Use-Specific Standards of Section 18-0206. C = Conditional Use, Subject to Procedures of Section 18-0701. C/C = Conditional Use, Subject to Procedures of 18-0701 and Standard Conditions of 18-0206.

(G) Animal Feeding Operations:

1. On any parcel of land less than 40 acres (one quarter quarter section), the animal density shall not be greater than 1.0 animal per pasturing/productive acre.
2. Allow animal feeding operations up to 40 animals in A-1 District as P/C (Permitted with conditions). Conditions are as follows:
  - (a) Such operations shall be located a minimum of ½ mile from churches, businesses, commercially zoned areas, recreational areas, and schools.
  - (b) Such operation shall be located ½ mile from platted lots for which subdivision plats have been approved by the City of Grand Forks with the intent of constructing residential dwelling units.

(H) Animal Wintering Operations:

1. On any parcel of land more than 40 acres, an animal wintering operation is allowed in the A-1 district as P/C (Permitted with conditions). Conditions are as follows:
  - (a) The confinement area of such operation shall be located a minimum of ½ mile from existing dwelling units, not including dwelling of farm operation belonging to farm operator.
  - (b) The confinement area of such operation shall be located ½ mile from churches, businesses, commercially zoned areas, recreational areas, and schools.
  - (c) The confinement area of such operation shall be located a minimum of ½ mile from platted lots for which subdivision plats have been approved by the City of Grand Forks with the intent of constructing residential dwelling units.

(I) Manufactured Homes

1. One manufactured home is permitted as a primary farm dwelling unit, or, provided the following conditions are met, as a secondary farm dwelling unit when located on the premises of a farmstead.
  - (a) Occupants are parents or children of farm operator.
  - (b) Occupants are farm laborers on the farmstead upon which the dwelling

is located.

(c) Overall density of the applicable zoning district (A-1 or A-2) is not exceeded by the presence of the dwelling unit.

2. Manufactured homes shall satisfy the following conditions:

- (a) Shall be classified as a "double wide."
- (b) Shall be attached to a permanent foundation system in compliance with all applicable regulations.
- (c) Shall have a date plate attached to the unit specifying, "this manufactured home is designed to comply with federal manufactured home construction and safety standards in force at the time of manufacture" and shall not have been altered so as to be in violation of applicable codes.
- (d) Shall obtain a moving permit as per Buildings and Building Regulations section 19-0110 (1) of the Grand Forks City Code.

3. Manufactured homes are prohibited as non-farm dwellings.

(J) Bed and Breakfast

1. Employees shall be limited to the following:

- (a) Members of household residing on premises; and
- (b) One (1) person in a part-time capacity.

2. Signs must comply with the sign requirements for home occupations.

3. On-site parking must be provided as follows:

- (a) One (1) space for each lodging room; and
- (b) Two (2) spaces for the owner.

(K) Recreational vehicle (R.V.) Parks:

1. Required lot area, lot width, and lot depth for the R.V. park:

- (a) A maximum density of eighteen (18) R.V.'s per gross acre shall be permitted. For computation of the area for each R.V. to be located within the R.V. park, the area may include any street, driveway, or parking area, public or private included within the boundaries thereof.
- (b) Minimum area requirements for a recreational vehicle park shall be three (3) acres and not less than three-hundred six (306) feet in width.
- (c) An area shall be set aside for an intensive play area for children and shall contain recreational facilities, the types to be determined by the city planner prior to the time of development of the plan.

The area to be set aside shall be determined on the basis of one-hundred (100) square feet of area for each R.V. stand in the park.

2. General internal park development requirements:

- (a) There shall be a minimum R.V. setback from any internal street of at least ten (10) feet.
- (b) Parking stands shall be constructed on an all-weather hard surface material (asphalt or Portland concrete) and shall be so designed as to drain away from the stand to the street or to a drainage area approved by the city engineer.
- (c) Each R.V. stand shall consist of an area of at least ten (10) feet in width and thirty (30) feet in length and shall have a parking area nine (9) feet in width and twenty (20) feet in length, parallel to or tandem to the R.V. parking stand.
- (d) All parking areas and streets shall contain curbing at least four (4) inches in height, graded and landscaped to the site.
- (e) The entire R.V. park shall be landscaped (excluding hard surfaced areas and buffered zones as required by section 18-0309).
- (f) All R.V. parks shall be enclosed by landscaped planting, planted screening or a fence to provide privacy to the occupants of the park. Height, size, and type of enclosure shall be pre-determined and submitted as a part of the general development plan prior to action by the planning commission and the city council.
- (g) All utilities supplied by the R.V. park to the R.V. stands shall be underground. This shall include sanitary sewer, water, and electricity. When central fuel such as gas or oil is provided by the R.V. park to each R.V. stand, such service shall also be located underground.
- (h) All sewerage and water systems hereafter constructed and maintained shall conform to the adopted provisions of the City of Grand Forks regulating wastewater treatment and water provision.

(L) Commercial Kennels

1. Commercial kennels; provided that in addition to all other applicable city ordinances, state laws and regulations, the following conditions are fulfilled:

- (a) In addition to the other procedures called out in 18-07 that all residential property owners within one thousand three hundred twenty (1,320) feet of the proposed facility are given written notice 10 days prior to the planning & zoning commission public hearing on the proposal.
- (b) That a minimum of thirty (30) square feet of kennel area per dog over thirty (30) pounds be provided; and a minimum of fifteen (15) square feet of kennel area for dogs of less than thirty (30) pounds be provided.

- (c) That the lot area be a minimum of five (5) acres.
- (d) That the yard be fenced to completely contain the kennel operation. The fence must be chain link or an equivalent approved by the zoning administrator.

(M) Home Occupation.

1. The use of the dwelling unit for the home occupation is clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than thirty (30) percent of the floor area of the principal dwelling shall be used in the conduct of the home occupation.
2. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation, other than one (1) home occupation sign as defined within.
3. Home occupation may be conducted in accessory buildings.
4. Employees shall be limited to the following:
  - (a) Members of household residing on premises; and
  - (b) One (1) person in a part-time capacity.
5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.
6. No equipment or process shall be used in such home occupation, which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in live voltage off the premises.
7. The hours of operation shall be limited between the hours of 7:00 am and 10:00 pm.

(4) *Temporary Uses.*

None.

(5) *Dimensional Standards*

The dimensional standards of Table 18-0206 apply to all development in the A-1 and A-2 zoning districts.

Table 18-0206 (5)

Dimensional Standard	Zoning District		
	A-1 Agricultural Preservation	A-2 Agricultural Urban Reserve	A-2 Cluster Development, as regulated by 18-1206 (6)
Maximum Density (Acres per Dwelling Unit)	40	40	40
Minimum Lot Size			
Area (Acres)	40[8][7]	2.5 [7]	0.5
Width (Ft.)	1320 [1]	330 [2]	100
Minimum Primary and Accessory Building Setbacks (Ft.)			
Front	35/75 [3]	35/75 [3]	30
Interior Side	60	60	10/10 [5] [6]
Street Side	60	60	20
Rear	25	50	40
Maximum Impervious Surface Area (percent of lot)	20	20	30
Maximum Building Height (Ft.)	35 [4]	35 [4]	35
Maximum Attached Accessory Structure Area (sq.ft.)	1200	1200	As regulated in 18-0305
Maximum Detached Accessory Structure Area (sq.ft.)	2400	2400	As regulated in 18-0305
Minimum Shelterbelt Setback [9]			
Perpendicular to ROW (Ft.)	50	50	50
Parallel to ROW (Ft.)	150	150	150

- [1] 40-Acre tracts along established roadways may be a minimum of 1320 feet wide minus the roadway right-of-way.
- [2] Lot width of 1/16 mile allows one side of lot to conform to 1/8 mile access spacing requirements along section line roads.
- [3] 75 feet is the required front yard setback on section line roads. This additional setback accounts for future section line roadway dedication of approximately 42 feet in

addition to the typical 33-foot half section of a section-line road, plus a 30-35 foot setback from future road right-of-way.

[4] Applies to dwellings and non-farm related accessory buildings only. No height limit for farm buildings and structures.

[5] 10/10 - 10 feet or 10 percent of the width of the lot, whichever is less

[6] For eave variations, see section 18-0304. For accessory building yard variations, see section 18-0305.

[7] Minimum lot size does not apply to the basic utilities land use category.

[8] For purposes of separating a farmstead with a habitable dwelling unit from a larger tract of property, a minimum five-acre lot may be subdivided to include the dwelling unit. A deed restriction shall be recorded on the original tract stating that the existing dwelling unit counts toward the maximum density of one dwelling unit per 40 acres. If the remaining tract is less than 40 acres, it shall be included in the plat.

[9] Shelterbelts consisting of one (1) or more rows. Shelterbelts for existing farmstead purposes are exempt from minimum setback requirements.

(6) *Cluster Development*

A cluster development is a residential subdivision in which the lots are allowed to be smaller (in area and width) than otherwise required for the underlying, base zoning district, but in which the overall density cannot exceed the maximum density limit for the underlying zoning district. Under the cluster development option, a subdivision may contain no more lots than would otherwise be allowed in the same zoning district, but the individual lots within the development shall be smaller than otherwise required.

(A) In the A-2 Zoning District, cluster development is an option for a property owner who owns at least two contiguous quarter sections (320 acres or larger, up to 640 acres per cluster). A cluster development shall not exceed the overall density of one dwelling unit per 40 acres, and is subject to the dimensional standards of Table 18-0206 (5). The following conditions must be met, and any such development is subject to the approval of a subdivision plat per Section 18-0901.

1. Property Access

a. Access and street intersections shall conform to the access management requirements of Section 18-0907(4)(L). Direct access to residential lots shall only be taken from a minimal access controlled street as part of the cluster development plat.

2. Street Right-of-way, Drainage and Grading

a. Street right-of-way width shall be determined by a grading and drainage plan, which shall detail the grading of the proposed lots, the storm water drainage plan, the cross section and cross slope of the proposed roadway, the cross section and cross slopes of the proposed ditches (if applicable), and the ditch bottom profile. Culvert sizes and elevations shall also be identified. Based on the above information, the City Engineer shall



identify an acceptable street right-of-way for local streets within a cluster development.

### 3. Wastewater Treatment

a. Prior to plat approval, the applicant shall submit a community wastewater treatment plan for the development, such as a shared drain field, or shall submit a sewer plan that allows the subdivision to be hooked up to the City of Grand Forks sanitary sewer system. Plans for a septic system and drain field shall conform to the adopted provisions of the City of Grand Forks regulating wastewater treatment and water provision and are subject to the approval of the City Engineer. Plans for sanitary sewer extensions and hook-ups must meet City of Grand Forks standards, and are subject to the approval of the City Engineer.

b. Waste water collection pipes shall be located within street right-of-way and hook-ups between houses and sanitary sewer lines, under either scenario described above must be located off the front or side of the dwelling to facilitate future installation of city services.

c. Prior to plat approval, the applicant shall submit a recordable covenant that identifies the responsible parties for conducting and funding maintenance and repair on the wastewater treatment infrastructure.

### 4. Water Provision

a. Prior to plat approval, the applicant shall submit either documentation that the applicable rural water district has agreed to provide water to the proposed development, or plans for hooking into the City of Grand Forks water system. Such plans must meet city standards, and are subject to the approval of the City Engineer.

### 5. Streets

a. Local streets platted as part of a cluster development shall be paved according to City Standards.

b. Streets shall be laid out in a manner that allows for future street extension(s) to facilitate future urban development at such time as a zoning change allows it, without the need to create additional, non-conforming access points to arterial or collector streets.

c. Prior to plat approval, the applicant shall provide either a covenant stating that property owners shall jointly bear responsibility for maintaining the roads within the development, or communication from the applicable township officials stating that they agree to provide road maintenance services.

## 6. Deed Restriction

a. Recordation of the plat shall be accompanied by a deed restriction that states that additional residential development is prohibited on the acreage from which the density for the cluster development was calculated until such time as the City of Grand Forks approves a zoning change allowing further development.

### (7) *Sewerage and Water Systems.*

All sewerage and water systems hereafter constructed or maintained shall conform to the adopted provisions of the City of Grand Forks regulating wastewater treatment and water provisions.

### (8) *Existing Lots Platted Prior to ~~March 20, 2006.~~*

Existing Lots, recorded prior to March 20, 2006, shall be considered legal, conforming lots. This applies to lots created within a 20-acre or larger subdivision, as well as lots created prior to the requirement for a minimum 20-acre subdivision.

# Extraterritorial Zoning Jurisdiction Map

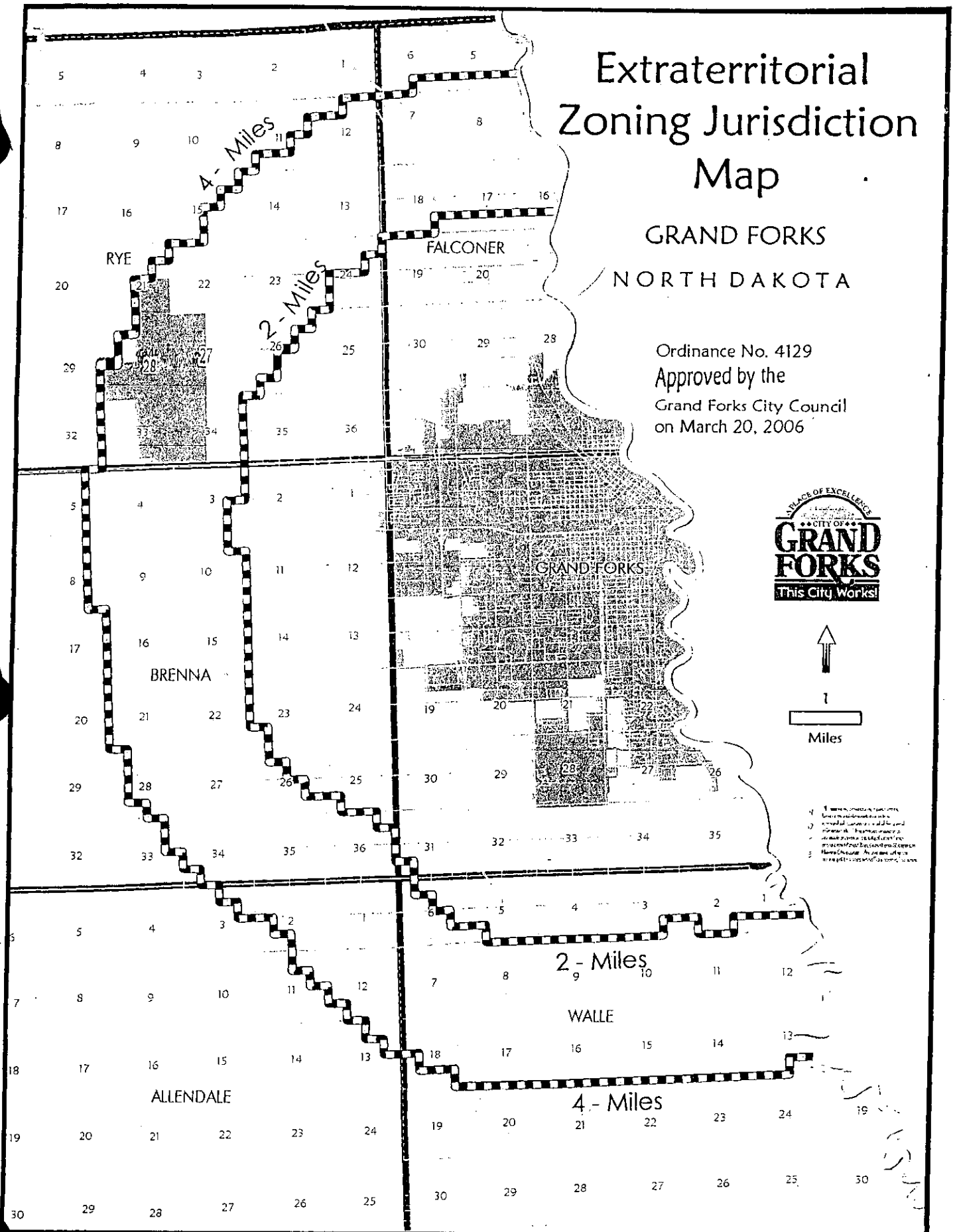
GRAND FORKS  
NORTH DAKOTA

Ordinance No. 4129  
Approved by the  
Grand Forks City Council  
on March 20, 2006



1  
Miles

1. Areas shaded in gray are within the city limits of Grand Forks, North Dakota.
2. Areas shaded in white are within the extraterritorial zoning jurisdiction of Grand Forks, North Dakota.
3. Areas shaded in black are within the extraterritorial zoning jurisdiction of Grand Forks, North Dakota.
4. Areas shaded in light gray are within the extraterritorial zoning jurisdiction of Grand Forks, North Dakota.



# N.D. Legislative Council takes up zoning this week

By Tu-Uyen Tran  
Herald Staff Writer

Building a residential development in rural Grand Forks got a whole lot harder in 2006, when the city of Grand Forks extended its zoning authority four miles outside city limits and clamped down on such developments.

The city was able to do that because the Legislature let it, and the state's other big cities do so with so-called extraterritorial zoning jurisdiction.

Now, those affected by the zoning will get a chance to air their grievances before a commission created by the Legislature in 2007. The commission is convening at 1 p.m. Wednesday in Fargo City Hall.

Brian Bitner, a member of the commission, said this likely would be the last chance for the commission to hear testimony. The commission had met previously in Bismarck. After this, he said, it will begin formulating recommendations.

Cities such as Grand Forks argue that they need the authority to ensure orderly development instead of patchwork development. For Grand Forks, control of zoning also would make it easier to build a new landfill. The people potentially affected have their grievances to air, as well.

## Managing growth

Beau Bateman, the chairman of Brenna Township, southwest of Grand Forks, is one of them.

He agreed that there is a need for orderly growth, but for a city the size of Grand Forks to reach out as far as four miles is unrealistic. The city won't reach that far for many, many decades, he said. It would be more rational, he said, if extraterritorial zoning authority were based on the actual rate of growth rather than just a flat four years.

In fact, some members of the City Council — Eliot Glassheim and Bob Brooks —

## If you go

A state commission is examining how cities' ability to control zoning four miles outside their boundaries is working. If you want your say, attend the

commission meeting at 1 p.m. Wednesday in the City

Commission meeting room in Fargo City Hall. If you can't make it, you can e-mail comments to commission staff member Tim Dawson at [tdawson@nd.gov](mailto:tdawson@nd.gov) or call (701) 328-2916.

agreed with that position back in 2006. Glassheim said at the time that he expected it would take the city two centuries to hit the four-mile line.

Council member Curt Kreun, a strong advocate of the extraterritorial zoning, said that's not the point. First, it's a planning tool that allows the city to decide in advance where streets and sewers will extend so that when it does get to that point, he said, taxpayers don't have to pay more to make two separate systems of streets and sewers compatible.

Second, the city wants to force developments closer to the city where all the city services are, he said, instead of waiting decades until there are large neighborhoods that are expensive to hook up.

The four-mile extraterrito-

rial zoning is a norm among many states, and Kreun said city leaders have been repeatedly advised by other cities to reach out as far as possible.

For Bateman, this is ignoring rural rights. "To suspend someone's rights of land ownership because it's easier for the city in 100 years, to me, is invalid reasoning. That's unjust." If the city wants to plan ahead, he said, modern surveying equipment with links to the global positioning system can easily ensure developments line up with the city's existing streets and sewers.

## Representation

Bateman and many landowners in his township and neighboring Walle Township also are opposed to the city's plans to build a landfill there. The city also is proposing other potential sites in Falconer and Rye Townships to the north, and many landowners there aren't happy either.

Unlike some landfill opponents, he concedes that there is a need for a landfill somewhere; he just doesn't think Brenna is the right place. The fact that the township board won't have much say in the matter only makes it worse.

Kreun argued that rural interests are represented on the city's planning and zoning commission, which has three members from rural areas and a county commissioner. Those folks certainly have put their stamp on city zoning codes, he said.

The problem for Bateman and other opponents is that the commission is merely an advisory body. The final authority lies with the council, which has overturned the commission before.

One solution is to create a regional planning commission, with city and rural representatives whose decisions are binding, Bitner said. "Right now, part of the problem is there's us versus them kind of thought out there. That's not in the best interest of good governance."

not true

- 6-1. **MATTER OF REPORT FROM SELECTION COMMITTEE (MATEJCEK, HUTCHISON AND WHITCOMB) OF OFFICERS FOR 2008-2009. CURRENT OFFICERS: PAULA LEE, PRESIDENT/CHAIRPERSON; JOHN DREES, VICE PRESIDENT; DR. LYLE HALL, SECRETARY.**

Matejcek said the selection committee was not able to meet but discussed the slate of officers over the telephone. They looked at different candidates to move up as chairman but in talking with commission members, most did not want to do it this next year. The selection committee was unanimous in the decision made. Matejcek thanked Lee for her willingness to continue as president for one more year.

**MOTION BY MATEJCEK AND SECOND BY HUTCHISON TO RETAIN THE SAME OFFICERS FOR ONE MORE YEAR AND REVIEW THE SLATE OF OFFICERS AT THE END OF 2008. MOTION CARRIED UNANIMOUSLY.**

- 6-2. **MATTER OF THE REQUEST FROM COMMISSIONER MATEJCEK FOR A DISCUSSION ON THE PLANNING AND ZONING COMMISSION'S INVOLVEMENT IN THE SITING OF A NEW LANDFILL IN THE CITY'S EXTRATERRITORIAL ZONING JURISDICTION.**

Lee announced the item was requested to be on the agenda by Commission Matejcek and the issue was turned over to him.

Matejcek thanked the commission for allowing the item to be on the agenda and informed them he had three points to address. He stated that situations had come up within the four-mile area and it is important for the commission and others to know what is going on. He, as well as John and Robert Drees, as county representatives on the planning commission, have attended various city meetings and one of the issues that is continually heard is representation of the residents and property owners in the extraterritorial zone (ETZ) and the fact that they do not have a voice in making the final decision on issues such as the landfill. The residents in the ETZ feel deceived by the city's decision to take an additional two miles (for a total of four miles) around the city.

Matejcek stated that Todd Feland has done a good job putting on presentations for a proposed landfill for the city. One of the things he has said is that the reason the city is in a mess today with the current landfill is due to poor planning from many years ago. Matejcek said he disagreed with that and did not feel there was any planning years ago. There was available land west of town and it was cheap. The city should not be involved in doing poor planning again. There is plenty of time to do it right this time. He suggested looking at a regional plan. There have been several options considered to date but this is something that should not be rushed and time should be taken to do it right. This is the biggest land use that will take place in the ETZ and it will be done by the city. Matejcek said the city should be looking at industrial area planning and whether or not the landfill will affect that. The city needs to consider

PLANNING AND ZONING COMMISSION  
MEETING MINUTES FOR DECEMBER 5, 2007

the beautification of access corridors. There is also the issue of the airport and the seriousness of the waiver. What is the price of human safety? Is it worth it to get a waiver?

Matejcek stated his last point is when and where a landfill is sited. Wherever it is sited, the residents' concerns need to be addressed; not just by a meeting but something in writing that lets the residents know what they're getting into. Maybe there needs to be a concept plan or a detailed development plan that spells out the bufferyards, fences, the type and frequency of noise-making equipment, height of the landfill, the amount of the daily tonnage, debris and odors, accesses, utilities and what can be done to lessen the affect on the community. Why not be good neighbors? Why not make written agreements with residents and township officials before the land is actually taken?

Robert Drees asked for a copy of the points presented by Matejcek.

Matejcek said the issue is not whether or not a landfill is needed. A landfill is needed and necessary but there are other things to consider. The landfill issue needs to be well thought out. It will probably be the last landfill in a large area and everybody is going to want to use it. The residents in the ETZ are being told various things about the size of the bufferyards and they need to know upfront exactly what the requirements will be.

7. **ADJOURNMENT.**

**MOTION BY MALM AND SECOND BY CHRISTENSEN TO ADJOURN  
THE MEETING AT 8:08 P.M. MOTION CARRIED UNANIMOUSLY.**

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Lyle A. Hall, Secretary

---

Paula H. Lee, President

redone by FEMA, and by updating this panel all the LOMR's that were in place became invalid; have had conference calls with FEMA but practical application is that we have properties in the Shadyridge area that are caught as the determination companies when doing periodic mortgage reviews, are saying that those properties now have to have flood insurance - even though we didn't change the flood elevations, the panel makes those properties invalid. These properties are outside the flood protection project - determination companies have stated new LOMR supercedes the old one. He stated they are dealing with the Shadyridge properties (I through VI - 26 homes constructed - papers handed out showing properties in these areas) and properties are outside the city limits; and that what elevations are today doesn't matter to the map determination companies, only looking at the map and saying those LOMR's are invalid and are now in the floodplain.

He stated they talked to FEMA to try to figure out the best way to resolve these, and most immediate focus are properties that actually have homes built on them, and the process that FEMA described that should be the quickest process is that if come in and give them the information that these areas are out of the 100-year floodplain, but they are looking at topographic information and if we wish to pursue that, have to follow-up with CPS to re-establish these topographic maps and that the City could in turn send to FEMA to help document that these homes are above the 100-year floodplain. He stated they are talking about homes along Adams, Desiree and those on the loop, which are outside the city limits (will be in the city limits in 2014), and question to the committee/council is should the City assist these property owners in mitigating the impacts of what the flood determination companies are coming up with because the panel changed - the panel changed because of our project and our LOMR because the City even though we had no control, didn't realize that this was going to take place.

Grasser stated they can try to document those properties that are above the 100-year floodplain, not going to move dirt, only do those that are good to go; and that if want to proceed with that, would take that out of flood protection project under non-participating core that is part of the remapping of that whole project, stay away from betterments category. He stated he didn't feel this needs to go to council, dollars aren't that substantial but would like affirmation that this is right way to go, may end up spending few more dollars than this because still trying to flush out the scope, but want to move expeditiously because people are receiving these letters. Moved by Bakken and McNamara to proceed with assisting property owners in mitigating the impacts. Motion carried. (Comm. action)

#### 7. Wastewater management plan - info.

Kreun stated that McNamara brought up situation that in our waste management information gathering process and waste management **landfill**, how to include our township friends and county friends so they don't feel left out; that they had a short discussion on it and as Planning and Zoning meeting tomorrow, would invite Mr. Matejcek, Mr. Drees and Mr. Malm to come to this body when we discuss **landfill** issues, specifically if they have something within our ET zoning area to help us with - something of that nature if they are so inclined. McNamara stated his discussion was based on meetings we have had, and would be more comfortable to have those people there, but if not interested, so be it. Kreun stated that he would extend that olive branch tomorrow night at P & Z meeting to those people, that we would give them the information that we would get and invite them to this meeting anytime that discussion takes place and could voice their concerns, give us any information that they want, then when get closer to the siting process to locating a site, and work directly with them like we said we would because there are going to be impacted people in that township and want to make sure concerns are heard.

*never happened turn.*  
McNamara stated he was most interested from the county perspective is what is their opinion as to siting the **landfill**, if there is something we ought to look at, doesn't want to see it opened up to re-

examine how we got to where we are now in terms of the north end or the south end and his concern was mostly relative to the county commission to make sure that, as much as nobody attended the meetings that we were at, to make sure that we sat down and spoke with them and get their input, and that inviting them to a meeting with an agenda item here and asking them to come and talk to us, but maybe they don't want to participate and if that is, so be it, or say that maybe ought to take another look either this site or something in this area because they think that would be productive. Bakken stated he didn't have a problem with doing that. Christensen stated that it is in their zoning rules, they don't want a **landfill** in the county. McNamara stated that he thinks they should say that.

There was considerable discussion with McNamara stating that this is a 100-year decision, and owe due diligence to make sure we make a final attempt and that the record reflects that, that parameters of the discussion would be within our timeline. Kreun stated preferably within the 4 mile ET; that we have asked these people for input and have asked more than township people and county people, other townships and other counties, if there is anything they wanted, and they basically said no or held us off to that extent because they don't want to be a part of it; that saying one last attempt, doesn't have a problem with that but get nervous just opening it up and asking where can we put this; but can't be an issue that they are going to throw this out and go study something else, etc., time to make the decision and if can help us in that timeframe and get it done. We are losing our customers, every customer we lose only increases the utility bill of our customers, we have fixed costs that will continue no matter how many people we serve.

McNamara stated he wanted to narrow this down -pkg. that has to come is landowner, twp., everybody is lined up and would like to do this as we see this as a benefit and if they can't do that based on our timeline, opening fairly narrow. He stated that in his opinion it belongs outside of the 4-mile ET and because of the magnitude of the decision what we owe the people that, having that discussion again, but trying to be good partners, trying to live up to all the things we said in those meetings and that this somewhat demonstrates our willingness to listen, and if they don't have anything to say - but if say they are interested, they have to deliver, the landowner, township and county all have to sign up, has to be a tight package.

Kreun stated that tomorrow night have Planning & Zoning Commission and Mr. Matejcek is on the agenda to discuss why Planning and Zoning doesn't have much input on siting of a **landfill** - Mr. Matejcek is concerned because we changed the ET zoning to the 4-mile jurisdiction and he is concerned that they don't have any input in that 4 mile jurisdiction He stated that he would invite that group at tomorrow's Planning & Zoning Commission meeting and that this be placed on the next committee agenda.

#### ADJOURN

It was moved by McNamara and Bakken to adjourn; motion carried. Meeting adjourned at 5:20 p.m.

Alice Fontaine, City Clerk

Dec. 4, 2007  
GF City Council Service/Safety  
Standby Committee



2 mile Et before 4 mile

## Existing Annexation Points

Criteria		Commercial Development	Residential Development	Points Assigned (Com)	Points Assigned (Res)	Measurement Method
I. Municipal Water Availability	Within: 1/4 mile 1/2 mile 3/4 mile 1 mile Further than 1 mile	4 3 2 1 0	4 3 2 1 0			Distance to be measured in actual pipe to be installed from trunk line of sufficient capacity as determined by the City Engineering Department.
II. Sanitary Sewer Availability	Within: 1/4 mile 1/2 mile 3/4 mile 1 mile Further than 1 mile	4 3 2 1 0	4 3 2 1 0			Distance to be measured in actual pipe to be installed from lift station of trunk line of sufficient capacity as determined by the City Engineering Department.
III. Transportation Accessibility	Within: 1/4 mile 1/2 mile 3/4 mile 1 mile Further than 1 mile	4 3 2 1 0	4 3 2 1 0			Distance from existing arterial or collector street to be measured in actual vehicle miles
IV. Municipal Fire Station	Within 2 miles Further than 2 miles	1 0	1 0			Distance to be measured in actual vehicle miles from existing fire stations
V. Improved Public Park	Within 1 mile Further than 1 mile	NA NA	1 0			Not Applicable for Commercial Property.
VI. Soils	Saline Non-Saline	2 0	1 0			Based on Soil Classification System prepared by the U.S. Soil Conservation Service.
VII. Existing Urban Development	75-100% 50-74% 25-49% 0-24%	3 2 1 0	3 2 1 0			Points based on percent of existing urban development included in the area proposed for annexation
VIII. Contiguity	50-100% 25-49% 0-24%	2 1 0	2 1 0			Points determined by the percent of the boundary of the proposed annexation area that is contiguous to the existing corporate limits.
IX. Compactness	0-400 ft. 401-800 ft. 801-1200 ft. Further than 1200 ft.	3 2 1 0	3 2 1 0			Distance to be measured from furthest point in the annexation area to the closest site of existing development within the corporate limits (excluding public right-of-way)
TOTAL POINTS						12 points is the minimum point total required to justify annexation.

4 wheel lift

[illegible]

Thank you for your time in reading this lengthy e-mail.

Sincerely yours,

Ma and Scott Bichler  
1520 83<sup>rd</sup> Street South  
Grand Forks, North Dakota 58201  
701-746-6681

ucy, here is a second letter sent to Louise Potter:

Representative Louise Potter;

I have written you previously about SB2027 on Extraterritorial Zoning. I know this is not immediately before you, but I still would like the opportunity to tell you exactly how Grand Forks taking a 4 mile ET zoning area has affected my husband and myself.

#1. We did not find out that we were being zoned as ET for the city of Grand Forks, until they had actually zoned us. This was done deliberately by the city. We had no knowledge, and no input. This goes against any democratic process, leaving anger in the wake.

#2. We have lost the right to sell our 2 1/2 unplatted acreage that we have been developing (planting trees, grass, etc)

for eventual sale upon our retirement. We have spent years and money improving this acreage. This was an investment in our retirement.

*Personal financial loss to us in dollars would be anywhere from \$15,000 to 45,000.*

We have lost the right to have as many horses as we choose on our property.

We moved out to the country for the express purpose of having animals, including horses.

Grand Forks now dictates that we can have only 3 horses. While not a huge financial loss, *this is a huge loss of the enjoyment of our property.*

#4. Grand Forks has implemented a four mile ET zoning (land grab) for land it will not need, even by it's own estimation to be 150 years. Citizens need to be protected from this kind of overreach.

We should not have to suffer financial loss along with the loss of use of our property because Grand Forks *might* need it in 150 years.

#4. Grand Forks tells us that we can't sell our property, we can't have over 3 horses on our property, because they feel that interferes with their city growth. Yet, they use this ET zoning to site a landfill. Won't having a landfill in a huge section of the ET zoned area, interfere with growth in that area? Why doesn't Grand Forks have to abide by the rules they place on ET rural residents? They are forcing the rural residents to follow rules for the growth of the city, and the city turns around and puts in a policy that will stunt the growth of Grand Forks in that area. Grand Forks needs to go through normal channels to site a landfill. A process that gives citizens input. A process that is fair and democratic.

Please talk to any legislator that was on the interim commission – Representative Wrangham, Senator

L. Kaldor. They heard testimony on this issue all spring, summer, and fall.

02/04/2009

We need to return fairness and democracy to all residents of North Dakota. Please work to **actively push** back ET zoning areas to 2 miles or less for the largest cities of North Dakota.

Thank you.

Sheila and Scott Bichler  
1520 83<sup>rd</sup> Street South  
Grand Forks, ND 58201  
701-746-6681

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**from:** redriverangus [mailto:matejceks@redriverangus.com]

**sent:** Wednesday, February 04, 2009 1:25 PM

**to:** Sheila Bichler

**subject:** copy of letter?

heila -

ould you please forward a copy of your letter to Representatives? Frank is going to Bismarck (again) and he'd like to include it in his packet also.

heila -  
Jo

02/04/2009

redriverangus

From: "Bichler, Sheila" <Sheila.Bichler@ARS.USDA.GOV>  
 To: "redriverangus" <matejceks@redriverangus.com>  
 Date: Thursday, January 22, 2009 8:29 AM  
 Subject: Let me know any changes that might be helpful.

Lucy, you are more knowledgeable on this issue, please let me know of any changes in this email that might be helpful.

I'm sending to all of my legislators for District 17. Thanks, Sheila.

Dear Senator Holmberg,

We are writing to you as residents of District 17 about pending legislation regarding Extraterritorial Zoning Authority for cities.

I am asking you to limit the reach of cities into the rural areas to ½ mile. Cities should not overreach. Doing so takes away the rights of the property owners, with no compensation.

Please let us explain what happened to us regarding this issue:

My husband and I own 7 ½ acres of land 3.5 miles west of Grand Forks. We purchased our 5 acre house/lot thirty years ago, and an attached additional 2 ½ acre property twenty years ago. We purchased the 2 ½ acre lot for use as horse pasture, and kept the property as an future investment property when we no longer had horses. We have paid all our taxes on time, and kept the extra lot as an investment in our future. We are not rich by any means, we both go to work every day to pay the bills and taxes. This extra lot was kept as something to help us in our retirement. What a surprise when all of a sudden we discovered that Grand Forks now had ALL the rights to the property that we had groomed and taken care of for THIRTY YEARS. We never even knew the four mile extraterritorial zoning was coming until Grand Forks applied it. We found out after they took control of our property. We had no say, no input. We immediately panicked, because we knew if the city of Grand Forks decided we could not sell our 2 ½ acre lot for a lot to be placed on it, that it would be virtually worthless. We immediately called the city Planning and Zoning Office and were told that the city would *probably* allow us to sell our 2 ½ acre lot, if it was already platted. (which it was)." We asked the city to send us a letter to that effect and **they refused** to do that stating "the planning and zoning will change, so we really don't know what it will be". **Now did Grand Forks take control over the property that we had worked so hard to take care of for 30 years, but they could NOT even tell us what they intended to do with our property.** We were, and are, totally at the mercy and whim of Grand Forks. They did not pay the taxes or mortgages on this land for the past thirty years. Nor did I ever see anyone from the city out here helping us to plant, mow and keep the property weed free. But they now have control over our property that we have worked so hard for, and saved for thirty years. And for what? Because in 100 years they might need it??

This is an abusive use of government powers. We received NO compensation for the loss of property, no benefits, and if we cannot make the decisions of what we do with our property – that constitutes a loss. *We bought this property so we would not have to be under the control of Grand Forks. And now, they just take it. I wish I could put into words the anger that I have for the city of Grand Forks to take away our right to do with our property as we please. The city of Grand Forks did this, without our knowledge, against our will, and with no compensation given to us.* This is supposed to be a country based on freedom and justice.

Please support any legislation that reduces the Extraterritorial Zoning Authority of cities.

Thank you for your time in reading this lengthy e-mail.

Sincerely yours,

Sheila and Scott Bichler  
 1520 83<sup>rd</sup> Street South  
 Grand Forks, North Dakota 58201  
 701-746-6681

02/03/2009

Political Subdivisions Committee  
House Bill No. 1554  
February 5, 2009

#3

Dear Chairman and Council,

My name is Ski Kostman. I am a Stanley Township Supervisor in Cass County. I am writing testimony **in favor of House Bill No. 1554**, as originally introduced. I believe that Townships should be given zoning authority within the Township including the Extra Territorial Area. Stanley Township unanimously agrees that the large cities have abused their authority within the ETA and this authority should be granted back to the Townships.

It has been brought up on many occasions that the Townships are not qualified to hold such an authoritative position. I would like to point out to the council my qualifications in establishing and maintaining zoning ordinances and comprehensive planning within Stanley Township:

1. I am an elected official asked by the people within the Township to do this job. Example: Stanley Township Board of Supervisor's have established updated Zoning Ordinances and Floodplain Management Ordinances. In Contrast: County and City planning positions are appointed. County and city planning have their own zoning and comprehensive planning that in many cases disregards Townships.
2. I reside and own property within the Township. Example: I vote for officials in my Township, County and State and pay property taxes to the county. In Contrast: County and City appointees are not required to vote in my Township or to live in my Township. They don't even have to step a foot in my Township, but they are asking for my Township zoning authority.

I assure you that I am quite qualified to hold such an authoritative position as Township Supervisor. These qualifications should trump all county or city authority, which have been claiming to have more qualifications. Township regulations of zoning is and should continue to be under Township authority.

The Townships have been blamed for numerous subdivisions and small villages and cities that have popped up within the Townships 20 to 30 years ago. As Township Supervisor I can say that we have worked with the county and cities for the seven years that I have been on the Township board. We have rewritten zoning ordinances to benefit city and county planning such as not allowing leap frog development or large scale development within the Township in hopes that this would encourage the cities to plan appropriately within the ETA. We've adopted a Flood Plain Ordinance to ensure county property owners rights. Stanley Township enforces and abides by its Zoning and Floodplain ordinances.

Stanley Township is in disagreement with the City of Fargo and Cass County zoning practices. It is the Cities and Counties that we need to ask the questions of who may have been in charge of what? It is my understanding that the counties are in charge of the platting process. Wouldn't the county be partially responsible for allowing multiple housing on a small tract of land outside of the city limits? Although I have no real evidence as to why subdivisions and small towns popped up 20 to 30 years ago. I do believe Stanley Township has tried in more recent times to improve it's zoning practices, where as the City of Fargo continues to:

1. Strip annex
2. Leap frog develop
3. Obtain authority through eminent domain.

These are the opposite of what Stanley Township has been practicing. Stanley Township unanimously agrees that the large cities have abused their authority within the ETA and this authority should be granted back to the Townships.

Thank you for your time and for hearing my testimony. If you have any questions or need more information regarding this issue you may contact myself at 701 232 6746, email [stanleytownship.cass@yahoo.com](mailto:stanleytownship.cass@yahoo.com) or [skik@ideaone.net](mailto:skik@ideaone.net).

Sincerely,

Ski M. Kostman  
Stanley Township Supervisor

*Handwritten signature*

**GARAAS LAW FIRM**  
ATTORNEYS AT LAW  
DeMores Office Park  
1314 23rd Street South  
Fargo, North Dakota 58103-3796

Jonathan T. Garaas  
David Garaas

July 24, 2008

Telephone  
Area Code 701  
293-7211

Mr. Jeff Klein  
NFIP Coordinator  
North Dakota State Water Commission  
900 E Boulevard Avenue, Dept. 770  
Bismarck, North Dakota 58505-0850

**RE: FEMA mapping**

Dear Mr. Klein:

I am writing to follow-up our brief discussion concerning the mapping of areas outside of the City of Fargo's city limits and/or extra-territorial zoning authority. I had indicated a recollection that the City of Fargo had not expanded its extra-territorial authority the full four (4) miles, and had actually pulled back. The following documents will establish the City of Fargo has not acted to further its extra-territorial jurisdiction in any significant way – it pulled back from an initial effort to expand so as to use the possible four (4) miles, but it still has not finally expanded from an earlier designation years earlier.

I have enclosed the following:

1. Page 484 of the Fargo City Commission minutes for February 26, 2007.

The City Planning Department recommended additional zoning to 112<sup>th</sup> Avenue South [an additional three (3) miles] which would take be utilizing the four (4) mile authorized jurisdiction – jurisdiction not yet utilized by passage of an ordinance by the City of Fargo. First reading [of required two readings] only.

2. Pages 685-688 of Fargo City Commission minutes of August 13, 2007.

Recognizing the February 26, 2007, proceedings, the City Planning Department noted the change in the North Dakota law limiting the extent of extraterritorial boundaries. The City of Fargo ceased any further action on the February 26, 2007, ordinance; instead, a first reading of a new ordinance that would only include two (2) tracts of land in Sections 28, 33, 34, 35, and 36-138-49 & Sections 2, 3, and 4-137-49 [presumptively within two (2) miles pursuant to new law] was approved. I cannot find any second reading of this ordinance which would expand upon an earlier one (1) mile exercise of extra-territorial zoning authority. The subsequent pages identify steps in



further annexation efforts. Certain lands to be annexed are only connected by ribbons of 60' and cannot be used for expansion of extraterritorial area in the future.

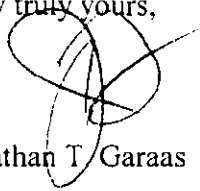
3. Pages 782-784 of Fargo City Commission minutes of October 22, 2007.

This only completed the annexation(s) discussed on August 13, 2007 – some of which are connected only by a 60' ribbon so extra-territorial jurisdiction cannot be computed using such annexed lands. N.D.C.C. § 40-47-01.1(8) under present law; (7) under old law.

The cities of West Fargo, Horace, Prairie Rose, Frontier, Briarwood, and Oxbow are located within many of the maps being circulated by the City of Fargo when identifying the proposed "FEMA" maps identifying the preliminary FIS or 100-Year Flood event. We learned last night that the proposed "FEMA" map will only relate to the City of Fargo, and its exercised extra-territorial zoning area – this is a substantially smaller area. For inhabitants of Horace, Prairie Rose, Frontier, Briarwood, and even Oxbow – none of which will be affected by FEMA maps being done at the request of Fargo – the informational meeting of last evening was an eye-opener. The inhabitants of these other communities will be greatly relieved.

If you have any questions concerning this matter, please feel free to contact me at any time.

Very truly yours,



Jonathan T. Garaas

JTG:j

Enclosures

cc: Horace, Frontier, Stanley Township

**First Reading of an Ordinance Extending Extraterritorial Zoning and Subdivision Authority of the City of Fargo:**

Senior Planner Jim Hinderaker stated Planning staff recommends extending Extraterritorial (ET) zoning to 112th Avenue South, an additional 3 miles, for south side flood protection. He said Planning chose to not go west towards Horace.

Horace City Attorney Jonathan Garaas stated some portions of Fargo's proposed ET are possibly within Horace's ET area. He said Horace has been in conversation with Fargo to resolve the ET boundaries. Mr. Garaas said Horace has done a first reading but put action on hold for three months waiting for proposed compromise between the two cities. He said Horace is attempting to work with Fargo.

Planning Director Jim Gilmour stated the ET area is consistent with past discussion between Horace and Fargo with the possibility of overlap. He said a process exists for solving potential disputes.

Commissioner Coates stated triggering this process will allow both sides to work out the details. She said the City Commission is acting in good faith. She said the future flood protection plans will benefit this area. The North Dakota Legislature, she said, is considering a bill to restrict ET authority of cities and it is important to act before the law changes.

Commissioner Coates moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Extending Extraterritorial Zoning and Subdivision Authority of the City of Fargo be placed on first reading.

Second by Wimmer.

In response to a question from Commissioner Mahoney, Commissioner Coates suggested the Mayors of Fargo and Horace get together to talk about the ET area and flood control issues.

On call of the roll Commissioners Coates, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**Petition for Exclusion By Owner Filed by Fred and Earlyne Hector for Property in the Southwest Quarter of Section 35, Township 139 North, Range 49 West Received:**

The Board received a Petition for Exclusion by Owner filed by Fred and Earlyne Hector for property in the Southwest Quarter of Section 35, Township 139 North, Range 49 West, pursuant to N.D.C.C. Chapter 40-51.2.

Jonathan Garaas, Attorney representing Fred and Earlyne Hector, submitted an Affidavit of Publication for the Petition for Exclusion of Territory filed by the Hectors.

Commissioner Coates moved the Petition for Exclusion be received and filed, that staff be directed to review the petition and provide comment, and that the matter be scheduled for discussion and consideration at the March 26, 2007 City Commission meeting.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$1,716,000.)

**Order Plans and Specifications for Improvement District No. 5757:**

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5757, in the City of Fargo, North Dakota.

**Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5757:**

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5757, in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5757, in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

**Direct City Auditor's Office to Call for Bids for Improvement District No. 5757:**

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5757, in the City of Fargo, North Dakota.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**Action on the Revised Developer Agreement with Feder Properties, LLP for Tax Increment Financing District No. 2007-02 Delayed for Two Weeks:**

Commissioner Williams stated he asked that Item No. "h" (Revised Developer Agreement with Feder Properties, LLP for Tax Increment Financing District No. 2007-02) be moved to the Regular Agenda because he did not receive a copy of the Agreement. He said he would like this item delayed for two weeks to give him an opportunity to review the document.

Commissioner Williams moved this item be delayed for two weeks.

Second by Mahoney. On call of the roll Commissioners Williams, Mahoney, Coates, Wimmer and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**First Reading of an Ordinance Extending Extraterritorial Zoning and Subdivision Authority of the City of Fargo:**

The Board received a communication from Senior Planner Jim Hinderaker stating on February 26, 2007 the City Commission approved an Ordinance extending

the zoning and subdivision authority of the City of Fargo a full four miles beyond the corporate limits of the city. However, he continued, based on recent legislative action limiting the extent in which a city may extend its extraterritorial boundaries, staff recommends the land area included in the ordinance initiated February 26, 2007 be amended to include only two tracts of land in Sections 28, 33, 34, 35 and 36, Township 138 North, Range 49 West and Sections 2, 3 and 4, Township 137 North, Range 49 West of the 5th Principal Meridian. Mr. Hinderaker stated it is the recommendation of staff to cease any further action on the Ordinance extending the zoning and subdivision authority of the City of Fargo initiated on February 26, 2007 and adopt the revised Ordinance.

Commissioner Coates moved that any further action on the Ordinance extending the zoning and subdivision authority of the City of Fargo initiated on February 26, 2007 be ceased, that the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the revised Ordinance Extending Extraterritorial Zoning and Subdivision Authority of the City of Fargo be placed on first reading.

Second by Wimmer. On call of the roll Commissioners Coates, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**Resolution Annexing a 60 Foot Strip of Land in Sections 28 and 33 of Township 138 North, Range 49 West and Section 4 of Township 137 North, Range 49 West:**

The Board received a communication from Senior Planner Jim Hinderaker stating on February 28, 2007, the City Commission adopted a Resolution of Annexation wherein the City of Fargo began the process to extend its corporate limits by annexing a strip of land 100 feet wide along 57th Street South. Mr. Hinderaker said after additional review of the proposed annexation, staff recommends the land area included in the original Resolution of Annexation adopted on February 28, 2007 be amended to include portions of Sections 28 and 33, Township 138 North, Range 49 West and Section 4, Township 137 North Range 49 West, all in the Fifth Principal Meridian. He said it is the recommendation of staff to amend the Resolution of Annexation adopted on February 28, 2007 and reschedule the public hearing to determine the sufficiency of any protest at the October 22, 2007 City Commission meeting.

Commissioner Coates offered the following Resolution and moved its adoption:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, The City of Fargo, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota, with about ninety-five thousand (95,000) inhabitants; and

WHEREAS, The Board of City Commissioners on February 28, 2007 resolved to annex a tract of land 100' wide lying parallel to and south and east of the following described line:

Beginning at the current corporate limits of the City of Fargo at the northeast corner of the northwest quarter of Section 28, Township 138 North, Range 49 West of 5<sup>th</sup> Principal Meridian, Cass County, North Dakota; thence west along

the north line of Section 28 to the west line of said Section 28; thence south along the west line of Section 28 and 33, Township 138 North, Range 49 West and the west line of Sections 4 and 9, Township 137 North, Range 49 West to the south line of Section 9 and thence terminating said 100' wide tract;

said tract containing 54.55 acres, more or less; and

WHEREAS, Said Resolution called for a hearing to be held August 27, 2007; and

WHEREAS, The City of Fargo Planning staff recommend that the Board of City Commissioners take action to amend the Resolution of Annexation of February 28, 2007 by modifying the description of land sought to be annexed and by modifying the date of the hearing on the same; and

WHEREAS, There is contiguous and adjacent to the City of Fargo, a tract or parcel of land hereinafter specifically described, containing 102.16 acres, more or less, which tract or parcel of land is not presently a part of the City of Fargo.

NOW, THEREFORE, BE IT RESOLVED, by the Board of City Commissioners of the City of Fargo, North Dakota, that the Resolution of Annexation of February 28, 2007 is hereby amended so that the boundaries of the City of Fargo be, and they hereby are, extended so as to include and incorporate within the corporate limits of the City of Fargo, Cass County, North Dakota, the following described land:

#### Annexation to the City of Fargo

Annexation of portions of Sections 28 and 33, Township 138 North, Range 49 West and Section 4, Township 137 North, Range 49 West, all in the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Beginning at the current corporate limits of the City of Fargo at the northeast corner of the northwest quarter (NW  $\frac{1}{4}$ ) of said Section 28; thence west along the north line of Section 28 to the west line of Section 28; thence south along the west line of said Sections 28, 33 and 4 to the southwest corner of said Section 4; thence east along the south line of Section 4 to the east line of the west half (W  $\frac{1}{2}$ ) of the southwest quarter (SW  $\frac{1}{4}$ ) of said Section 4; thence north along said east line of west half (W  $\frac{1}{2}$ ) of southwest quarter (SW  $\frac{1}{4}$ ) of Section 4 to the north line of said southwest quarter (SW  $\frac{1}{4}$ ); thence west along the north line of said southwest quarter (SW  $\frac{1}{4}$ ) of Section 4 to a point on a line parallel to and 60' east of the west line of said Section 4; thence north along said line parallel to and 60' east of the west line of said Sections 4, 33 and 28 to a point on a line parallel to and 60' south of the north line of said Section 28; thence east along said line parallel and 60' south of the north line of said Section 28 to the east line of said northwest quarter (NW  $\frac{1}{4}$ ) of Section 28; thence north along the east line of said northwest quarter (NW  $\frac{1}{4}$ ) of Section 28 to the point of beginning.

Said annexation tract contains 102.16 acres, more or less.

BE IT FURTHER RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that this Resolution be published in the official newspaper for the City of Fargo once each week for two successive weeks, and a hearing be held on the 22nd day of October, 2007, at 5:15 p.m., in the City Commission Room, City Hall, Fargo, North Dakota or such other time and place as determined by the Board of City Commission as provided by law.

Second by Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

**Request for an Extension of the Noise Ordinance for the Outdoor 3rd Thursday Event Approved:**

The Board received a communication from Mona Arnold, Manager of the Fargo American Legion, requesting an extension of the City's Noise Ordinance on August 16, 2007 from 10:00 p.m. to 11:00 p.m. for the last of the outdoor 3rd Thursday events on the lawn of the Fargo American Legion.

Commissioner Wimmer moved the request be approved.

Second by Williams. On call of the roll Commissioners Wimmer, Williams, Coates, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**Hearing on Application to Transfer the Alcoholic Beverage License from Nodak Hotels, LLC d/b/a Expressway Inn to Choice Alliance II, Inc. d/b/a Quality Inn Continued to August 27, 2007:**

This was the time and date set for a Hearing on an application to transfer the Class "ABH" Alcoholic Beverage License from Nodak Hotels, LLC d/b/a Expressway Inn to Choice Alliance II, Inc. d/b/a Quality Inn, at 1340 21st Avenue South, however, the Auditor's Office has requested the Hearing be continued to August 27, 2007.

Commissioner Wimmer moved the Hearing be continued to August 27, 2007.

Second by Mahoney. On call of the roll Commissioners Wimmer, Mahoney, Williams, Coates and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**Hearing on the Rezoning of Parcels of Land in Erskines Addition Continued to September 24, 2007 (1226 Univ. Dr. and 1117 13th Ave. S.):**

This was the time and date set for a Hearing on the rezoning of parcels of land in Erskines Addition, however, the Planning Commission continued their Hearing and the City Commission should continue their Hearing to September 24, 2007.

Commissioner Mahoney moved the Hearing be continued to September 24, 2007.

Second by Wimmer. On call of the roll Commissioners Mahoney, Wimmer, Williams, Coates and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

License at 1000 45th Street South, Suite 100, notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Mahoney moved the application be approved.

Second by Wimmer. On call of the roll Commissioners Mahoney, Wimmer, Coates, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**Resolution Adopted Determining Protests Insufficient on Resolution Annexing a 60 Foot Strip of Land in Sections 28 and 33 of Township 138 North, Range 49 West and Section 4 of Township 137 North, Range 49 West (Along Portions of 100th Avenue and 57th Street South):**

The Board received a communication from Senior Planner Jim Hinderaker stating on August 13, 2007 the City Commission adopted a resolution annexing 102.16 acres of land in portions of Sections 28 and 33 of Township 138 North and Section 4 of Township 137 North. Mr. Hinderaker said the land primarily includes a 60 foot strip along portions of 100th Avenue and 57th Street South and he submitted a copy of the annexation resolution and map of the area. He said notice of the resolution/hearing was published in the newspaper and copies were sent to all owners of property in the annexation area. Mr. Hinderaker stated the purpose of the hearing is to determine if protests to the annexation have been filed. He said according to 40-51.2-07.3 of the North Dakota Century Code, in the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution becomes a part of the City. He said a protest petition has been filed with the City Auditor's office by Terry and Kristie Sauvageau which includes three separate parcels or 7.27 acres of land within the annexation area. He said in order for a protest to be valid, one-fourth of the territory must be included in the protest and he submitted a copy of the signed protest petition. Mr. Hinderaker stated the minimum area for protest is 25.54 acres.

Richard Freeman, 2914 124th Avenue South, stated his concerns regarding the proposed annexation. He said the Planning Department has said 124th Avenue will not be affected for 50 years and he thinks this statement is a big stretch. He questioned what the Planning Department is planning for the 60 foot strip. He said the proposed annexation and future extraterritorial zoning are serious problems for the rural residents.

Planning Director Jim Gilmour encouraged the Board to pass the annexation. He said this annexation is the only way to ensure that millions of dollars in flood control will benefit Fargo and not other cities.

Commissioner Wimmer offered the following Resolution and moved its adoption:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, The City of Fargo, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota, with about ninety-five thousand (95,000) inhabitants; and

WHEREAS, The Board of City Commissioners on February 28, 2007 resolved to annex a tract of land 100' wide lying parallel to and south and east of the following described line:

Beginning at the current corporate limits of the City of Fargo at the northeast corner of the northwest quarter of Section 28, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota; thence west along the north line of Section 28 to the west line of said Section 28; thence south along the west line of Sections 28 and 33, Township 138 North, Range 49 West and the west line of Sections 4 and 9, Township 137 North, Range 49 West to the south line of Section 9 and thence terminating said 100' tract;

said tract containing 54.55 acres, more or less; and

WHEREAS, Said Resolution called for a hearing to determine the sufficiency of protests be held on August 27, 2007; and

WHEREAS, The Board of City Commissioners on August 13, 2007 resolved to amend the Resolution of Annexation of February 28, 2007 thus modifying the description of land sought to be annexed and modifying the date of the hearing on the same; and

WHEREAS, The City Auditor's Office published a Notice of Hearing on said annexation in the official newspaper for the City of Fargo on August 27, 2007 and September 03, 2007 that a Hearing would be held in the City Commission Room at City Hall, Fargo, North Dakota at 5:15 o'clock p.m., October 22, 2007 to hear and determine the sufficiency of protests.

NOW, THEREFORE BE IT RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that there is insufficient protest and that the boundaries of the City of Fargo be, and they hereby are, extended so as to include and incorporate within the corporate limits of the City of Fargo, Cass County, North Dakota, the following described land:

Annexation of portions of Sections 28 and 33, Township 138 North, Range 49 West and Section 4, Township 137 North, Range 49 West, all in the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Beginning at the current corporate limits of the City of Fargo at the northeast corner of the northwest quarter (NW ¼) of said Section 28; thence west along the north line of Section 28 to the west line of Section 28; thence south along the west line of said Sections 28, 33 and 4 to the southwest corner of said Section 4; thence east along the south line of Section 4 to the east line of the west half (W ½) of the southwest quarter (SW ¼) of said Section 4; thence north along said east line of west half (W ½) of southwest quarter (SW ¼) of Section 4 to the north line of said southwest quarter (SW ¼); thence west along the north line of said southwest quarter (SW ¼) of Section 4 to a point on a line parallel to and 60' east of the west line of said Section 4; thence north



along said line parallel to and 60' east of the west line of said Sections 4, 33 and 28 to a point on a line parallel to and 60' south of the north line of said Section 28; thence east along said line parallel and 60' south of the north line of said Section 28 to the east line of said northwest quarter (NW ¼) of Section 28; thence north along the east line of said northwest quarter (NW ¼) of Section 28 to the point of beginning.

Said annexation tract contains 102.16 acres, more or less.

BE IT FURTHER RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that this Resolution and an accurate map of the annexed area, certified by the executive officer of the city, are filed and recorded with the Cass County Recorder.

Second by Coates. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Coates, Mahoney, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

At 6:05 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

**Request from the Fargo Dome Authority for Expenditure of Fargodome Sales Tax Funds in the Amount of \$85,000 Plus Reimbursables for a Fargodome Market Assessment Approved:**

The Board received a communication from Ryn Pitts, President of the Fargo Dome Authority, stating the Fargo Dome Authority is requesting approval of an expenditure of Fargodome sales tax funds of approximately \$85,000 plus reimbursables for a Fargodome Market Assessment. Ms. Pitts submitted the Request for Proposal (RFP) which shows the study will include an assessment of the market for the existing Fargodome with specific attention to the market potential of the proposed expansion. She said the areas of research will include the market niche, the impact of expansion, revenue opportunities and the Fargodome's business model, and construction and operating economics. The project timeline, she stated, includes a target completion date of mid-March 2008. She said the Fargo Dome Authority held a special meeting October 11, 2007 to review the RFP responses from five firms and narrowed the field to three to be interviewed October 30, 2007. The three firms, she said, are Convention Sports & Leisure of Minneapolis, C.H. Johnson Consulting of Chicago and HVS Convention, Sports & Entertainment Facilities Consulting of Chicago. She stated evaluation criteria include qualifications of the consultant, understanding of the RFP, proposed study methodology and cost of services. She said the Fargo Dome Authority approved an expenditure of Fargodome sales tax funds of approximately \$85,000 plus reimbursables for the study.

Commissioner Williams questioned if the assessment would be for the existing facility and proposed expansion.

Ms. Pitts stated the Fargodome is almost 15 years old and the proposed assessment is just good planning principles for the future. She said the assessment would include the existing building and the expansion.

#5

**GARAAS LAW FIRM**  
ATTORNEYS AT LAW  
DeMores Office Park  
1314 23rd Street South  
Fargo, North Dakota 58103-3796

Jonathan T. Garaas  
David Garaas

April 27, 2007

Telephone  
Area Code 701  
293-7211

Mr. Kevin Gorder, P.E.  
Interim District Engineer, Fargo District  
North Dakota Department of Transportation  
503 38th Street South  
Fargo, North Dakota 58103-1198  
HAND DELIVERY

**RE: I-29/52nd Avenue South Interchange Reconstruction  
& 52nd Avenue South Reconstruction, Fargo, North Dakota  
Project No. IM-8-029(046)060 & U-CMU-8-081(029)920**

Dear District Engineer Gorder:

I am writing as the attorney for Fred M. Hector and Earlyne L. Hector, the owners of real property located immediately north of the above-described construction project – on both sides of Interstate 29, in Fargo, Cass County, North Dakota. In order to more fully identify the circumstances, I have been asked to expand upon the prior letter dated April 20, 2007 -- which continues to articulate the basic position(s) of Fred M. Hector and Earlyne L. Hector with regard to the project(s) herein referenced. So as to have a single document expressing the sentiments of Mr. and Mrs. Hector, I will be incorporating many of their positions into this letter, some of which will be word-for-word identical.

On Tuesday, April 17, 2007, a joint special meeting of the City of Frontier, Cass County, North Dakota, and Stanley Township, Cass County, North Dakota, was called to discuss the construction project for 52nd Avenue South and the I-29 interchange located near Frontier, North Dakota, as more particularly described above by project number. I was personally present at the joint meeting.

On Friday, April 20, 2007, a similar meeting involving representatives of the City of Fargo, North Dakota Department of Transportation [and consulting engineers], and the Hectors, along with legal counsel for the Hectors, took place at Fargo City Hall.

The Hectors appreciated the presentation, and explanation, given by you with the

assistance of Mark Bittner [Fargo City Engineer], and Kris Bakkegard of Kadrmas, Lee & Jackson [Project Design Consulting Engineer].

It is the feeling of the Hectors, following your presentation, that they also benefitted from the complete and open discussion of the various alternative construction proposals now facing the Department of Transportation.

**After the presentation, Fred M. Hector and Earlyne L. Hector fully endorse the construction project(s) denominated "Shift to the North Alignment" as set forth in the Environmental Assessment Figure 2-16 which is called "Alternative 1-D with 31st Street Access Option" [page 2-10].**

The benefits of such construction project(s) are clear, definite, and significant to the citizens of North Dakota, and those persons visiting this great State.

Mr. Hector has related to me a story involving a State Highway Department representative who predicted, over 30 years ago, there would be the need for an 8-lane road between University Drive (Old Highway #81) and I-29 at 52<sup>nd</sup> Avenue South (Cass Highway #6). Mr. Hector remembers telling the North Dakota Highway Department representative that they better do it right. This was the same position that he took a couple of years ago – this interchange should be built right so that everyone benefits.

Mr. and Mrs. Hector recognized the old plan would have been devastating to the people of Frontier, North Dakota – and every other property owner seeking access to 52<sup>nd</sup> Avenue South from the south frontage road. Mr. and Mrs. Hector also recognized that the City of Fargo's traffic patterns would be hurt by re-establishing the frontage roads in the current locations.

Relocating the frontage roads as presently being contemplated under the new plan will definitely benefit property owners east of Frontier, North Dakota, and also, improve access to the land owned by the Fargo Public School District. In that the new project shifts everything north, the proposed development south of 52<sup>nd</sup> Avenue will also be improved. Access to 52<sup>nd</sup> Avenue South will be better for everyone, and on the west side of I-29, the frontage road can be connected immediately north of the current plat's access point to the new Walmart site. The Hectors are mindful that the flow of traffic will be adversely affected, with possible serious accidents, if the frontage roads are connected to 52<sup>nd</sup> Avenue

at the present locations – it will be too close to the interchange and the area will be elevated with sight-line problems. The new plan will allow for proper placement of the frontage road/new plat [plat south of 52<sup>nd</sup> Avenue South] intersection west of the interchange for appropriate traffic control and improved traffic flow.

Besides benefit to others, the Hectors would have suffered financial losses if the frontage road(s) are not appropriately placed – productive land would be inappropriately separated no matter if it is used for farming, or for commercial purposes.

One advantage arising from the new project relates to the vacation of an existing all-weather road in the northwest quadrant that actually interferes with projected development of the site – a point noted by past prospective purchasers of the land in the northwest quadrant.

Besides these observations, the Hectors expect the value of their remaining property will be further recognized by the project above described – it will make it easier to access, under safer conditions, and that adds additional intangible value to their already valuable land. Improving the interchange of I-29 and 52<sup>nd</sup> Avenue South improves all of the surrounding land, and the infrastructure of two North Dakota municipalities.

The Hectors are the landowners of the land where the business known as Starr Fireworks is located, but there exists a few more years on the lease. The new project's land requirements would cause the lessee's interest to be eliminated, which then would allow for the Hectors to regain use of whatever land is not necessary for the project. The Hectors do not expect to be reimbursed for any lease monies due them from the lessee should the State of North Dakota acquire the lessee's interest in the property, by agreement or otherwise.

The Hectors urge all governmental bodies, and other property owners, involved in the decision-making process, to expedite the approval of such alternative, with construction as soon as reasonably possible, without the need for any further environmental study -- it has already taken place.

The Hectors recognize that they will be entitled to reasonable compensation for that portion of the right-of-way that was going to be obtained by eminent domain under the old plan called "widen to the North" [or voluntary transferred by agreement].

Under the old plan, the Hectors are entitled to, and will receive, compensation at market value for approximately 315,000 square feet in the northeast quadrant of the interchange ["Frontier Quarter"]. The donated land for this quadrant is anticipated to be an additional 190,000 square feet of real property for which no compensation will be sought, nor expected.

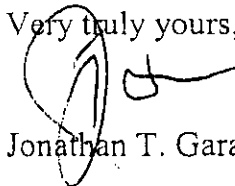
Under the old plan, the Hectors are entitled to, and will receive, compensation at market value for approximately 205,000 square feet in the northwest quadrant of the interchange ["Starr Quarter"]. The donated land for this quadrant is anticipated to be an additional 130,000 square feet of real property for which no compensation will be sought, nor expected.

The offer by Mr. and Mrs. Hector relating to this additional 320,000 square feet [ $190,000 + 130,000 = 320,000 \div 43,560$  square feet = 7.35 acres approximately] will not be withdrawn should the City of Fargo fail to recognize the commercial zoning as requested by the Hectors. We feel confident that the City of Fargo will ultimately recognize what the Hectors have known for years – as does everyone else that travels on the Interstate Highway System – interchanges within cities, and even those interchanges close to cities, are used for commercial purposes.

As you are aware, I have written similar letters on behalf of Stanley Township and the City of Frontier. This project, when changed as above noted, will greatly improve the transportation system of this area. The Hectors know the project, if built under the specifications endorsed in this letter, will benefit everyone.

If you have any questions concerning this matter, please feel free to contact me at any time.

Very truly yours,



Jonathan T. Garaas

JTG:j

cc: Fargo City Engineer Bittner  
C. Bakkegard of KL&J  
D. Plambeck

#6

House Committee on Political Subdivisions  
February 5, 2009

Mr. Chairman and members of the committee:

My name is Curly Haugland and I appear today representing the Landowner's Association of North Dakota in support of HB 1554.

Landowner's Association of North Dakota has a membership of over 500 landowners across the state and is devoted to protecting the property rights of individuals.

HB 1554 will restore the rights of property owners in North Dakota to vote for the members of the public body that has the zoning authority over their property.

We hope you will see the wisdom of this simple measure and the value of re-connecting individual voters with the elected officials responsible for the decisions that determine the future use and corresponding value of their private property.

Attached also are selected writings on this issue which I hope you will find useful as you deal with this bill and other related bills.

Thank you for your consideration.

We urge a DO PASS on HB 1554

# Ludwig von Mises Institute

Ludwig von Mises Institute - *Tu Ne Cede Malis*

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## Zoning is Theft

Daily Article by Jim Fedako | Posted on 3/21/2006 12:00:00 AM



Zoning is theft, pure and simple. In his fantastic introduction to the Austrian School, *Economics for Real People*, Gene Callahan correctly identifies eminent domain as a form of property theft, especially noting the use of government condemnation in order to secure rightfully owned property for commercial development.

It is easy to see government as the crowbar that influence-seekers use to jimmy locks and force private property owners from their land. Here we have the clear picture of Ma and Pa Kettle and clan fighting the law and "progress" armed only with shotguns, corn squeezing, chewing tobacco and shear grit. The flip side to eminent domain, zoning, is not so easily seen. But as Bastiat revealed, the unseen is as important as the seen.

Zoning is typically defined along the lines of a government-regulated system of land-usage imposed in order to ensure orderly development. Zoning is usually a component of the larger conceptual ideal called regional planning. Of course, planned development is really the name of the road toward planned chaos.

Zoning uses all the standard interventionist lines of thought, most notably the concepts of externalities and utility. Those who advocate zoning really believe that acting man does not have the ability to create communities that are functional and prosperous. Without plans and maps drafted and drawn by the local elected elite, developers with knowledge and foresight, and a whole lot of money to gain or lose, would purposively layout communities that are sterile and functionless. Only the marginal vote-getters — those elected — and their appointed allies are omniscient enough to peer into the crystal ball and define the perfect setting for future life and leisure. The rest of us can only marvel at their visions.

Just as the developer can use government to roll over the rights of property owners, property owners — community members — can use government to roll over the rights of developers and fellow property

consumers.

Today, townships create zoning maps and comprehensive plans that overlay development regulations on top of current properties. Prior to the establishment of zoning regulations, a farmer could simply sell his land to the highest bidder. No one had a voice in the proposed use of the exchanged land. The sale to a new property owner incorporated full development rights, including continued farming, residential and commercial development, or parceling off pieces for home sites. Land was a commodity similar to the crops grown on it. Just as no one had a right to control the final use of the corn and soybeans reaped from the soil, no one had the right to control the next use of the land. Property rights were secure.

Zoning changed everything. The future use of existing farmland will, with the stroke of a pen, be limited in some manner by zoning regulations. The regulations could restrict future land usage to its current use — farming in this instance — or it could restrict land usage to some other form of activity.

The free market has a tool that allows a property owner to align the future use of his property with his vision, the restrictive covenant. A property owner could, for example, create a legacy by selling his land contingent on the development carrying his family name. Should the property owner be too restrictive, the value of his property will fall. He will be exchanging a psychic good, a family legacy, for cash.

Zoning is another matter altogether. Zoning restricts current landowners based on the local power brokers. In the zoning process, someone gets hurt. Had the farmers of a township wanted to keep the area as farmland, they could have signed restrictive covenants guaranteeing crops instead of homes. Property rights, and the laws that purport to protect those rights, allow individuals to act in their own best interest. Zoning, collective decision-making, use the coercive power of government to restrict usage based on the whims of those in power.

The farmer who owns this land now has his potential property rights bounded within a specific range; future use is restricted to residential developments that have no more than one house per acre. The farmer may vote, and may have voted for some of those elected, but he never agreed to the change in proposed land usage. He was robbed, and there is no means for him to restore his rights and land value; they are gone with the stroke of a pen.

I know some of those in the Chicago School will claim that the farmer implicitly agreed to the loss of land-usage rights by being born in the United States, or of naturalized American parents, or by becoming a citizen through oath. By owning property in the United States, the farmer granted majority ownership in his property to those elected and appointed, the omniscient and omnipotent. This is no way to build and run a system of secure property rights, and no way to create a free market. Rothbard is correct when he constructs his political economy on secure rights to property; anything less is the beginning of the Hayek's *Road to Serfdom*.

Now we have a developer who is trying to satisfy the urgent wants of consumers, his development could include new homes, new stores, new factories, etc. The developer is a keen entrepreneur who sees a chance to turn a profit by creating a development that will be desired, and therefore profitable to him. The developer settles on a residential development and approaches the farmer from above offering to purchase his land, contingent on final zoning approval of course.

You see, the developer has been here before. He knows the ways of the local officials who approve and disapprove zoning changes on whim and fancy — or even the smallest of political pressure. The developer is not going to consummate the deal with the farmer until he knows that his proposed development is a go.



The farmer, old and worn-out, wants to retire and enjoy, along with his wife, his remaining years in leisure and comfort. This is certainly a reasonable request from someone who has worked the dirt in snow, rain, and blistering heat for decades. Who could reasonably question his desire? Commissioners and board members; those omniscient by vote and omnipotent by law.

Remember that the land was designated to be developed at only one home per acre, but the developer does not think he can make a go of it at that yield. Given the market in the area, there is no way for him to turn a profit due to the myriad of other regulatory hoops he will have to jump through in order to get approval for his development. A host of green-eyed bureaucrats see the proposed development as a tax revenue generator. The developer will have to build off-site roads and sewer improvements, donate a park or school site, and give away money to all those governments with their hands out. In addition, regional officials will balk at the proposal since it does not agree with their vision of the future.

So the developer, a Don Quixote at heart, decides to take on the zoning commission by proposing a variance to the zoning code and comprehensive plan. Mr. Developer needs to build one and a half homes per acre, a change that will require months of hearings where he will be badgered and attacked from the zoning commission and community members alike. The commissioners will request petty changes to the development's conceptual plan based on vague building standards that they most likely do not understand. Is stucco created from natural and man-made materials a natural or artificial exterior? Does 50 microns of aluminum create a better look than 49 microns? Should sidewalks be required? How high should the entrance sign stand? Is fire-red a natural color? Is a 30-foot setback sufficient for future property values? The answers depend on which commissioner has the mike at the time.

Residents with property adjoining the development will complain loudly of supposed lost property values, traffic, and crime. In addition, they will attack the developer as evil incarnate bent on destroying the community. But those same voices will lose the rhetoric as soon as the developer offers all adjacent homeowners landscaping allowances. A few thousand in new trees planted in their backyard is enough to forgive any supposed loss in value, additional traffic, and hypothetical break-in.



This  
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is  
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So the developer now agrees to build roads, upgrade sewer lines, donate parks with equipment, set aside a school site, and improve residential landscape. What is gently termed exaction is really extortion by another name. After zoning comes township trustees meetings and the process begins all over again. More exactions and more regulations, but trustee approval can be had if the developer does the dollar-dance long enough. Had the developer simply slid a rumpled paper bag of twenty's across the table, a law would have been broken. Instead, the process occurs in the sunshine for all to see, and all to agree that more should have been given — or taken.

All agreed, with the exception of the developer and the forgotten farmer. You see, lost in all this is the simple desire of a farmer and his wife to retire and enjoy life, and maybe leave a little for their grandchildren. Every hand looking for a piece of the development pie is not robbing the developer and

redistributing supposed unearned profits; those hands are robbing the farmer and his wife of their property value.

The risk of not passing zoning, the exactions, and readily available alternatives for investment are all reductions to the value the farmer could have obtained for his land absent zoning. The loss of value is recognized at the time the developer makes an offer for the land; the theft, on the other hand, occurs in front of the community that the farm family lived in for generations. It shows what damage a little money and power can cause in a community. Zoning is indeed theft.

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Jim Fedako is a former professional cyclist who lives in Lewis Center, OH. [jfedako@aol.com](mailto:jfedako@aol.com).  
Comment [on the blog](#).

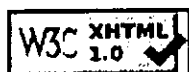
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# CAPITALISM MAGAZINE

IN DEFENSE OF INDIVIDUAL RIGHTS

## Running with Robbers

by Matt Wingard (October 31, 2007)

Article address: <http://www.CapMag.com/article.asp?ID=5052>

**Summary:** Few wealthy supporters of land use restrictions seem willing to give their neighbors the same economic opportunity they and their ancestors enjoyed.

[CapMag.com]

One of the most perplexing things about the current fight over Oregon land use laws is how many wealthy Oregonians publicly support restricting development rights.

Many of them are landowners. So it would seem they are advocating against their own interests and the basic concepts of the free market and private property that sustain their wealth.

In reality, wealthy landowners have already developed the land they control. This is why they are wealthy. Restricting the land around them usually turns out to be a way to limit competition and hold their advantage in the marketplace.

Few wealthy supporters of land use restrictions seem willing to give their neighbors the same economic opportunity they and their ancestors enjoyed.

Most of the property owners hurt by land use restrictions have modest holdings, where the value is in future development. That value is often the sum total of their life savings. Should the rest of us be able to steal their investment because we prefer that it remain undeveloped? Those are usually called "parks," and as a society we used to feel obligated to pay for them.

The golden rule is: "Do unto others as you would have them do unto you." If you don't want the majority to one day steal your property, don't run with robbers.

**About the Author:** Matt Wingard is Director of the School Choice Project at Cascade Policy Institute, a Portland, Oregon based think tank.

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# CAPITALISM MAGAZINE

IN DEFENSE OF INDIVIDUAL RIGHTS

## Re-arranging Deck Chairs on the Housing Titanic

by John A. Charles, Jr. (August 29, 2006)

Article address: <http://www.CapMag.com/article.asp?ID=4772>

**Summary:** A central reason why housing is so expensive in Portland (and most other Oregon cities) is that the government has created an artificial shortage of homes through zoning and other types of land-use regulation.

[CapMag.com]

The Portland City Council wants to spend at least 30% of all urban renewal dollars on housing subsidies. Their concern is that skyrocketing home prices have made it difficult for lower-income families to live in the city.

Unfortunately, Council members are boxed in by their own ideology of urban planning. A central reason why housing is so expensive in Portland (and most other Oregon cities) is that the government has created an artificial shortage of homes through zoning and other types of land-use regulation.

A recent study by the Brookings Institution found this to be true on a national scale as well. The authors examined land-use policies among the nation's 50 largest cities, and found that those cities with the least amount of zoning – Dallas, San Antonio and Houston – had the cheapest rents and the lowest home prices of all cities. Not only that, the three Texas regions had lower concentrations of poverty, higher home ownership rates, and larger concentrations of college graduates than cities with strict growth controls such as urban growth boundaries.

The Portland obsession with high-density, mixed-use development, with expensive mandates for union-scale wages and green building techniques, leads inevitably to higher-cost housing. This cannot be offset by requiring PDC to subsidize a handful of new housing projects. What's needed is a wholesale re-thinking of Oregon's elitist growth management philosophy.

**About the Author:** John A. Charles, Jr. is President and CEO at Cascade Policy Institute, a Portland, Oregon based think tank.

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# CAPITALISM MAGAZINE

IN DEFENSE OF INDIVIDUAL RIGHTS

## Measure 37: Oregon Supreme Court Gets One Right

by Steve Buckstein (February 27, 2006)

Article address: <http://www.CapMag.com/article.asp?ID=4586>

**Summary:** Our constitution, like all other state constitutions, is not to be regarded as a grant of power, but rather a limitation upon the powers of the legislature.

[CapMag.com]The Oregon Supreme Court has unanimously upheld the constitutionality of Measure 37, the property rights initiative approved by the voters in 2004. It requires government to either compensate landowners for reductions of real property fair market value due to certain land use regulations or modify, remove or not apply such regulations.

Most Oregonians understand the importance of protecting property rights, and they voted to require their government to understand that importance as well. A few dissenters challenged the measure and won in circuit court, but the highest court in our state has now soundly rejected their arguments.

The most interesting claim against Measure 37 was that it violated the legislature's right to make laws. In rejecting that argument, the Court restated what it had previously determined, that:

"Our constitution, like all other state constitutions, is not to be regarded as a grant of power, but rather a limitation upon the powers of the legislature. The people, in adopting it, committed to the legislature the whole law making power of the state, which they did not expressly or impliedly withhold."

Oregonians have now withheld from government the power to arbitrarily reduce the value of our property without consequence. The state can still enact land use laws, but if those laws reduce the value of property you owned at the time the law changed, you can demand that the government modify, remove or not apply the regulation, or compensate you for your loss.

Both property rights and the principle of limited government were reinforced with their decision.

**About the Author:** Steve Buckstein is a Senior Policy Analyst and founder of the

# CAPITALISM MAGAZINE

IN DEFENSE OF INDIVIDUAL RIGHTS

## Developers are Not the Devil and Profit is Not a Sin

by Thomas Sowell (September 2, 2005)

Article address: <http://www.CapMag.com/article.asp?ID=4388>

**Summary:** What the morally self-anointed want is to use the power of government to impose their conception of beauty on others, regardless of what the Constitution says about equal rights for all.

[CapMag.com]The ability of the human mind to rationalize is one of the mysteries -- and the marvels -- of the ages. A recent e-mail from a reader in Santa Barbara, California, was a classic example of a widespread rationalization of the severe home-building restrictions which have made California home prices a multiple of home prices in the rest of the country.

First, this reader reminds me that "money isn't everything." That is certainly true -- and especially when it is someone else's money.

"We have fought very hard to prevent developers from profiting from the beautiful community we have worked so hard, and for so many generations to create and preserve," he says.

In other words, the people who have lived in Santa Barbara a long time, and who therefore have not had to pay the outrageous housing prices that their home-building restrictions force newcomers to pay, are on a higher moral plane than "developers" -- practically a cuss word in coastal California.

The fact that developers, like most people, want to earn money is regarded as sinister by some and the fact that the money is called "profit" makes it different from money that is called something else. It is amazing how many of those who consider themselves "thinking people" respond automatically to words the way Pavlov's dog was conditioned to respond to certain sounds.

What developers want means absolutely nothing economically unless other people are prepared to pay for what they offer. In other words, developers are just intermediaries who represent the demand for housing by vastly larger numbers of other people.

In the housing market, as in other markets, there are always people who want to use the same resources for different and conflicting purposes. There is nothing unique in the housing market when there are two sets of people wanting the same things and there is not enough

to satisfy both.

The Constitution of the United States gives them both equal rights, no matter how much nobler some of those people choose to believe they are.

Our Santa Barbara reader says that the purpose of home-building restrictions is "to try to preserve natural beauty and avoid the congestion and obstructed views of an urban environment," such as that of Los Angeles. Avoiding "congestion" is hypocritical nonsense. Since the number of people is the same, whether or not there are housing restrictions, keeping them out of Santa Barbara just transfers the "congestion" elsewhere. As for "natural beauty," nobody wants to live in ugliness. Some of the most beautiful places in California are places where people live.

What the morally self-anointed want is to use the power of government to impose their conception of beauty on others, regardless of what the Constitution says about equal rights for all.

Although much is made of the disadvantages of a crowded urban environment, there is much less to that argument than meets the eye. Like everything else in the world, high-density urban environments have costs as well as benefits and different people weigh the two differently.

Urban environments have high density because some people prefer the economic, cultural and other benefits made possible by high density. It has nothing to do with the bogeyman of "overpopulation." American cities were more crowded when the population of the United States was half of what it is today.

Those who don't want to live in cities don't have to -- but that is very different from saying that they should have a right to forever preserve where they live the way that it has been in the past. People who own a home in a community do not own the community. They paid only for their own property -- and so did those who would sell to a developer. It is amazing how often lofty talk is used to try to deny others the same rights one claims for oneself.

The fact that some people are on the inside looking out does not make them more important than people who are on the outside looking in -- and it certainly does not make their self-interest noble, even if it makes their rationalizations vehement.

**About the Author:** Thomas Sowell has published a large volume of writing. His dozen books, as well as numerous articles and essays, cover a wide range of topics, from classic economic theory to judicial activism, from civil rights to choosing the right college.

Please contact your local newspaper editor if you want to read the THOMAS SOWELL column in your hometown paper.

HANDed out.

#7

NOT here.

To Whom It May Concern:

From: Daniel Romuld, Rye Township Citizen

Date: February 5, 2009

RE: HB 1554

A question posed to me was 'would the citizens of the townships agree to the proposed landfill?'  
The answer is 'no' in its present form with the reasons that follow.

1. No dialogue has ever occurred between Rye citizens and the city of Grand Forks (City). Instead meetings have been held at the City's request and were only presentations of what the City was already going to do in regard to the landfill. More telling of statements regarding the landfill rather than ever asking Rye citizens was generally the meeting content and format as spoken by City representative, Todd Feland.
  - a. Quote: "We don't have to be here, but because Grand Forks wants to be a good neighbor, ...". The City record is loud and clear to us in Rye because the current landfill is also in our township.
  - b. The good neighbor policy and practice does not exist with the current landfill; can we believe that this would improve with another landfill? It seems that if I would clean up the garbage from the current landfill left year after year in our ditches and on our farmland and dumped it within the City limits I would have my truck impounded and would be subjected to stiff penalties, civil and criminal. If I treated the City officials and residents in the same manner afforded by the City to Rye and the other townships surrounding the City it would not be considered being a good neighbor.
2. Most important is the failure of the current landfill. It is leaking dangerous contaminants at the present and foreseeable future into a ground water system that lies right on the surface for all practical purposes as it does in the entire area of Rye Township. A new landfill will do the same because the ground will compress and any liner or mitigation process will fail in the near future.
  - a. We citizens living in the adjacent townships of Grand Forks have recommended using plasma furnaces to incinerate. A company offered to build one for free. This offer was disregarded with the statement of a (City) council member saying, "We have heard this before".
  - b. We have recommended (mandatory) recycling and composting. NO one listens.
  - c. These 3 processes get rid of 90% of the garbage leaving only 10% to be removed to a site that can handle heavy metals.
  - d. These recommendations all have been rejected.

2/4/2009



3. It appears to me the reason for lack of interest to pursue other means of processing garbage is simple greed. It isn't as profitable as dumping garbage into a hole at \$40.00 a ton when delivered to the landfill at our own expense for transport for those of us who live outside of the City.
  - a. Greed is the same reason the City has the 40-acre rule in the extra-territorial (ET) zone. It forces development within the City limits and has eliminated growth in the ET causing millions of dollars in lost revenue and jobs. I can cite this a fact as I am a licensed contractor and have built in the ET area in the past. I haven't had any projects in the ET since this 4-mile rule was invoked.
  - b. The economic impact on all the townships around the City will be in the 10's of millions and the eventual cost of cleaning the 2 failed landfills and proposed landfill will be in the 100's of millions of dollars.
4. The theme I kept hearing from the cities during the hearings on January 23, 2009 was they know better than the townships on how to do things. All the thinking I have seen from Grand Forks is crisis management that was self inflicted as well as immediate monetary gain at someone else's expense with absolutely no consideration for long or short term damages to the land or its people.
5. The mechanism that will allow for intelligent dialogue and management of all the citizens' needs must be restored. The only recourse townships have at this point is the North Dakota legislature.

Please give back retroactively, the authority to stop the greed and bad management in the entire ET.

My opinion is 'absolute power breeds arrogance followed by contempt for and denial of individual rights; all of which results in corruption'.

Again, thank you for your valuable time and consideration of this matter.

Dan Romuld

Dan Romuld  
1355 23 Ave NE  
Grand Forks, ND 58203

Telephone: 701-741-4977

e-mail: dromuld@hotmail.com

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#8

In support of HB 1554

North Dakota statehood 1889      ND state population 2008 census 641,481  
North Carolina statehood 1789      Charlotte, NC city population 2008 census 671,588      3 mile ET  
Grand Forks, ND city population 51,740      4 mile ET

NC code allows ET extension only if body to be absorbed permits it through vote

Zoning changes to, or additions in Townships or County Code must be subject to public hearing  
Cities can take ET without public hearing on zoning changes or additions

### **LANDFILLS**

NC code "a municipality can't permit a use in the ET that it doesn't allow in it's own municipality"

### **DENSITY**

GF County 2 ½ acre lots permitted      Grand Forks city ET 1 home per 40 acres

Stopping just one subdivision in Brenna Township costs rural Thompson School district nearly \$40,000 annually

Grand Forks-Traill Water Users (rural water co-op) will lose hundreds of thousands of dollars in infrastructure and customer base due to density restrictions, despite a signed agreement with Grand Forks

Given current population growth and city size, western edges of Grand Forks' 4 mile ET will not be needed for over 150 years, longer then we have been a state

Ghost platting uses GPS satellite technology to precisely (sub-inch) locate objects on earth's surface: homes can be dispersed on quarter sections in anticipation of future streets, sanitary and storm sewers, etc.

### **ACCOUNTABILITY**

Americans vote for those who govern them

Restoration of voting and property rights needs to be retroactive.

### **REASONABLE - LOGICAL**

City planners keep planning      Planning and Zoning commissions keep recommending  
Elected city residents make city judgments      Elected ET residents make ET judgments

Beau Bateman  
Brenna Township Supervisor

In support of HB1554

Good afternoon Chairman Wrangham and members of the House Political Subdivisions Committee..

I am Larry Syverson a farmer from Mayville; I am the Chairman of Roseville Township of Traill County. I am also a District Director of the North Dakota Township Officers Association. NDTOA represents the six thousand township officers that serve our eleven hundred forty one dues paying member townships. Those officers are the elected administrators of their communities. Their constituents hold the power of the electorate over those that make and enforce rules for them.

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

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

Now it may pose a problem for those bureaucrats in the cities charged with planning expansion to not have control over the situation but that is the nature of a democracy, it can be downright unhandy, but that is the form of government that American citizens have a right to expect. Anything else is some degree of tyranny.

There is some opportunity to be represented on the zoning commission, but that is merely an advisory board that makes a recommendation to the city commission which makes the actual decision. This I suppose is a bit better than going hat-in-hand to beg the

case before the King of England, but it certainly is not a very good application of democracy.

It might be one thing to be in an area that a city is actually growing into, but ET zoning has been used by "cities" that are not growing and very few of them grow in 360 degrees. The four townships that touch the city of Mayville have been zoned for years, each developing within their own comprehensive plans. The city exercised the expanded one-mile extra territorial authority, citing a need "to make sure no feedlots are developed next to town", of course such development was already restricted by township zoning as well. We were told this would have no impact on the townships, I pointed out that for one thing if city zoning, having no experience with dealing with problems in open country, were to issue building permits that did not maintain township set back requirements, they would create snow hazards on the roads that could be an extreme burden on the townships. My objection was noted and assurances made that the township setbacks would most likely be used by city zoning.

In 2007 the real purpose behind the extension by Mayville became evident when construction was started on their new sewage lagoon, placed within a few hundred feet of an occupied home in Mayville Township. The city wished to circumvent the zoning control of the township and impose their tyranny on the smaller community and the unfortunate resident of that home.

Most all the attention here has focused on the actions, with their supposed merits or excesses in the areas around the big three cities. They claim that only they can adequately plan for the future because they have a staff of trained professional planners. One problem here is that section 40-47-01 gives this same democracy crushing power to every incorporated "city" in the state. Clifford the smallest city in Traill County has one less person than the smallest township in the county. This "city" could, if it chose to, exercise

it's zoning authority to one mile, imposing it's will on it's larger neighbors. It could then spew its discharges and refuse at will without regard to the property rights of the impacted area. The planning ability of most "cities" in North Dakota is limited to the attorney for the city telling the city council that if they exercise their ET authority nobody could oppose their wish to place sewage lagoons or dumps.

The big three claim to have the edge on planning, ok. When asked why Grand Forks limited housing in their ET zone to one house on 40 acres they cited a need to allow for traffic, placement of arterials etc. I thought they just said they had the edge on planning, what happened? Crystal ball in the shop? Make your plans and let people get on with their lives and dispose of their property as they see fit.

As I said, I am from near Mayville, the North Dakota League of Cities "City of the Year for 2008" First on its list of accomplishments is the completion of the new sewage lagoon, within a few hundred feet of Tom Moe's house and one half mile from my house. The zoning ordinance of Mayville Township would not allow a feed lot to be placed there but when Mayville exercised its extra territorial authority it was able to place its lagoon with impunity even though it is just as offensive as a feed lot.

My farmstead is a few hundred yards outside of Mayville's extra territorial radius so at least I was lucky, when the house that has been home to my family for more than one hundred years was badly damaged by fire this summer and had to be replaced, I did not have to go begging to the city to get a permit replace it. I did not have to fork out several thousand dollars for a platting survey like I heard one individual from Bismarck's ET zone would have to do to replace this burned garage. Unfortunately, I still wake with a feeling of dread, I don't know what else the city of Mayville might permit in my neighborhood, after all anything goes as long as it is a mile out of town. It was not an

easy decision to rebuild there but where else? This is where I farm; this is where I am from.

In a hearing for another bill concerning extra territorial zoning authority the Senator from West Fargo mentioned that the association of townships was a party to the original ET zoning legislation, this is true we did participate as she said. Pardon our naiveté, we saw nothing wrong with providing for good planning, we did not anticipate the predatory actions that the cities would unleash. That any government in the State of North Dakota could force such bureaucratic tyranny on law abiding citizens was not even imagined.

If you have a product to sell and nobody wants to buy it; do you blame the public, go to the Legislature and get a law passed forcing people to buy it? Most successful merchants analyze why a product will or will not sell and make adjustments to the product or to their sales approach. There may or may not be a problem with your plan for expansion, perhaps it is just ugly packaging.

The democratic way of handling the provision for future growth would be for the city to identify areas of future expansion and advise the local authorities of those areas of what is needed to fit in to that future plan and provide the expertise as needed to enable the residents to so develop as it would be in their own future best interest.

At our 2005 annual convention the members passed a resolution calling for the roll back of the extra territorial zoning authority that had been given to the cities. This last December the NDTOA membership endorsed another resolution calling for the elimination of extra territorial zoning by cities.

Chairman Wrangham and Committee Members that concludes my prepared statement. I ask you to reinforce democracy, please reign in extraterritorial zoning; give HB 1554 a do pass recommendation.

I will try to answer your questions.

#10

Testimony Presented on HB 1554 to the  
House Political Subdivisions Committee  
Dwight Wrangham, Chairman

by

Jim Gilmour, Planning Director  
City of Fargo

February 5, 2009

Mr. Chairman and Members of the Committee:

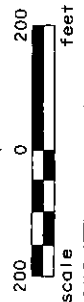
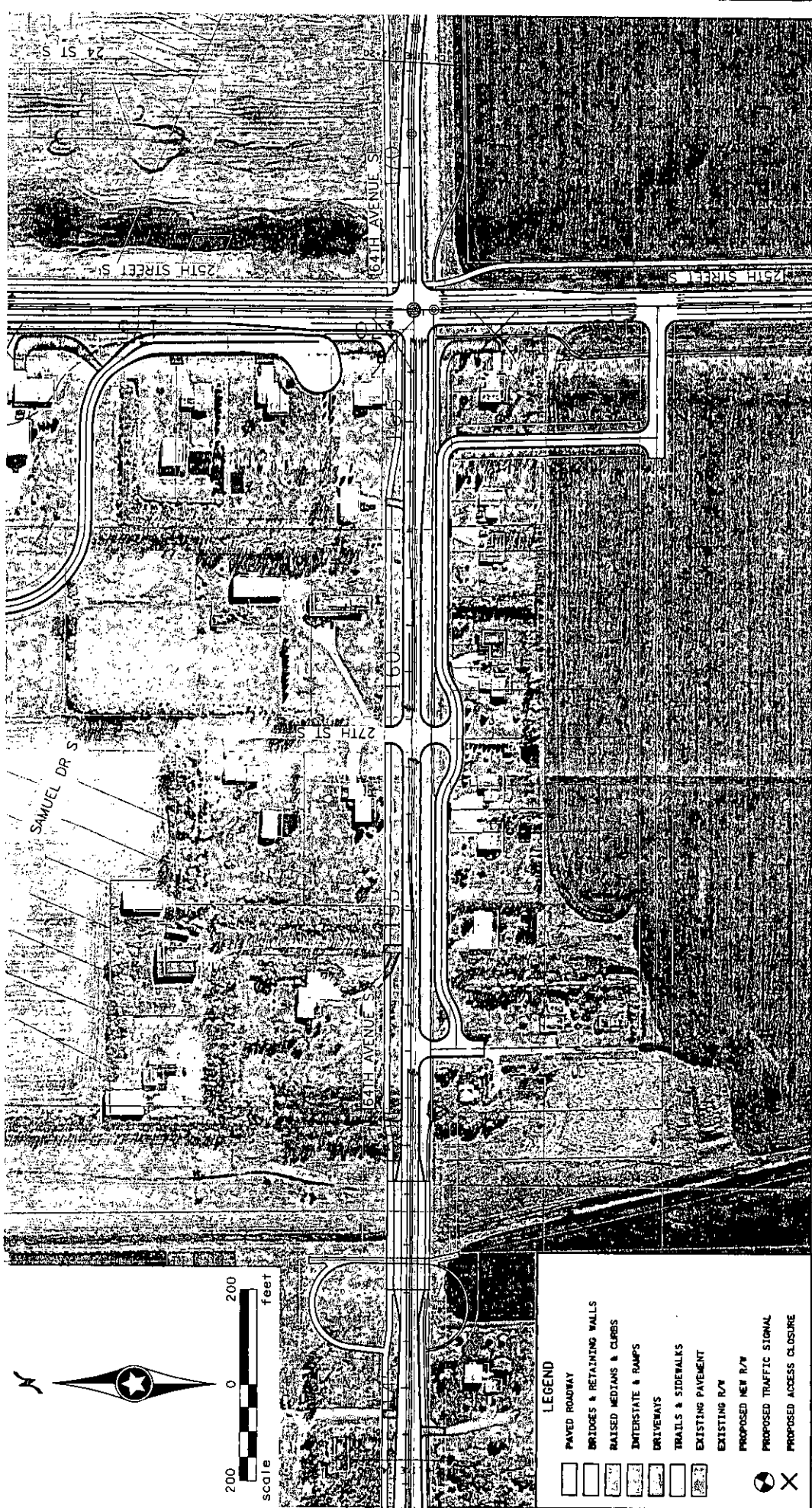
I am here to speak on behalf of the Fargo City Commission in support of cities retaining extraterritorial zoning jurisdiction.

The existing extraterritorial zoning jurisdiction has been very important to managing the growth of the City of Fargo. It allows the city to plan for the future, preserve corridors for future roadways, prevent inappropriate land uses, and require proposed subdivisions to be compatible with future urban growth. Too often, the City of Fargo has had to acquire and remove buildings at great expense because there was not adequate width for city streets.

I have attached a plan that shows the complicated roadways system that is needed when unplanned development occurs on section line roads.

The existing 4 miles of jurisdiction has been an appropriate distance for the City of Fargo. Twelve years ago, Fargo had only two miles of jurisdiction. Today, most of the land that was in the extraterritorial jurisdiction southwest of the city then is already annexed into the city. Much of it has been developed for housing and other urban land uses.

The City of Fargo requests a "Do Not Pass" recommendation for the bill.



**LEGEND**

- PAVED ROADWAY
- BRIDGES & RETAINING WALLS
- RAISED MEDIANS & CURBS
- INTERSTATE & RAMPS
- DRIVEWAYS
- TRAILS & SIDEWALKS
- EXISTING PAVEMENT
- EXISTING R/W
- PROPOSED NEW R/W
- PROPOSED TRAFFIC SIGNAL
- PROPOSED ACCESS CLOSURE



**HB 1554 HOUSE POLITICAL COMMITTEE**

**FEBRUARY 5, 2009**

**TESTIMONY FROM KEITH BERNDT**

**CASS COUNTY ENGINEER**

#12

Good morning Chairman Wrangham and committee members. I'm Keith Berndt. I serve as the Engineer for Cass County. I'm also charged with supervising the Cass County Planner and associated planning activities.

The Cass County Commission passed Resolution 2008-3 in January 2008 supporting ET zoning authority of 4 miles for cities over 25,000 population and 2 miles for cities between 5,000 and 25,000 population. I'll provide some introductory testimony and then I'll read that resolution for the record.

We enjoy excellent working relationships with our Township and City officials. It has been demonstrated on many occasions that Townships, Cities, and the County can work together as partners on planning issues.

Counties in North Dakota have subdivision authority outside of municipal boundaries and extraterritorial zoning areas. Townships in Cass County do exercise zoning authority. Proposed developments outside of extraterritorial areas are reviewed by the County and Township Governments. The Cities of Fargo and West Fargo afford the County every opportunity for input on development proposals within the ET areas. In accordance with current state law, dependent upon the size of the city, the County Commissions in ND appoint 1, 2, or 3 voting members to each City Planning Commission from ET area.

**One of the primary considerations in planning should be to minimize the tax burden on current and future citizens.** If one accepts that premise and then asks who is in the best position to plan for future growth in a way that minimizes unnecessary tax burden on future citizens, you reach some inevitable conclusions. Despite good intentions, townships lack resources to adequately plan for metropolitan growth. Townships generally have no professional planning, engineering, or legal staff. Work is oftentimes done by volunteers with a lack of time and training. Proper planning and zoning administration in a growing area requires a significant resource commitment and specialized knowledge. Enforcement of a zoning ordinance may require legal work and in many instances townships simply do not have the budgets to take enforcement actions when necessary.

Township Officials are not in the business of building infrastructure other than gravel roads and associated culverts. It would seem unreasonable to expect individuals without experience in building and maintaining urban infrastructure to have an understanding of what it takes to plan for future infrastructure.

Right of way costs make up a significant percentage of the costs of many projects. When corridors are preserved through right of way dedications, access control, and adequate setbacks it assists efforts to build projects and minimizes the burden on taxpayers.

When lots are developed in a manner that considers future infrastructure, taxpayers do not have to unnecessarily subsidize overly expensive infrastructure installation. In order to be effective, preservation and planning efforts must be done many years ahead of development.

When good planning is done, it allows current landowners to better understand the long range plans and make their individual plans in a way that is compatible with good sustainable development.

The Cities of Fargo, Moorhead, West Fargo, and Dilworth; the Counties of Clay and Cass as well as the Departments of Transportation from both states participate actively in the Metropolitan Council of Governments. The metropolitan area townships are not members in the Metropolitan Planning Organization.

Much of eastern Cass County is in a flood plain. Floodplain zoning administration requires considerable technical expertise. Townships may not have the technical resources necessary for proper and fair administration of floodplain ordinances in developing areas.

Cass County Resolution #2008-3 follows:

**RESOLUTION #2008-3**

**EXTRATERRITORIAL ZONING AUTHORITY**

**WHEREAS,** It is the desire of the Cass County Board of Commissioners that necessary local government services be provided to all citizens of Cass County in a high quality and cost effective manner;

**WHEREAS,** In order to effectively plan for and reserve the opportunity to build future transportation facilities, water supply, sewage, flood control, schools, parks, emergency management and other public requirements, it is necessary for city officials to consider build out requirements that may occur 25 or more years into the future;

**WHEREAS,** City planning officials are in the best position to understand and plan for the future needs of the city;

**WHEREAS,** It is necessary for city officials to have adequate statutory authority to effectively plan for future needs;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Cass County, North Dakota that the Cass County Commission supports statutory provisions that allow cities over 25,000 in population to exercise 4 mile extraterritorial zoning and subdivision authority and cities over 5,000 in population, but less than 25,000, to exercise 2 mile extraterritorial zoning and subdivision authority.

APPROVED:



Ken Pawluk, Chairman  
Cass County Board of Commissioners

ATTEST:



Michael Montplaisir, Auditor  
Cass County, North Dakota

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Thank you for the opportunity to testify. I'd be happy to answer any questions.

Testimony on House Bill 1554  
House Political Subdivisions Committee  
February 5, 2009  
Bill Wocken, City of Bismarck

Mr. Chairman and Committee Members,

House Bill 1554 is a measure that changes the land use planning sections of the North Dakota Century Code to allow a half mile jurisdiction for any city, regardless of size.

This provision differs markedly from the existing law that allows a one, two or four mile jurisdiction to cities based on their size. In practice, this bill requires the use of township or county land use regulations exclusively. It pretty much guarantees no extraterritorial jurisdiction in practical application.

Page 5 , Lines 10-15 of the bill state that if a city claims jurisdiction of the area within a half mile of its limits it must adopt and administer the land use regulations of the jurisdiction who would have the authority to enact these controls in the absence of the city asserting its jurisdiction. This makes the city the administrator of the township or county's regulations. One would assume the only reason a city would take the jurisdiction to begin with is to start to plan for the area eventually becoming a part of the city under its regulations. This language on Page 5 makes that difficult or impossible.

Cities need to plan for their growth into the areas surrounding them to provide efficient and economical growth and services. Even if cities had a half mile jurisdiction in which to exercise their jurisdictions the half mile distance would be inadequate for all but the smallest cities. Urban lots bring with them demands for storm water drainage, municipal

utilities and roads that connect to an effective transportation network. A distance of several miles from a city's limits is needed to accomplish many of these planning functions. To accomplish flood control or major drainage programs will also require the ability to plan for the area considerably outside the limits of a city.

This bill seeks to destroy the concept of managed growth for the entities in this state that are growing; the major cities. I cannot understand how a decision to grow in a haphazard method is good for anyone. I ask you to consider this concern and to give House Bill 1554 a "Do not pass" recommendation.



#13

Mayor Dennis R. Walaker  
200 3rd Street North  
Fargo, North Dakota 58102  
Phone (701) 241-1310  
Fax (701) 476-4136

February 3, 2009

Representative Dwight Wrangham  
Chair of Political Subdivision Committee  
State Capitol Building  
Bismarck, ND 58505

Dear Representative Wrangham:

Thank you for allowing me to testify on SB 2027 relating to extraterritorial zoning matters on Friday, January 23, 2009. As I indicated in my testimony, for the past ten years Fargo has managed to deal with the 4 mile jurisdiction through ET agreements with all incorporated areas surrounding our community. The problems we have come up against as we grow have been in areas where there was no planning or consideration for the future when land was developed over 20 years ago.

At the hearing, I gave the example of the community of Frontier. This rural subdivision was developed along Interstate 29 and a county road which is now, for the most part, within the boundaries of Fargo and is known as 52<sup>nd</sup> Avenue South.

When Frontier was incorporated, their city limits came within 120 feet of the center line of the county road which had a developed interchange to I-29 at the intersection of these two roadways. In 2006, the North Dakota Highway Department and the City of Fargo agreed that the interchange needed upgrade and expansion in anticipation of a Wal-Mart being proposed for the west side of the interstate along this county road/52<sup>nd</sup> Avenue South. The fact that Frontier did not have enough right-of-way to accommodate this expansion without the purchase and removal of a block of homes in their subdivision and the only entry into this subdivision was too close to the interchange off and on ramps, the roadway had to be moved 600 feet to the north. The City of Fargo had to purchase the extra right-of-way. Frontier did not participate in this activity even though they were the ones that would have experienced problems. The roadway needed to be moved while the existing roadway maintained traffic and additional



dirt fill had to be acquired to accommodate the shift in the roadway. All of this resulted in added cost to both the North Dakota Department of Transportation and the City of Fargo of over \$4 million.

This same thing has been repeated on other occasions because of premature growth around the city with no consideration given to transportation issues by the governing bodies responsible for the zoning of land adjacent to the city. It was only when the legislature allowed the cities to use ET zoning that the premature growth issues were addressed. I'm afraid the current legislation will turn back the clock on how premature growth around cities should be handled. This desire to live outside the cities of North Dakota is not going away and the least we can do is attempt to manage its development so future generations don't have to spend extra money to correct problems caused by a lack of foresight.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis R. Walaker", with a long, sweeping horizontal line extending to the right.

Dennis R. Walaker  
Mayor



#14

Comments opposing House Bill 1554  
February 5, 2009

Comments on extraterritorial zoning authority

Richard Hammond - Burleigh County resident

House Bill 1554 is very similar to Senate Bill 2027 which was produced by the Advisory Commission on Intergovernmental Relations (ACIR) as a result of extensive public hearings held over many months. These two bills have the same flaws. Extraterritorial zoning authority should be removed from the cities and any zoning done in the rural areas should be done only by the elected boards of the political subdivision that represent the voters of those rural areas.

The interim committee spent many hours, and days, holding public hearings only to ignore the concerns of the majority of the citizens, many of who took time from work and drove many miles to present their testimony. The testimony is in the committee's record. Problems with the cities application of their Extraterritorial zoning authority have been an issue with rural residents for the past 30+ years. We have yet to have the legislature seriously consider the matter.

The granting of extraterritorial zoning authority to the cities in the state was a bad idea. In the early 70's, the cities fought hard in three legislative sessions before they got their way. The legislature granted the power to zone beyond the city borders based only upon the theoretical projections of the cities and their lobbyists as to how well ETA would work. After giving this power and authority to the cities, the legislature has failed in its responsibility over the years to go back and review how this power was being applied in practice. Although rural residents have continually expressed disapproval over how the system works, or rather has not worked, over the past 30+ years, it has taken until the last legislative session for the legislature to even consider "studying" the subject. Over the years, when citizens would get an elected representative to even ask about problems with ETA, the representative would consult the cities planners and ask if there were any problems. The city representatives would always lie and say they had no problems in the rural area with ETA("nothing to see here") even though that was

untrue. Even this last interim "study" was a failure. The ACIR would not consider the volume of testimony from citizens. The committee simply gravitated to the cities special interest lobbyists. Unfortunately, in considering testimony, the concerns of the citizens expressed at the many hearings were ignored and the private testimony made by the cities lobbyists and planners in the halls and cloak rooms, was given the most weight and credibility. This is not how a representative democracy is supposed to work. Extraterritorial zoning has not worked as the proponents had suggested. The legislature originally must have assumed that the cities would exercise their new authority in a reasonable manner, with restraint, and with due respect to the rural residents rights. That is not what happened. The cities have been heavy handed, arrogant, self serving, and dishonest in their use of this authority. Although the city lobbyists have testified how they work with the other local governmental units, that is untrue. Cities only "work with" the other entities when there is no disagreement as to what needs to be done. If there is any disagreement between the city and the county or townships, then the city will ignore the county or township and simply proceed in spite any local governmental entity's wishes.

The original laws allowing cities to control beyond their borders were written only for situations wherein there was unincorporated territory, which had no governing body at all, adjoining the city. This has never been the case here. The ETA scheme ignores the fact that there are viable, working, elected, county commission governmental bodies for every county in the state. Soon after the passage of ETA for the cities, Apple Creek Township made a court challenge to the law. The challenge failed because it was poorly prosecuted and flawed. The challenge was based on legislative intent rather than the real constitutional issues. I believe that a proper challenge based upon the constitutional issues would have succeeded and we would not be here today.

After ETA was authorized for the cities, there was a rash if incorporations of new cities within the state. This was happening because forming a new municipal corporation was the only way for rural citizens to protect themselves from the heavy-handed, unrestrained power of the cities. The legislature failed again. At the time, I tried to get the legislature to investigate the underlying problem as to why these new cities were seeking to

incorporate. Rather than investigating why these new cities were being formed, the legislature just stopped any new cities from incorporating. When I brought this up at a previous hearing, the League of Cities representative told the committee that incorporations had not been stopped. This is untrue. Incorporations have been effectively stopped. North Dakota could not stop incorporations in the same manner as Minnesota did, because the North Dakota Constitution would not allow it. So in order to circumvent the State Constitution, the legislature made the cost and requirements to incorporate a new city prohibitive. Presently, in State law, even if a group were to meet all of the requirements for incorporation, the County Commission could arbitrarily deny the incorporation without cause (i.e. if they thought it was not in the best interests of all concerned). The answer is, yes, incorporations have been stopped within the state and the League of Cities representative will mislead you about that. There have been no new cities incorporated in the State since the last law on municipal incorporations was passed. The legislature failed in it's duty to investigate why these new cities were forming. They were forming because the legislature had given the cities an unreasonable degree of power over non-voting rural residents.

There is considerable language in 1554 addressing mediation before an administrative law judge. It is the legislatures' duty to clearly define both issues and intent so that citizens do not have to go to a court, or to a mediator, to determine what the legislature really meant. On one hand, the cost of mediation will be a burden to a citizen. On the other hand, the cities have tax money and little or no restraint on spending that money. This system places the citizen at a disadvantage.

Exhibit 1 is a list of citizen concerns that were expressed at the ACIR interim committee hearings and were never addressed by that committee. Keep this Exhibit in front of you when you evaluate this bill or any other bill dealing with ETA of cities, and ask if the bill addresses each and every one of these concerns listed. Bill 1554 does not.

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What is so frustrating to other rural citizens and me is the absolute refusal by our elected representatives, to

acknowledge and consider the underlying issues behind this flawed scheme of giving cities ETA. The voting, or representational issue, is being raised time and again, yet, the legislature refuses to address the issue. The constitutional issue with Section 21 of Article 1, has never been acknowledged, let alone addressed by the legislature. I specifically asked the ACIR committee to get some kind of response, or advice, from their staff attorney on these matters. A staff attorney is there as a legal advisor, not just to take minutes. A clerk-typist could take minutes. No legal advice was forthcoming. The concept of granting power with no corresponding responsibility or accountability, no check or balance, or no citizen protections against the possible abuse of this power, is irresponsible. Again, no committee will even address these issues-

The cities have testified numerous times that they need this power and authority to plan roads and streets. Attached are a couple of exhibits that are examples of Bismarck's planning for roads and streets.

The first exhibit is a map showing where Divide Avenue intersects with North Bismarck Expressway near the I-94 Exit 161. Divide Avenue is the arterial street that runs east and west just north of the capitol. For some unexplained reason, Divide Avenue angles northeast around a couple of corners and intersects with Bismarck expressway several hundred feet south of I-94 Exit 161. Divide Avenue is a major arterial street and should have gone straight east to intersect with Bismarck expressway at the corner of Revere Drive. The present intersection of Divide Avenue and North Bismarck Expressway is so close to the entrance ramp of I-94 Exit 161 that traffic will back up through both lights at rush hour. This is not responsible traffic planning to have the intersection of a major arterial street come out this close to an interstate interchange. It is not proper street planning to have so many corners in a major arterial street. Divide Avenue should have been extended straight to Bismarck expressway at Revere drive. Remember that the City of Bismarck had a planning office when this was done.

The next exhibit shows the street planning around Bismarck's new Northern Plains Commerce Center. This is located in the Morrison Avenue area in southeast Bismarck, near the Wal-Mart store. The center includes an area of

rail served industrial lots and a container shipping hub wherein trucks and freight trains will be able to exchange cargo loads. The BNSF train frequently blocks Yegen Road. The train will stop and wait for another train to pass. This can take much time, as schedules are not always followed. Trucks and cars frequently have to turn around and find an alternate route. In this case, the alternative route wherein Morrison Avenue intersects Burlington Drive is blocked. There is only a short section of Morrison Avenue that could easily be opened to allow traffic to use the overpass when Yegen road is blocked by a train. I believe that this road was blocked, in part, to spite the residents of the City of Lincoln and make it as difficult as possible to commute to Lincoln. It is no secret that the City of Bismarck was furious when Lincoln incorporated. How dare they obtain the same status and power as Bismarck? Incorporation was the only way the citizens of Lincoln could protect themselves from the ongoing tyranny of the City of Bismarck. For the City of Bismarck to plan and develop a major shipping hub and industrial area and then not plan for the roads to serve the industrial area is simply irresponsible.

In order to view the real world results of Bismarck's planning efforts, I challenge each of you to go downtown to Bismarck's inner city and look for a parking place. Then remember that Bismarck has had a planning office for over 30 years and this is all they have to show for it. Bismarck has shown that it is not capable of responsibly planning within the city. Why would anyone believe that the city is capable of doing responsible planning in the rural areas? The city has not earned the right to extend its unwelcome influence into the rural areas.

Again, I must question why is it so difficult for the majority in the legislature to understand that we have an existing, functioning county government. The citizens of all major cities have elected representation on their respective county commissions. Therefore, the city's interests are represented on the county commission. On the other hand, county residents are not represented on the city commission. This is not a complicated concept. Anyone who has taken an 8th grade Civics class or a high school Government class will understand this. There are no substantive qualification requirements for being elected to a city commission. There is no rational explanation for the theory that the city commission is capable of making

responsible planning and zoning decisions and the county commission is not. The cities will never respect the rights of the non-voting rural residents. Cities will never be accountable unless they are required to do so.

The only excuse that I heard for the taking away the right to vote was the flimsy excuse that the State had the right to zone and that the legislature delegated that right to the cities. Who authorized the legislature to give away anybody's constitutional right to vote?

One of the issues repeatedly brought up by the cities lobbyists is the allegation that these rural residents are wearing out the roads and somehow taking advantage of the city and not paying their share of taxes. Every major city has some sort of Convention and Visitors Bureau. They consider it a great success if they can get tourists to stay for a few days and spend some money. They have estimates as to how many tourists will visit and how much each will spend. On the other hand, the cities resent the neighboring rural residents who spend most of their entire income in the closest city. Rural residents spend far more in the city than any tourist will. If rural residents would quit shopping in Bismarck, the economy would dry up.

As a citizen, I am concerned about the functioning of our democratic process and I simply do not know where to go from here. Our representative form of government is failing and there is little citizens can do to prevent that. Citizens will come and testify before this, and other, committees. Some witnesses have driven great distances to be here. After we testify and when this hearing ends, we will have to go home, or go to work. My observation and experience has been that after citizens leave, the paid, full time, special interest lobbyists, who in this case are the city planners and city officials, will begin their full time arm twisting in the hallways and cloak rooms. I feel very much at a disadvantage in this system. It is difficult for a citizen to compete on what is not a level playing field. I urge you to listen to the citizens. Also please recognize that simply because a city official is from a city with a population of 50,000, that does not automatically mean that he or she represents the wishes of all 50,000 people who live in that city. In my discussions with people from Bismarck, most city residents are not even aware of what the city is doing in the rural areas and most do not support it. Who anticipated that the

City of Fargo would annex a strip of land 60 feet wide and 6 miles long just to control more rural area? You need to judge the character of these people by what they do and not by what they say. The State is entering the first phase in the decline of our short-lived democracy. When Ben Franklin was asked by one of the colonists what kind of a government they were getting, he replied: "A republic, if you can keep it." Well, North Dakota is not doing a very good job of keeping its democratic republic.

The cities were given a serious public trust by the legislature. The cities have mishandled this power and authority. The only responsible solution is to take away the extraterritorial zoning authority entirely. The cities abused their authority as much as possible when they only had 2 miles. The abuses only became worse when they extended their power to 4 miles. The solution is not to just decrease the control area to 2 miles. Please consider eliminating extraterritorial zoning authority of cities entirely.

"Democracy is two wolves and a lamb voting on what to have for lunch." -  
-- Benjamin Franklin

"Remember, democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide" (1814).  
--John Adams

**Exhibit 1**  
**Issues raised by citizens with respect to**  
**Extraterritorial zoning authority**  
**of the state's municipal corporations**

1. Numerous citizens raised the representational issue wherein citizens have no input into the decisions made by the various cities. The denial of citizens' right to vote for the representatives on the governing body that controls their property is the most obvious and objectionable flaw in this scheme. The accountability to the voters is fundamental to a democracy. Without that accountability, there is no democracy.

2. Article 1, Section 21. of the North Dakota State Constitution reads;

**"No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."**

In this case, voting is more than a "privilege". Voting is a constitutional right.

Why, or how did, the legislature give the cities special privileges to simply run roughshod over the rural residents and fail to provide the rural residents with any remedy or protection against the cities abuse of that power?

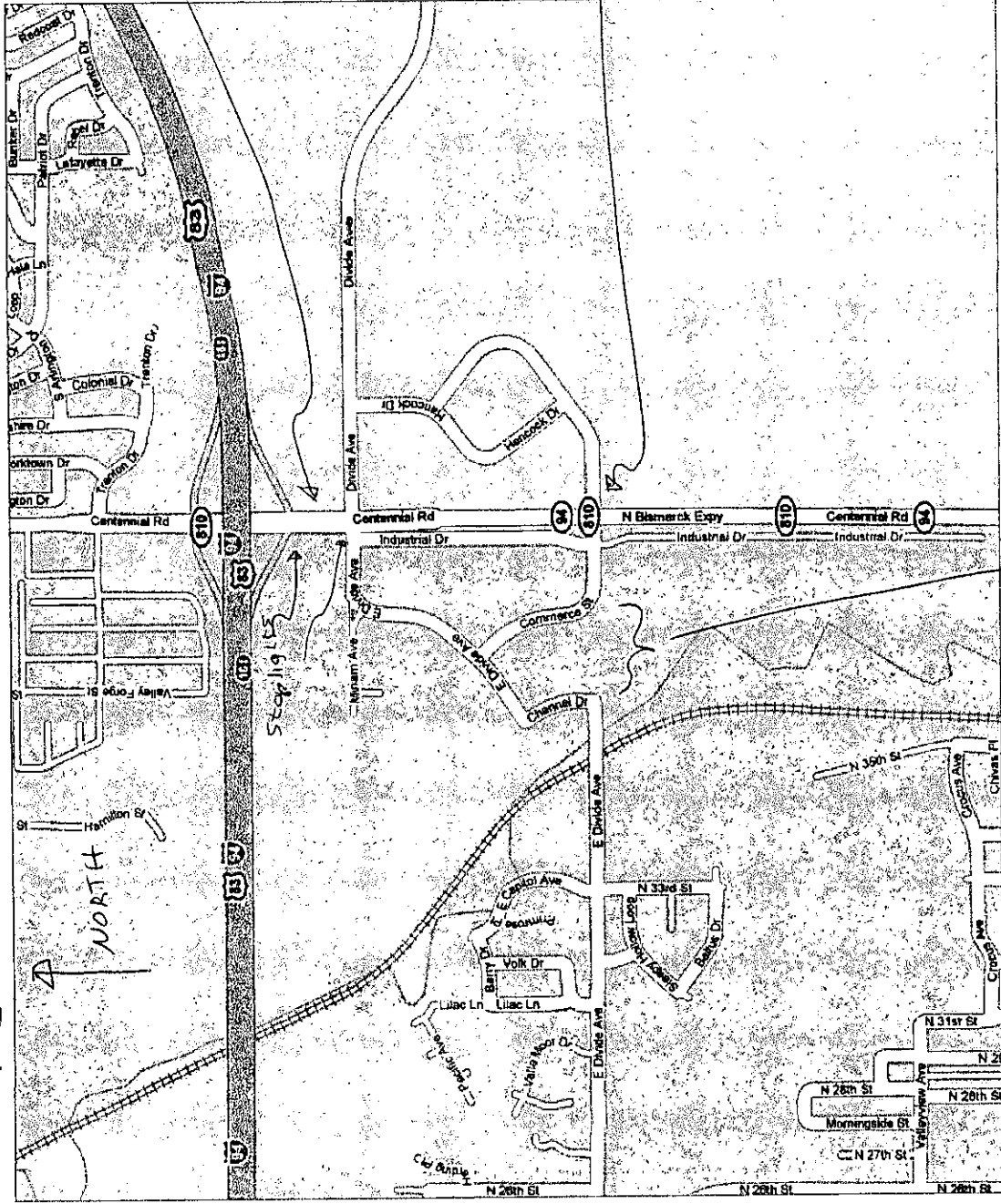
This section is a clarification of the Equal Protection Clause of the 14th amendment of the U.S. Constitution that prohibits states from denying any person within its jurisdiction the equal protection of the laws. I believe that the authors of our North Dakota State Constitution included this language because they believed that it was necessary to clarify and strengthen the 14th amendment rights in the U.S. Constitution.

3. Various county and township governmental subdivisions have lost substantial amounts of revenue to the cities.

4. The manner in which the power and authority has been used compared to what was proposed and expected when the legislation was first proposed. Cities will always engage in irresponsible, heavy handed tactics when they are accountable to no one.

5. The cities have accomplished a gradual mission creep, adding to their authority over the years. The initial authorization was for zoning and planning only. Over the years the cities authority went from control over zoning and planning only, to all ordinances. Cities would simply add other regulations to the Zoning and Planning section of their code of ordinances and increase their power in that manner.

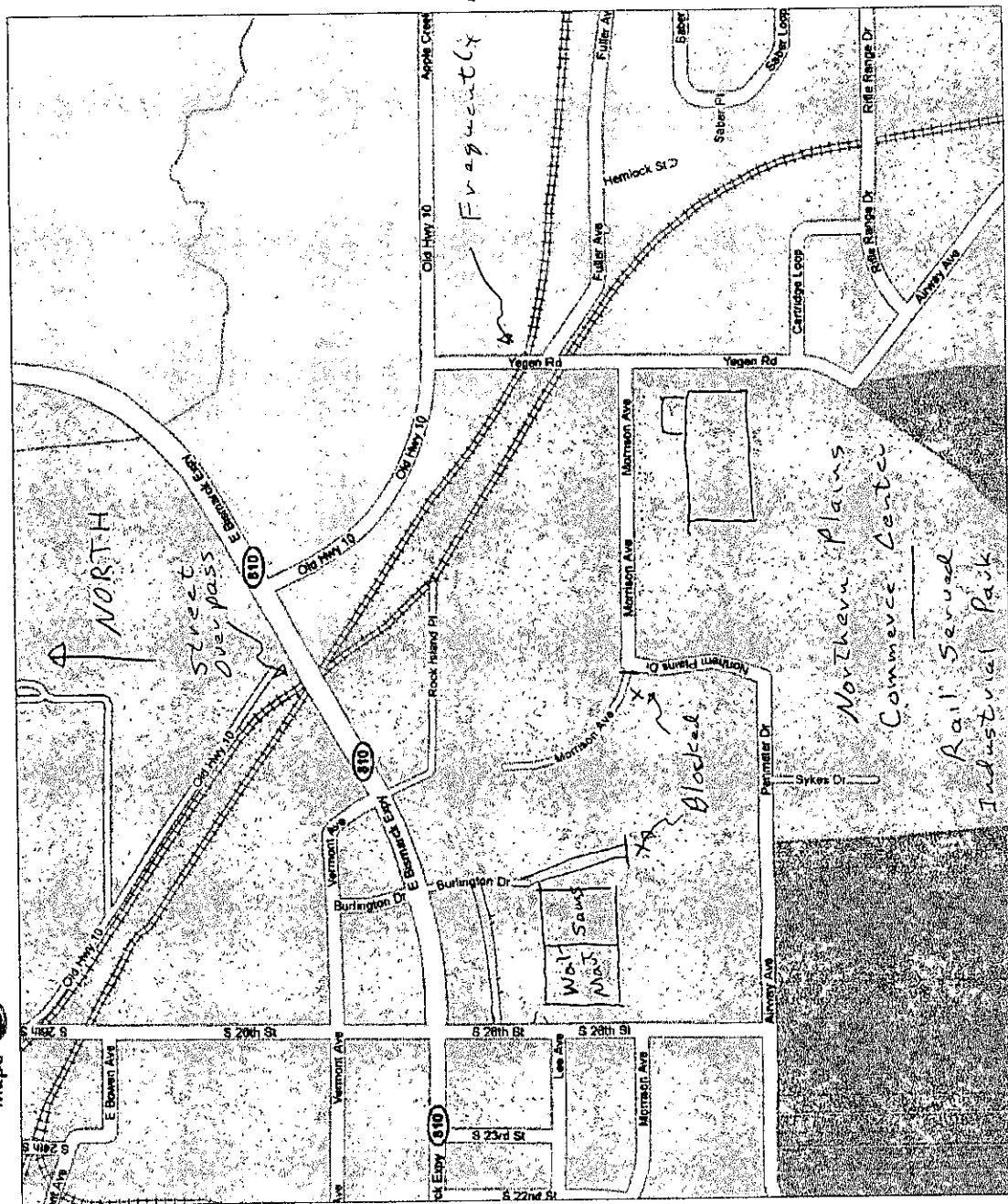




This short section  
of Bismarck Expressway  
backs up during AM  
+ PM rush hour.

This should have been  
proper intersection  
for Divide Avenue and  
N. Bismarck Expressway.

Divide Avenue should have been planned and  
built straight through here.



**TESTIMONY ON HOUSE BILL 1554**

#15

**House Political Subdivisions Committee**


**Curt Kreun  
City of Grand Forks, ND**

**February 5, 2009**

Mr. Chairman and members of the Committee, my name is Curt Kreun and I am on the City Council of the City of Grand Forks. I want to thank you for the opportunity to testify on House Bill 1554 and request your recommendation of a DO NOT PASS.


I understand that we need to cooperate to come to a conclusion on the issue of extraterritorial zoning. We have heard the concerns of the citizens within the 4-mile extraterritorial area. As a result of these concerns a zoning agreement has been drafted by both the city and county planning staff that will provide an agreement for the extraterritorial area around the City of Grand Forks. Although this zoning agreement has not been approved by any of the bodies as of yet, I believe we have the start of a solution for all concerned citizens. Next week, the zoning agreement will be introduced to both the city and county planning commission and the township officers for their input.

This agreement gives the city zoning jurisdiction within the two-mile area around the city limits. In addition, 400 feet on both sides of the centerline of all paved roads within the two to four-mile area around city limits will be within the city's jurisdiction. The county will have jurisdiction of all other areas.



Again I want to emphasize that this zoning agreement is in the preliminary stage and has not been approved by the Grand Forks County Commission or the Grand Forks City Council. However, I feel that this agreement is a compromise that will be for the betterment of the Grand Forks region.

House Bill 1554, limits the cities ability to work out an agreement with these other entities. It also seriously reduces the cities ability to plan around the city. The compromise that we are striving for in Grand Forks is to return the ET area to 2-miles and allow for city to plan around the future corridors. It is for these reasons that I would ask for a DO NOT PASS recommendation of House Bill 1554.



Thank you for your consideration.



www.westfargond.gov

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

#16

## HB 1554

### City of West Fargo Testimony

HB 1554 intends to substantially reduce the area limits for extraterritorial zoning authority of a city from 1 mile, 2 miles or 4 miles depending on city size to only ½ mile for all cities, and also to limit the adoption of any regulation to that which is already adopted by the governmental entity exercising subdivision or zoning authority in the area before extension of the city's authority. The proposed legislation essentially strips all extraterritorial authority from cities. 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.
- The proposed Bill promotes continuing a county or township regulation which may be in conflict with the growth that the City is planning for, or the type of growth that developers are contemplating near the city.
- The extraterritorial changes to the State Statutes in 1997, following much review and debate, included provisions to protect bordering cities from getting into a land-grabbing game, provided for more orderly and timely city annexations, and also provided a greater voice for property owners during the annexation process. Had those provisions not been adopted by the legislature, the substantial annexation advances by Fargo in 2002 and following years would have without any doubt resulted in Fargo surrounding the communities of West Fargo and Horace, thereby restricting us from further growth.
- 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 early annexation of bordering areas to prevent the development of incompatible uses and/or subdivisions and to provide for the proper design and location of streets.
- Premature annexation causes tax implications for property owners.
- The recently adopted State statutes provide cities with greater control with regard to the location of animal feeding operations within close proximity of the city (existing ET area), because of the potential impacts to many people.

- 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.
- Township and County officials are notified of development applications as part of the public hearing process, so that any potential issues can be identified and comments and suggestions can be considered.
- A number of developments have occurred near West Fargo prior to extraterritorial subdivision and zoning authority which have become problematic because of inadequate lot sizes, inadequate roads, failing wells and septic systems, flooding problems, disagreements between property owners, and other health and safety concerns. This has resulted in substantial public cost and countless hours of work for township, county and city officials to resolve the issues. The current extraterritorial statutes helps to prevent many of these problems from re-occurring and allows for all jurisdictions to work together to solve existing problems which otherwise may not be addressed. Please refer to the attachment which was shared with the Advisory Commission on Intergovernmental Relations.
- The current extraterritorial statutes have been thought out well. The statutes have evolved over the years as a result of difficult experiences which townships, counties and cities have faced. Minor adjustments may be necessary to address new or emerging issues. However, throwing out the many well-founded statutes will cause much consternation for cities, as well as for townships and counties, and will result in additional tax payer dollars in the future to solve problems which can be prevented.
- Cities are generally better equipped to address urban type problems associated with 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 1554**.



www.westfargo.org

Larry M. Weil, Planning Director

**ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS**  
**Wednesday, January 23, 2008 Meeting**  
**Fargo, ND**

**City of West Fargo Growth Characteristics**

<u>YEAR</u>	<u>LAND AREA</u>	<u>POPULATION</u>
1950	+ 180 Acres	1,032
1970	+ 900 Acres	5,161
1990	+ 4,510 Acres	12,287
2007 (est.)	+ 9,430 Acres	24,000

**Benefits of Extraterritorial Area for City**

- Provides for proper coordination of future streets to insure connectivity and adequate right-of-way
- Provides opportunity for land use planning for compatible uses as city grows
- Provides ability for future facility planning for city with a better understanding of urban development characteristics
- Provides for technical review of extraterritorial development by City professional engineering and planning staff
- Provides for township involvement and insight on the Planning and Zoning Commission through County Commission appointments to the Commission
- Provides opportunity for coordination with township and county during application review process
- Added cost to City for development review in extraterritorial area is minimal as professional staff is already in place

**Examples of Lack of Subdivision & Zoning Coordination Beyond City Limits in Past**

- West Fargo Lepird's Area
  - Currently in City of West Fargo
  - Subdivided by metes and bounds without adequate roadways and developed while outside city limits and prior to extraterritorial authority
  - Conflicting land uses were developed which took years and significant developer tax concessions to mitigate
  - Issues with property owner access to property, maintenance of private roads, neighbor structure encroachments over property lines, disagreements between property owners, difficulty to provide desired municipal services
  - Unlikely that an adequate street can ever be provided because of lot arrangement, existing structure locations, disagreement among property owners

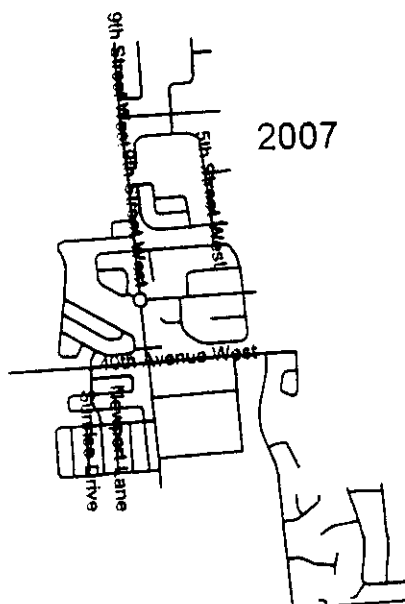
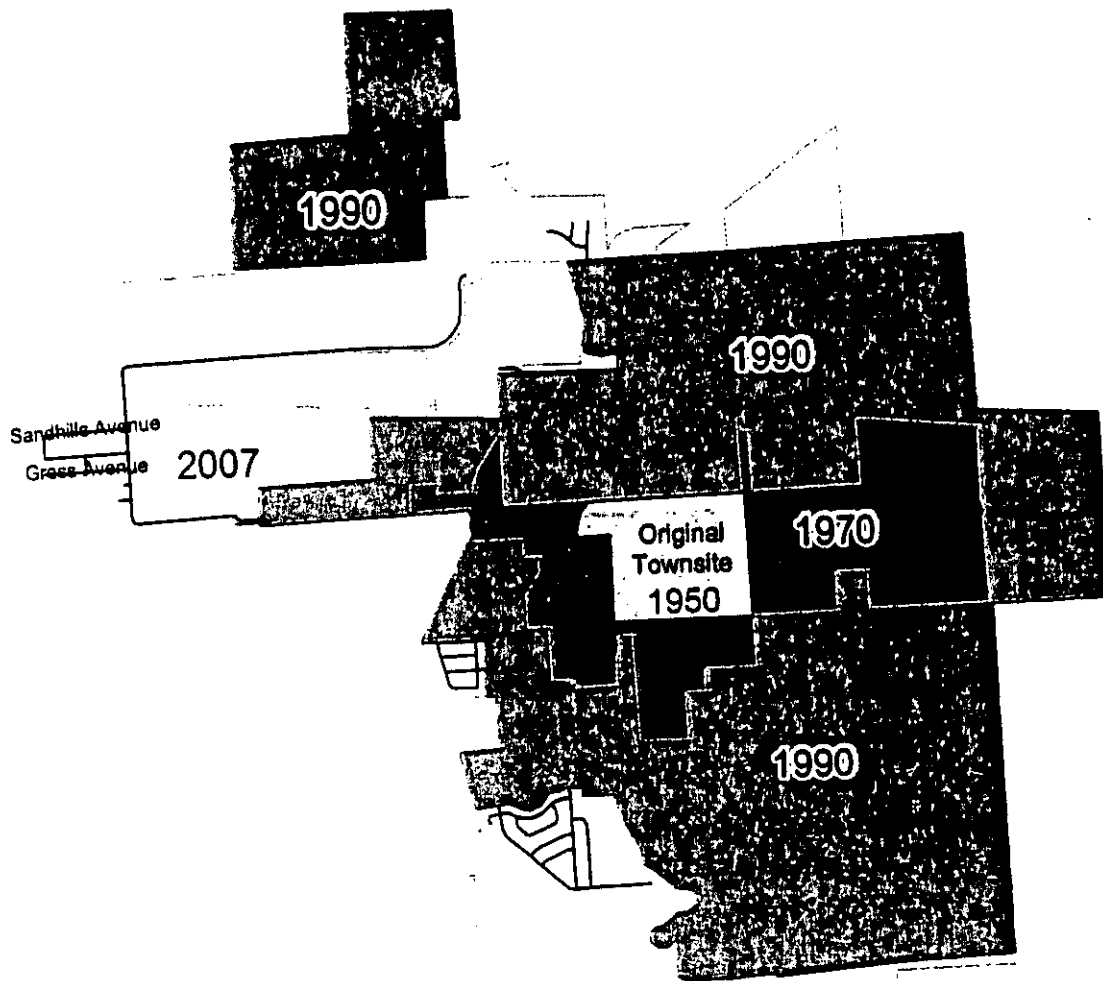
- West Fargo Meadow Brook Park Area
  - Recently annexed into the City of West Fargo
  - Subdivided into urban size lots during the 1950s prior to extraterritorial area and sold for residential development
  - Lots too small for septic systems and in poor soils resulting in septic system failures; sewage pumped onto ground periodically resulting in health concerns and county health monitoring issues
  - Area periodically flooded in past due to floodplain and poor drainage; floodplain issues addressed with Sheyenne Diversion project, but drainage and lack of services are still issues
  - Township maintained road adjacent to development for years, but development was responsible for maintenance of local subdivision roads resulting in poor road conditions
  - Numerous urban type development issues within the development without adequate controls in place resulting in township and county being requested to resolve issues; township and county not prepared to address the issues
  - Area was only partially developed, because of issues; most of properties went back to county for back taxes placing additional burdens on county and now city
- West Fargo North Extraterritorial/Quam's Area
  - Prior to extraterritorial authority, a number of subdivisions developed in floodplain which are subject to frequent flooding
  - Some subdivisions have residential structures that cannot be accessed by roads during flooding and are accessed by boat, canoe, or other means
  - A number of residential structures have sustained flood damage
  - Several federal program flood buyouts have taken place at cost to taxpayers

#### **City/Township/County Coordination**

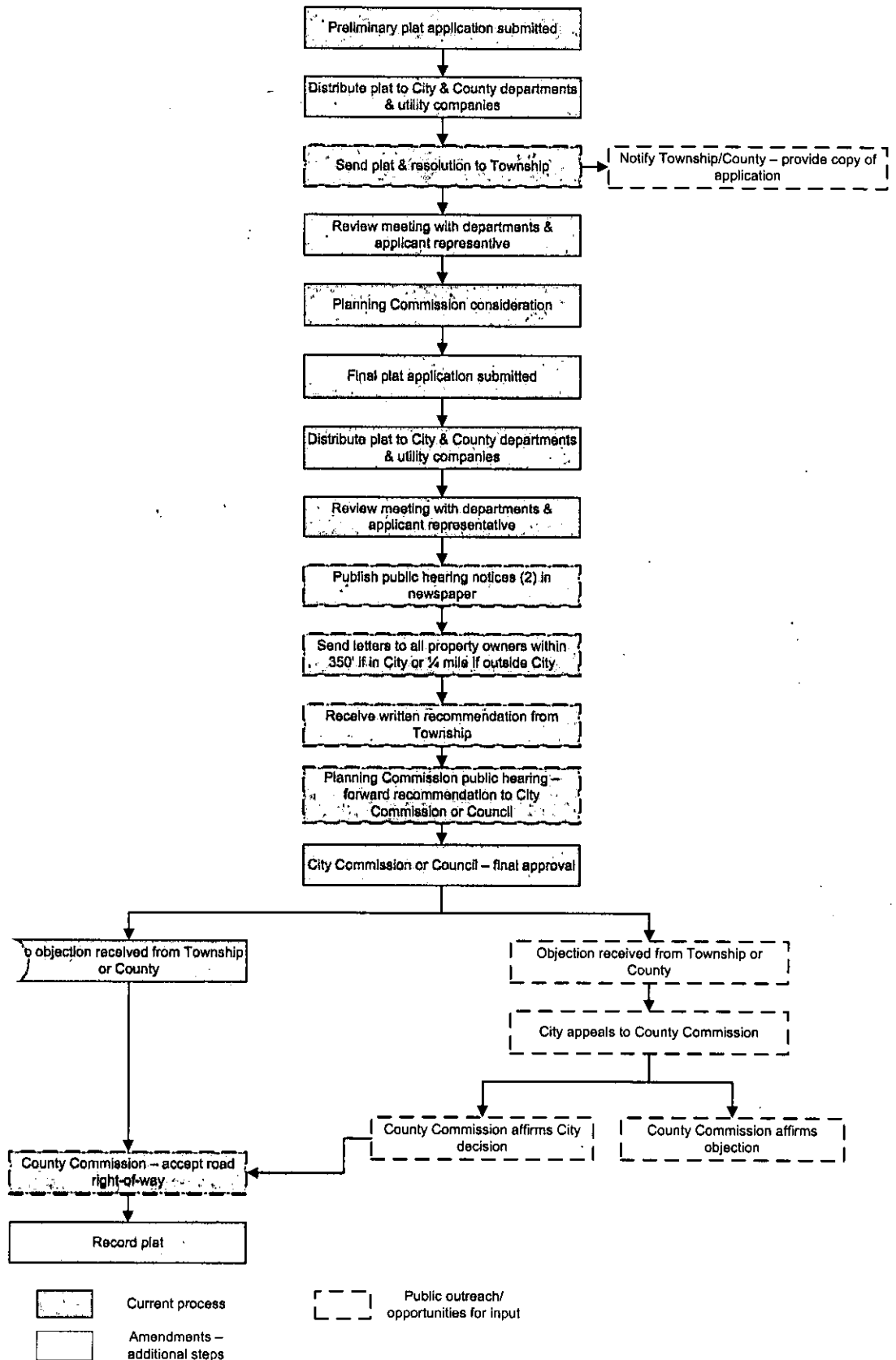
- City has developed good working relationship with townships and county
- City involves townships in development of comprehensive plan
- Townships and county have discouraged urban development within the extraterritorial area; townships have requested that primarily agricultural uses should be supported
- Township and county urban development concerns addressed by City's comprehensive plan; agricultural areas designated as agricultural preservation land use; zoning ordinance also provides for preservation of agricultural land through large lot zoning for non-farm uses
- Township and county review and comment on development requests (subdivision & zoning) within the extraterritorial area
- Townships have indicated desire for the City to maintain full extent of extraterritorial area, because of inexperience in development issues, and lack of time and manpower



# West Fargo Historical Growth



# BISMARCK SUBDIVISION PLAT APPROVAL PROCESS





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John Gunkelman, Fargo

##### 1ST VICE PRESIDENT

Ron Zeller, Dickinson

##### 2ND VICE PRESIDENT

Joel Feist, Minot

##### SECRETARY/TREASURER

Ken Krajsa, Fargo

##### PAST PRESIDENT

Tim Rosencrans, Grand Forks

##### BUILD-PAC TRUSTEE

Don Dabbert Jr., Fargo

##### ALTERNATE BUILD-PAC TRUSTEE

Lori Willson, Bismarck

##### STATE REPRESENTATIVE

Ralph Applegren, Grand Forks

##### ASSOCIATE NATIONAL DIRECTORS

Ken Krajsa, Fargo

Todd Brady, Bismarck

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###### FARGO-MOORHEAD

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Joe Stenvold

Bruce Walker, Life Director

Vicky Flagstad, Executive Officer

#### STAFF

Doreen Riedman,

Executive Officer

Neiss,

Administrative Assistant



**NAHB**

NATIONAL ASSOCIATION  
OF HOME BUILDERS

## Testimony in Opposition to House Bill 1554

### House Political Subdivisions Committee

### February 5, 2009

**Doreen Riedman, Executive Officer**  
**North Dakota Association of Builders**

Chairman Wrangham and members of the House Political Subdivisions Committee, the North Dakota Association of Builders (NDAB) opposes House Bill 1554, and urges this committee to uphold meaningful extraterritorial zones in our state.

The NDAB represents over 2,000 members statewide with employees numbering approximately 43,000. We are affiliated with five local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, and Minot; and are all part of a larger federation, the National Association of Home Builders (NAHB), which has over 200,000 members.

We believe that local governments need the opportunity to:

- ❖ Plan for and accommodate anticipated growth in economic activity, population, and housing demands. And to plan for the construction and expansion of roads, schools, water and sewer facilities and other infrastructure required to serve a prosperous community.
- ❖ Adopt comprehensive land-use planning processes at the local level that clearly identify land uses, such as residential, commercial, recreational, and industrial as well as land to be set aside as meaningful open space.

Developers need the ability to anticipate and plan long-term developments. Having one-half mile extraterritorial zones does not provide adequately for the future needs of our cities.

We respectfully ask the committee to oppose House Bill 1554, and ensure that our cities have the opportunity to plan for orderly growth and development in our state.

#18

**HOUSE BILL 1554  
FEBRUARY 5, 2009  
2:30 PM  
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 1554 would radically change extraterritorial zoning and subdivision regulation authority for cities in North Dakota. Since passage of the original legislation in 1975, we have been able to use this provision to help manage city growth. I believe the existing law has worked well over the years.

During the past two years, the League of Cities, planners and others have been working with the ACIR to come up with a reasonable bill that addresses some of the concerns that have been expressed about extraterritorial zoning. That bill, Senate Bill 2027 has been heard and is currently being considered by the Senate Government and Veterans Affairs Committee.

In contrast, House Bill 1554 would severely limit extraterritorial zoning in the State by limiting the area of jurisdiction to one-half mile and by requiring that cities enforce another governmental entity's regulations.

I have a particular concern with Section 2 on the last page of this bill. The Section states that "any extraterritorial or subdivision regulation beyond one-half mile in effect before the effective date of this Act is void and if another governmental entity has or had at the time of extension any regulation of similar subject matter that is not the same as a city regulation, the city regulation is void". Does this mean that all the zoning changes we have implemented in the extraterritorial area over the past 33 years will revert back to agricultural zoning? Or that all of the 350+ subdivisions approved in that same time period would become non-existent? How can hundreds of individual zoning changes that were put into place through a strict process of public hearings and deliberation by

planning commissions and governing bodies be wiped out overnight? What would happen if a 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, extraterritorial zoning has worked effectively in the Bismarck area for many years. I believe this bill would be very difficult if not impossible to implement, that it places the sole burden on cities to implement and enforce, that it does not recognize growth management needs of different sized cities, and that it unfairly impacts individual land owners. On behalf of the City of Bismarck, I would ask that you give House Bill 1554 a **do not pass** recommendation.

March 10, 2009

To: Senator Dick Dever, Chairman, and members of the Government and Veterans Affairs Committee

Representative Dwight Wrangham, Chairman, and members of the Political Subdivision Committee

As a former County Official and current member of the Ward County Planning Commission having been involved with zoning for the past thirty two years in this area I have a few comments for your consideration regarding Senate Bill 2027 and House Bill 1554 related to extraterritorial zoning by cities.

Extraterritorial zoning has worked quite well in Ward County. Several cities have exercised their authority and it has been my experience the current law has served this area very effectively. The major growth area is around the City of Minot and City Officials have worked very closely and effectively with Township and County Officials to provide orderly development in the area surrounding the City. During all the years of involvement with zoning I have received very few negative complaints regarding involvement of cities beyond their boundaries. Some Township Officials where there is township zoning have expressed that they are very pleased that cities have control of development next to the cities and do not have to make decisions that could affect the orderly development.

Because the current law is working quite well, I support SB 2027 with amendments, but not HB1554.

I am unable to attend the hearings on these bills and have asked the Minot Officials to present this letter.

Thank you for your consideration,

Don Siebert, Chairman  
Ward County Planning Commission

## Extraterritorial Zoning Authority Should be Eliminated

March 12, 2009

Richard Hammond: Rural resident - Burleigh County

Over the past two years, the legislature has studied the results of the application of extraterritorial zoning authority that was granted which allowed the larger cities within the state to take control over the rural areas surrounding the various cities. I support any legislation that will, at least, roll back the cities ETA area of control. The best solution is to take away ETA from the cities entirely. Both House Bill 1554 and Senate Bill 2027 seek to address issues that have arisen in the application of ETA authority. There have been extensive hearings held by the interim ACIR Committee and both House and Senate committees on this matter. The sheer volume of testimony presented detailing problems and abuses of the system by the various cities speaks for itself. At this point in time, the record is clear and there is no need to repeat the volume of testimony that exists in the record. These bills seek to cut back or limit the amount of territory that the cities can control. Although decreasing the area of control is a step in the right direction, the best solution is to take ETA away from the cities because, the scheme simply has not worked as planned, and the cities have trampled on the rural residents rights and abused their power and authority simply because they could.

Nobody on either side of this issue objects to responsible planning. There is a need to plan for arterial streets and utilities. Any type of planning is simply someone's best guess as to what will develop in the future. For that reason, the more detailed the planning, the more likely that that planning will miss the mark. When planning produces a two-inch thick document for one county at a cost of over \$100,000.00, then somebody was duped and sold a bill of goods. The planners who have presented themselves to the various legislative committees as subject matter experts have a conflict of interest. These planners have an interest in selling extensive and costly plans to the various political subdivisions.

When the last two years of citizens testimony is viewed in its entirety, a clear pattern of abuse emerges wherein the various cities exhibit disrespect for individual and property rights of the neighboring rural residents. From the testimony, we learned how Grand Forks used its ETA to site a sanitary landfill in a rural area over objection of the neighboring residents and their elected township governing body. We saw how Fargo annexed a strip of land 60 feet wide and 6 miles long simply to include a large rural area within their ETA. We saw how Bismarck, over the objections of the Burleigh County Commission, extended their control area, with the attitude of "because we can".

The bottom line is that this ETA does not work. It never did. Long ago, the legislature was sold a bill of goods by the planning lobby. A bill of goods that

turned out to be false. In order to justify ETA, there must have been some assumptions.

1. Assume that there is no governing body at all in control of the rural areas.
2. Assume that the elected County Commission is not capable of making responsible planning and zoning decisions.
3. Assume that the cities would use the power and authority responsibly and for the purpose intended by the statute.
4. Assume that the cities would respect the rights of the non-voting rural residents.
5. Assume that the planning would be managed in a responsible, professional manner.

All of these assumptions turned out to be false in the actual application of ETA. The "why" this happened is easy to understand. It is human nature. When there is no accountability for one's actions, and no responsibility to anyone, or to any authority, humans will act in their own selfish interest at the expense of anyone who stands in their way. This is exactly what the cities have done and will continue to do.

The issue most often raised by citizens in the hearings was the representational, or voting, issue. Our ultimate frustration is that if anyone should understand the concept of accountability to voters and residents it should be our elected representatives and senators. When our elected representatives do not understand the concept of the "consent of the governed", then we are in the process of losing our democracy.

The second issue that the various committees have failed to address is the conflict with Article 1, Section 21, of the North Dakota State Constitution, which requires that no citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens. ETA grants privileges to the citizens of the cities which are not available to rural residents who live in the ETA controlled area. Neither the ACIR committee nor the House or Senate committees has ever addressed this issue. I am still waiting for an explanation.

I support any legislation that will take away as much of the cities control over the rural areas as possible. The complete solution to this problem is to take control away from the cities and give that control to the elected representatives of all citizens of the area, that is the respective county commissions. Even decreasing the allowed ETA taking area will be a step in the right direction. Maybe, in another 2 years, when we discover that the world did not come to an end when the cities lost control over the larger area, then the remainder control can be taken from the cities and returned to the voters.





# Grand Forks Traill Water District

BOX 287  
1401 7th AVENUE N.E.  
THOMPSON, NORTH DAKOTA 58278  
*"Rural Water for a Better Rural Life"*

Office: 1 Mile West of Thompson  
Phone: 701-599-2963  
Fax: 701-599-2056

RANDAL W. LOESLIE  
System Manager  
e-mail: gftwu@invisimax.com

## Testimony In Favor Of HB 1554 March 12, 2009

My name is Randal Loeslie, I am the Manager of the Grand Forks – Traill Water District, Thompson ND; the first rural water system in the State. We are providing water to 2,370 households and 5 cities with bulk water, or about 8,000 – 10,000 people. We have been in the business since 1969, or for 40 years.

On January 24, 2000 we entered into a Water Service Area Agreement with the City of Grand Forks. The area was basically around their 2-mile ET and also their permanent flood control levies. That area was to be our service area, but after many meetings the City decided to take the 4-mile ET to build their landfill and only allow one house per 40 acres, 4 lots per 160 acres; unlike to county zoning that is allowing 1 lot per 2 ½ acres, 64 lot per 160 acres.

The City of Grand Forks maintains the taking of the 4-mile ET for future growth. This is approximately another 21,000 acres beyond the 2-mile zoning. I think it started out to site the landfill, but after it was done I think the City felt pretty good about having all that jurisdiction.

At a city council meeting on February 21, 2007 one councilman stated that the rural water had speculated to serve 400 – 500 members outside the 2-mile ET Zone. However, the City and Rural Water had agreed the 2 – 4 mile ET Zone would be GFTWD area to serve domestic water in a January 24, 2000 Agreement. When the City went to the 4-mile ET by requiring only 1 house per 40 acres it eliminated GFTWD ability to serve new customers because no one could build because of costs.

I would also like to mention that at a hearing in Bismarck on HB 1554 the City of Grand Forks proposed to go back to the 2-mile ET with a 400' corridor on all paved county roads. It is very easy to see the only reason this proposal was offered is because of the HB1554 going back to a 2-mile ET. They would not be coming up with this idea at all if Representative Dwight Wranghem's HB 1554.

The 4-mile ET could cost our rural system 500 customers over the next 20 years and a possible loss of income of \$5,000,000. The Cities' recent proposal of a 400' corridor on all paved county roads would be the same as a 4-mile ET as they would probably not allow subdivisions along the corridor.

I think the Legislature can see the City of Grand Forks has abused the 4-mile ET. The City of Fargo with its 6-mile ribbon annexation has also abused the ET law. My Board and members request the Legislature take back the 4-mile ET to 2 miles. The City of Fortworth, Texas only exercises a ½ mile ET. Are we missing something?

# Proposed Grand Forks Zoning Map

## PROPOSED CHANGES

### Grand Forks Zoning

A1

A2

AD

B1

B2

B3

B4

I1

I2

PUD

R1

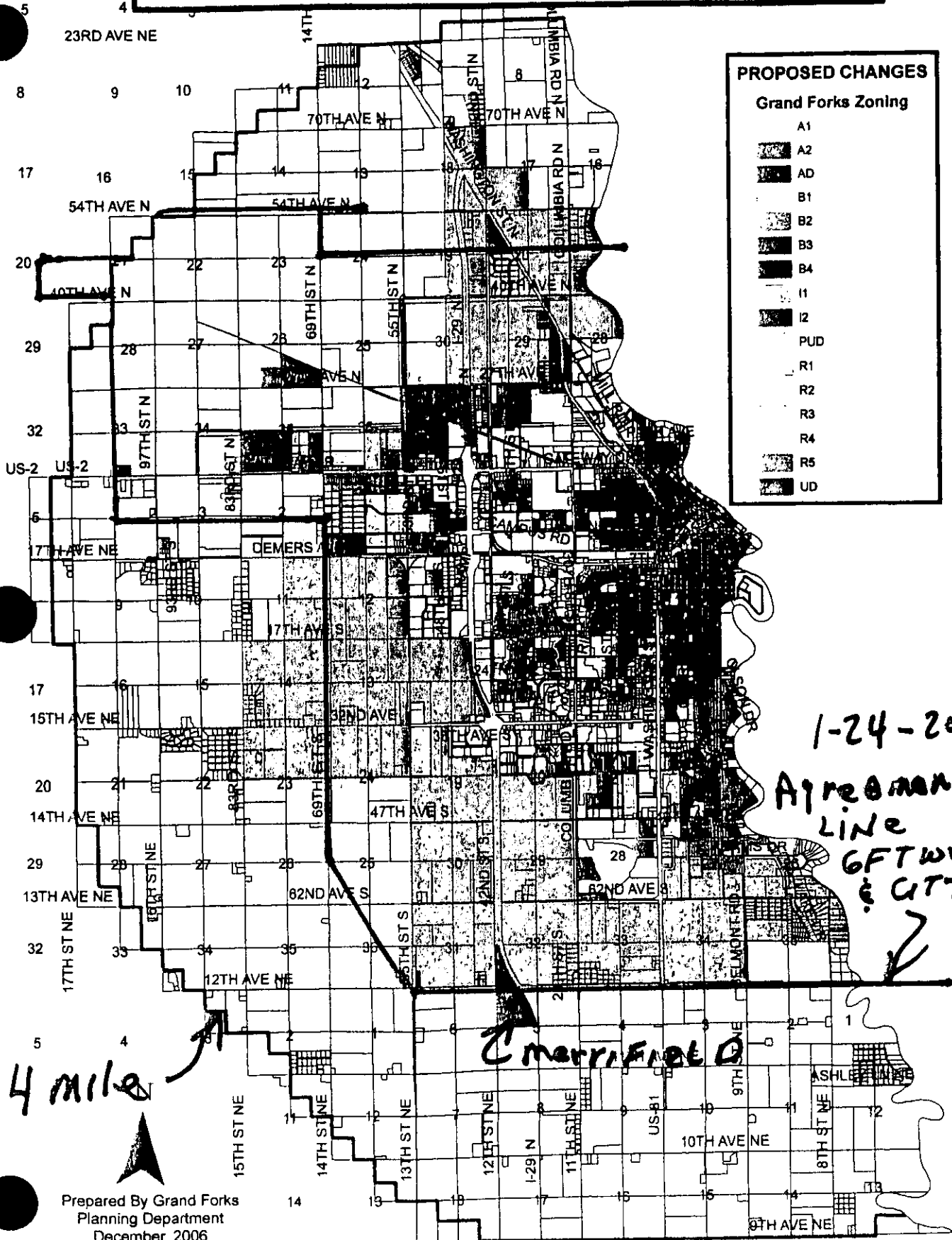
R2

R3

R4

R5

UD



Prepared By Grand Forks  
Planning Department  
December, 2006



## PLANNING AND DEVELOPMENT

200 Third Street North  
Fargo, North Dakota 58102

Phone: (701) 241-1474

Fax: (701) 241-1526

E-Mail: [planning@cityoffargo.com](mailto:planning@cityoffargo.com)

[www.cityoffargo.com](http://www.cityoffargo.com)

Testimony Presented on HB 1554 to the

Senate Government and Veterans Affairs Committee  
Dick Dever, Chairman

by

Jim Gilmour, Planning Director  
City of Fargo

March 12, 2009

Mr. Chairman and Members of the Committee:

I am providing testimony on behalf of the Fargo City Commission in opposition to HB 1554 which greatly reduces existing extraterritorial zoning jurisdiction.

The existing extraterritorial zoning jurisdiction has been very important to managing the growth of the City of Fargo. It allows the city to plan for the future, preserve corridors for future roadways, prevent inappropriate land uses, and require proposed subdivisions to be compatible with future urban growth. Too often, the City of Fargo has had to acquire and remove buildings at great expense because there was not adequate width for city streets.

The existing 4 miles of jurisdiction has been an appropriate distance for the City of Fargo. Twelve years ago, Fargo had only two miles of jurisdiction. Today, most of the land that was in the extraterritorial jurisdiction southwest of the city is already annexed into the city. Much of it has been developed for housing and other urban land uses.

HB 1554 is not needed because SB 2027 addresses concerns of rural residents. SB 2027 preserves extraterritorial zoning for growing cities and provides an option for residents in the outer half of the area to have County Commissioners, who represent urban and rural residents, make the final decision on disputed land use issues.

The City of Fargo requests a "Do Not Pass" recommendation for HB 1554.

In support of HB1554

Good morning Chairman Dever and members of the Senate Government and Veterans Affairs Committee..

I am Larry Syverson a farmer from Mayville; I am the Chairman of Roseville Township of Traill County. I am also a District Director of the North Dakota Township Officers Association. NDTOA represents the six thousand township officers that serve our eleven hundred forty one dues paying member townships. Those officers are the elected administrators of their communities. Their constituents hold the power of the electorate over those that make and enforce rules for them.

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

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

Now it may pose a problem for those bureaucrats in the cities charged with planning expansion to not have absolute control over the situation but that is the nature of a democracy, it can be downright unhandy, but that is the form of government that American citizens have a right to expect. Anything else is some degree of tyranny.

There is some opportunity to be represented on the zoning commission, but that is merely an advisory board that makes a recommendation to the city commission which makes the actual decision. This I suppose is a bit better than going hat-in-hand to beg the

case before the King of England, but it certainly is not a very good application of democracy.

It might be one thing to be in an area that a city is actually growing into, but ET zoning has been used by “cities” that are not growing and very few of them grow in 360 degrees. The four townships that touch the city of Mayville have been zoned for years, each developing within their own comprehensive plans. The city exercised the expanded one-mile extra territorial authority, citing a need “to make sure no feedlots are developed next to town”, of course such development was already restricted by township zoning as well. We were told this would have no impact on the townships, I pointed out that for one thing if city zoning, having no experience with dealing with problems in open country, were to issue building permits that did not maintain township set back requirements, they would create snow hazards on the roads that could be an extreme burden on the townships. My objection was noted and assurances made that the township setbacks would most likely be used by city zoning.

In 2007 the real purpose behind the extension by Mayville became evident when construction was started on their new sewage lagoon, placed within a few hundred feet of an occupied home in Mayville Township. The city wished to circumvent the zoning control of the township and impose their tyranny on the smaller community and the unfortunate resident of that home.

Most all the attention here has focused on the actions, with their supposed merits or excesses in the areas around the big three cities. They claim that only they can adequately plan for the future because they have a staff of trained professional planners. One problem here is that section 40-47-01 gives this same democracy crushing power to every incorporated “city” in the state. Clifford the smallest city in Traill County has one less person than the smallest township in the county. This “city” could, if it chose to, exercise

it's zoning authority to one mile, imposing it's will on it's larger neighbors. It could then spew its discharges and refuse at will without regard to the property rights of the impacted area. The planning ability of most "cities" in North Dakota is limited to the attorney for the city telling the city council that if they exercise their ET authority nobody could oppose their wish to place sewage lagoons or dumps.

As I said, I am from near Mayville, the North Dakota League of Cities "City of the Year for 2008" First on its list of accomplishments is the completion of the new sewage lagoon, within a few hundred feet of Tom Moe's house and one half mile from my house. The zoning ordinance of Mayville Township would not allow a feed lot to be placed there but when Mayville exercised its extra territorial authority it was able to place its lagoon with impunity even though it is just as offensive as a feed lot.

My farmstead is a few hundred yards outside of Mayville's extra territorial radius so at least I was lucky, when the house that has been home to my family for more than one hundred years was badly damaged by fire this summer and had to be replaced, I did not have to go begging to the city to get a permit replace it. I did not have to fork out several thousand dollars for a platting survey like I heard one individual from Bismarck's ET zone would have to do to replace this burned garage.

A few days ago I was visiting with an attorney in Mayville, he asked if there were many issues the townships were working on in this session, I answered yes there are several. Then he asked about extra territorial zoning, I said yes we are working on several bills dealing with that issue. He then mentioned that Portland had exercised its option of extra territorial zoning, without even knowing it. Last year they had contacted a law firm to do the work but when the lawyers reviewed the city zoning ordinance they found that it was already included when the city first zoned in 2005. By the time the city of Portland got around to zoning in 2005, Viking Township to the North and Roseville Township to

the South had been protecting the residents of Portland from adjacent nuisance developments for twenty six years. Both Viking and Roseville Townships were zoned in 1979 and by 2005 had both revised their ordinances twice.

The news that Portland had exercised its extra territorial option came as quite a surprise to me, since by law a city that does exercise this option must notify the townships affected and hold a transition meeting. Roseville Township received no such notice, I have not seen a map of the area claimed by the authority of the city, so I do not know if I violated their zoning ordinance when I replaced our burned out home this past year.

When I attended school in Portland in the 1950s and 60s they had two grocery stores, one of them also sold clothing; they had a pharmacy, a hardware store, a café, two service stations, two bars, a pool hall, movie theater, two grain elevators, and even more. Now it has one service station, a bank, an insurance office, one grain elevator but still two bars. The "city" cannot even keep a coffee shop open on main street but they have the authority to tell somebody up to a mile outside of their boundaries what size or shape buildings they can put up on the land that their families have owned and been stewards of for more than one hundred years. It has been said that extra territorial zoning is necessary to allow for growth? How does that apply here?

Wither or not the large cities need extra territorial zoning and how much is appropriate is arguable. However, the "cities" the size of Portland do not need such authority at all and in fact it should be totally eliminated. They do not have any more planning ability than the adjacent townships; they did not even realize they should adopt a zoning ordinance for them selves until just a few years ago. This is like giving a loaded shotgun to a three year old. I don't know what else the cities of Mayville or Portland might permit in my neighborhood, after all anything goes as long as it is a mile out of town. They can

safely place any nuisance that they don't want in town right next to my property because they will never grow out that far.

In a hearing for another bill concerning extra territorial zoning authority the Senator from West Fargo mentioned that the association of townships was a party to the original ET zoning legislation, this is true we did participate as she said. Pardon our naiveté, we saw nothing wrong with providing for good planning, we did not anticipate the predatory actions that the cities would unleash. That any government in the State of North Dakota could force such bureaucratic tyranny on law abiding citizens was not even imagined.

Absolute authority should not be necessary for a city to plan for expansion. The democratic way of handling the provision for future growth would be for the city to identify areas of future expansion and advise the local authorities of those areas of what is needed to fit in to that future plan and provide the expertise as needed to enable the residents to so develop as it would be in their own future best interest. The only reason a city's plan would need the force of authoritarian law would be that the plan could not withstand the sunlight of a democratic debate.

We keep hearing about those poor developers that might be inconvenienced if the zoning reverts back to the adjacent townships. Well no body was worried about the descendants of the original developers, from more than one hundred years ago, when extra territorial zoning was instituted. They had their own plans on how best to develop or dispose of their land, their plans were crushed by the municipal steamrollers.

It would seem that the municipalities have some altruistic cause as their goal in planning future growth of their communities, but the truth of the matter is that millionaires are made or crushed by their actions. The planners can make or break you or me on their whim. Like an advancing plague, by the time democracy catches up to a development the dozers have moved on under the shelter of authoritarian rule.



At our 2005 annual convention the members of the North Dakota Township Officers Association passed a resolution calling for the roll back of the extra territorial zoning authority that had been given to the cities. This last December the NDTOA membership endorsed another resolution calling for the elimination of extra territorial zoning by cities.

Chairman Dever and Committee Members that concludes my prepared statement. I ask you to reinforce democracy, please reign in extraterritorial zoning; give HB 1554 a do pass recommendation.

I will try to answer your questions.



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

## **Engrossed HB 1554 City of West Fargo Testimony**

Engrossed HB 1554 intends to substantially reduce the extraterritorial area (ETA) for planning and zoning authority of a city from 1 mile, 2 miles or 4 miles depending on city size to only ½ mile, 1 mile or 2 miles and creates several problems. The City of West Fargo would like to go on record as opposed to the bill for the following reasons:

- The existing ETA which is beyond what the scaled back version will be would come under the jurisdiction of the township and/or county. This would create nonconformities unless and until the new authority would develop zoning provisions that adequately accommodate the established uses in this area, or unless the committee reviewing an ETA extension request would approve the city extending the ETA.
- If existing legal uses become nonconforming uses, they may experience difficulty in any refinancing or expansion plans, or if damaged by fire or other disaster.
- The reduced ETA will create more difficulty for faster growing cities to properly plan for orderly and compatible development patterns, particularly relating to streets and land uses. West Fargo has experienced a growth pattern such that the extended ETA has been very helpful to properly plan for streets and compatible land uses. Please refer to the attachment which provides some insights to the City's growth, as well as problems that we have encountered in areas we have grown into that did not have proper planning. This information was shared with the Advisory Commission on Intergovernmental Relations during their interim review of ETA.
- Cities that cannot adequately plan for orderly and compatible development patterns may resort to premature annexation policies resulting in property tax implications on property owners.
- The changes proposed under Engrossed HB 1554 do not adequately address concerns relating to more township and county involvement with development review which has been addressed by Engrossed SB 2027.
- The current extraterritorial statutes have been thought out well. The statutes have evolved over the years as a result of difficult experiences which townships, counties and cities have faced. The adjustments proposed under Engrossed SB 2027 address new or emerging issues, but do not eliminate the provisions which work effectively.

- Cities are generally better equipped to address urban type problems associated with development pressures adjacent to cities.

Engrossed SB 2027 better addresses the changes needed to the current statutes than does the Engrossed HB 1554. As such the City of West Fargo urges the Legislature to **defeat Engrossed HB 1554**.

**ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS**  
**Wednesday, January 23, 2008 Meeting**  
**Fargo, ND**

**City of West Fargo Growth Characteristics**

<u>YEAR</u>	<u>LAND AREA</u>	<u>POPULATION</u>
1950	+ 180 Acres	1,032
1970	+ 900 Acres	5,161
1990	+ 4,510 Acres	12,287
2007 (est.)	+ 9,430 Acres	24,000

**Benefits of Extraterritorial Area for City**

- Provides for proper coordination of future streets to insure connectivity and adequate right-of-way
- Provides opportunity for land use planning for compatible uses as city grows
- Provides ability for future facility planning for city with a better understanding of urban development characteristics
- Provides for technical review of extraterritorial development by City professional engineering and planning staff
- Provides for township involvement and insight on the Planning and Zoning Commission through County Commission appointments to the Commission
- Provides opportunity for coordination with township and county during application review process
- Added cost to City for development review in extraterritorial area is minimal as professional staff is already in place

**Examples of Lack of Subdivision & Zoning Coordination Beyond City Limits in Past**

- West Fargo Lepird's Area
  - Currently in City of West Fargo
  - Subdivided by metes and bounds without adequate roadways and developed while outside city limits and prior to extraterritorial authority
  - Conflicting land uses were developed which took years and significant developer tax concessions to mitigate
  - Issues with property owner access to property, maintenance of private roads, neighbor structure encroachments over property lines, disagreements between property owners, difficulty to provide desired municipal services
  - Unlikely that an adequate street can ever be provided because of lot arrangement, existing structure locations, disagreement among property owners

- West Fargo Meadow Brook Park Area
  - Recently annexed into the City of West Fargo
  - Subdivided into urban size lots during the 1950s prior to extraterritorial area and sold for residential development
  - Lots too small for septic systems and in poor soils resulting in septic system failures; sewage pumped onto ground periodically resulting in health concerns and county health monitoring issues
  - Area periodically flooded in past due to floodplain and poor drainage; floodplain issues addressed with Sheyenne Diversion project, but drainage and lack of services are still issues
  - Township maintained road adjacent to development for years, but development was responsible for maintenance of local subdivision roads resulting in poor road conditions
  - Numerous urban type development issues within the development without adequate controls in place resulting in township and county being requested to resolve issues; township and county not prepared to address the issues
  - Area was only partially developed, because of issues; most of properties went back to county for back taxes placing additional burdens on county and now city
- West Fargo North Extraterritorial/Quam's Area
  - Prior to extraterritorial authority, a number of subdivisions developed in floodplain which are subject to frequent flooding
  - Some subdivisions have residential structures that cannot be accessed by roads during flooding and are accessed by boat, canoe, or other means
  - A number of residential structures have sustained flood damage
  - Several federal program flood buyouts have taken place at cost to taxpayers

### **City/Township/County Coordination**

- City has developed good working relationship with townships and county
- City involves townships in development of comprehensive plan
- Townships and county have discouraged urban development within the extraterritorial area; townships have requested that primarily agricultural uses should be supported
- Township and county urban development concerns addressed by City's comprehensive plan; agricultural areas designated as agricultural preservation land use; zoning ordinance also provides for preservation of agricultural land through large lot zoning for non-farm uses
- Township and county review and comment on development requests (subdivision & zoning) within the extraterritorial area
- Townships have indicated desire for the City to maintain full extent of extraterritorial area, because of inexperience in development issues, and lack of time and manpower

**Donna Bye**

**From:** Mike Vendsel [Mike.Vendsel@co.ward.nd.us]

**Sent:** Tuesday, March 10, 2009 11:21 AM

**To:** Donna Bye

**March 10, 2009**

To: The Senate Political Subdivisions Committee Hearing on HB1554 and The House Political Subdivision Committee Hearings on SB2027 as amended.

My name is Mike Vendsel and I am the Director of Tax Equalization and the Zoning Administrator for Ward County. I have been in my position for the past seven months. In my short time I have witnessed the communication and cooperation that is going on between the city of Minot planning and zoning department and the county Planning and Zoning Committee. It is my observation that the current working arrangement is an excellent situation for the people of Ward County who are within the two mile extra territorial zoning area for the city of Minot. When the city of Minot has plans for the extraterritorial zones outside of Minot they are excellent at notifying the local county and township officials involved and allowing them to provide input to the plans, prior to implementation. Because this system has worked well for our area I am in support of SB 2027. It is similar in many respects to the process we are using and I feel it would work well for other entities within North Dakota. I do not favor HB 1554 as I feel it would likely have a negative impact on the strides we have made in the area surrounding Minot.

Thank You,  
Mike Vendsel

3/11/2009

**Donna Bye**

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**From:** Bruce Christianson [Bruce.Christianson@co.ward.nd.us]  
**Sent:** Wednesday, March 11, 2009 11:50 AM  
**To:** kkrebsbach@nd.gov; dhogue@nd.gov; bhunskor@nd.gov; druby@nd.gov; ethorpe@nd.gov;  
kconrad@nd.gov; konstad@nd.gov; lbellew@nd.gov; lawolf@nd.gov; lpinkerton@nd.gov;  
mklein@nd.gov; rfrantsvog@nd.gov; rhorne@nd.gov; tconklin@nd.gov; tseymour@nd.gov  
**Cc:** Devra Smestad  
**Subject:** SB 2027 // HB 1554

**To:** The Honorable Ward County Legislators:

The Ward County Commission does hereby declare support for Senate Bill 2027, a bill to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; and to provide an expiration date.

The Commission passed and adopted a motion of support for SB 2027, as amended, on March 10, 2009.

Be it further noted, the Commission discussed House Bill 1554 and no motion of support was offered or considered.

/s/  
Bruce I. Christianson, Chairman  
Ward County Commission



**Testimony Regarding Senate Bill 2027**

**Prepared by: Dana G. Larsen, PE, Ward County Engineer**

Chairman, and Committee member, I would like to state that my working relationship with the City of Minot and its extraterritorial zoning has been very good. Minot's planning and zoning department sends me a preliminary pack to comment on before every planning and zoning meeting and my comments are typically included in the final packet. My past experience with items on the agenda is that planning and zoning department and board have been very receptive to my comments and concerns.

There have been many rural subdivision developments that have been created in the extraterritorial zone area around Minot and the City, County, and Townships have tried to work together to serve the public and minimize obstacles. For instance, making sure the roads, approaches and drainage are built to meet the township, city, and county standards. This is done to insure that when a township agrees to take over the roads for maintenance and add the miles on to their system, that the roads are in good shape, and are not an encumbrance to the township. The county water board also has a good working relationship with Minot and the two entities have worked together many times on joint projects.

It has been my personal experience that the extraterritorial zoning has worked quite well in Ward County, and SB 2027 would not hinder that working relationship. I am unable to attend the hearings on these bills and have asked the Minot Officials to present this letter. Thank you for your time on this matter.



March 11, 2009

To: Senator Dick Dever, Chairman, and members of the Government and Veterans Affairs Committee

Representative Dwight Wrangham, Chairman, and members of the Political Subdivision Committee

RE: Senate Bill 2027 and House Bill 1554 – Extraterritorial Zoning for ND cities

As a Minot native and current member of the Minot Planning Commission living within the 2-mile Extraterritorial Area (ETA) of Minot, I'm writing you regarding the two above-mentioned bills.

History has shown that extraterritorial zoning has worked quiet well here in the Minot area. My experience and broader understanding is that Minot officials have proactively worked in partnership with township and county officials as the city growth warranted outward expansion. Considering the congested nature and lack of developable space within the city's core moving out from Minot's core is essentially the only growth option. As a resident and landowner within the ETA, you can imagine that thoughtful ongoing development is a high-priority concern for me.

HB 1554, in my opinion, is unnecessary and undesirable as it will do nothing to improve the current law. Additionally, HB 1554 could impede future development by creating extra bureaucracy and uncertainty for developers/investors. SB 2027, as amended, mimics the practice already in place here in Minot where city officials send notice to and invite comment from township and county officials. Adding that notification requirement would seem a fair compromise to all interested parties.

As such, I support SB 2027, as amended, but am against HB 1554.

I had preferred to appear before the committee to testify but work engagements prevented me from doing so. In my absence, I have asked officials from Minot to include this letter in their testimony documents. Thank you for your time and consideration.

Regards,

John Zimmerman  
Member, Minot Planning Commission

To Whom It May Concern:

I am a concerned resident of rural Minot and an owner of M1 Zoned Property within the current Minot ET area. I can only comment to my experience within Ward County, but I feel strongly that reducing the ET Area authority of the city would be detrimental to the county as a whole.

As a Member of the Minot Planning Commission, I've witnessed first-hand the cooperation between the city staff and township/county officials. The City of Minot has the staff and resources to better manage the growth of the ET area. Reducing the ET could help landowners cut corners and save money during the development phase of outlying projects. Unfortunately, the city and future property owners would be forced to shoulder the burden of the developer &/or previous land-owner.

Although the intention of the proposed bills is to give the governing authorities to those closest to the voting constituents is valid, it makes much more sense to include county appointed representatives on the city planning commission. Why would we create new boards within the counties/townships or placing the added responsibility on the county commissioners?

Randy Conway  
6701 25<sup>th</sup> Ave NW

*Rita M. Curl-Langager*  
1112 9<sup>th</sup> Street SW  
Minot, ND 58701

March 11, 2009

Sen. Dick Dever, Chairperson, & Committee Members  
Committee on Government and Veterans Affairs

Rep. Dwight Wrangham, Chairperson, & Committee Members  
Committee on Political Subdivisions

Re: Support for SB 2027

Dear Legislators;

Planning and zoning in the perimeter of a city provides for city and county residents to engage in cooperative preparation for the future. In Minot, the goals that the planning commissioners share are to optimize public health, to promote public safety, and to sustain, if not enhance, property values. We actively seek citizen participation in our discussions to determine what the majority believes are just decisions, and to provide rationale for the decisions that we believe serve the greatest good. Without the two- or four-mile zone of cooperative governance, these discussions would not take place.

The greatest public health hazards that we observe in ungoverned areas are improper use of septic tanks, and too little land to support large domestic animals. We learned from past mistakes that septic systems and large animals require adequate property to avoid ground saturation and aboveground sewage. As cities grow and residential areas expand, it is necessary that respected professionals uphold expectations that insure proper land use, and the future availability of adequate water and sewer systems.

Public safety and cost-effective management of roadways and utilities requires long-term planning and management. Three important objectives are (1) to create right of ways for streets, (2) to establish setbacks for buildings, and (3) to identify utility locations appropriate to neighborhoods and to land topography. Cooperative governance allows cities to plan with some assurance that those plans will be actualized. Citizens incur a great deal of unnecessary expense when unstructured and unplanned development takes place.

Orderly and high-quality planning must take place to insure that the body politic allows the community and its constituency to develop in a progressive and cooperative manner. As the urbanization of rural areas occurs, the responsibilities to avoid public health hazards, naive organizational arrangements, and infringement on the property values of others increase. Successful planning depends on establishing communication and building trust that we will achieve our goals to promote the greatest good.

Sincerely,  
Rita M. Curl-Langager, PhD  
Chairperson, Minot Planning Commission  
Professor, Minot State University

**HB 1554**  
**SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**  
**March 12, 2009**  
**TESTIMONY FROM TIM SOLBERG**  
**CASS COUNTY PLANNER**

Good morning Chairman Dever and committee members. I'm Tim Solberg, and I serve as the Planner for Cass County. In my role as County Planner I interact with cities and townships alike in issues related to growth in Cass County.

The Cass County Commission passed Resolution 2008-3 in January 2008 supporting ET zoning authority of 4 miles for cities over 25,000 population and 2 miles for cities between 5,000 and 25,000 population. In light of that resolution I would like to go on record as being opposed to House Bill 1554. I am providing the resolution for the record.

We enjoy excellent working relationships with our Township and City officials. It has been demonstrated on many occasions that Townships, Cities, and the County can work together as partners on planning issues.

Counties in North Dakota have subdivision authority outside of municipal boundaries and extraterritorial zoning areas. Townships in Cass County do exercise zoning authority. Proposed developments outside of extraterritorial areas are reviewed by the County and Township Governments. The Cities of Fargo and West Fargo afford the County every opportunity for input on development proposals within the ET areas. In accordance with current state law, dependent upon the size of the city, the County Commissions in ND appoint 1, 2, or 3 voting members to each City Planning Commission from ET area.

● **One of the primary considerations in planning should be to minimize the tax burden on current and future citizens.** If one accepts that premise and then asks who is in the best position to plan for future growth in a way that minimizes unnecessary tax burden on future citizens, you reach some inevitable conclusions. Despite good intentions, townships lack resources to adequately plan for metropolitan growth. Townships generally have no professional planning, engineering, or legal staff. Work is oftentimes done by volunteers with a lack of time and training. Proper planning and zoning administration in a growing area requires a significant resource commitment and specialized knowledge. Enforcement of a zoning ordinance may require legal work and in many instances townships simply do not have the budgets to take enforcement actions when necessary.

● Township Officials are not in the business of building infrastructure other than gravel roads and associated culverts. It would seem unreasonable to expect individuals without experience in building and maintaining urban infrastructure to have an understanding of what it takes to plan for future infrastructure.

Right of way costs make up a significant percentage of the costs of many projects. When corridors are preserved through right of way dedications, access control, and adequate setbacks it assists efforts to build projects and minimizes the burden on taxpayers.

When lots are developed in a manner that considers future infrastructure, taxpayers do not have to unnecessarily subsidize overly expensive infrastructure installation. In order to be effective, preservation and planning efforts must be done many years ahead of development.

When good planning is done, it allows current landowners to better understand the long range plans and make their individual plans in a way that is compatible with good sustainable development.

The Cities of Fargo, Moorhead, West Fargo, and Dilworth; the Counties of Clay and Cass as well as the Departments of Transportation from both states participate actively in the Metropolitan Council of Governments. The metropolitan area townships are not members in the Metropolitan Planning Organization.

Much of eastern Cass County is in a flood plain. Floodplain zoning administration requires considerable technical expertise. Townships may not have the technical resources necessary for proper and fair administration of floodplain ordinances in developing areas.

Cass County Resolution #2008-3 follows:

**TESTIMONY ON HOUSE BILL 1554**

**Senate Government and Veteran's Affairs**

**Curt Kreun  
City of Grand Forks, ND**

**March 12, 2009**

Chairman Dever and members of the Committee, my name is Curt Kreun and I am on the City Council of the City of Grand Forks. I want to thank you for the opportunity to testify on House Bill 1554 on behalf of the City of Grand Forks and request your recommendation of a DO NOT PASS.

I understand that we need to cooperate to come to a conclusion on the issue of extraterritorial zoning. We have heard the concerns of the citizens within the 4-mile extraterritorial area. As a result of these concerns a zoning agreement has been drafted by both the city and county planning staff that will provide an agreement for the extraterritorial area around the City of Grand Forks. Although this zoning agreement has not been approved by any of the bodies as of yet, I believe we have the start of a solution for all concerned citizens.

This agreement gives the city zoning jurisdiction within the two-mile area around the city limits. In addition, 400 feet on both sides of the centerline of all paved roads within the two to four-mile area around city limits will be within the city's jurisdiction. The county will have jurisdiction of all other areas.

Again I want to emphasize that this zoning agreement is in the preliminary stage and has not been approved by the Grand Forks County Commission or the Grand Forks City Council. However, I feel that this agreement is a compromise that will be for the betterment of the Grand Forks region.

What is most important about this agreement is simply that the entities involved DO have the capacity and ability to work together on planning and zoning issues. As the City Council, we are, like you, usually unable to make perfect laws. We therefore try our best at making "more perfect" laws.

House Bill 1554 is a "less perfect" law that limits the ability of affected political subdivisions to work out an agreement with each other. It also seriously reduces the ability to plan around growth areas like cities and new developments. This committee passed a good bill out last half of the session in 2027. We support you in those efforts and ask for your support with a DO NOT PASS recommendation of House Bill 1554.

Thank you for your consideration.



**North Dakota Senate Government & Veteran Affairs Committee**  
**House Bill No. 1554**  
**March 12, 2009**

Chairman Dever and members of the committee, my name is Dennis Johnson. I am currently serving my 9<sup>th</sup> year as President of the Dickinson City Commission. I am testifying in opposition to HB 1554.

Extraterritorial zoning authority jurisdiction insures that properties being developed outside of city limits conform to city building, fire, street, and water distribution codes and that adjacent zoned property are of a similar kind. This is essential to protecting the long term value of the property being developed and reducing the risk of future costs to taxpayers to redo infrastructure to conform to codes.

I oppose HB No. 1554 because of the reduction of the extraterritorial zoning jurisdiction from two miles to one mile. Cities do not grow uniformly in all four directions. I also oppose the bill because there are no grandfather provisions for the existing extraterritorial zoned areas beyond the one mile.

Thank you for the opportunity to appear before you and present my testimony.



#### Officers

Steven Zimmer – President  
Brad Gengler – Vice President  
Ben Ehreth – Secretary/Treasurer  
Past President – Joel Quanbeck

#### Board Members

Stephen Miller, AICP  
Larry Weil  
Greg Hoover

**Website:** [www.NDPlanning.org](http://www.NDPlanning.org)

## **North Dakota Planning Association Testimony on Engrossed HB 1554**

The North Dakota Planning Association would like to go on record as being **opposed** to this bill for the following reasons:

- Under this version of HB 1554 the extraterritorial jurisdiction will be scaled back to the pre-1997 area. Reducing the jurisdiction of a city in the ET area will leave properties and uses that may not be consistent (non-conforming) with, or may not be allowed under the townships zoning ordinance. This could create problems with obtaining a mortgage and/or financing property in these areas.
- This Bill would almost certainly force cities to annex land outside their current limits to ensure orderly development of infrastructure improvements. This would put an unnecessary burden on land owners to pay city taxes and be included in assessment districts for infrastructure projects.
- The main point of contention that was voiced in committee hearings by opponents of ET jurisdiction was the lack of representation for property owners in the ET area and lack of a vote in plans and potential development. Currently there is a separate bill that addresses this issue in a manner that gives property owners a vote on what happens with their property and also gives cities an ET area that allows them to plan for growth. The NDPA believes Engrossed SB 2027 better addresses the issue of property owner and township representation.

The North Dakota Planning Association asks that the Legislature **vote to defeat HB 1554**.

**HB 1554**  
**March 12, 2009**

**Mandan Building Permits Revenue and Expense**

**City and ET building permits**

Expense	2006	\$144,947	2007	\$142,307	2008	\$162,550
Revenue		\$142,206		\$249,998		\$138,923

**Value of buildings for which permits were issued**

2006	\$38,849,822.	2007	\$71,256,395	2008	\$37,623,110
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This does not include any of the office work or any prior work with the individuals to receive a permit. Building permits are not a revenue source and should do more than pay for the process. Our office is on a break-even position most years. Some years we lose and other years if there is a large project, we might be ahead a little but our goal is to break out even.

Rich Barta, Assessor and Building Inspector  
City of Mandan  
701-220-8788

#,

**Cook, Dwight C.**

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**From:** Jerry Hjelmstad [hjelmstad@ndlc.org]  
**Sent:** Monday, April 20, 2009 5:04 PM  
**Subject:** Cook, Dwight C.  
FW: e-mail on ETJ and the basement exception

Senator Cook:

We were contacted by the State Water Commission relating to extraterritorial zoning and flood insurance. The explanation from Jeff Klein is below. This is an example of a potential problem that could occur if the House version of HB 1554 or SB 2027 were to eliminate the "grandfathering" that the Senate versions included.

Jerry Hjelmstad  
ND League of Cities

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**From:** Klein, Jeff J. [mailto:jjklein@nd.gov]  
**Sent:** Monday, April 20, 2009 4:49 PM  
**To:** Jerry Hjelmstad  
**Subject:** e-mail on ETJ and the basement exception

Here's the e-mail without the attachments.

That's an accurate understanding.

Attached find:

- 1] communities which have the residential basement floodproofing exception through the National Flood Insurance Program (NFIP);
- 2] the ETJ map for Cass County which also shows the township location. Here's where I got it from on the Cass County website:  
<http://www.casscountynd.gov/departments/Highway/Maps.htm#ET>
- 3] example of Fargo's floodproofed basement diagram;
- 4] description of the residential basement floodproofing exception from the NFIP regulations.

All the Cass County B.E. (basement exception) townships [5] border the Red River, from North to South: Harwood Township, Reed Township, Barnes Township (not labeled - swallowed by south Fargo), Stanley Township and Pleasant Township. The BE relative to the ETJ would not be an issue in these townships.

All the other townships where the city has a BE and an ETJ it would be a potential problem.

Cities with the BE and ETJ exercised and the affected townships within Cass County which do not have the BE:

Fargo: Mapleton T and Warren T.

West Fargo: Raymond T and Mapleton T.

Horace: Warren T and Normanna T.

Mapleton: Mapleton T, Warren T, Harmony T (participates under Cass Co for NFIP purposes) and Durbin T.

Casselton: Casselton T, Everest T, Harmony T (all who participate under Cass Co for NFIP purposes) and Durbin T

Cass County does not have a BE, so the county would not present a remedy to this possible scenario.

Feel free to use my name for information related to this issue. Also, Senator Tom Fischer of Fargo is very knowledgeable about how all this BE stuff works.

Jeff Klein  
State NFIP Coordinator

Jeff Klein,

Thanks for the information about city zoning and flood insurance rates.

As I understand your comments, some public entities that participate in the national flood insurance program (including some North Dakota cities) have building codes with approved exceptions to federal regulations (such as flood proof basements) which result in reduced flood insurance rates for individuals in those areas. If the zoning jurisdiction of those individuals were to be shifted to a different public entity (such as another political subdivision) that has not qualified for those exceptions, those individuals could see a large increase in their flood insurance rates. Is this an accurate understanding, or am I missing something?

Jerry Hjelmstad  
ND League of Cities

**Koppelman, Kim A.**

#2

**From:** Dawson, Tim J.  
**Sent:** Tuesday, April 21, 2009 11:20 AM  
**To:** Koppelman, Kim A.  
**Subject:** RE: ET zoning and flood insurance

**It would appear that Mr. Weil is correct and the township could not relinquish zoning authority to the city but under the section below could jointly exercise the authority. This is a fine line that can be and would need to be addressed in the joint powers agreement.**

**54-40-01. Agreement Exercise of joint powers Bonds.**

1. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing, and maintaining any building for their joint use. The term governmental unit as used in this section includes every city, county, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.

2. Two or more counties or cities, or any combination of counties or cities, whether or not they have in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, for the purpose of acquiring equipment or constructing roads, bridges, road and bridge improvements.

3. An agency, department, or institution of this state may enter an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized by law to perform. Any agreement entered under this subsection must be submitted to the legislative assembly or, if the legislative assembly is not in session, to the legislative council or a committee designated by the legislative council for approval or rejection and may not become effective until approved by the legislative assembly or the legislative council.

4. Counties or cities, or any combination of counties or cities, may jointly issue bonds in the same manner and for the purposes provided for in chapter 21-03.

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**From:** Koppelman, Kim A.  
**Sent:** Tuesday, April 21, 2009 10:28 AM  
**To:** Dawson, Tim J.  
**Subject:** FW: ET zoning and flood insurance

Tim;

This comes from our city planner. We've been visiting about the ETZ legislation and I assured him, based upon our discussions, that cities and townships could enter into joint powers agreements to allow cities to continue to zone in the "outer ring" in those case, which we've heard about, where they get along fine and the townships would prefer that they do it.

Thoughts on his points?

Thanks.

**Rep. Kim Koppelman**  
North Dakota  
Chairman, Constitutional Revision Committee  
2008 Chairman, The Council of State Governments (CSG)

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**From:** Larry M. Weil [mailto:Larry.Weil@westfargond.gov]  
**Sent:** Tuesday, April 21, 2009 10:13 AM  
**To:** Koppelman, Kim A.  
**Cc:** Brian Neugebauer  
**Subject:** RE: ET zoning and flood insurance

Rep. Koppelman,

One thing I would question with the joint powers agreement would be whether the City could legally apply their rules, or whether they would only be allowed to administrate the rules of the jurisdiction that has the zoning authority. It seems that on the County level (11-33-20) that the statutes imply that the zoning authority stays with the jurisdiction granted that authority unless that authority is relinquished. The statute provides for townships and cities to relinquish authority to the county. However, under the municipal statutes (40-47 & 40-48) and under the township statute (58-03), there is no mention to the authority to relinquish authority.

Larry

Koppelman, Kim A.

#3

From: Sheila Bichler [sheila\_bichler@und.nodak.edu]  
Sent: Tuesday, April 21, 2009 12:38 PM  
To: Kelsh, Jerome G.; Koppelman, Kim A.; Dever, Dick D.; Headland, Craig A.; Cook, Dwight C.; Nelson, Carolyn C.  
Subject: ET Zoning Bills SB 2027 and HB 1554

Dear Legislators,

If there is any issue that shows the repercussions of what can happen when ill conceived , and poorly thought out bills become law, it's the ET zoning issue. A few years ago, the North Dakota legislature voted to allow 4 mile extraterritorial zoning. Had we been aware of this bill and the repercussions that we would be facing today because of it, we would certainly have made our position known at that time.

What are the repercussions of the new 4 mile ET zoning law to my husband and myself? *One repercussion is that we will financially lose \$40,000 because we cannot sell our 2 ½ acre unplatted lot that sits 3.5 miles outside Grand Forks. Why can't we sell this land? Because Grand Forks has decreed the minimum size of a lot to build a home on, must now be 40 acres. Is that the rule inside the city of Grand Forks? No. What compensation will we receive from Grand Forks for the \$40,000 loss? Nothing. That's right. Nothing. Will we receive any services like fire protection, sewer, water, etc. from Grand Forks. Nope. Can we vote in Grand Forks? Nope, not a chance. Yet, somehow, this was the will of the North Dakota legislators. Please tell us what is fair and democratic about this? And it's all because Grand Forks *might* need our property in 400 years.*

My husband and I are both 57 years old. The \$40,000 loss that we will suffer represents a big investment in our retirement planning. We're not rich, we go to work every day. It's taken us 30 years to pay down the mortgage and make this property our own, or how it stands now, the property of Grand Forks.

Because my husband and I both have jobs it is difficult to take time off to go to Bismarck to testify. While we are hard at work paying for the taxes on the property that Grand Forks has made worthless to us, Grand Forks lobbyists are hard at their job making sure that they stay in control of *our* land. We are asking you to give complete control of our land *back* to us. We are the rightful owners of this property. We are the individuals who made 30 years of mortgage payments on this property.

It is within your power to correct the mistake that was made years ago, and return our property to us. We ask that it be reinstated to us completely. Not with any caveats that give Grand Forks control of "site plans", or any other amendment or stipulation that gives Grand Forks *any* control of our property. We've seen how Grand Forks takes advantage of any opening that they can find. Case in point, the 40 acre minimum building lot rule that made our property worthless, the rule that they don't have inside city limits. We want to be made whole again. Not ½, or ¼, but whole again. We don't want crumbs of voting representation that gives the county commission the right to vote in cases of a dispute with the city. **We want to be governed by the people that we elect.** I think that's something the founding fathers of this country, also, had in mind. Please return us to this basic right.

Thank you.

Sincerely yours,

Sheila and Scott Bichler  
1520 83<sup>rd</sup> Street South  
Grand Forks, ND 58201  
701-746-6681