

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2027

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2027

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/23/09

Recorder Job Number: 7675

Committee Clerk Signature

Kate O'Leary

Minutes:

Senator Dever called the committee to order and roll was taken. All were present at the hearing.

**Representative Lee Kaldor:** See attached testimony #1.

**Senator Nelson:** In the current way we do things we have a committee for mediation and in the proposed plan there is no mediation, could you explain why?

**Representative Kaldor:** We gave the administrative law judge the final determination to resolve the issue.

**Tim Dawson:** I staff the Advisory Commission on Intergovernmental Relations and that is why I am here today. It provides for joint jurisdiction in the extraterritorial area with a dispute mechanism between the 2 parties, which would typically be a city or a township of an administrative law judge. If you turn to page 4 of the bill you will see the meat of the bill, subsection 3 of the bill. Subsection 2 says that the city would maintain enforcement of the extraterritorial zoning area even though there is joint jurisdiction for the determinations relating to zoning and regulation. As to Senator Nelson's question earlier, the mediation is when the cities have a battle over overlapping extraterritorial zoning jurisdiction and it does not relate to the extension into a township.

**Senator Nelson:** Why in the middle of page 4 is it in the title that mediation is included in that section when there is no reference to mediation?

**Tim Dawson:** On page 6 subsection 7 it talks about a mediation committee when 2 cities have overlapping areas that extraterritorial zoning could be the same.

**Senator Dever:** As law currently exists, if a resident has a dispute with a zoning decision where do they appeal to?

**Tim Dawson:** You would have to appeal to the city.

**Representative Dwight Wrangham:** See attached testimony #2.

**Senator Judy Lee:** I am here to give you background on extraterritorial zoning. There have been discussions and I wanting to provide some information that will clarify and provide some additional accuracy to what the situation was some years ago in the area that I live. Some of you may remember when there was no Wal Mart in Fargo, there was an agreement that there was going to be a division between Fargo and West Fargo at 45<sup>th</sup> Street. We saw one day that Fargo has annexed a section of their land that was where Wal Mart was going. That is what the reason is for the goofy city limit between Fargo and West Fargo in the area north of Wal Mart. This was a time that preceded any changes in ET zoning and annexation, at that time everything was in a state of flux. That is part of the reason that ET zoning becomes a concern. In 1997 I was serving on the political subdivision's committee in the Senate and Senator Erlacher was the chair and there were 3 bills that were brought in to correct small situations in 3 different areas in North Dakota. The chairman asked the committee if it might be worthwhile asking the sponsors of those 3 small pieces of legislation of ET zoning if we might be able to look at the whole section of law and the sponsors all agreed so that was re written in a long process but we had participation from many of those stake holders that earlier speakers have mentioned. Everybody that would have had an interest in this was a part of that discussion.

Individuals were gathering here and trying to come up with something that would work and address the changing needs in all areas of North Dakota, they would get feedback from their constituents, and meet again. What was proposed and adopted was something that all of those groups agreed was the right way to go in order to have some concept of planning. The extended boundaries took place at that time, the logic for it concerning the amount of acres that a city was likely to expand in a given year, on the average. These are not the right numbers, but I will use them as my example. If a large city was likely to annex 40 acres in a year, a medium city 20, and a small city 10 then it seems if you looked several years out, you should be looking several years out you should be looking at how many miles you need to make some planning in order to have those infrastructure areas in particular coordinated. Streets, water and sewer lines, what is going on with septic systems versus sewer lines. That has certainly been an area that needed attention. A couple of examples would be, I spent 12 years on a planning and zoning commission in West Fargo and I have been over 30 years in the real estate business in our area so I am familiar with the growth and patterns in our community. We have 3 small communities: Prairie Rose, Frontier, and Briarwood that were incorporated when North Dakota law permitted cities to be incorporated if they had 50 residents. You could be a smaller community and incorporate as a city. Several of those incorporated small cities were done around our metropolitan area because people did not want to pay big taxes that Fargo and West Fargo were charging. As some of the rural people would agree we have folks in the city that would like to live in the country and have some of the benefits of that and then call the township officers to say, "How come you are not plowing the snow in my driveway?" Because they are accustomed to having somebody take care of those services. We had these small cities incorporated there was not a conscious in place at that time for making sure the streets integrated into the street plan that eventually would evolve with the cities. Equally important,



was sewer systems; some of them had community wells, some had individual wells, some are hooked up to rural water but having individual septic systems became a challenge in a part of the state that has terrible land for septic systems and drain fields. So we had a small town that had terrible problems with sewage disposal, ended up being able to get federal money to put in a sewer system. That is a continuing issue, and so it is important to coordinate those things, not only for public health and safety, but also for the benefit of the people that own those properties because there are some large costs involved if they have to make a switch. An example of that is Oak Port township, which is directly north of Fargo but because of the way the Red River bends it is in Minnesota. Those folks out there live on larger lots some of them 5 acres there would be a lot of places that have horses or other animals, and they have had septic systems since those houses were built quite some time ago. They have had terrible problems with their septic systems and so an agreement was eventually reached with the city of Moorhead that they would be connected with the Moorhead sewer system, in the meantime there was a law that effected them that said that you had to have a septic system that was certified by the county in order to sell your property. So let's say that I wanted o sell my property because I had a job change, I would have to bring my septic system up to speed, even though 2 years from now I am going to be paying \$20,000 to connect to the city sewer system. That is part of the reason that this infrastructure planning is so very important; in my area we have the Metropolitan Council of Government which coordinates the activities of West Fargo, Fargo, Moorhead, and Dilworth. You see many examples of where it needed to be done differently then it was done many years ago and also that it works better now. So that legislation that was re written in 1997 extended the boundaries but also put in place a process to resolve disputes, because annexation often results eventually as a city grows. Mediation is in that litigation, in the olden days the only way one area could respond if a city annexed them

would be to sue and take it into court. For example, but if West Fargo had been mad at Fargo and we had an issue, we would have had to sue Fargo. The more important issue is a lot of land that has been under discussion is in our Cheyenne Diversion Flood Protected land and it is very attractive to homeowners and political subdivisions to have it as a part of their property. The big issue is, for folks who are living in rural subdivisions, between West Fargo and the smaller community of Horace, a few miles farther south, they weren't in any political subdivision so when Fargo said that they wanted to annex certain areas of the rural subdivisions, there was very little that they could do to respond to that except have the township sue the city of Fargo. What happened as a result of this legislation is that everybody who had a stake in this sat down at the table. The mediation was a remarkably effective way to do that, it was not that there weren't some tempers now and then, and it is not that the solutions were easy, but everybody that had an interest also had a place at the table. It is important that the mediation process is considered as a real plus to that legislation. Both the homeowners and land developers who might purchase property whether it is homes or land for other purposes needs to know what their property can be used for, and equally importantly need to know what the adjoining property can be used for. That is why ET zoning is very important. The people who are satisfied and who have been well served by something like this seldom come to our meetings. We have a system that has had some really good outcomes as a result of having been passed in 1997, it wasn't perfect but this is our opportunity to make it better. I encourage you to keep the things that are working well and improve on them as I know you are able to do. But let's not lose what is working let's just make it more effective than it was before. Thank you Mr. Chairman.

**Sandy Clark:** See testimony #3.

**Senator Cook:** During the interim we had a bill draft that had joint jurisdiction in the outer half of the ET area that was a compromised bill that the cities brought forward. That was amended to include joint jurisdiction in entire area. Do you recall the Farm Bureau position was on joint jurisdiction in the outer half?

**Sandy Clark:** We would support joint jurisdiction on the entire ET area, not just on the outside ring.

**Dan Stephenson:** See attached testimony #4.

**Richard Gross:** See testimony #5.

**Senator Horne:** How far out do you live, is the zoning for Grand Forks 4 miles out?

**Richard Gross:** 4 miles, yes.

**Senator Horne:** So when you asked to have the zoning rolled back, you mean roll it back to the city limits?

**Richard Gross:** That is what I would love, or at least roll it back to where it is necessary.

**Senator Horne:** How would the city plan if they were only allowed to plan at the edge of their city?

**Richard Gross:** The city can plan; I think that our township supervisor and our county supervisor are also interested in orderly growth. I believe that they are as reasonable as the city people. There are as knowledgeable, if the city says that the road will be a 4 lane road I would hope our township people would say, "Ok, we will take care of the setbacks." I don't think the city has to be out there doing that.

**Senator Dever:** Would your concerns be relieved if you had the right to vote for city commissioners?

**Richard Gross:** If I had the right to vote for city commission I would run for city commission.

**Beau Bateman:** I am Beau Bateman, farmer west of Grand Forks, township officer.

Immediately west of the city we lost another 1/3<sup>rd</sup> of our township when Grand Forks exercised their 4 mile ET several years ago. Amongst the 50 states 2 share north in their name, North Dakota and North Carolina, North Carolina has been in the business of ET zoning many more years than North Dakota. If you would indulge me I would defer to some North Carolina rules, Charlotte is a city that has more people than the entire state of North Dakota and they exist with a 3 mile ET. The number is arbitrary, that is not the issue, the issue is the rights of the people who are governed to be able to vote for those who govern them. Interestingly, in North Carolina with a 3 mile ET, they cannot exercise that until the body who is zoning allows them to. The township or the county says, "Yes, you may. You show us what is reasonable and logical and we will accept that because we are reasonable logical elected officials that are accountable to the people that we govern." It is ironic that in the state of North Dakota that both townships and counties have to reveal to the people that they govern the new laws or changes in existing laws before they are implemented so we can comment and change if we are against them; the cities do not. The township has to have a hearing, the county has to have a hearing, we asked for that from the city. Tell us the rules before you impose them so that we can debate them, that was not allowed; instead we were given a telling. We showed up and the city told us what the new rules were going to be after they took away our rights to vote on those rules. 2 issues: population density and landfills again refer to North Carolina state code in place long before ours were. If a city extends an ET, it cannot put in that ET any zoning code that it does not have for its people in the incorporated municipality. Density: currently in Grand Forks county we can have homes of 2 ½ acres outside the city. The city of Grand Forks took over the zoning and then changed that rule to one house every 40 acres. That reduces the ability to develop in a rural area. Thompson School District is our rural district, if this zoning

stops just one subdivision in our township because we can't have a 2 ½ acre subdivision on 80 acres, that one stoppage costs Thompson Public School District over \$40,000 a year every year they don't have that subdivision. Many years ago the city of Grand Forks signed an agreement with our rural water cooperative to service the area south of Grand Forks that was starting to spring up with these small ranchettes. Our rural water district, based on good planning procedure, known growth rate, estimated land to fill in, did proper planning and said that we need to size and install water mains to service this projected growth. Once the city took the 4 mile ET and reduced the number of house density out there from 2 ½ acres to 1 per 40 acres we just lost a bunch of money and the ability to recover our investment. When we asked the city to compensate for that loss of business the direct quote was, "We don't reward speculation." So if the city does it, then it is good planning but if the rural water cooperatives do it, it is speculation? Imagine the U.S. government freezing your stock market investments for 100 years, how would you feel if they said you could not sell your stocks until we tell you that you can and right now we don't know when that would be, but it might be in 80 years. We have a widow in our township whose investment plan was to rent her farmland and to sell a few lots so that she could have enough money to retire comfortably. She can't do that now. We can predict where she lives that the city of Grand Forks won't be for almost 100 years. It is easy to tell from the maps of Fargo and Grand Forks the direction and you can apply the growth rate to the square footage of the town and there is your metric to tell you how long it will take you to get there. If the city wishes to take zoning and they wish to freeze that land for 50 years then I ask the city to make the effort to show me the map of where your streets will be in 50 years. In summary, the 2 R's, we need to restore our rights and we need retroactivity. If we don't have the rights to vote there is no accountability and things don't change. And retroactivity, you must

recognize that when you pass the law and gave them 4 miles, if you don't make this retroactive the way SB2027 works it protects the next generation.

**Jerry Hjelmstad:** See testimony #6.

**Senator Cook:** Can you walk us through how the joint jurisdiction would work?

**Jerry Hjelmstad:** The city would have the jurisdiction as far as permitting and so forth, but any changes that would be made in subdivision plats or zoning changes would have to be approved by both governing bodies in order for those changes to take place.

**Senator Dever:** In Grand Forks, the city requires that there is a minimum of 40 acres. I understand where the county or township might have an interest in that but I doubt that there is a 40 acre requirement within the city limits and I am wondering if you might comment.

**Doreen Reidman:** See testimony #7.

**Senator Horne:** Your suggestion is that the bill be amended to allow joint jurisdiction and the outer half, so if there was a 4 mile ET zone, joint jurisdiction would be in the 2 miles outer half?

**Doreen Reidman:** Yes, that is correct.

**Senator Horne:** League of Cities amendment talks about joint jurisdiction beyond 1 mile. This would be a different idea on an amendment that you are proposing.

**Kelvin Hullet:** See testimony #8.

**Dennis Walaker:** See testimony #9.

**John Warford:** See testimony #10.

**Senator Cook:** Would you be against any amendment to this bill that made it clear that a city could not impose any zoning rules that were more restrictive than zoning rules that they had in their own city?

**John Warford:** I would need to think about it in order to get a city position on that.

**Senator Dever:** The issue of traffic flow was interesting to me and it seems that a lot of the growth in Burleigh County has taken place outside the city of Bismarck and there is a lot of people using those roads and those kinds of things. I recall 3 years ago when the DOT was considering where to locate another bridge across the river. I imagine that the city had an interest in what was taking place there and in the county.

**John Warford:** That was the Northern Bridge Corridor which was an area that was preserved for eventually a bridge to go across. It is along 1804 and crosses over into Mandan; it was quite a process in order to get that done. Expanding on the idea of roads, many of us have been to communities that have poor planning where roads seem to not make sense. Looking at the growth management planning and planning in ET areas to have flow of traffic and have a good sense of where schools would be, commercial areas, residential areas, and so forth. It is visionary for us to leave a legacy for those that follow us.

**Frank W. Matejcek:** See testimony #11

**Steven Zimmer:** See testimony #12

**Senator Cook:** We have heard testimony that Grand Forks has imposed a zoning law that lots outside the city have to be at least 40 acres.

**Steven Zimmer:** Our zoning classification for that is if it is an agricultural zoned property, the purpose behind the 1 per 40 acres, especially in the Red River Valley, is the flood protection. And if a land owner wants to come in and subdivide a property we require that they take it to FEMA and that the properties in question be brought outside the flood plain so that they are able to get flood insurance.

**Senator Oehlke:** Item 5 of your testimony talks about sole planning and growth area. Help me define growth area.

**Steven Zimmer:** That is different for every city. Growth area would be anything that 5 or 10 years down the road this is where we are going to be.

**Senator Oehlke:** Cities have a better idea of growth patterns and where they should be versus townships?

**Steven Zimmer:** Planners look at the growth rate, where the development is going and so that is what we are paid to do.

**Daryl Bragg:** Grand Forks resident and taxpayer. I represent the Grand Forks County Coalition who has been representing the people in Turtle River Township back when we were fighting the landfill issue there. Our organization is in favor of this bill but with amendments.

**Gabe Brown:** Gibs Township which is within the 4 mile ET of Bismarck. I also own and operate a ranch in the majority of that ranch is within the 4 mile ET. Gibs township is opposed to any sort of ET.

**Michael R. Brown:** See attached testimony #13.

**Senator Cook:** What role did the county of Grand Forks play in the sighting of the landfill?

**Brad Gengler:** City planner for Grand Forks. As you are aware the landfill sighting process took a long time. When we did extend our ET zoning jurisdiction we then adopted the new zoning regulations.

**Senator Cook:** Section 23-29.07 states that before the Health Department can issue a permit in a county the county commissioners have to make a decision. Has a permit been issues yet?

**Brad Gengler:** No.

**Senator Cook:** Do you want to explain how the city justified the 40 acre decision?

**Brad Gengler:** The idea is part of the long term process. Over time, the individual subdivisions, as far as our planning process, we chose to limit that in order to prevent the multiple subdivisions of land. It was simply a density control issue.



**Senator Cook:** Why is it important for Grand Forks to control the density of an area outside of the city?

**Brad Gengler:** A good example is 32<sup>nd</sup> Avenue. Part of that restriction of the 1 per 40 would allow for some kind of control in the event that the city started growing and residential subdivisions started popping up on a major roadway.

**Dean Frantsovog:** See testimony #14.

**Keith Berndt:** See testimony #15.

**Douglas A. Goulding:** See testimony #16.

**Senator Cook:** The challenges of sighting the landfill in Grand Forks County, could that have been eliminated if the county would have known that they had a vote on that issue coming to them?

**Douglas A. Goulding:** Many of the rural residents don't have the numbers to defeat the citizens of Grand Forks.

**Senator Cook:** The argument that they don't have any representation, would that go away?

**Douglas A. Goulding:** I think that if the political subdivisions had authority to have a vote, it would compel the city to go out and enter compromises and give examples of how the interest of the rural residents will be protected.

**Senator Dever:** Is there a provision that allows the citizens of Grand Forks County to put that on the ballot?

**Douglas A. Goulding:** I am not sure the answer to that.

**Rosellen Sand:** See testimony #17.

**Larry Weil:** See testimony #18.

**Richard Hammond:** See testimony #19.

**Senator Horne:** If they don't take away ETZ entirely, would it be helpful if somehow the residents living in the ET zone had the ability to vote on city matters, would that help?

**Richard Hammond:** The county is the only subdivision that represents everybody. You are not going to have the rural residents voting in city elections.

**Senator Dever:** We do everything to get all the information on the issues.

**Connie Sprynczynatyk:** Connie Sprynczynatyk from the North Dakota League of Cities.

When I run for election in this community for the City Commissioner, my job is to get votes from 55,000 people. Then it is my job to look out into the community, many of the rural residents work in town I can tell you that there is endless appetite to live out in the country. The reason that planning is important is because when there is a change in land use, be it a rural residential subdivision, a piece of commercial property, or change in a farming operation. But when there is a change in a use of the land that it makes sense that it works, not just for the land owner. It has to make sense as the push goes out. I can tell you that when Bismarck looked at taking the full 4 miles extra territorial zoning jurisdiction it really was because we had been working with the county commission and could not come to an agreement on the rural residential subdivisions and those provide a burden on services. As a tax payer living in Bismarck, I get to pay city taxes and Burleigh County taxes so any service that the county provides to all of the residents if it is a centrally assessed function, I pay too. The day after Bismarck took the 4 mile ET authority the zoning was the same. There was an update to a plan and there was an attempt to identify possible future places in Burleigh County where there might be industrial and commercial zoning. It is a thought that in the future if there is more need, the time is right, and the land owner is willing, but if none of those conditions apply that farm stays in place and nothing happens to it. This is all about balance, when we talk about democracy we are talking about how we deal with the rule of the majority and yet, protect the

interest of the minority. That is also true for land owners, shouldn't a person buying a piece of property outside or inside the corporate limits of the city, have some reasonable expectations about what the neighbors are doing or are going to do with the land. When I sit at the City Commission table all of those decisions are very thought out and it is difficult to make them. What we have to do is act in the best interest of the whole. What we try to do is listen to those concerns, especially about voting and we actually worked with some of the planners around the state to come up with the concept that the township officials could have shared authority in the outer portion to essentially give those townships veto power over something that they thought would not work. Do we know if it is going to work? We have no idea, and that is why Jerry brought you amendments this morning that would try to share that authority in that outer portion.

**Brian Bitner:** See testimony #20.

**Senator Cook:** So you are in support of this bill?

**Brian Bitner:** Yes.

**Senator Cook:** Don't building permits need to be priced so that they cover the expenses and couldn't generate income to do other things for a city or county?

**Brian Bitner:** Yes. My recommendation as a township road supervisor was to no longer rely on building permit revenue.

**Senator Horne:** Do you support giving citizens in the ET zone the right to vote on city issues?

**Brian Biter:** No, I don't think that is workable. That decision was already made by the Supreme Court. There is a disconnect between the citizens outside the city and the citizens inside the city.

**Senator Horne:** How could it be worked out if that is not workable?

**Brian Bitner:** A decision made on land outside the city should be made at the county commission or township level. I think that we need to make sure there is input from the cities.

**Senator Cook:** The bill we have before us today gives joint jurisdiction to both political subdivisions that is the way we give everybody their voice. Do you not think that that solves that problem?

**Brian Bitner:** I think that it goes a long way towards solving it as it is before us.

**Senator Horne:** Does joint jurisdiction mean that if a county or township doesn't agree with something that the city would like to do that they can prevent it from happening?

**Brian Bitner:** That is correct.

**Senator Cook:** If there is a dispute then it goes to mediation.

**Dick Lettier:** My name is Dick Lettier, a resident of Apple Creek. My question in all of this is, you have taken the vote from me and we get no benefit at all.

**Senator Dever:** Are you just referring to the building permit fees?

**Dick Lettier:** Yes.

**Curly Haugland:** My name is Curly Haugland and I am president of Land Owner Association of North Dakota. We tried with this bill originally 2 sessions ago, it did not go well. Between the ACIR meetings over the past year and a half and the comprehensive planning's in Burleigh County I can't tell you how much time I have spent watching people telling us how to live our lives and imposing more burdensome rules on us. The reason I am here is LOAND is a property rights group we are here to protect rights, that is what it comes down to.

**Larry Syverson:** See testimony #21.

**Ken Yantes:** I am the North Dakota Township Association and we are opposed to this bill.

Albert Frisinger was unable to testify but he handed in his testimony to be reflected in the minutes. See testimony #22.

Jon Gregoire was also unable to testify but handed in testimony to be reflected in the minutes.

See testimony #23.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/ReSenator Oehlkelution No.2027

Senate Government and Veterans Affairs Committee

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Hearing Date: 01/23/09

Recorder Job Number: 9444

Committee Clerk Signature

*Kate Oliver*

Minuets:

**Senator Horne:** If there was a disagreement then the county commissioners would have the final decision making authority?

**Jerry Hjelmstad:**Yes.

**Senator Horne:** Does the association of counties like this idea?

**Jerry Hjelmstad:** Not sure if they like it, but it has an expiration date.

**Senator Dever:** Joint jurisdiction in that area.

**Jerry Hjelmstad:** Before there would be 2 sets of hearing.

**Senator Oehlke:** This leaves in place that the administrative law judge. Is that between cities then?

**Jerry Hjelmstad:** There is provision for administrative law judge.

**Senator Dever:** Administrative law judges settle law matters and we are most likely talking policy matters.

**Senator Cook:** The bill that we had before, joint jurisdiction for the entire ET zone, correct?

**Jerry Hjelmstad:** Correct there is no separation. Not changing that. They would have the opportunity to object. All of subsection 3. Taking out line 28 on and replaced by the proposed language.

**Senator Dever:** The only new language in the bill is subsection 2 on page 4.

**Jerry Hjelmstad:** Then the changes that the legislative council put in to fine tune the changes in subsection 1.

**Senator Oehlke:** When they talk about the governing board that would have jurisdiction. The township or the county?

**Jerry Hjelmstad:** It would depend on if it was a zoning change and the township had exercised zoning authority.

**Senator Horne:** at one time there was a suggestion to take the original bill which gave joint jurisdiction and divide the ET area into 2 zones; your amendment would scrap that idea?

**Jerry Hjelmstad:** Correct.

**Senator Nelson:** Is 15 days long enough for the objection?

**Jerry Hjelmstad:** The reason we put 15 days in there is that they will be notified, the city governing board would also have to act on it.

**Senator Cook:** After the county commission denies the cities decision, it's over with? I thought we still had the subsection 7.

**Jerry Hjelmstad:** That provision would be taken out.

**Senator Cook:** The criteria that we have in the bill, prior to that we had a mediation committee that is for the extension of the ET zone.

**Senator Horne:** If the county objects and then the county decide it would seem that it would be hard for them to remain impartial?

**Jerry Hjelmstad:** That could be an issue; they would have to make a finding based on the case.

**Senator Cook:** I guess that I admire your willingness to move. I just wish you were not moving so far. Explain to me the dispute process?

**Jerry Hjelmstad:** Lack of representation, no elected representation in the areas.

**Senator Dever:** As a matter of process, it will be interesting to see how this moves through the floor, house.

**Senator Cook:** The one that I offered yesterday is now obsolete.

Move made by Senator Nelson to approve amendments with a second by Senator Horne.

**Senator Oehlke:** If it is a reasonable zoning or subdivision change they would be able to do it correctly. The way it is laid out, if they do it the way the amendments indicates they ought to do it, and the process is followed then maybe the amendment would be a good thing

**Senator Cook:** If I was a property owner in the 4 mile annex would I have to go to the city first?

**Jerry Hjelmstad:** Yes

**Senator Cook:** The only way the county could weigh in is if I had the support of the county, correct? Say in Grand Forks, made a requirement that all plots have to be 40 acres and I wanted to make it 2 acres.

**Jerry Hjelmstad:** The other entity would be able to object to that decision. After the city takes action, they would have 15 days to object to them.

**Senator Nelson:** I heard a bunch of objections about the entire zone and the outer versus inner zone, where is it?

**Jerry Hjelmstad:** Based on the fact that the needs of the city needs to have more control over the inner zone. That was the reason for this compromised proposal.

**Senator Nelson:** If my mayor is in favor, is he still in favor with the new amendment?

**Jerry Hjelmstad:** This amendment was reviewed by our legal staff and deemed appropriate.

**Senator Dever:** I recall seeing emails from the mayor of Grand Forks another one from someone on behalf of the mayor of Fargo, in support of the bill with amendments.



**Senator Cook:** Can we hold off on this vote until after the floor session. I want to make sure that for or against. I am looking at the zoning change process. If I ask the city to change the zone. Is it possible that the committee takes no action?

**Jerry Hjelmstad:** I guess I can't answer that question. The planning commission is a governing body.

**Senator Cook:** No matter what the county commission could weigh in.

**Bill Wilkin:** Final action by the city has to be a yes or a no.

**Senator Oehlke:** Would it be a problem if we say that the city has to take action within 60 days? They want 15 days if they are going to object, it would seem that we could add some working in there for processing that application on the front end too.

**Jerry Hjelmstad:** By the time they go through the process with the planning and zoning commission and make a recommendation it can take up to 4 months. I think it would be tough to put it to a time limit.

**Senator Horne:** In my mind I was feeling comfortable with the split ET. Is Bismarck willing to give that up?

**Bill Wilkin:** We started with the 50/50 proposition and we were happy with that. In view of the testimony at the hearing, we thought this would be a good compromise. We would live with that amendment. Trying to give another alternative.

**Senator Horne:** Have you talked to any of the other folks in different places around the state?

**Bill Wilkin:** We will not submit anything without going through the league of cities. We don't want to create a problem for another city because it solves our problem.

**Senator Cook:** I would be more favorable to the other amendments that the city presented.

What I struggle with is that we want to get something passed and it is a long process.

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Minutes:

Senator Dever called the committee to order and roll was taken. All members were present.

**Senator Dever:** Committee we have alternate amendments brought but we have a motion on the floor to adopt the amendments.

**Senator Horne:** I withdraw my second.

**Senator Dever:** The motion to approve the previous amendments has been withdrawn without objection. Let's take a look at the amendments that are before us. Senator Cook are you the author of these amendments?

**Senator Cook:** My understanding is that in the outer ring of the ET area there would be a step in there that if there was a disagreement between the 2 political subdivisions, in most cases the city and the county, that this would offer a dispute resolution mechanism to solve that disagreement. The inner half would be as it is now, but if there was a disagreement between the county and the city the decision of the county commission would be final, in the outer half there would be a dispute resolution mechanism.

**Senator Dever:** And the final arbiter of that would be?

**Senator Cook:** An administrative hearing, I believe.

**Senator Nelson:** In the outer rim, it goes from city to the jurisdictions and the jurisdictions have 15 days to make a decision and if they don't like it, it goes back to the city.

**Jerry Hjelmstad:** Jerry Hjelmstad, I am here on behalf of the North Dakota League of Cities. These amendments are very similar to what we presented on Friday, the difference being that the first 3 paragraphs with the amendments on page 4 line 21, 23, & 25 relate the area of joint jurisdiction to the outer half of the ET zone and the next part where it says page 5 after line 20 insert, it refers to the area of joint jurisdiction rather than the entire ET zone, so the new process of the township objecting and going to the county commission for resolution would relate to the outer half of the ET zone.

**Senator Oehlke:** If there is a dispute it gets settled by the county commission?

**Jerry Hjelmstad:** That is correct.

**Senator Horne:** We have a 4 mile ET zone, the 1<sup>st</sup> half governed by the city?

**Jerry Hjelmstad:** That is correct. The first half would be as it was from 1975-1997 before it was expanded, it would be totally governed by city. In expanded area would be this new procedure where the township could object and go to the county commission for resolution.

**Senator Horne:** Would this have a 2 year sunset on it?

**Jerry Hjelmstad:** Yes.

**Senator Cook:** There is not a dispute resolution?

**Jerry Hjelmstad:** The resolution would be that the township could object, and then it could go to the county commission. The administrative law judge is not part of this amendment.

**Senator Dever:** I was trying to think of cities that are in different counties.

**Jerry Hjelmstad:** 7 cities in ND that are in more than one county.

**Senator Dever:** We have cities that are within 4 miles of each other.

**Jerry Hjelmstad:** The dispute resolution would remain the same for overlapping cities. This would be a dispute between the township and the ET.

**Senator Cook:** This amendment is complete; we don't have to pass 2 sets, correct?


**Jerry Hjelmstad:** That is correct

A motion was made by Senator Cook with a second by Senator Nelson to approve the amendments as now proposed on SB2027.

**Senator Horne:** If we approve this amendment, the cities would have jurisdiction over the first half of the ET zone and the outer ring would be governed jointly with final resolution of disputes to the county, is that correct?

**Jerry Hjelmstad:** That is correct assuming the city takes full jurisdiction.

The motion passed 5-0. Senator Cook made a motion for a Do pass as amended with a second by Senator Oehlke. The motion passed 5-0. The carrier is Senator Cook.

  
2-16-09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

Page 1, line 2, after "cities" insert "; and to provide an expiration date"

Page 4, line 21, after the period insert "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."

Page 4, line 23, after the period insert "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."

Page 4, line 25, after the period insert "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."

Page 4, replace lines 28 through 31 with:

"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."

Page 5, remove lines 1 through 28

Page 8, after line 9, insert:

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

Renumber accordingly

Date: 2-16  
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

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

Action Taken

Move Amendments

Motion Made By

Cool

Seconded By

Nelson

Senators	Yes	No	Senators	Yes	No
Dick Dever	<u>X</u>		Dwight Cook	<u>X</u>	
Dave Oehlke	<u>X</u>		Carolyn Nelson	<u>X</u>	
Robert M. Horne	<u>X</u>				

Total Yes

5

No

0

Absent

0

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

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

Date:  
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

Carrie Cook

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

Oehlke

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

Total Yes

5

No

0

Absent

0

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

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

**REPORT OF STANDING COMMITTEE**

**SB 2027: 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). SB 2027 was placed on the Sixth order on the calendar.

Page 1, line 2, after "cities" insert "; and to provide an expiration date"

Page 4, line 21, after the period insert "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."

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Page 5, remove lines 1 through 28

Page 8, after line 9, insert:

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

Renumber accordingly



2009 HOUSE POLITICAL SUBDIVISIONS

SB 2027

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. SB 2027

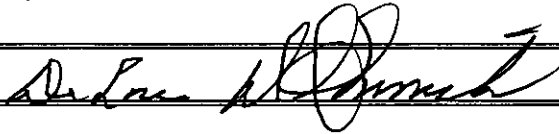
### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10875

Committee Clerk Signature



Minutes:

**Chairman Wrangham** opened the hearing on SB 2027.

Recorder was not working until 00847.

**Rep. Kaldor:** Presented the bill with proposed amendment #1 .0402. Went over the amendment in detail. So in the bill we passed on the interim we set forth a set of criteria so I want you to look back to the original bill. Some of the criteria had to do with growth and there is significant difference in the growth rate of the various cities in North Dakota. Basically those criteria were intended to give the administrative law judge guidance in making their decision. Those criteria in the original bill can be found on page 5 of the original bill and these are factors; whether these proposed changes are consistent with the growth plan. It talks about a growth plan; not just a plan. It talks about the impact of the present and planned uses of the area.

**Rep. Koppelman:** Rep. Kaldor we don't have a copy of the original bill. The things you are covering are in your amendments.

**Rep. Kaldor:** Yes they are in the amendments, on page 2. Those A-H establish the criteria.

Are they the end all? Will they give satisfactory guidance that something for you to deliberate on and maybe there are others who have better ideas, but I think the amended Senate version

is the less clear. On a personnel note this is a very difficult and challenging issue. I deliberated on it with your committee two years ago and Rep. Koppelman who chaired the conference committee I believe and it is an extremely emotional issue for many people. I had the good fortune of hearing from probably 500 testifiers over the period of the last incumbent at least in travel to Fargo. I could not help but be persuaded in 1997 that the legislature went further than it should have done and that there needed to be some changes. Did we come up with a perfect solution? I am not sure that is possible. I think the Senate in their amendments have the interest in those persons affected because they do not have a vote. They do elect their commissioners, I will give them that. I would like if that is who will make the decision, I would hope the county commissioners would base their decisions on some of the criteria that we established.

**Chairman Wrangham:** Our chief interest today is to hear as much testimony as we possibly can and so we will try to restrict the questions as much as possible. There are some questions we will need to ask of specific people.

**Rep. Klemin:** In the amendments that you handed out you have the administrative law judge making the decision. If there is room to provide for an application to the district court and there in the right of certiorari and then it goes on to say what is review by the district court is limited to. My question is twofold. This right of certiorari is very unique situation. We do have some statutes telling us the right of certiorari. I was just looking at that under the statutes relating the certiorari a state that will review the district court is limited stated in this first sentence to review upon the recommended is whether the review should be acted regularly. However, your amendment goes on and puts and additional criteria in there. It is similar to what is in the administrative rules or county commission decision. I am wondering how much thought was given to the rite of certiorari decision or whether you really thought anything about that in an

ordinary judicial review because the supreme court has set out some clear standards on what the scope of review is going to be with the district court or another state agency.

**Rep. Kaldor:** I am going to rely upon statements I received from the individual who requested these. Are you looking at Section 40-51.2-08 in the Century Code?

**Rep. Klemin:** I am looking at 32-32-09 which is the chapter on rite of certiorari.

**Rep. Kaldor:** The basis that was given in my information is from Chapter 40. Chapter 40-51. I am sure Mr. Dawson will be able to answer that question.

**Rep. Koppelman:** In your amendments I am looking block on insert on Page 5, line 6. Two sentences down from there it reads the political subdivision that would otherwise have zoning and subdivision regulation jurisdiction may approve or reject any decision made by the city under the cities jurisdiction. It occurs to me that a lot of what we have heard testimony on is a particular situation where maybe you have a city and then you have the rural area outside that city and so what we are talking about and hearing a lot of testimony about is from the rural people that live in those areas and are concerned about being regulated by people in the city that they don't vote for and all of that. However, it occurs to me that the language like this could have other meanings. For example if two cities have an exterritorial zoning overlap and you are saying the city exercising the authority that their authority would be subject to approval by a political subdivision that would otherwise have authority. How would that apply in those kinds of situations?

**Rep. Kaldor:** I will defer to Mr. Dawson on that subject. I believe that is addressed in current law regarding cities that ET was set.

**Tim Dawson, Legislative Counsel:** I am here to describe 2027 as it came out of the Senate. It has been substantially amended since it came out of the ACIR. I did not have a hand in drafting it and don't have any special insight into it. I am here mainly to describe this bill draft

and I am not for or against the bill at all. On pages 1-4 on the bill you will see the law as it has been for the last two years. If you get to page 4 you will see that it is effective after July 1, 2009. This was the law as it was before the previous four pages and as it will be after the previous four pages. Of course, with any changes that happens this legislative session. Those changes in Subsection 1 with the underscored language basically in this section there is joint jurisdiction in the outside half of the ET zoning area between the city and the political subdivision with previous jurisdiction. Subsection 2 on page 5 reaffirms that there is one set of rules and one enforcer of those rules, the city. In subsection 3 defines what joint jurisdiction is. In joint jurisdiction an application for change would go to the city and the city would give notice to the other political subdivision, for example the township, the township then can object. If the township objects the decision is then made by the board of county commissioners based on the record and comprehensive plans. The rest of the bill is cleanup and an expiration date of July 31, 2011. As for the questions that were asked earlier by Rep. Klemin the language in the amendment was copied from the annexation statute relating to the judicial review when an administrative law judge makes a decision regarding an annexation so that language goes along with that. Rep. Koppelman, yes there are different places that deal with this. I think the language in the amendment is clear enough to be talking about just that jurisdiction that we are talking about in this context. Please read it and make sure there is not confusion and that it will apply to situations that it shouldn't apply to.

**Rep. Koppelman:** What is the relationship in the bill if it would become law? What is the relationship between ET zoning and annexation? Is ET a pre-cursor to annexation?

**Tim Dawson:** It is a factor that goes into determining whether annexation is proper it would appear to be not a necessary pre-cursor, but perhaps a factor pre-cursor.

**Rep. Jerry Kelsh:** (inaudible)

**Tim Dawson:** When it came out of the interim committee it was joint jurisdiction in the entire area with mediation dispute mechanism of an administrative law judge with factors listed for that administrative law judge to make the decision. This one is joint jurisdiction in the outside half with the board of county commissioners as that dispute mechanism decider. They don't use the factors, but they use the record and comprehensive area plans.

**Rep. Zaiser: (inaudible)**

**Tim Dawson:** The bill as it came out of the Senate on page 5 lines 17-19 says 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, county and township. Those are of course some of the things that are in those list of factors but the overlap isn't complete. There are more things taken into account I think in the factors.

**Rep. Zaiser: (inaudible).**

**Tim Dawson:** That means that they aren't going to have a brand new hearing on it. They are just going to look at the record so whatever you have written down from the previous objection and previous decision; whatever is in front of them is what they look at and they will not have a new hearing on the thing.

**Tim Dawson:** I think they mean two different things; however there could be some overlap.

**Rep. Klemin:** So the board of county commissioners is not going to hold a hearing on it and they are going to look solely at the record that has been completed between the city, county and township and make a decision after looking it over. Is that what is intended?

**Tim Dawson:** I did not draft it. It came out of the Senate so I haven't given it a thought until you have asked the question so after you asked the question it does say that they are going to look at findings based on the records and township comprehensive plan so I suppose they will have to get those in order to have a hearing, but not have testimony.

**Rep. Klemin:** Basically there are two things then; one before the city and the city then makes a recommendation to the county and the county has a hearing and it makes the decision based on the record it is hearing and the recommendations of the city. The way this is set up the county commissioners reads over what happens and makes a decision without any further input from anyone. It looks like they can't take any input from anyone.

**Tim Dawson:** That seems to be a fair assumption.

Chairman Wrangham: On page 4 of the engrossed bill on a.b. and c of the bill joint zoning and subdivision is mentioned in each of those sections referring to those sections referring to the outer half of each of those sections. On page 5 line 6 paragraph 2 states the zoning and subdivision regulation of the city govern the entire ET area assumed by the city. We seem to be in direct conflict to me.

**Tim Dawson:** Although it may not be the most eloquent way of saying that subsection 2 was meant to say that when this is all done it is the zoning and subdivision regulation of the city in the joint jurisdiction coming to the determination, but once it is determined it is the city so the city is going to enforce it and issue the permits. It is going to be the city zoning regulations when it is all done so there is only one person in charge. So a person isn't going to be under a city and a township. Although, the process involves the township.

**Rep. Klemin:** Just going back to the beginning of subsection 2 where application are mailed to the city, does the city in some other laws we don't have in this bill, required to hold a hearing on the application in order to make a record?

**Tim Dawson:** That is covered under the normal zoning and zoning hearing regulations. So yes.

**Rep. Kretschmar:** Under current law can zoning outside of city limits; there are townships and counties and say they both have a plan; which one prevails?

**Tim Dawson:** On page 5 it doesn't say which should prevail if anyone is given the other. It is an interesting questions in an area in which there is an organized township and no county regulation the zoning in that area why the county would have their comprehensive plan. It is a policy decision that you would have to weigh, but should that have that have the same weight as the township that actually has the zoning regulation in that area.

**Rep. Zaiser:** I think it was in cross over and there was discussion about the house bill. I don't remember who I talked to in Legislative Counsel but that question came up in terms whose comprehensive plan prevails and an individual, I don't recall, my recollection is that the comprehensive plan that gets the most proposed land use that is being proposed within this area whether it is the two mile or four mile or half mile would be the prevailing comprehensive plan.

**Richard Hammond:** (see testimony #2).

**Rep. Klemin:** I am not sure where you are in this bill. Are you in support of this bill as it came to us from the Senate?

Richard Hammond: Realistically it is going in the right direction. ET should be removed entirely. Politically that is probably not possible.

**Rep. Klemin:** So the answer is yes.

**Richard Hammond:** Yes as presented by Rep. Kaldor.

**Rep. Conrad:** What Rep. Kaldor proposed in the criteria is that important?

**Richard Hammond:** Yes that is most of the bill.

**Rep. Zaiser:** Would you be interested in looking at a compromise that might involve roads within the four mile area that reduce some of the zoning authority down to a smaller area but also within that you would promise that you would also protect citizens within that area if the township would take authority of the county.



**Richard Hammond:** Any zoning authority could prevent this. As far as the roads go you have to plan arterial roads where ever the 400 foot right of way might be very extreme. I think the county and township can plan arterial roads as good as or better than the city would. We need to have some kind of remedy for the rural residence and not just an open advisory placed on a committee. It has to be a rural entity.

**Rep. Zaiser:** what are some of those remedies that no one has addressed? What would you suggest would be the remedy outside a setting on a committee?

**Richard Hammond:** You have to be able to vote and you have to be able to actually have a body that you can vote for overturn what the city has done. It has to have that much power; otherwise the city is going to do just as much as it can get away with, unless somebody somewhere along the line says wait a minute.

**Rep. Headland:** Do you think that ET zoning would work if the governing body before the zoning took place had the end authority?

**Richard Hammond:** Does it need to work? We don't need it. The original ET statue sited that anywhere in the country where you had the governing body and nothing, no county, no township, no anything and they have been kind of a mission creep on this thing. You really don't need ET zoning. We need cooperation and we already have governing bodies in each of these other entities.

**Jerry Hjelmstad, ND League of Cities:** (see testimony #3). Went over the information on the handout.

**Rep. Headland:** What happens to the fees that are collected in ET zoned areas with current legislation?

**Jerry Hjelmstad:** What fees are you addressing?

**Rep. Headland:** Permit fees?

**Jerry Hjelmstad:** Permit fees for building permits would go to the building construction department for inspections that they are doing during construction.

**Rep. Headland:** That would be to the city building inspectors?

**Jerry Hjelmstad:** That would be correct, it would go to the city for inspections.

**Rep. Headland:** What happens to the permits fees that a political subdivision such as a township collected before ET zoning took affect?

**Jerry Hjelmstad:** The city would no longer be fulfilling the function of building inspections but they would not be collecting those fees. They would be going to the entity that would be performing the building inspections.

**Rep. Headland:** Currently under law before ET zone fees collected stay within the political subdivision; with ET zoning those permit fees go to the city. Is there a requirement or does there need to be a requirement in that piece of legislation that indicates that fees collected in the area that have been extraterritorial zoned need to stay in the areas that have been ET zoned so they have the ability to maintain their infrastructure?

**Jerry Hjelmstad:** My understanding that the main purpose of those fees is to provide for the building inspection services so which entity that is providing that service should be the ones using those fees.

**Rep. Headland:** I don't believe that is currently happening. I think there are area that has been ET zoned for quite a few years now and there has been no infrastructure placed out in some of these areas by the city. So my question is there has been a lot of growth and building outside some of these cities and there have been a lot of fees collected and I want to know why they haven't been sent out in the areas where they have been effective?

**Jerry Hjelmstad:** The only thing I can say is those fees are for permitting in those areas.

**Rep. Jerry Kelsh:** (inaudible).

**Jerry Hjelmstad:** As far as the criteria for the county commission to make a decision I guess the reason we had the county commission is because there was a lot of testimony before the Senate committee and a lot of representation so the senate came out with the county commission to do that.

**Rep. Koppelman:** There are the tiers of cities; 5,000, 14,000 and 25,000 and a point that was made earlier in testimony was that some large cities are not growing very fast, if at all, and some small cities are growing pretty rapidly. ET zoning and their annexation is a typical growth issue. Was it ever discussed to try to link this somehow to growth versus simply size?

**Jerry Hjelmstad:** I can only assume that it was based on the chances of the city growing and the growth proportion in size as far as mileage so I am sure that is way they used the size.

**Rep. Klemin:** This procedure that is set out on page 5 of this bill in subsection 2; there is an awful lot of procedure here, but once they get to the board of county commission it says to make a county decision based on local municipalities and it doesn't indicate anything based on record. I don't think they have another hearing. Is that your understanding?

**Jerry Hjelmstad:** I can see where that can be interrupted that way. I believe the intent of it was that the county commission should base their finding on the record. I don't think the it was to prevent them from having a hearing if those chose to.

**Rep. Klemin:** It says a final decision based on the record. The way the record reads right now there is no other hearing and assuming that there is no further hearing. If they would be able to hear arguments and a reviewing authority to go to?

**Jerry Hjelmstad:** I believe the intent was to give the county commission the ability to determine how they were going to decide based on the record or having other information if they chose to do so.

**Rep. Klemin:** Then the decision of the board of county commissioners then they would still be subject to judicial review. We have a statute in there and the decisions of the county commissioners and that still would apply in this case would it not?

**Jerry Hjelmstad:** The decision can be found to be totally arbitrary in their decision. There is still a right of appeal from the decision of the county commissioners that would apply that is not stated here.

**Rep. Jerry Kelsh:** Why would you consider the county commissioners decision whether than an administrative law judge? The administrative law judge would have a hearing and all persons would be able to come in and give their reasons on both sides and he would make the decision. According to what came from the Senate the county commissioners would not have that hearing authority. What would be your reasoning thinking the county commissioner's decision would be better than an administrative law judge decision?

**Jerry Hjelmstad:** I don't believe there was any thought that it would be better, I think part of the reason for these amendments are some of the concerns in the Senate hearing about lack of representation. Having the decision made by someone that was not elected etc.

**Senator Lee:** I am here to encourage the idea of having collaborative efforts between the various political subdivisions and I thought I might be interesting to have a little background on this bill. It was about 12 years ago in the Political Subdivisions Committee that Senator Orlocker chaired at the time that there were three separate issues concerning areas in ET zoning and annexation that have brought in various entities. They all addressed little pieces of the action and so at the time Senator Orlocker thought it might be a good idea to visit with all of those sponsors and see there was some interest in looking at the whole section as it has to do with ET and they were all agreeable so that is what we did. This was before email and so we had

city and county planners; city attorney's and attorney general's office and League of Cities, Association of Township officers etc as well as other who were in the room. Rep. Koppelman was in the legislature at that time too. There was a lot of faxing back and forth to see how they could make this work for everybody. We have had it in place for awhile and tried it and by large it has worked really well, but that doesn't mean that there aren't some things we can improve because occasionally there will be somebody who doesn't understand what the intent might have been. So that is what we are all here for now. In my real life I am a real estate broker and have been for about 33 years. I can tell you how important it is to have planning involved that really recognizes the need to look into the future. Shared a few examples of this when Prairie Rose and Frontier were out there because they did not want to pay those nasty special assessments and they were will to live without paved streets and ditches and rural water and septic systems now the awkward thing is they are surrounded by the city of Fargo because of the growth of the community and so the issue of compatibility of the water and sewer systems and the way the roads were and the excess to that area is restricted because of the roads and designing. Some areas have raw sewage in their road ditches. Went into a long description of the problems that the Fargo and surrounding area have had. Anyway my point is there needs to be some kind of consistency in this planning and in order to make sure that water and sewer lines are compatible. The rural subdivisions are using rural water which is very common in our area now, but if you were in one of the older areas with community wells, how does that work? If we are closer to a city do we want to be hocked up to a city sewer system instead of having a rural septic system? All of those issues end up being a kind of big deal. So that is how we got to the one to four miles and keep working on how many acres one might expect communities to grow and how far out should they be planning? The whole idea is to make for sure the roads on one side of the Red River match on the roads on

the other side and I think that is kind of a good idea too. I would hope that we might find some way to continue to plan in cooperation with all the property owners there and see how we can make it work so that the best interest of the majority of the citizens can be recognized with respect to the rights of the minority parties as well. I came today too really to provide some background and that we need to improve things as time goes by and live within it.

**Dennis Johnson: President of Dickinson City Commission:** (see testimony #4).

I think I am the only Major that is going to testify this afternoon so if you have some questions that you would like the Major's prospective on I would be happy to try to address those. The situation in Western North Dakota is different from the other situations.

**Rep. Headland:** As a major of a city would you have a problem with a requirement to annex ET zoned territory into a city within a reasonable amount of time?

**Dennis Johnson:** By requirements?

**Rep. Headland:** I think there have been areas that have been ET zoned in and they have not become part of the city and have not shared in the benefits of becoming part of a city but their dollars that they spend on improving their property to permit is going to the city I think that is part of his heartburn and the citizens that live in the area in that they don't feel that because they don't feel their fees go toward improving their property in any way.

**Dennis Headland:** I can shed some light on the fee issue with the city of Dickinson's prospective. The permit fees we collect generally in my view would not pay for the total cost of city inspection. It would depend upon the year, but in most years you probably don't have enough fee income to offset the cost of construction.

**Rep. Headland:** In your case it may not be relevant, but I think in cases of large cities such as Bismarck where they spend a lot of deduction in the outer areas in the ET area for several

years they have not shared in the benefit. Would a requirement to allow them to become part of the city to annexation, would there be a problem with this?

**Dennis Headland:** Isn't it true that annexation many times comes from the citizens themselves? And the time; wouldn't you be forcing them to act sooner than they really would want to?

**Rep. Koppelman:** How large is Dickinson now and what is your growth rate?

Dennis Headland: In the 2000 census they had Dickinson at about 16,000 people. As you know we have had quite a bit of oil development and other development in Western North Dakota. Our guess right now is perhaps at 18,000 and most of that growth coming in the last 4-5 years. Went over the history of the oil boom of the 70s and 80s. Dickinson and Stark County, our situation is such that again my guess and estimate is that between 80%-85% of Stark County lives in Dickinson or works in Dickinson so the 2 mile jurisdiction works out really well for us. Stark County doesn't have an engineer or building inspectors but the city does so with the concentration of population right in the Dickinson area works well for everyone. My interest as a major is to protect the interest of the citizens within the city of Dickinson. If we annex an area and it is not up to code we have to build it up to code. There are only two ways to pay for that and one is you either special assess the people you are bringing in or you allow the whole general population to cover the cost. I think the larger the cost the more likely you are to say it is going to be the whole population of the political subdivision that is going to cover these costs. We want to get it correct to minimize the costs of the citizens in the city limits.

**Rep. Nancy Johnson:** Are there areas in Dickinson or the ET zoning area of Dickinson that probably not in good shape and maybe would need to have some updating to be annexed?

Dennis Johnson: I think there are areas outside the city that we would have some concern about. I don't know if we would have real major concerns for most of the areas. I can give you

an example: North of town a subdivision that I think is in pretty good shape in terms of most places, but we know in terms of water distribution, if they came into the city the pipes aren't sized large enough to handle the additional fire hydrants and we would not only have to purchase the water systems we have, but we would have to go in and modify the system so we could bring proper fire protection to it. We have an example in the southern portion of the city, a mobile home park that was developed in the 1970 or early 80s was not subject to city codes and actually was not subject to any city responsibility as to water distribution and street maintenance. That was all set up to be with who ever owned the property at the time. That was 30 years ago and the ownership of the properties has turned over a number of times.

Now these residents are down there with streets that are in extremely poor condition.

Problems with water distribution and they wonder why the city isn't going to fix it. We are not going to fix it because it isn't our responsibility. The original agreement when that came in was it was their responsibility and we find that hasn't worked. I know in our cities place someone is going to have to step in and bear those costs. Those costs would be so large there is no way you could special assessment to the residents there. It would bankrupt them. So it will be the cost of whoever the existing city taxpayers are at the time and that is finally decided to do.

That is the type of thing that I think ET zoning can help prevent.

**Rep. Kretschmar:** You have extended your jurisdiction to the two mile? Do any other political subdivisions, the county or townships exercise some type of zoning in that area also?

**Dennis Johnson:** I didn't know they had townships.

**Rep. Klemin:** As we received this bill from the Senate the city would make the decision and the governing body of the other jurisdiction would have an opportunity to object. They say

township in this bill because in this case it sounds like it is going to be the county. So the county would have the opportunity to object and they would make the kind of decision based



on record. That kind of sounds like the deck is stacked a little bit. What if the county doesn't know what the city is doing?

Dennis Johnson: In our case I don't have a problem with the area outside the one mile or outside the city limits with the county being over there. There reason I say that is Stark County and the city of Dickinson work very closely together. Our planning and zoning commission has a county commissioner on it; it has at least two other members from outside the city limits in the ET zone and they hold hearing on any zoning request and their recommendations them come to the city. They do both inside and outside the city limits. It wouldn't be a problem from my perspective is the county heard the issues and over road the city. I would respect that decision. In the nine years I have been major I don't think this has been an issue for us. I think things are a little different in the west.

**Connie Sprynczynatyk: North Dakota League of Cities and ND Planning Association:**

(see testimony #5, #6, #7). I am just going to hand out a couple of letters. Cities use the building permit fee to fund the functions of inspections and permit review. I have the permit fee from the city of Mandan. Two sessions ago there was actually a bill in to require cities to use the fee only for administration and inspections and nothing else. Ultimately what the city decided that this was a solution looking for a problem because the cities got up and said here is the process to do this function. The city of Mandan said they took in \$138,923. His department spent \$162,550 administering the permits in the city of Mandan. You had a question about growth rates. We had the decision this morning. We do not know the answer to this. Discussed the flood control and growth in North Dakota. Western North Dakota typically doesn't have organized townships. Here is what 2027 does was it was amended by the Senate. The blue boxes are the step in process in state law right now. Whether you are going through an approval process or a zoning change process so understand that townships

do not have plats subdivision approval authority so actually the way 2027 is set up they are getting into the process because now they are going to have to be notified up front as soon as the city gets something; then the township gets the same thing. In the absence of township, it would be the county so all of that process, by the way the red hash lines means those are the points of public input that are now in the process. So can you do a subdivision or a zoning change approval in less than 60 days? My point is if the county offices are notified in the front of the process that is that first yellow box they have the same amount of time to work with those issues as the city is going to have time. We are talking weeks and weeks and probably months. They get it at the same time so if they don't like it in that outer portion they essentially can say no we veto that. Everyone votes for the county commissioners and the administrative law judge said well those criteria that you had in there; that is not sufficient for us to use as administrative law judges to make a final decision. Could those criteria that were in the original 2027 come back in sure. Should it be an administrative law judge? Sure. But the complaint was we don't get to vote. Then appeal those to the commission that you vote for.

**Rep. Klemin:** Please repeat. I have these two charts and they are a little bit different and which one is for the engrossed bill?

**Connie Sprynczynatky:** The chart's reflects what the planning process would look like with the amendment for 2027. The yellow boxes would be the amendments.

**Rep. Klemin:** We have an engrossed Senate bill before us so when you say new amendments; the only amendments we have before us are the once presented by Rep. Kaldor.

**Connie Sprynczynatky:** I am sorry. I should have said here is what the engrossed 2027 looks like that you are processing.

**Rep. Klemin:** What is it?

**Connie Sprynczynatky:** One is the zoning change and one is subdivision plat approval.

Remember only counties and cities have plat approval. But three can have zoning and so townships get inserted directly into the plat approval process according to engrossed 2027 and again the yellow boxes of the zoning change process that is where the township officials and their appeal can come.

**Rep. Klemin:** this flow chart is of the same bill we have before us and not of the amendments that Rep. Kaldor proposed?

**Connie Sprynczynatky:** Yes you are correct.

**Rep. Koppelman:** You said that the administrative law judge testified in the Senate and if I understood you correctly this was regarding the original bill which will also be represented in the recommended amendments we received from Rep. Kaldor that the criteria is not sufficient, but as I read the amendment says in making a decision the administrative law judge shall consider the following factors so it is not a restricted thing that says that this is your criteria and you cannot use it. Am I missing something or is that a change?

**Connie Sprynczynatky:** The administrative law judge testified during the interim study process and they said then they needed criteria in which to make a final decision. Unless you use the position that the governing board decision can be appropriately supported as Rep. Klemin said so that was the attempt to give them criteria. There was heartburn about not voting for people and that is why the county commissioner came in to get at that issue. Those criteria that were in the original 2027 can certainly come back in.

**Rep. Koppelman:** How many cities fall into this first category of being fewer than 5,000? I would assume it is a lot.

**Connie Sprynczynatky:** If you want cities 3,000 and above it is 13; 5,000 it is 12.

**Rep. Koppelman:** So below that would be everyone else. How many would fit into the 25,000 plus?

**Connie Sprynczynatyk:** four

**Rep. Koppelman:** How has that changed in 1975 and 1997? Are those category's so board that they are static? I am talking about in terms of population.

**Connie Sprynczynatyk:** Since 1975 I am just recalling a map of the number and size of the city of Bismarck in 70s and the number of subdivisions outside the city limits and I can tell you it is an explosion. We could reproduce that map for you. But it has been very uneven growth because Bismarck has gone along at a nice growth rate. It is hard to submit.

**Rep. Klemin:** We were talking about how these charts demonstrate to representation issues being resolves? But when you review the one, two and four mile zones it is only the outside half of these that there is this joint jurisdiction and this review process only applies to an area of joint jurisdiction so even with the ET zoning you are still in the exact same position that the county goes. They don't have that representation and there is not right to appeal with the county commission and all that. The township has no right to object to anything that happens in the inner half of that zone so why wouldn't we want to have this joint jurisdiction for the whole zone and that would certainly take care of the question, wouldn't it?

**Connie Sprynczynatyk:** You are correct. I testified on 1554 this morning. There is no perfect answer to this situation because if you were going to tie ownership of property and the ability to do something that we wouldn't have done from anywhere. Montana is a good example where the zoning laws are much more relaxed than they are here. You are correct; the share authority is in the outer portion. During a great amount of interim testimony there were a number of people acknowledging that I don't like this, but I understand that there needs to be an area of growth. It is pretty logical that there is an area of growth outside the city. How

big that area should be if one of the questions and who should have the responsibility for planning and zoning is the other part of the question and I said this morning there is no perfect answer.

### **Opposition:**

**Richard Gross: Grand Forks.** I live a little over 5 miles out of town. I am now in the ET zone ever since the four mile changes. I am a priest. I don't normally say that but I wanted to today and I will explain why. I hadn't wanted to testify and all that. My testimony has been the fact that I can't vote for those who govern my life. We have city leaders who are accountable to absolutely no one. They can do what they wish and I can't vote so I have no place to speak and that is very troubling to me. Last week or so I was at a hearing in Fargo. I was setting in the back the attorney from the city of Grand Forks, Ron Fisher, in his closing argument got a little loud and there is Father Gross. He says he has no representation; he does, I saw he was in Bismarck and testified before a committee. Those are his representatives. He has people that he can talk to so this really doesn't belong in the judicial system so he can go to the representatives. The people he voted for. Judge Erickson said I guess it is the legislature that created the situation and they should be the ones that can fix it. So I am coming to you to who should I go? You are the only people that can give me back my right as a citizen. As a priest, why am I in this and there are a couple of reasons. The other reason is I have neighbors. People I have meet in the 5 mile zone in the ET zoning. There is an older couple; a Korean veteran. They bought in 80 a place to live on; they have 4 kids and closing in on retirement age and the plan was that they would come home and live together on this 80 acre plat and their kids would share in this 80 acres. Then the city arbitrarily without announcement said one house per 80 acres. Now who compensates those people? They can't be here to testify. I have a neighbor in his 50s and he kept the farm that sold out two parcels; one on each side of the place setting there with his wife and mother. Each parcel was going to be between 15-20 acres. Part of their retirement plan was to develop this. Now they can't do this. By the way little couple ended up owning only about 78 acres so they can't do

anything with that too. I don't see the sense in that. As I understand according to projections, I understand that is going to be 250 years before I am in the city. 250 years ago where were we? There is no logic in this. Why does the city get the right to control me out there? I might not follow a building code? I asked the question, how many years out does the city plan? I understand about 20-30 years, whatever you need. Let's figure that out first and then decide if we need 4 miles, 3 miles or 2 miles? What is necessary? It is not 4 miles. We asked one of our city council men why you are doing this and they said because we can. That is not a very good answer. I know that that house in Fargo is in the wrong place and they had to spend all that money to move it. I know that the garbage dump is in the wrong place and the landfill in Grand Forks is in the wrong place. We do the best we can with planning. I don't think the questions are to plan or not to plan. The question is does anybody need absolute authority. It is going to cost more money; think about the cost to the people that I am talking about right now. Who is taking care of that cost? The bill engrossed 2027 says zoning and subdivisions regulations are for the city governing the entire ET area assumed by the city. As I look at that it seems then we can throw the rest of it away. The city has the authority. As far as joint jurisdiction is concerned, am I a fan of that? I read the book Animal Farm and they had seven commandments and it was that all animals are equal. If you read the book you know it was the pigs. They took over the house and eventually they had a page added to these commandments that all animals are equal; and then got added some animals are more equal than others. So joint jurisdiction; one animal is going to be more equal than the other. There is no such a thing as equal equal. So the amendments that Rep. Kaldor presented did say that in the inner half of ET the city is more equal and if anyone wants to object it falls on the township or county. In the outer half the governing body out there is more important and I don't see why that wouldn't work. Unless there is an assumption that those guys are going to be doing planning. I go out there and I see a septic system that has to be torn out I don't want it to go next to a road that is going to be a four lane. I think that would be possible. That is the amendment is to put the city in charge inside and amend the upper to be more equal and have the rural people and as far as the

county commission is concerned is would not be in favor of that. I would much rather have the judge do it, if it gets to that.

**Frank Matejcek, Grand Forks, Commissioner on the Grand Forks city Planning and Zoning**

**Commission.** (See testimony #8) The state law mandated that three members from the ET area from any city that has exercised the ET authority. ET area of Grand Forks is 0-2 miles and remained that way until 2006 when the city decided it needed four mile authority to site a landfill. Representing the people in the ET zone has always been somewhat contentious since we were outnumbered on the city planning and zoning commission basically. The city council had the final say and there was no representation for the ET residence. Zoning is supposed to protect land uses and protect abuse of uses being placed in unfit area. That is why you zone. If you have an area where you can locate heavy industry you keep it away from a single family home. Grand Forks abused the system by changing making the landfill a permitted use in an agricultural zone after they took the four mile authority nullifying the basic right of the citizens. No public hearing was required. They didn't change the zone; they just changed the permitted use. Grand Forks is expanding its industrial park because it is a good growing city, they need to. Grand Forks Herald announced the property purchased south of the existing district park they have has been approved an acquired by the city council for a price of \$20,155/acre. Pretty good for farmland. Most of the property was purchased to prevent development. The property North of Grand Forks, which was bought for the municipal landfill, is owned by an elderly widow whose family has farmed it for over 60 years. Talking to her family last evening she is an unwilling seller. She would prefer to pass that property on to her children and grand children and have this as an income for them. She has been offered \$1300/acre. I have also been told that if we need to take this property they have and use eminent domain, which the law says they can use. In that case they put the money in escrow, they take their land the process going forward will be justified compensation. Let's review the city of gets \$20,155/acre; a widow under threat of eminent domain gets \$1300. That is why you must set back ET authority to two miles to protect and give some

representation to the residents of this area. Only the legislature can correct this injustice. I would support 2027 with the Kaldor amendments.

**Rep. Jerry Kelsh:** When you talk about eminent domain do you mean the quick take or do they have to go to court to take it?

**Frank Matejcek:** Quick take it.

**Rep. Corey Mock:** Are you in support of Rep. Kaldor's amendments?

**Frank Matejcek:** Yes I am.

**Lane Magnunson, County Planner, Grand Forks County:** (see testimony #9). Another reason for the amendment is we are currently working with the city of Grand Forks to develop a zone agreement for the ETA and both bodies have not officially approved it. Basically what it would do is the 2-4 mile area the county would have zoning jurisdiction and taking into consideration the cities concerns as far as their corridor restrictions and enforcing those and the city would have jurisdiction from 0-2.

**Rep. Conrad:** did the commissioners talk at all about this administrative law judge?

**Lane Magnunson:** They specifically talked about the issue of joint zoning with the initial Senate bill and they were not in favor of the joint zoning. I think that was one of the main reasons.

**Rep. Koppelman:** The last statement in your testimony says about the plans would have conflicting policies. The theory should be then should be that you have some cooperation with the city and township, if that is the rural zoning authority or the city and county if that is the rural zoning authority. Do county's cities and townships get together and work on this stuff together now?

**Lane Magnunson:** The way it works now the county does the zoning for the majority of the townships in Grand Forks County. We also do work with the city in our last ordinance update



we looked at the 4 mile ETA and said what is your ultimate goal and then they did extend 4 miles so it was a mute point. There are some lines of communication open and I think that is what they are using now to develop a joint agreement but still the county is representing the townships interest to its best ability and trying to come together with the city with something we can work with.

**Rep. Jerry Kelsh:** How are your county commissioners elected at large? The reason for the question is several counties that do at large, and if there is a large city in that county there is a good chance that the majority of them would live within the city limits even if they are elected with areas because they have to be elected by population. My fear that if it goes to the county commission and in the county with an election at large you would have at least three of them, from the cities and they wouldn't be as good a consideration given to the rural areas is possible. Am I thinking wrong in that process?

**Lane Magnunson:** I think it is a concern of the people out in the county. I think the last election was pretty indicative of that. I believe that four or five of the commissioners are from the city of Grand Forks. We try to do our best to incorporate our townships. The county commission doesn't make that ruling on any planning items without a township recommendation and to my knowledge they haven't ruled against what the township recommended so I think there is always going to be some type of fear of rural residence there are so many people living inside that area, but in the same breath I feel that the county commissioners have listened to the people in the rural areas.

**Rep. Klemin:** With regard to these comprehensive plans. Does the county of Grand Forks currently have a comprehensive plan that covers the ETA?

**Lane Magnunson:** They do not currently have a comprehensive plan since the four mile extension, but they do not include any land inside the four mile area because of the ETA. The

first step is to set down with them and decide what should go on in those areas and set a policy and amend it.

**Rep. Klemin:** Does the city of Grand Forks have a comprehensive plan that covers this area. If we adopt these amendments that you are proposing you wouldn't use the comprehensive plan that the city Grand Forks has already in place; rather the county would have to develop its own comprehensive plan for that 4 mile area that it does not currently have.

**Lane Magnunson:** Yes staff would have to develop it. Basically we have already done the work for that four mile area. They would have to adopt it because the city extended it so they would have adopted it.

**Chairman Wrangham:** When did the city assume the four miles?

**Lane Magnunson:** It was in the spring of 2006.

**Chairman Wrangham:** I have had the question in my mind. These two comprehensive plans, the city of Grand Forks is within Grand Forks County; why do we need two comprehensive plans? Couldn't the comprehensive plan for Grand Forks County cover the whole county including the city?

**Lane Magnunson:** Grand Forks County and the city of Grand Forks have different philosophies on planning. Ideally that would work in perfect world and I am always open to cooperation, but at this point in time, I think the philosophy's of rural versus urban planning are too different.

**Chairman Wrangham:** You don't feel the counties have the expertise for comprehensive planning within the city, but the city has the expertise to ETA zone outside of the city?

**Lane Magnunson:** I don't feel comfortable based on what Century Code allows. If Century Code would change then the county is capable of handling. At this point in time we don't have because we are not allowed by Century Code.

**Larry Siverson: A Farmer from Mayville:** (see testimony #)

**Curt Kreun, Grand Forks City Council:** (see testimony #11). I also wanted to follow Lane here in the county. I wanted to follow Lane and I also work with Brad Gengler, these two gentlemen have put together a lot of information that is taking place to cooperate to make these two entities look at what we are trying to accomplish. We have made that possible between the programs that he presented and I think we can do that and I think with your help we can also accomplish a lot of goals. One thing we found out is one show doesn't fit all. I think we have found a pretty good solution for some of the problems in our area.

**Rep. Jerry Kelsh:** I am concerned about which amendments are you talking about; the Kaldor proposed amendment or the amendment that was proposed by the county planner.

**Curt Kreun:** I am not in favor of Rep. Caldor's amendment. I am in favor of the amendment that Lane Magnuson from the county put forth.

**Chairman Wrangham:** Why did the city of Grand Forks change the permitted use of land from 2 ½ acres to build a home to putting four homes on 160 acres? What was their thinking there?

**Curt Kreun:** It was one home for 2 ½ acres versus what we brought forth of one home for forty. If you go to the planning seminars and you go to the large planning areas what they are trying to do put cost shares together in closer to the city. In the outer areas you are trying to keep the large developments from taking place.

**Chairman Wrangham:** Why is that?

**Curt Kreun:** I think as a mayor as I indicated, what you are trying to do is create it so the cost doesn't get so big. If you get these spot developments taking place all over; a few here and a few there, actually as you go through that process you will become extremely sensitive to what

that city services and I think that part of the reason to discourage those spot developments throughout the county.

**Chairman Wrangham:** If I understand correctly and it has been stated several times that they are looking at 250 years before that area would become part of the city if projects go so I am having a little trouble in 250 years I am not sure we will use plats.

**Curt Kreun:** One of the other things and I have learned this as well is that you are not projecting all the growth out to that particular distance, but what you are trying to do is keep the growth into an area that is controllable for planning.

**Rep. Klemin:** Mr. Magnuson had some amendments here that basically said that the county's comprehensive plan is deemed the controlling document in the four mile area and not the city's comprehensive area plan and you are saying that you support those amendments and are you speaking on behalf of the Grand Forks City Council? Are you speaking the two to four or zero to four? In this bill we received from the Senate it says the county commission is in dispute between the city and township so that the county commission would make the final decision based on the record and the comprehensive plans on file from the city, township and county. Mr. Magnuson's proposed amendment was to remove city and township out of that so that we would only be looking at the county's comprehensive plan within that four mile area so from his testimony there is a county right now that does not have a comprehensive plan and that the city does so my question to you was, you said you were supporting these amendments; are you speaking on behalf of the Grand Forks City Council?

**Curt Kreun:** Yes.

**Rep. Klemin:** So the Grand Forks City Council wants to govern by the counties CAP and the 4 miles ET area and not the cities current CAP for that same area?

**Curt Kruen:** If I am not mistaken I don't think that was what the intent was by the county.

**Rep. Klemin:** That is the question I am asking.

**Curt Kruen:** It was our intention was to have basically zero to two to deal with and counties have two to four.

**Beau Bateman:** In the end you will be debating two issues. One of them is distance and the other one is dispute and how you resolve those two issues. I am here against the bill as written. We are against a joint jurisdiction in our township. We feel it is redundant if you have dispute whether you have 3 and 3 county and city or township and city where there is a dispute of rights when you have a dispute resolution. If that committee does not exist and we had the same dispute it would result the same so we see redundancy and against this. We are also having against having county commissioners resolve our differences and I will talk about that later. We are also against the two year sunset clause which would permit a manipulation of events in the next two years by the people who can control zoning because they are in charge of it. Held up poster. What you see here is the city of Bismarck, Grand Forks, and the city of Fargo and they are drawn to scale. It is interesting. The city of Bismarck with that four mile and the city of Grand Forks with their four mile; both of them with half the population of the city of Fargo are actually controlling more land. That doesn't seem to jive with what we are asking. The city of Grand Forks the black area is the airport. The city of Fargo actually has ET zoning west of the city of West Fargo, but I understand they are going to give that back. Again I refer to city of Fargo west of Fargo the 2-4 miles ET. You may hear in discussion that they would be a great difficulty if we pulled everyone back to 2 miles. The city of Grand Forks is willing to go back to the 2 miles right now. So that eliminates Grand Forks as one of your areas of controversy. The city of Fargo has only the small areas to the Northwest and Southeast which would be in turmoil, if you want to accept that, if you roll it back to the two miles. Certainly there would be no more turmoil in returning them to two miles than the turmoil that

we experienced when the city took us with their 2-4 miles. Explained the growth method for the city of Grand Forks based on city of Grand Forks growth since 1970. Since 1970 this is the growth method. The city of Grand Forks and Fargo occupy almost exactly the same square footage per person or population density; about 10,000 sq. ft. per person. Bismarck is a little bit different; a few more feet per person because Bismarck has various steps and satellite development outside. So there is a predictable method and a known occupation. The other area on the city of Grand Forks is the two mile ET. They won't fill that area give this method, which is from their website. The reason the township rejected the attempt of the city of Grand Forks and the county commission to come together were two and this was two weeks ago and this was a hand vote: The city would not sign that agreement with townships; they would only sign that agreement with the county. We agreed it was only good for 60 days and they could dissolve it at anytime within that 60 days and in my mind it is not an agreement at all. They wish to take control of 400 feet on either side of adulteries to place utilities, but 400 feet is a long ways to put utilities. My 6013 plan says that should be residential and a city park should be put in there as well. It is difficult to sign a plan in the future and you are going to miss. How much miss do you want them to have? Frank referred to the timeframe that the city took when went after their landfill. The reason we are suspicious and passion about getting specific language is in city council minutes from Feb 20, 2007; after they took the four mile, but before the judge told them they couldn't have the townships for a landfill. The minutes from the city council reads things transpired in the county and the township level up that this council is left with very little choice but to extend the jurisdiction from 2 miles to 4 miles. They did that when they saw that the county was about to deal with its zoning rules and they were going to eliminate the possibility of sighting a land fill except within the two mile jurisdiction. We the city council was left with little choice but to try and protect our zoning jurisdiction so the unfortunate

event that we were to lose the litigation and we decided it was in the best interest of our citizens and the people in the region to site a landfill within the 4 miles we had to have that opportunity and this is why we extended the jurisdiction four miles. A number of western states for ET zoning we have to rely on that experience. In South Dakota City and county exercise joint jurisdiction when agreed upon and Minnesota by agreement only. City and county or city and township exercise joint jurisdiction over agreed upon orderly excess. Montana ET zone is graduated by population. Three miles; two miles and one mile. A city may not exercise ET zone over any cooperated area where the county has adopted its own regulations. Wyoming there is no ET rules. Nebraska not over 3 miles, but nowhere regulations on farm or agriculture. Colorado no ET zoning. Arizona e mile ET zoning only if county does not exercise their authority. North Carolina; one of the odd states no ET zoning where the county is exercising it zoning authority. Texas ET is by population. Went on for other states. There are a number of options for western states who share our heritage who deal with this situation. When you take an ET and tell the lady like in Grand Forks that she can't subdivide her property you have an effect. Why can't she subdivide her forty; we asked the planner. It will be more expensive once the city gets there. So the cities money is more important than the rights of this woman over the course of the whole time that it is going to take them to get to where she is. In her case perhaps that is her 401K. Isn't that the same thing we disagreed with in the Supreme Court, that if a monetary gain for a city base versus right and 38 states that know that is wrong including the state of North Dakota? You hear zoning is important here, but the method is important. How important are the rights of these people when it comes to their future and their property. We are talking about the rights of Americans. When we give the power to those people who we don't vote to those guys we really think they understand as much. Discussed the city of Fargo and West Fargo and how they now get

along, but did not always get along. They get along now because they are equals. Counties do not have that nor do townships. The cities trump that. How can you have an equal negotiation if one person has all the power like the cities? They don't have to listen to you. Without a repeal of a four mile back to two. I would like to see it back to zero. I like what Colorado, Wyoming and Nebraska are doing. We know you are not going to do that. We are willing to give that up but let's go back to two where they had it and we will take the 2-4. Because if you don't do that we are subject, once we leave this room, the same guys some of who are reasonable and some who maybe angry at us for dragging into Bismarck four times to discuss this issue and take that out on us when we leave. I live within 2 miles of the city and within the 4 mile so we can be subject to that issue. Therefore that is why I resist the county commission. The people need to have a voting right. We will give the city the right to appeal to a municipal law judge.

**Rep. Koppelman:** So are you in support of the amendment or in support of the engrossed bill?

**Beau Batemen:** I am in support of the Kaldor amendment.

**Rep. Koppelman:** There is really an equal authority because the cities are continuous and share a border and because of the size.

**Beau Bateman:** You are allowed in that instance at least a 33% chance to be heard.

**Rep. Zaiser:** In terms of the relationship they want to be able to veto certain decisions. Is that the objective? Inaudible...

**Allen Solberg:** As I understand there has been an amendment as it was engrossed in the Senate. I am testifying as a neutral in this. In the annexation law and those factors by law that we are to consider with annexation hearing. There are also some guidelines on how to apply



this. The concern I have it when you have factors in here, these are difficult types of decisions as you realize. I would be happy to answer questions you may have.

**Rep. Klemin:** I have a question about this rite of certiorari process that seems integrated. There is a judicial review process that is similar, but they are not quite the same. Give me comments about these.

**Allen Solberg:** That would be a special rite to only review over the procedure that was conducted properly. Not that it would review the decisions that they made. So that is different from an appeal. The appeal you would be looking at the whole record.

**Rep. Klemin:** The rite of certiorari process which does go into this other area so it is kind of a combination between the standard rite of certiorari and the judicial review process. If we are going to have the ORJ involved in this thing maybe we need to them to recommend too.

**Allen Solberg:** Inaudible..

**Donna Bye:** Handed out testimony Don Siebert #12, Mike Vendsel #13, Bruce Christianson #14, John Zimmerman #15, Randy Conway #16, Dana Larsen #17, Rita Curl #18. Read and went over these testimonies.

**Larry Weil, Planning Director, City of Fargo:** (see testimony #19).

**Chairman Wrangham:** On the subject of premature annexation, why would the tax burden increase if the city annexed an area and did not provide any more services then why would the taxes go up?

**Larry Weil:** By verture of annexation the area that is annexed comes under the domain of city proper of the city. Typically the city tax base is higher because of the other services that are provided.

**Chairman Wrangham:** they have police and fire out there now. So you are saying it costs more to supply those services if you get them from the city than if you get them from the county?

**Larry Weil:** That concludes my testimony.

**Ken Yant: Secretary of the ND Township Officers:** I did serve on a commission starting in 1988. I represented the ND township officers on that committee. It consists of two people from the city, two from the county. Two Senators and two representatives; one from the Governor's office so we do have a variety of representation. This last year we had about seven meetings and we considered at length the ET zoning. We had seven bill proposals in our last meeting. We finally decided on the proposal that was introduced into the Senate. We knew it wasn't right, but the fact that we support the bill.

**Randal Loeslie:** Grand forks Rural Water Manager: (see testimony #20). Look at the map attached. We are not in support of 2027 with even the amendments that are on it. It has gotten very cumbersome. I think it defeats the purpose. I think if you don't throw the 4 mile ET out completely I think the best can do it let the townships have jurisdiction over that jointly with an administratively law judge. The only time the city has to pay rural water is just to annex that property. So the two to four mile zone basically puts the rural water out of business unless they are already in that.

**Brian Bitner: Burleigh County.** This is the city of Bismarck zoning authority manual. (holding a large book). This is Burleigh County zoning ordinance manual. They are both just about as thick, but I think the Burleigh County one is a little thicker now that I look at it. There was a statement earlier where the Major of Dickinson said he is responsible for representing only the citizens of the city in regards to ETA. I want you to know as the Burleigh County Commission I want to represent all the citizens of the county not just the ones in the city. If the

city major or city commission is only considering the city residence that is a disservice to those citizens that live in the ETA. 0-2 and 2-4 isn't the actual issue. The actual issue is the lack of representation. If we understand there is a problem in the 2-4 how is that any different in the zero to two. The Burleigh County Commission wants to represent all the citizens and we are on is on record of voting for joint jurisdiction. I don't think 2027 is a very effective bill because as a County commissioner if I was to hear a dispute in the ETA and the zoning and subdivision regulations of the city governs the entire area, what is there to decide. The only question is whether that dispute falls under the city zoning ordinance. There are some criteria in here that calls out for notification and has 15 days to object. Most townships meet once per month. I don't know how you would even meet to object. I think some of these changes to the advisory commission bill would water it down and make it ineffective. One of the things we are going to look at in Burleigh County at our next meeting is discussion considering the formation of regional planning and zoning commission pursuant to ND Century Code 11-35. Hopefully that will address some of these issues also. With this planning and zoning process there seems to be some kind of concern that roads won't line up with the cities. I can't think of any place in the county where we have that problem, but I can think of places in the city where we have that problem. How would premature annexation happen? There is a whole section that deals with annexation in the code.

**Rep. Klemin:** We have the engrossed bill with amendments before us proposed. What do you think?

**Brian Bitner:** There is too much confusion going on with this. The first engrossment of 2027 I can't support the way it is.

**Rep. Klemin:** The original bill is what you are talking about.

**Brian Bitner:** Yes the original bill. I like the idea of the amendments that were presented by Rep. Kaldor, but I haven't seen those.

**Robert Bahm, Minot:** I am in the two mile jurisdiction and I own 200 there and another 1400 acres in the 4 mile jurisdiction so this has an effect on that. We built our house 15 years ago and I had to go through the city because I was in the two mile jurisdiction. When I went to pay my building permit the city doubled my permit and I asked them why. Well because we are not going to get any specials from you. But I didn't think that was right at the time, but I had no choice. Now when I see what is going around with this type of stuff it just gets bigger and bigger without any recourse. I can't vote in the city of Minot; I pay their extra city sales tax. So all the decisions of my property are affected by the people that make the decision in Minot and I have no recourse so maybe that is my fault and I should be running for the County

Commission. The majority of the people on this list are big land owners and developers in the city of Minot that are making the decisions so who are they going to favor; their own pocket books. Explained that house was taxed for more than it cost to build it because of the city regulations. So we just paid for rural water to come to our property so within the two mile jurisdiction the city isn't going to do it. So to get water we had to do it and then going back to specials. To me they always want to take but I have nothing to get back to me. I do think the best thing is to have an administrative law judge in there.

**Tim Solberg:** Cass County Planner: (see testimony #21).

**Rep. Koppelman:** Do you know if they were looking at the engrossed bill?

**Tim Solberg:** I have not been involved with the legislative meetings that have been taking place.

**Rep. Koppelman:** It does provide for the same distances, but it does create shared or overlapping. You are aware of all of that.

**Tim Solberg:** I can't speak for the commission. I am speaking from the staff. We feel confident in the city's ability to plan for the area that would become part of the city and we also feel it is important that the townships and counties also have a say in it.

**Curley Haugland, Land Owners Association:** We support no ET zoning.

Testimony handed out: Kevin Hullet #22, John Warford: #23, Jim Gilmour #24

Hearing closed.

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. SB 2027

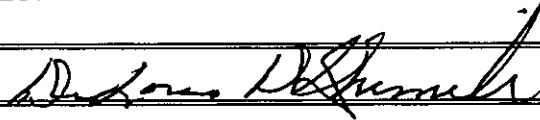
### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: March 19, 2009

Recorder Job Number: 11257

Committee Clerk Signature



Minutes:

**Chairman Wrangham:** reopened hearing on SB 2027. We have received a lot of testimony on it and quite a few amendments out there.

**Rep. Corey Mock:** As Rep. Kaldor's amendment was testified to by all parties perhaps the committee should discuss that first.

**Chairman Wrangham:** I think I would like to appoint a subcommittee to get all these amendments put together and see which ones fit together and so forth and so on. We have a few days to get it done. **Subcommittee appointees:** Rep. Headland, Rep. Koppelman and Rep. Kelsh. If you could get together and I think you could have all afternoon and the rest of the morning to organize and decide where you want to go on it.

**Rep. Jerry Kelsh:** What perimeters is the committee looking at?

**Chairman Wrangham:** Everyone knows I have been very active on this effort. I think the Kaldor amendments look very good. I think the administrative law judge idea is a good way to go. What we are looking at here is the ACIR worked for two years and decided that there should be some changes. The ACIR subsequently put 2027 into the Senate with some substantial changes. As it came over to us, my opinion is, those substantial changes were removed. It became really a nothing bill the way we got it. What I would like to do is go back

to somewhere beyond where the ACIR had gone. We know we are going to have to give up some things in conference with the Senate. I think some change is what the public and what ACIR wants.

**Rep. Koppelman:** I look at this effort as similar to what happened in 1997. I was involved in that. We had four bills, but basically they got together in that case and milled it into one bill and I think that was a situation where some were blue bills and just kind of added amendments to one etc. We passed one thing out of here that not all of us supported but never the less it was what the house passed so I think the bottom line is to come to some conclusion to what ET Zoning is. I know the interested groups have been meeting and talking etc. I think the subcommittee should consider all of that and try to bring back to the committee what we think is the best solution.

**Rep. Nancy Johnson:** I think it would be helpful to look at the Kaldor amendments and my second request is adopt something everyone can live with.

**Rep. Corey Mock:** I would hope the subcommittee would look at is consideration to the Kaldor amendment. Since the hearing itself those that were in favor of it favored the Kaldor amendments and those that opposed it looked at the Kaldor amendments as fair and prudent. It seemed that the discussion was whether we were in favor or opposed to the bill as written. Everyone had a consensus that administrative law judge was the most fair in solving the problems. I too would like to set in on that subcommittee. I know that Grand Forks County has looked at this and is one of the major fighters in anti territorial zoning and it has been quite an issue to say the least. I think they were opposed to 1554 because they didn't eliminate ET zoning and coming out and saying this is better speaks volumes to the progress that amendment has done.

**Rep. Koppelman:** I hear a lot of interest around the room. Everyone is saying they want to be in on this. For subcommittee work that would get to be too much. I welcome all the suggestions so maybe a way to do this is rather than having everyone chiming in and participating is each of you that have ideas or amendments maybe the committee could take some time to just listen to you and then gather all of that and then go do its work. Then come back to the main committee.

**Rep. Zaiser:** I agree with your view. A large committee can stop progress. For me it would make sense for the subcommittee to come to a conclusion on the Kaldor amendments and where they want to go. Communication has been a major problem. People who are miss interrupting mad at the people they didn't think they were made at. I think the process should be easier.

**Rep. Klemin:** We have open meeting laws and other people can be there, but they will not be members of the subcommittee. They can hear what other people are saying anyway. Personally this is not a one size fits all situation. There are counties with unorganized townships and there are counties with organized townships and I think we have to be consented of the difference. I think the Kaldor amendment puts up some good points, but it is not good in some areas in my opinion and it is a one size fits all resolution which I don't think it recognized the all the issues. I don't think we need to have an administrative law judge in all cases.

**Chairman Wrangham:** I am sure that it was not the intent they would be meeting behind closed doors. They will be meeting here in this room and if anyone wants to attend I will send an email to the committee.

**Rep. Jerry Kelsh:** The administrative law judge was mentioned and I know it will not fit all cases, but my concern is that if you have the county commission you will not have rural



representation. I think they are influenced by where they live no matter what everyone thinks. The townships will probably feel a little leery about doing this but maybe this will make them get along better.

**Rep. Koppelman:** It is not a one size fits all. In the western part of the state where there aren't townships it is very different. The way the Kaldor amendment reads is that the entity doing the zoning outside of the city and the city get together and work things through depending on who has what authority and all of that. Then they go to the LJ and they can't work that out and then it goes to the county commission; however, if there is no township doing zoning it is the county commission and the city getting the issues and the county commission making the decision so that isn't fair so you have to look at the fact that it is not one size fits all.

**Chairman Wrangham:** Passed out the Kaldor amendment (#1) to look at. The administrative law judge would consider a comprehensive plan in making his decision so my attempt here is to limit what parts of the comprehensive plan he would consider. Those being zoning, platting and things like that. Comprehensive plans have crept into social engineering, my words and I don't think that part of the plan should necessarily be considered by the administrative law judge.

**Rep. Corey Mock:** I would like to make a request of the subcommittee regarding meeting next Tuesday. I would hope that the subcommittee would come back and meet prior to the weekend.

**Rep. Zaiser:** I think plan A should be planning and plan B should be zoning and land use is really the issue.

**Rep. Headland:** Due to the fact I will be gone tomorrow the subcommittee will not be meeting tomorrow. Maybe we can meet later today. Otherwise we will be going next week.

Hearing closed.

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. SB 2027

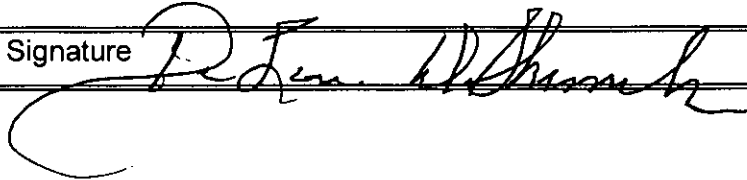
### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: March 24, 2009

Recorder Job Number: 11456

Committee Clerk Signature



Minutes:

**Chairman Wrangham** reopened the hearing on SB 2027.

**Rep. Headland:** (passed out proposed amendment). Our subcommittee work is not done.

Rep. Jerry Kelsh has two amendments that he presented yesterday that he did not get done in time for our meeting and we need to talk about this one too. It is not a subcommittee amendment.

**Tim Dawson, Legislative Council:** the amendment before you should have the number 0406. In this amendment there will be half mile, one mile and two miles. If you look at those sections as well the underscored language in a will all be gone, because at the half mile there isn't going to be any joint jurisdiction. It will all go to the city within that half mile. The one mile, two mile they keep that. But they do beyond the one half mile or one mile language. This is defined later in the bill with joint jurisdiction. Some of this is from the Kaldor amendment. Most of it was cut and paste. If you look at all that underscored language in two and three are going to be gone. Then you look at the amendment with this new subsection two starting on page 5, line 6 and subsection 3 on the backside on page 2 and there will be a new subsection 4. On page 3 subsection 4 will become 5 and there is a new subsection 6. We will start with subsection 2. This reads just like the Kaldor amendment. There is joint jurisdiction in the area

of the first half. Went over the jurisdiction as outlined in the proposed amendment. This one adds mediation to the Kelsh amendment. So it goes from negotiation to mediation and then to jubilation so there is another step in there. If the setting governing body does not come to an agreement then they request the governor's body to preside over the meeting and act as the mediator. This sort of mediation continues if the mediator's doesn't think it is worthwhile and if they are unable to resolve that dispute then you put in the board of county commissioners and they are a party to the action. If that does not work then it would go to an administrative law judge. That should get you over to subsection 3 of page 2 of the amendment. This deals with the outside half of the joint jurisdiction. Like the Kaldor amendments with the political subdivision that would otherwise have jurisdiction being the primary in that area and just mirrors that previous language that you saw in subsection 2 from city primary. Now the other political subdivision is primary.

**Rep. Conrad:** are we talking about the 2 mile; now it is 1 and 1.

**Tim Dawson:** I did not know if I should change them so I left them the same. I did not know whether to take the Kaldor or Kelsh distances. I took the Kelsh distances. The local jurisdiction would have been the outside half so in a four mile city which is now two miles the outside half would be the outer one mile area.

**Rep. Koppelman:** Our intent in our discussion yesterday was not to roll back on that point. It was to keep it the Kaldor amendment was. The Kaldor amendment was that the distance would remain what they are now. If you are a city that has a two mile jurisdiction you would stay at 2, but it would be 1 and 1. Four mile etc.

**Tim Dawson:** You look at subsection 4. The last section says the party that does prevail is liable for the cost of the administrative law judge. Then we get into the procedure for the administrative law judge or the board of county commissioners should they choose to be

involved in this and that procedure is the same as it always has been. The appeal section is dealt with under a special law which deals with appeals from local jurisdictions which is 28-34-01 and that is on page 3 at the top. Then there is the list of factors on page 3 of the amendment. The new subsection 6 deals with the population of 2,000 or more and they have a boundary that overlaps and it is for the smaller city that is involved and this deals with disputes between two cities. Then the application section has language that was on both, grandfathering in previous acts of the city.

**Rep. Zaiser:** do you keep in where the ETA overlaps?

**Tim Dawson:** when it overlaps normally it is the distance established under whether it is one, two or four so they are on the same footage.

**Chairman Wrangham:** On the application section I need some clarification. If at present time the city is zoning and area say at the 2-4 mile. If the city was zoning in a subdivision 3 miles out, with this change where they have joint jurisdiction, if I live in that subdivision, how does that affect me? Am I still under primarily the city jurisdiction or am I then under the other jurisdiction?

**Tim Dawson:** You would be under the cities jurisdiction; at least that is the intent. We did try to make this application section clearer.

**Chairman Wrangham:** So if the city exercised their ET authority out the full four miles, what do they give up in this?

**Tim Dawson:** They would give up anything in future growth.

**Chairman Wrangham:** What is future growth?

**Tim Dawson:** The city growth so half that line that is four miles moves.

**Chairman Wrangham:** So they give up nothing until that four mile moves.

**Rep. Klemin:** The way I read this is if you have a subdivision out there that has been platted under the city zoning; the people that are there have the right to rely on that subdivision plat at the time it was made. Next to it you may have an area that is still zoned; wouldn't that be the county or township then?

**Tim Dawson:** Yes that is right. I was talking about ET zoning.

**Rep. Klemin:** So it is not that the city has four mile zoning and keeps it forever, it is scaling back. What we have done before is still the same.

**Rep. Zaiser:** In other words it is grandfathered in. When they were given restrictions when they built their home they wouldn't have to operate under different regulations. But anything new would go under the new political subdivision jurisdictions.

**Chairman Wrangham:** Somehow we need to clarify this, I think.

**Rep. Koppelman:** that is the intent. In the grandfathering in areas where you have a city that has exercised 2 or 4 mile ET zoning and if this law were to pass as Rep. Klemin said there might be a subdivision where the city has already zoned it, that would continue. What about in that outer ring if there is a subdivision or a local resident or local area where they don't want the city to do that anymore; is there any kind of procedure to sort of undo that? Can they then make an objection and get out of the ETA and go back to zoning it ourselves and they negotiate and mediate, if they chose to do that? We think in most cases it will not be an issue because if people build in that subdivision, the city has zoned it and platted it, that is what they expect and they are happy with it; but in those rare cases where there is a problem, should be create a solution, I don't know.

**Rep. Zaiser:** I think it will be very difficult with the liability issue.

**Rep. Koppelman:** We did discuss rather than an individual being able to do it that it would be between the governing authorities. The person affected would have to go to their governing body.

**Rep. Jerry Kelsh:** If you built a house five years ago and it was zoned by the city of Bismarck, so this summer I say I am going to build this new house on the 80 acres I own and this is the county. My intention that I would be going by the county or township; whoever had zoning authority before the passing of this bill. Is that right or wrong?

**Tim Dawson:** ET zoning would still reach out the full four miles. The subdivision regulations still go out four miles. There is a statute that says that subdivision regulations follow the procedures of ET zoning regulation. That is put into this statute. It is important how this is drafted. It is unclear how it is drafted. It doesn't cover the circumstances that this committee wants it to cover. I think it is arguable who would have jurisdiction over your home just on the other side. I think the city would with this clause.

**Rep. Jerry Kelsh:** I think that is a real point of contention in the whole thing. That was not my intent. I wanted it to be under the authority of the previous zoning authority.

**Chairman Wrangham:** I don't see the zoning requirements changing very much or at all in any of these areas. I visited with Mr. Dawson and some of the committee members about putting something in there to the effect that the procedure by which the township or county could contract with the city doing it now to continue doing it. Then the township or county would have some say in how they wanted it administered. Mr. Dawson informed me that he thinks they can already do that under a joint powers agreement. I think Burleigh County does some of that now just outside of the ET area. This weekend we drove down in an area that was zoned and platted within the ETA and the water was terrible and there were some areas where septic tanks were under water. As I looked at that area I couldn't help but think that the

major problem was the storm water drain was not set up right. No matter who does it there are problems. These things need to be looked at on a county wide basis and a water district wide basis or whatever because to just to plat a subdivision doesn't do the job.

**Rep. Headland:** My intention was to not have the city have the authority, but have the township that had the ability to accept the cities authority or if they chose not to for whatever reason have the ability and a process to voice their concerns and to see it out to the end. I think that was my intent.

**Rep. Zaiser:** I am concerned if people can pick and choose. I am concerned if you may have the city administering the zoning on this house in an area and then there is a new home built and you have the political subdivision doing the zoning on this new building. I think that would be a night mare. I would like to amend it so either the city do it or the township do it and there is no either or. In regards to the drainage I think the solution would be to make the subdivision make them subject to the watershed district approval. Use an area plan like Fargo does where they consider maybe a square mile in their zoning so they look at an area wider than a subdivision.

**Chairman Wrangham:** You have another bill to present. We should have done the amendment first and subcommittee report.

**Rep. Headland:** Actually the subcommittee does not have a report so to speak. Rep. Kelsh came with two amendments to the subcommittee. We have not really completed our work.

**Rep. Jerry Kelsh:** I have two amendments. One of them rolls back to one mile the zoning part to the city. Then we cut back everything before 1997 as it was then. There is not mediation process in the bill.

**Rep. Conrad:** You mentioned the two mile?

**Tim Dawson:** They would go back to before 1997.

**Chairman Wrangham:** In 1997 House Bill 2384 changed it to ½, 1-2, 2-4.

**Rep. Klemin:** On page 3 I think there is additional language that should be added. On factor h. or go before the board of county commissioners. On the application section it seems like mostly what we are talking about is the outer areas. It seems that those subdivision regulations should stay in place, but the entity that continues to exercise jurisdiction should change so if the city did exercise the authority it should stay the same because when they bought their property or built a home they have the right to rely on those regulations. What we can do is say the city is not going to continue to exercise jurisdiction over that outlying subdivision; it would be the township or county, unless they agree the city should continue to do it. So in the future if someone wants to get a building permit in an undeveloped lot in that political subdivision they would go to the township or whoever has jurisdiction.

**Chairman Wrangham:** I agree. I like what you are saying. I don't know how we can implement it. As a legislator we had told people who had relied on the zoning and permitting of their township that they can no longer rely on that. We took the township's authority away and gave it to the city and that seems to be constitutional so this seems to me we are just going the other way.

**Rep. Klemin:** So the property rights couldn't be taken away from them that would be the grandfather clause thing.

**Chairman Wrangham:** Just to make myself clear, if I bought a piece of property that was zoned and I bought having certain expectations that the township did the zoning and permitting and it was going to stay that way, then when the city took that over I lost that reliability. Was I honored, no?

**Rep. Koppelman:** The same things occur when the cities annex. You are in a rural area and the next day you are in an urban area. We have a procedure for protesting and there have



been a lot of discussion in past session whether that is set up correctly in terms that people who don't want to be annexed and are. It seems to me Rep. Klemin's points in the grandfathering area I think are a problem. I think this is something our subcommittee should discuss and come to some sort of conclusion. The grandfathering section really is lifted about two years ago. What that did it rolled the distances back, but it said whatever you are doing now keep doing. The idea was that the cities would not be able to do new ET zoning in that outer ring area during that two year period. Maybe in the outer 4 mile that the city has exercised the ET zoning maybe we could clarify that they had to have done something besides just exercising that zoning authority it would have to be platting, construction or development and that kind of thing. Then they have acted on that zoning and have begun investing in it and building or doing something with it.

**Rep. Conrad:** I think it is such as the Grand Forks situation where the woman wanted to break up her land and to do plat and now she is restricted to that 40 acre plats. How do you take it back?

**Rep. Jerry Kelsh:** Maybe all we need to do is turn it back to joint with a resolution on certain things. Give one or two miles to the city and anything beyond is joint and they have to come to an agreement. Have the resolution process in there so it would solve the problems that you would have. I think we are making this more difficult than we need to. We are not going to be able to take care of every little concern.

**Tim Dawson:** Are you saying we are not having the resolution section.

**Rep. Jerry Kelsh:** No, the city either gets one or two miles out; whichever we think is proper and then we have the rest of it we have to have a joint at least. Maybe one mile is enough. I

don't know.

**Rep. Conrad:** I think of going back to the pre 1997 two miles. So we can direct that issue before we can discuss the rest.

**Rep. Koppelman:** I think we should have the subcommittee meet first. One of the things the subcommittee has talked about is inserting the mediation process. It has been tested and has worked well. One of the things they did in 1997 was put that process into law. The process basically is you try to negotiate and if you can't solve it through negotiation the govern appoints a mediator and then there is this committee of two people from each interested party and the mediator and the reason I think that is healthy is that mediation is where they are not going to force you to do anything. Hopefully you can reach some kind of conclusion, but there is a hammer over the process because the next step is the administrative law judge. Another thing that has been mentioned is the memorandum of understanding or joint powers agreement where they can work together, these political subdivisions if they chose to and we are sure that is possible under current law. The distances out based on the population of the cities so really ET should be a pre-courser of that.

**Rep. Zaiser:** I concur that I think it is hard to come up with a workable plan in a large group. I think we should adjourn and let the subcommittee go to work.

**Rep. Conrad:** We have 32,000 people in the city of Minot. We have 18,000 within those two miles. They have been there a long time. There were some concerns about the 4 mile ETA. There are 9,000 people outside that zone in the would be 4 mile.

**Chairman Wrangham:** Who does the zoning for them?

**Rep. Conrad:** The Township.

**Chairman Wrangham:** They maintain a staff etc.

**Rep. Conrad:** Yes they do it.

**Chairman Wrangham:** So that is 60,000 people. Too bad they couldn't have a one stop shop. Sounds like they can't afford to have a large staff for the amount of people around Minot.

**Rep. Koppelman:** In the areas that we live we know what is going on. In some areas that means it is a problem for friction. In other areas things are working well and we don't want to upset the apple cart so I think we have to be careful with a one size fits all approach.

**Rep. Kretschmar:** I would like to get a consensus of the distances we want in the bill. I represent only cities of 1,000 or less. I would like to see our zoning stay at one mile. I think from what I heard the only problems in North Dakota are Grand Forks, Fargo and Bismarck. In my district I have heard no negative comments on any of this ETA.

**Rep. Klemin:** I think this Headland amendment is going in the right direction. We do not want to go back to what we had before 1975. I think the subcommittee has had a good start on a product here so I think that is the direction to go. I think there should be only two areas instead of three.

**Rep. Jerry Kelsh:** I know some of you would like to eliminate ETA. I know that isn't a possibility so that is why I made the suggestions of one mile and the amendment isn't going to do that or a two mile and anything beyond that I didn't put mediation in there, but the hammer is still there. I think we only have two cities with the problem and that is Grand Forks and Bismarck. I don't know if we can come up with a solution without impacting the people that are working together well now.

**Rep. Zaiser:** The townships or counties take over the ETA over 2 miles that the joint over two miles would not work. Have it either the city or county; not both.

**Rep. Nancy Johnson:** I would like to not see a change in the 1,2 & 4 mile ETA.

Hearing closed.

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. SB 2027

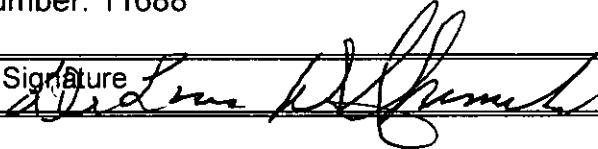
### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: April 2, 2009

Recorder Job Number: 11688

Committee Clerk Signature



Minutes:

Started at 04.41

**Chairman Wrangham** reopened the hearing on SB 2027. Handed out proposed amendment .0500.

**Rep. Headland:** This is the final draft of what the subcommittee passed out and if it would be alright with the committee it would probably be best to have Mr. Dawson go through it with the whole committee.

**Tim Dawson, Legislative Council:** the meat of it will start on page 3. Basically in subsection 1: a.b.c. There is joint jurisdiction in the outside half. Whether it be one mile, two mile and four mile and there is joint jurisdiction in the outside half. Subsection 2 goes on to explain the other political subdivision has primary zoning and subdivision authority in the cities. In that section it goes on to talk about the negotiation, mediation, arbitration and judification that belong in this process and each one of those can be used if there is a disagreement. Subsection 3 says in that outside ring of joint jurisdiction which the primary sources of the other political subdivisions, the township represents the areas out there that have already been planned by the city. If it doesn't have a platt for it there are going to be little pokadots out there in that outside ring where the cities will be primary and the township is going to be secondary. If you

look at the bill you define other political subdivisions; you refer to the township or other political subdivision. Subsection 4 on page 5 deals with the county commissioners or the administrative law judge being the arbitrary of the decision. Some decisions maybe referred to district court. Other factors they look at are in subdivision a-g. The next review is on 6, 7 & 8 and this deals where two cities come up and but against each other and the things that arise with ET zoning and annexation. Six says if there has been an overlap of ET zoning area the ETA is divided an equal distance. This is where most of the changes happened this morning where the subcommittee were in these areas here to get these more nailed down to address that situation of those two cities. Seven says if you have city limits that are contiguous the larger city shall exercise the same authority as the smaller city in as much as the city overlaps under this section.

**Rep. Kretschmar:** What does in as much mean?

**Chairman Wrangham:** The top of page 6, last line says authority has the smaller city in as much as the cities overlap. I am hearing strike as much as and replace it with where so it reads smaller cities where the cities overlap?

**Rep. Koppelman:** The subcommittee did some wording change on that just this morning and I am thinking we eliminated the overlap references and put where the other cities are contiguous is better language.

**Tim Dawson:** Yes the subcommittee voted to switch back to the smaller cities in as much as the cities are contiguous under this section. Section 8 again deals with two cities that have contiguous and that annexation of property by one of the cities does not affect the zone authority previously established under this section. An annexation of property by one of the cities does not affect the zoning authority previously established under this section. We go to subsection 15 on page 7 and we have that definition I spoke about earlier "other political

subdivision" which means a political subdivision. The application section will mess with that previous language we discussed on the pokadots in the outside half of the areas in which we have plated so I will just read the application and hopefully it is clear. Read the section. The second sentence deals with continuity because there is going to be a roll back here. The city is going to roll back from four to two miles when it does that districts and regulations stay until the new authority or political subdivision does whatever it wants to. So the second this happens you don't have to have a meeting right away afterward so some time can be taken by the other political subdivision to adopt regulations in that area. They have full authority to do that and this doesn't leave you in no man's land until they do. The first sentence is going to affect cities immediately after this act is approved except for the pokadot areas. That concludes my description of the amendments.

**Rep. Jerry Kelsh:** I am not clear on #8 on page 6. Where the city if contiguous there is a separation in there and each zone where two or more cities are in and up to who has the authority?

**Tim Dawson:** Within the city limits you win. So if you are annexed and you are within the city limits you win.

**Rep. Jerry Kelsh:** Can the voting authority overlap or can it overlap? If one zones out two miles and overlaps and the other one couldn't zone out that far because they would be zoned in the same area as the other one is already zoned. Do you just zone up to that area, is that it or how does that work?

**Tim Dawson:** there will be overlap in the ETA authority in which case there could be a dispute and then there is a whole dispute mechanism in the second part of this, if you look at subsection 9, 10, 11, 12, 13.

**Rep. Jerry Kelsh:** There are concerns about the pokadot sections. There they are setting out there under no man's land. Maybe they have some people living there, but it may take five acres or whatever. All around that then would be private zoning authority. What would happen if this is cut off or development up to it. How would that work or would all these other mechanism come into play. Would the arbitration, mediation and other stuff take care of that?

**Tim Dawson:** I think that is the over design about this is to have all disputes go to that dispute resolution provision.

**Rep. Klemin:** Nine and ten of this act would become effective on August 1, 2009 right?

**Tim Dawson:** Yes

**Rep. Klemin:** Why do you need that in the bill?

**Tim Dawson:** That is in the code.

**Rep. Klemin:** This is a bill just to amend the section; it would stop anyway.

**Tim Dawson:** It is done this way because if you start putting the effective date in law so the only place they excess, if you look at page 1 it says 40-41-01.1. The only caption for this whole section of law is on page 1. That is what we do all the time.

**Rep. Klemin:** On page 5, this is in the middle of it where the administrative law judge or board of county commissioners shall set forth providing the decision including law and order, I was wondering about the words using the law with regards to the board of county commissioners. Discussion on wording.

**Tim Dawson:** It makes no difference to me. I think you bring up a valid point and that probably more clearly described the same thing. The event would be the same. What you want is probably more accurately described the situation.

**Motion Made to amend by Rep. Klemin: Page 5 put reason for decision. Seconded by Rep. Conrad**

**Voice vote carried.**

**Rep. Kretschmar:** I asked about groups. To give you an example the cities in my district we have one mile so the city zones for the whole mile. The county uses jurisdiction over the other half; them and the townships really do nothing.

**Tim Dawson:** So the city has ET from ½ mile to 1 mile.

**Rep. Kretschmar:** So the city has jurisdiction in the outer ½ mile and the county doesn't care. Would the city ordinance then be the law?

**Tim Dawson:** Just because you don't exercise the jurisdiction you have you still have the jurisdiction. It would be outside the jurisdiction of the city so I don't know how they would enforce it? The jurisdiction would belong to the other political subdivisions.

**Chairman Wrangham:** Under the application section it says the city remains in effect and regulations in their jurisdiction until modified or different districts and regulations are adopted by another political subdivision. If another subdivision didn't adopt anything in that outer half mile the city would retain, wouldn't they? I thought that was the purpose of that.

**Tim Dawson:** It is making the assumption that the city in the outside half has gone so far as to extend their ET zoning authority and has zoning districts with their own regulations for agriculture, commercial or whatever the case maybe in that area. When you pull out those regulations will stay there and they become the regulations of the other political subdivisions. They can appeal and get rid of those if they wanted to. The thought at the time was that we would provide continuity to obtain them, but get rid of them right away.

**Rep. Kretschmar:** I am looking at subsection 2 on the bottom of page 3 and that is a one mile zone distance and they are in the outer half mile where the county has joint jurisdiction and the county has some joint zoning out there. It says for the decision to be final the other political subdivision, that is the county, shall give written notice to the city; and then the city can request



negotiation and then says negotiation is out of the question then the city is final. Now if it goes the other way around and says the city wants to exercise jurisdiction by joint authority; there is nothing I found in the bill that the city has to give notice to the county so they can deal with it together. Only if the county doesn't care, then the city's decision is final where the county could seek negotiation. I don't see that in the bill. I don't know if it should be in there or not. It goes one way but does not go the other way.

**Rep. Zaiser:** I understand why comprehensive plan was taken out of there and projected rural plan was put in, but my question for you under state law you have to have a comprehensive plan before you are able to zone. I am wondering what affect that would have?

Tim Dawson: in the administrative law judge or board of county commissioners we listed the ones that they have to absolutely because they are listed there to make their final decision.

They can have any other factors that they want to bring in. If they find that comprehensive plan is important they can bring it in.

**Rep. Zaiser:** My point is by law you have to have a comprehensive plan to do zoning.

**Rep. Koppelman:** We have a question on the application section. Rep. Kretschmar brings up an interesting point. In these areas that are in the outer ring where the joint jurisdiction would exist I think the intent of the subcommittee was if a city had exercised its ETA they would have had construction or platting taken place. We were thinking in the subcommittee then the city would continue to exercise that jurisdiction so as this changes nothing would change for the cities that have gone out and acted upon the zoning authority in a particular area. What would change is in those areas in that outer tier where the city may have had the authority but didn't do anything more than saying it is zoned. My concern is the last part of the application section is coming in the words where different districts and regulations are adopted by another political subdivision under this act. I don't think the intent of the subcommittee was that in those areas

where the city has platted and is exercising its authority that the county or township could then come back and say well OK, but now we want to change it. The overlap that and create a dispute. The intent was that it created a two tier process in that outer ring. One being where zoning but nothing else has taken place the other political subdivision is in charge. Where the city has platted then the city has the authority, but the objection authority of one or the other still exists.

**Tim Dawson:** I think that is what is accomplished here. Perhaps in that last sentence what we are saying is it goes to the regulations in the area of the joint jurisdiction you all become districts and regulations of the other political subdivision immediately. There is joint jurisdiction in the outside half; it is not joint jurisdiction. It is jurisdiction by the by we with other political subdivision with an appeals process by the city. That is not really what joint jurisdiction where they both exercise the same jurisdiction, but it seems to still fit. It is not the best way to describe it, but it isn't joint jurisdiction it is the political subdivision on the outside half with the city able to come in and challenge it. Then we look at that last sentence there it talks about joint jurisdiction so then you go into that joint jurisdiction language. Joint jurisdiction is only that area in subsection 2.

**Rep. Headland:** My intent in this language was in those pokadot areas where in the outer areas the city has the right to dispute. My intention was that in the pokadot areas where the city had the zoning authority that the people that lived there can still can go to their political subdivision and request them to dispute something that the city is planning. It gives them their voice, where they do not have it currently.

**Rep. Jerry Kelsh:** I think number 2 on page 3 described in that outer ring because it says that under this jurisdiction the other political subdivision may adopt, so it couldn't be final, the other political subdivision shall give written notice to the city and then it goes through all the

remedies. Then number 3 if just the opposite and I think that covers Rep. Kretschmar concerns. The city would have the jurisdiction to recede in their range; their application and issue permit's and the other political subdivision in that area have all the remedies that are afforded to any other in section 2.

**Tim Dawson:** Section 2 deals with the outside ring. Section 3 deals with the dots in the outside ring. This is confusing because in Subsection 3 in the area where it would be otherwise joint jurisdiction they presented them a plat, so when we talk about joint jurisdiction we are only talking about the ring; we are not talking about the dots. Although the procedure is the same.

**Rep. Kretschmar:** You say 2 on the bottom of page 3; maybe joint jurisdiction isn't the best choice. It is the joint jurisdiction that you describe in subsection 2 different from the joint jurisdiction that is described in 1 & 2?

**Tim Dawson:** It is plugging into that term of joint jurisdiction in a.b.& c. I am defining it. So I am defining the term as it is used in the underscored language in a.b. & c. The other political subdivision having jurisdiction with an appeals process by the city.

**Rep. Kretschmar:** Under the bill can a city go out into the outer ring and zone or do something?

**Tim Dawson:** Only in as much as they can do it under subsection 3. If the city has presented a plat presented before them in that outside ring, then they could so it was to that area they would be primary. They wouldn't have zoning jurisdiction in the rest of the area, but they would be able to come in and say, you are putting an industrial next to our residential so stop it and then they can go through the arbitration.

**Rep. Headland:** Isn't it true that there is nothing in here that would preclude the other political subdivision from adopting the city's zoning regulations if they chose to? So if they don't have

anything to dispute naturally their responsible to zone it; they may very well say we like the cities plan, we are adopting it.

**Tim Dawson:** You are correct. That is why is carry over provision is in there. The thought was that most of the time they will continue to do the same areas of districts and general zoning. They would just adopt what the city has. Issues usually arise over specific zoning issues.

**Chairman Wrangham:** Is there a section of law that deals with joint jurisdiction where any township or county could so a joint powers agreement type thing?

**Tim Dawson:** Correct. In fact the township in the outside ring would just do a joint powers agreement with the city and have the city enforce the previous stipulations of the city in the area if that is what they want to do.

**Rep. Nancy Johnson:** Is there anywhere in here in the outer ring where the county has their jurisdiction, if they decide to put in a back door area that they can give notice to the city?

**Tim Dawson:** Before they do anything they have to give notice to the city and the city can do the arbitration. There is a 30 day window.

**Rep. Klemin:** According to page 3 in the first section in the subsection 2 joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction; I am wondering if it wouldn't be clearer instead saying joint saying in common jurisdiction?

**Tim Dawson:** the other political subdivision makes the regulation, they enforce it, they have that jurisdiction. In that sentence I wanted to make clear that the jurisdiction of the other political subdivision. It is only then you begin with this mediation and other dispute resolutions that are listed later on. I don't want to go on and confuse it. Maintain could be switched to has joint jurisdiction.

**Motion made to amend by Rep. Klemin moved to change on page 3, second line in section 2 the words maintain that be removed and the word has be inserted. Seconded by Rep. Conrad.**

**Voice vote carried.**

**Rep. Kretschmar:** Am I correct when I say in the outer ring except for the pokadots the city would have no jurisdiction to do anything unless the county or township does something that the city doesn't like and they can negotiate. In the interim the other political subdivision has something to say unless the city has done so?

**Rep. Hatlestad:** Wouldn't it be just as easy to cut everything in half and say the city has jurisdiction here and the other two political subdivisions have there and then grandfather in the areas that were in.

**Rep. Headland:** then you don't give any voice to the platted areas in the outer ring then.

**Rep. Hatlestad:** but you are not doing it now.

**Rep. Headland:** Yes we are doing it now. We have that mechanism?

**Rep. Koppelman:** this gets so complex. I think the committee understands, but I think to try and simplify this I think is what Rep. Hatlestad said is a good way to explain it. We are saying that the ETA that cities had prior to 1997 are restored. They have that inner ring that they had. In the outside areas the rural zoning authority has that authority now with the exception of the areas that have been grandfathered in. The only thing is what Rep. Headland said which that is even in those grandfathered in areas the township has the authority to object and even in those areas where the authority is given back to the townships the cities have the authority to object.

**Rep. Kretschmar:** In the inner ring, the part the city has jurisdiction over, but the citizens that live in that inner ring really have nothing to say. They can't talk to the county commission, or

township board or anybody. As of right now they are subject to the jurisdiction of the city council in which they cannot vote. I think that is not a good thing.

**Rep. Koppelman:** He is correct; however, that is the way it has been for almost 35 years and I think is what the subcommittee determined is that it is not wise to go back and try to undo that bill. The complaints that we have all heard in this session and prior from rural folks are usually the folks in that outer ring simply because that is relatively new; since 1997. The inner ring has been so long established that we felt that inner ring was an area has been well established in law and doesn't seem to be a big issue. In that inner ring where cities now exercise this authority they also are required to have a rural representative on their planning and zoning commission so there is some voice.

**Rep. Jerry Kelsh:** Everyone is having to give up something in this process. This is what we thought was a reasonable compromise. At least in the outer ring there is remedies to take care of things that have happened out there that weren't there before.

**Rep. Conrad:** If you are within two miles of the city and your roads aren't connected and you have joint jurisdiction so if you go beyond the two miles that is iffy.

**Rep. Corey Mock:** My only concern is the grandfather clause, which I think is necessary in the areas where development has already occurred in the outer half. Grand Forks with their zoning of the landfill; that hasn't even been platted yet, but it is a multi million dollar application process to permit and you can't find land to permit so that technically is grandfathered, but legally from the 97 law the state is looking eventually at a law suit.

**Chairman Wrangham:** In most cases you have to plat it before you can get a permit.

**Rep. Corey Mock:** This is in process and I have sat with the mayor this morning and that area has not been platted. They have been in process of siting the landfill for the past two years.

**Rep. Headland:** The problem in that area has been that the people that live in that area have no voice. We are giving them a voice. At least there is a way to mediate that out now with both sides having their due process.

**Rep. Corey Mock:** I believe fairness and justice must take place especially when considering growth. I don't think it is fair to anyone to say in sometime we are going to be growing here means now. The problem with the landfill in Grand Forks and everywhere else you are going to have this issue. You can't just place it anywhere and the area in which the city is willing to place it is acceptable, but the whole township is upset it is going into that one section even though that section is locatable. So the voices of a few outside that area are getting in the way of that one area and a section of that township. The problem is if we don't grandfather some of that development for the cost, I am afraid of the consequences and I am wondering if there is a potential solution.

**Rep. Koppelman:** I wanted it to be known that we did not craft these solutions for a specific place. We did not talk about the Grand Forks area landfill or the guy who wanted to build an out building and couldn't get a building permit. We decided we could not through state law try to micromanage what is going on in local areas. The reason we selected platting was that was what sort of an indication that something is going on beyond zoning. This doesn't go into effect when we pass it for several months so maybe that could be accomplished if that is a concern. If that area were platted right now and this were to go into effect and therefore we are part of their grandfathered area, what would happen would be whenever something would occur there the rural folks would have the authority through their representative government to object. We did not in this draft give authority to an individual. We have them representation that they didn't have before because they can go to their county or township and say I don't like what the city is doing over here and it is in this outer ring so will you object on my behalf?

Then it is up to their elected officials to decide. I think an issue that big it probably will end up in district court no matter what we do; even if we do nothing.

**Rep. Zaiser:** You said you took a broad approach to this and didn't have any specific area in mind. When you talked about cities butting one another did you have a city in mind?

**Rep. Koppelman:** I am aware of this because of specifics and history. I represent West Fargo and obviously West Fargo and Fargo have contiguous borders. The West Fargo, Fargo issue is not the issue going forward; however for two reasons. The battle has been fought and the zoning has been established; the agreements have been struck and out mediation have occurred. West Fargo is the fifth largest city in the state. The fastest growing city in the state. When the census is taken in several months they will be in one of the larger tiers so it will have equal distance authority to Fargo. The reason we have inserted this is that in 1997 I worked with the laws that existed in the state with regards to contiguous cities and what was interesting is the law on the books in 1983 said all the ET zoning statutes apply to non contiguous cities. It said it because back then there were no contiguous cities in ND. Back then the legislature, I think was saying, when that occurs we need to go back to the drawing board. What happened in 1997 I had a bill that dealt with that and what we have been talking about for a few sessions now is what came out of 1997. The only reason we are including it is there is a question as policy makers we need to ask ourselves; is it reasonable. There is a population threshold of 2,000. That is why we put that in because examples like Frontier and Prairie Rose in Fargo; they don't want to grow their little housing developments that are technically incorporated as separate cities, but they don't care about ET zoning authority and none of this applies. But when two viable cities touch do we want to give some fairness and I think that was the issue.

**Rep. Zaiser:** I have a question about Surrey and Burlington. Wasn't the population there a problem there if Minot would go down to half mile; wouldn't that put Minot in a box?



**Rep. Conrad:** We are 50 years away from that.

**Rep. Koppelman:** On contiguous cities our question was do we bump the smaller up to the larger cities authority or do we shrink the larger city to the smaller city. You could do either, but I think the feeling was in this was what we were dealing with was roll back so we don't want to start bumping people out so the idea was to make it the smaller cities.

**Rep. Jerry Kelsh:** In the case of the Grand Forks landfill, they have done a lot of things whether it is just planning or not I don't know. Would there be a word that would be better than the word plat that would be more conclusive of what we want to do?

**Tim Dawson:** I don't know what has happened in Grand Forks. This talks about the presented a plat. My understanding the first thing you do before you do anything with the city process so it is a presented plat. That is not a completed plat so I don't know if Grand Forks has presented a plat in that process?

**Rep. Corey Mock:** Perhaps a city that has presented a plat or sight plan application before the subdivision; that would be something we could look at. **Motion Made to Amend Page 4, Subsection 3, line 2 to after plat put or site plan application. Also on Page 7, Section 2, Line 3 after plat put or site plan application. Seconded By Rep. Conrad**

**Rep. Headland:** I don't see any harm in doing is, but I don't see the need to do it either because the process for mediation and objection by the political subdivision is going to be there. They are going to do it whether it is platted or not.

**Rep. Zaiser:** I think Rep. Mock has a good idea. The first step in the platting is the preliminary application or plat, if you will or site plan.

**Chairman Wrangham:** I think the intent of the subcommittee is this is to grandfather areas after they are done, completed; the city has done the action; the building is there so then it can stay there. I think we are taking a huge step back when we start saying that if there is

anything. If this was to project and if it is something that is under the jurisdiction of the city now and I think the purpose of the forum have given a lot. I would like to see it stay a plat myself.

**Rep. Corey Mock:** I think Rep. Headland is right. If we grandfather that area, if there is any area where the outer zone the city has been in the process of constructing some sort of development or landfill they could continue to move on and if a complaint does come in from the local area the process has been in place as what to do. I think if we are going to grandfather in those areas in I think it is a fair amendment.

Discussion:

**Rep. Jerry Kelsh:** We did not put that language in and there have been a lot of times there hasn't been a plat, would they even have the option of giving notice to the outer ring etc.

**Rep. Headland:** If we do add this and the dispute comes forth it is going to place the burden of cost on the other political subdivision versus the city. If we left it as a plat it would be the other way around so I think I will probably reject the motion.

**Rep. Conrad:** when listening to the testimony I remember those who testified. I was surprised the landfill didn't come up that much; it was the 40 acres and a lot of the other things that they were concerned about.

**Voice vote carried on amendment.**

**Rep. Kretschmar:** In subsection 4 versus 14 where you make the definition of a quarter quarter section. When I envision a quarter quarter section on mind it is 20 acres in a square; could it be 40 acres in a different configuration like a rectangular?

**Tim Dawson:** it is defined by federal law and I would guess it would be the square.

**Rep. Kretschmar:** when they set up this mediation committee or have the government make the appointment I think the government has more important things to do.

**Rep. Koppelman:** the procedure in current law has worked very well involving mediation involving cities; whether they have contiguous borders or they simply have overlapping ET authority in this process. The governor does do the appointment and I think we thought was that being the governor we have two political subdivisions in this state that have conflicting interests or have an issue they are trying to deal with and all the governor does is appoint a mediator and he sets over this process and brings hopefully everyone to an agreement.

**Rep. Headland:** If there are no further questions I would like to thank the subcommittee and I also want to thank Mr. Dawson for helping us.

**Motion Made By Rep. Headland to adopt the amended version of the bill. Seconded by Rep. Koppelman.**

**Voice vote carried.**

**Rep. Nancy Johnson:** The sunset clause has been removed.

**Rep. Koppelman:** The current law that is in place was a moratorium that we put on and that is why we are back here. The Senate put a sunset clause on the interim bill. It is the feeling that we can't just keep doing two year fixes.

**Rep. Zaiser:** I have a question and concern on some of the variables on the application process. Sometimes there are and aren't townships and sometimes there are counties that do zoning and sometimes that have none.

**Do Pass As Amended by Rep. Kilichowski; Seconded By Rep. Jerry Kelsh**

**Vote: 11 Yes 2 No 0 Absent Carrier: Rep. Headland**

**Hearing closed.**

#1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

Page 1, line 2, remove "and" and after "date" insert "; and to declare an emergency"

Page 4, line 24, remove "beyond one-half mile [.80]"

Page 4, line 25, remove "kilometer]"

Page 4, line 29, remove "beyond one mile [1.61 kilometers]"

Page 5, line 3, remove "beyond two"

Page 5, line 4, remove "miles [3.22 kilometers]"

Page 5, line 6, replace "The zoning and subdivision regulations of the city govern the entire extraterritorial" with "Joint jurisdiction in the area within the first half of the distance in subsection 1 is jurisdiction in which the city receives applications and issues permits and imposes 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. The political subdivision that would otherwise have zoning and subdivision regulation jurisdiction may approve or reject any decision made by the city under the city's jurisdiction. For a decision to be final, the city shall give written notice to the governing body of the political subdivision that would otherwise have jurisdiction and the decision of the city must be approved or rejected by the governing body within sixty days of notice. If the governing body does neither, the decision is deemed approved. If the decision of the city is rejected by the governing body of the political subdivision that would otherwise have jurisdiction, the governing body shall state on the record the reasons for rejection. 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 rejection, the regulation of the city prevails unless the governing body petitions the office of administrative hearings to appoint an administrative law judge to make a determination as to the dispute between the city and the governing body. The governing body of the political subdivision that would otherwise have jurisdiction is liable for the costs of the administrative law judge."

3. Joint jurisdiction in the area outside the area in subsection 2 is jurisdiction in which the political subdivision that would otherwise have zoning and subdivision regulation jurisdiction maintains that jurisdiction and receives applications and issues permits and imposes administrative fees for applications and permits. In addition, under this jurisdiction that political subdivision adopts, modifies, and enforces any zoning designation or regulation and approves any subdivision plat or regulation. For a decision to be final, the political subdivision shall give written notice to the city. The city may approve or reject any decision made by the political subdivision under the political subdivision's jurisdiction. The decision of the political subdivision must be approved or rejected by the city within sixty days of notice. If the city does neither, the decision is deemed approved. If the decision of the political subdivision is rejected by the city, the city shall state on the record the reasons for rejection. If the political subdivision and

city do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the rejection, the regulation of the political subdivision prevails unless the city petitions the office of administrative hearings to appoint an administrative law judge to make a determination as to the dispute between the political subdivision and the city. The city 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 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. A decision by the administrative law judge 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 shall enter an order setting forth what the administrative law judge determines to be fair and reasonable terms and conditions. In all cases, the administrative law judge shall set forth in writing a decision, including findings of fact, conclusions of law, 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, any interested party dissatisfied with the decision may apply to the district court for a writ of certiorari. The review upon the writ may extend only to the determination of whether the administrative law judge has acted regularly and has not exceeded the administrative law judge's jurisdiction or abused the administrative law judge's discretion under this section. In making a decision under this subsection, the administrative law judge shall consider the following factors:
  - a. Whether the proposed change is consistent with a projected growth plan;
  - b. Whether the proposed change is substantially related to planning practices consistent with adopted comprehensive plans;
  - c. The impact of the proposed change on the present and planned uses of the area under review;
  - d. The impact of the proposed change on the health and safety of the residents of the area;
  - e. The effect of the change on the liability of the affected jurisdiction to adequately staff and enforce the change;
  - f. 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;
  - g. 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
  - h. Any other factor determined to be relevant by the administrative law judge."

Page 5, remove lines 7 through 19

Page 5, line 20, replace "4." with "5."

Page 5, line 25, replace "5." with "6."

Page 6, line 3, replace "6." with "7."

Page 6, line 19, replace "7." with "8."

Page 6, line 26, replace "6" with "7"

Page 7, line 21, replace "8." with "9."

Page 7, line 25, replace "9." with "10."

Page 7, line 29, replace "10." with "11."

Page 8, after line 4, insert:

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

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

Page 1, line 2, after the semicolon insert "to provide for application;"

Page 4, line 22, overstrike "One" and insert immediately thereafter "One-half" and overstrike "1.61" and insert immediately thereafter ".80"

Page 4, line 23, remove "A city that has exercised its authority under this subdivision has"

Page 4, remove lines 24 and 25

Page 4, line 26, overstrike "Two miles" and insert immediately thereafter "One mile" and overstrike "3.22" and insert immediately thereafter "1.61"

Page 4, line 27, remove "A city that has exercised its"

Page 4, remove lines 28 through 30

Page 5, line 1, overstrike "Four" and insert immediately thereafter "Two" and overstrike "6.44" and insert immediately thereafter "3.22"

Page 5, line 2, remove "A city that has exercised its authority under this"

Page 5, remove lines 3 through 5

Page 5, line 6, remove "The zoning and subdivision regulations of the city govern the entire extraterritorial"

Page 5, remove lines 7 through 19

Page 5, line 20, remove "4."

Page 5, line 25, remove the overstrike over "3." and remove "5."

Page 6, line 3, remove the overstrike over "4." and remove "6."

Page 6, line 19, remove the overstrike over "6." and remove "7."

Page 6, line 25, remove the overstrike over "4"

Page 6, line 26, remove "6"

Page 7, line 21, remove the overstrike over "6." and remove "8."

Page 7, line 25, remove the overstrike over "7." and remove "9."

Page 7, line 29, remove the overstrike over "8-" and remove "10."

Page 8, after line 2, insert:

**"SECTION 2. APPLICATION.** Any extraterritorial zoning regulation in effect before the effective date of this Act which extends beyond the extraterritorial zoning authority provided by this Act is not affected by the reduction in the extraterritorial zoning limits in section 1 of this Act."

Page 8, line 3, replace "This" with "Section 1 of this"

Renumber accordingly



# 3

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

Page 1, line 2, after the semicolon insert "to provide for application;"

Page 4, line 22, overstrike "One" and insert immediately thereafter "One-half" and overstrike "1.61" and insert immediately thereafter ".80"

Page 4, line 23, remove "A city that has exercised its authority under this subdivision has"

Page 4, remove lines 24 and 25

Page 4, line 26, overstrike "Two miles" and insert immediately thereafter "One mile" and overstrike "3.22" and insert immediately thereafter "1.61"

Page 4, line 29, replace "one" with "one-half" and replace "1.61" with ".80"

Page 5, line 1, overstrike "Four" and insert immediately thereafter "Two" and overstrike "6.44" and insert immediately thereafter "3.22"

Page 5, line 3, replace "two" with "one mile"

Page 5, line 4, remove "miles" and replace "3.22" with "1.61"

Page 5, line 8, replace "An application for a zoning change or subdivision plat or any change in zoning or" with "Joint jurisdiction means the city receives applications and issues permits and imposes 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 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 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."

Page 5, remove lines 9 through 19

Page 5, line 20, after "4." insert "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. 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, conclusions of law, 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 for a de novo review. In making a decision under this subsection, the administrative law judge or board of county commissioners shall consider the following factors:

- a. Whether the proposed change is consistent with a projected growth plan;
- b. Whether the proposed change is substantially related to planning practices consistent with adopted comprehensive plans;
- c. The impact of the proposed change on the present and planned uses of the area under review;
- d. The impact of the proposed change on the health and safety of the residents of the area;
- e. The effect of the change on the liability of the affected jurisdiction to adequately staff and enforce the change;
- f. 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;
- g. 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
- h. Any other factor determined to be relevant by the administrative law judge.

5."

Page 5, line 25, replace "5." with "6."

Page 6, line 3, replace "6." with "7."

Page 6, line 19, replace "7." with "8."

Page 6, line 26, replace "6" with "7"

Page 7, line 21, replace "8." with "9."

Page 7, line 25, replace "9." with "10."

Page 7, line 29, replace "10." with "11."

Page 8, after line 2, insert:

**"SECTION 2. APPLICATION.** Any extraterritorial zoning regulation in effect before the effective date of this Act which extends beyond the extraterritorial zoning authority provided by this Act is not affected by the reduction in extraterritorial zoning limits under section 1 of this Act."

Page 8, line 3, replace "This" with "Section 1 of this"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

Page 1, line 2, after the semicolon insert "to provide for application;"

Page 4, line 22, overstrike "One" and insert immediately thereafter "One-half" and overstrike "1.61 kilometers" and insert immediately thereafter ".80 kilometer"

Page 4, line 23, remove "A city that has exercised its authority under this subdivision has"

Page 4, remove lines 24 and 25

Page 4, line 26, overstrike "Two miles" and insert immediately thereafter "One mile" and overstrike "3.22" and insert immediately thereafter "1.61"

Page 4, line 29, remove "beyond one mile [1.61 kilometers]"

Page 5, line 1, overstrike "Four" and insert immediately thereafter "Two" and overstrike "6.44" and insert immediately thereafter "3.22"

Page 5, line 3, remove "beyond two"

Page 5, line 4, remove "miles [3.22 kilometers]"

Page 5, line 6, replace "The zoning and subdivision regulations of the city govern the entire extraterritorial" with "Joint jurisdiction in the area within the first half of the distance in subsection 1 is jurisdiction in which the city receives applications and issues permits and imposes 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.

3. Joint jurisdiction in the area outside the area in subsection 2 is jurisdiction in which the political subdivision that would otherwise have zoning and subdivision regulation jurisdiction maintains that jurisdiction and receives applications and issues permits and imposes administrative fees for applications and permits. In addition, under this jurisdiction that political subdivision adopts, modifies, and enforces any zoning designation or regulation and approves any subdivision plat or regulation. For a decision to be final, the 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 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 political subdivision that would otherwise have jurisdiction 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 political subdivision that would otherwise have jurisdiction 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."

Page 5, remove lines 7 through 19

Page 5, line 20, after "4." insert "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, conclusions of law, 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:

- a. Whether the proposed change is consistent with a projected growth plan;
- b. Whether the proposed change is substantially related to planning practices consistent with adopted comprehensive plans;
- c. The impact of the proposed change on the present and planned uses of the area under review;
- d. The impact of the proposed change on the health and safety of the residents of the area;
- e. The effect of the change on the liability of the affected jurisdiction to adequately staff and enforce the change;
- f. 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;
- g. 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
- h. Any other factor determined to be relevant by the administrative law judge.

5."

Page 5, after line 24, insert:

"6. Notwithstanding subsections 1 and 5, if two or more contiguous cities, each having a population of two thousand or more, have boundaries in which the extraterritorial zoning authority of the cities may overlap, each city may extend its zoning regulations to the distance established under subsection 1 for the smaller city involved."

Page 5, line 25, replace "5."" with "7.""

Page 6, line 3, replace "6."" with "8.""

Page 6, line 19, replace "7."" with "9.""

Page 6, line 26, replace "6"" with "8""

Page 7, line 21, replace "8."" with "10.""

Page 7, line 25, replace "9."" with "11.""

Page 7, line 29, replace "10." with "12."

Page 8, after line 2, insert:

**"SECTION 2. APPLICATION.** Any extraterritorial zoning regulation in effect before the effective date of this Act which extends beyond the extraterritorial zoning authority provided by this Act is not affected by the reduction in extraterritorial zoning limits under section 1 of this Act."

Page 8, line 3, replace "This" with "Section 1 of this"

Renumber accordingly

Date: 4-2-09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

**HOUSE POLITICAL SUBS COMMITTEE**

☐ Check here for Conference Committee

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

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Klemin Seconded By Rep. Conrad

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham			Rep. Conrad		
Vice Chair Rep. Headland			Rep. Kelsh		
Rep. Hatlestad			Rep. Kilichowski		
Rep. N. Johnson			Rep. Mock		
Rep. Klemin			Rep. Zaiser		
Rep. Koppelman					
Rep. Kretschmar					
Rep. Pietsch					

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

Absent \_\_\_\_\_

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

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

Amendment  
Page 5 - reason for decision

Vote  
carried!



Date: 4-2-09  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

**HOUSE POLITICAL SUBS COMMITTEE**

☐ Check here for Conference Committee

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

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Klemin Seconded By Rep. Conrad

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham			Rep. Conrad		
Vice Chair Rep. Headland			Rep. Kelsh		
Rep. Hatlestad			Rep. Kilichowski		
Rep. N. Johnson			Rep. Mock		
Rep. Klemin			Rep. Zaiser		
Rep. Koppelman					
Rep. Kretschmar					
Rep. Pietsch					

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

Absent \_\_\_\_\_

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

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

*In line 2, Section 2, Page 3 remove the  
word maintain that be removed and  
put ~~that~~ HAS to be.*

*Vote  
carried!*

Date: 4-2  
Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

**HOUSE POLITICAL SUBS COMMITTEE**

☐ Check here for Conference Committee

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

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep Mock Seconded By Rep Conrad

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham			Rep. Conrad		
Vice Chair Rep. Headland			Rep. Kelsh		
Rep. Hatlestad			Rep. Kilichowski		
Rep. N. Johnson			Rep. Mock		
Rep. Klemin			Rep. Zaiser		
Rep. Koppelman					
Rep. Kretschmar					
Rep. Pietsch					

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

Absent \_\_\_\_\_

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

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

*pg 4, Sub 3, line 2 insert "after plat or  
+ Page 7, Sec 2 site plan application."*

*Vote  
carried /*

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

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 - 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-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 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 maintains that jurisdiction and may 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 had presented a plat 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 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, conclusions of law, 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 liability 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 in as much as the cities overlap under this section. *when*  
*are contained 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.
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.
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.
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 the effective date of this Act. 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

April 2, 2009

VR  
4/2/09  
1067

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

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 presented a plat or site plan application 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 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 liability 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.
- ~~9.~~ 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 or site plan application was presented to the city before the effective date of this Act. 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



Date: 4-2-09  
Roll Call Vote #: 7

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

**HOUSE POLITICAL SUBS COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number 90140-0409 as amended

Action Taken ☐ DP ☐ DNP ☐ DP AS AMEND ☒ DNP AS AMEND

Motion Made By Rep. Headland Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham			Rep. Conrad		
Vice Chair Rep. Headland			Rep. Kelsh		
Rep. Hatlestad			Rep. Kilichowski		
Rep. N. Johnson			Rep. Mock		
Rep. Klemin			Rep. Zaiser		
Rep. Koppelman					
Rep. Kretschmar					
Rep. Pietsch					

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

Absent \_\_\_\_\_

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

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

*Unanimous  
Vote  
carried!*

Date: 4-2-09  
Roll Call Vote #: 5

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

**HOUSE POLITICAL SUBS COMMITTEE**

☐ Check here for Conference Committee

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

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Kilichowski Seconded By Rep. J. Kelsb

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham	✓		Rep. Conrad	✓	
Vice Chair Rep. Headland	✓		Rep. Kelsb	✓	
Rep. Hatlestad	✓		Rep. Kilichowski	✓	
Rep. N. Johnson		✓	Rep. Mock	✓	
Rep. Klemin	✓		Rep. Zaiser		✓
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Pietsch	✓				

Total (Yes) 11 No 2

Absent 0

Floor Carrier: Rep. Headland

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

**REPORT OF STANDING COMMITTEE**

**SB 2027, as engrossed: Political Subdivisions Committee (Rep. Wrangham, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2027 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 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 presented a plat or site plan application 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 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 liability 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 or site plan application was presented to the city before the effective date of this Act. 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

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

SB 2027

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.2027

Senate Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Hearing Date: 04/16/09

Recorder Job Number: 11906

Committee Clerk Signature
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Minutes:

Chairman Cook opened the conference committee on SB2027, roll was taken, and all committee members were present.

Senator Cook talked about the info that they had in front of them. He wanted to hear from the House side.

**Representative Koppelman:** There are 2 bills dealing with this issue. We have some provisions that we want to talk to you about. The issue dealing with ET zoning is very controversial. I started to research it in 1997 as did other folks. We ended up coming up with one piece of legislation that changed ET zoning in North Dakota. However, in the outer ring we have heard a lot of comments from citizens that have real concerns. There are cases where someone wanted to build a garage on their land and they city would not grant them the permit, or people living in a rural area and was told that they could not build any more than one house per 40 acres. We tried to set up a system that there was balance...the bill that came from you contains a provision that says 4:47 if a city has taken action that they retain the ET jurisdiction. In the 2-4 mile zone, they retain that authority. The zoning authority goes back to the rural political subdivision, what would happen in the grandfathered area is that the rural political subdivision would have the right to object, the city still controls the ET zoning process. It

begins with negotiation, if that does not work it goes to mediation, and if that doesn't work it goes to arbitration with an administrative law judge and as a final step they can always go to court if they want to. There is a provision in there also that if it is a township that is doing this, then the arbiter would be the county, so if it is a city doing the extra territorial zoning in that 2 to 4 mile range and the township objects, the county commission can come in and settle it. Those are the basic provisions of that piece.

**Senator Cook:** You made a statement that if there was a sight plot that was already in place, that you felt that it should be kept in place. As 2027 came to you didn't it do the same thing?

**Senator Dever:** The amendments on the bill look like the ones that we did. Amendments that we are looking at are the 0400 version.

**Representative Koppelman:** The only reason we did that is for ease of readership. The amendments got so unwieldy to try and wade through. So a lot of the provisions in the House version from the Senate version are retained but we did it as a house just from a format perspective.

**Senator Cook:** What was it that you felt 2027 didn't do?

**Representative Koppelman:** Can you point out where the language is in the Senate bill so we can go through it?

**Senator Cook:** We are looking at the 0400 version of the bill; I would ask where it is taken out.

**Representative Koppelman:** As I said, many of the provisions of the Senate bill are retained in the House bill.

**Senator Cook:** I want to make sure that it isn't the issue here, and I think that it could be.

Changes that have been made by the city in the outer half would need to be retained. And I

think that there are some out there that would like decisions that are being made in that outer

half to reverse back and I want to find out if that is something that you are concerned about or not.

**Representative Headland:** I have some concern with sight plan. I voted against that amendment in committee, and I intend on, if possible, to take out those words. I am not clear as to what would constitute a sight plan. I don't know what type of investment the city would have in what they would deem what a sight plan is and I think that needs to be further explored.

**Representative Koppelman:** There is an email that, perhaps, we all received and it had to do with a concern that was expressed by a citizen that the term sight plan is so general that he alleged that there were cities that were hurrying to do sight plans in all of their extended outer ring, in light of this legislation potentially being passed. So by the time it becomes effective that they would control it all and I don't think that any of us want to see that type of circumvention of our intent. I think that one way that we could resolve it, is to put a date on it.

**Senator Cook:** The bill that you have in front of us doesn't do anything to change any existing zoning changes that have been made. So both pieces of legislation are talking about things brought forth after the passage and signing of this law?

**Representative Koppelman:** That is my understanding, and the only thing that would affect with our House amendments is more a question of not changing zoning, who is in control of what, and how are things changing as it goes forward.

**Senator Cook:** If I may, the major difference is how we handle disputes.

**Representative J. Kelsh:** I think what we had tried to protect is what the cities had spent money on engineering and plotting, not just that they have proposed something. A sight plan, if they have made some investment not just because they have made the proposal. We don't want the plan to be a part of it.

**Senator Cook:** I think that we are on the same page there. The issue that we need to spend time on is the dispute mechanism. As 2027 came to you if the city was moving forward with either a plat change or a zoning change and the township disagreed with what the city was trying to do then the township could dispute it and stop it. Then it would go to the county commission for final resolution.

**Representative J. Kelsh:** I have made a proposal that mediation first. I hate to see the county commission gets stuck between 2 subdivisions. Our intention was to save money. If they can't settle it on their own then they can hire a mediator. If they can't do it that way then they have other remedies.

**Representative Koppelman:** The dispute mechanism that we added in the House is used other places in the law and actually has been tested and found to work very well. Rather than coming up with a new process we find that the negotiation is a good first step. If that can't happen, mediation is a good step, but the parties still need to agree, if that fails then arbitration comes in at that point.

**Senator Cook:** The criteria that you used for administrative law judge on the bottom of page 7 to the top of page 8. If you look at the 0300 version of the bill, on page 5, you see the criteria for the administrative law judge that we put that on. Did you have any conversations with an administrative law judge as to how you drafted that criteria?

**Representative Koppelman:** I don't believe so, I think that we were told that in the Senate you had talked to one.

**Senator Cook:** I ask that you go to Senate testimony and find the testimony from Mr. Holmberg.

**Representative J. Kelsh:** I believe that he did testify at one point that they needed some criteria in the bill to help them effectively do their job. That is why we had Tim Dawson put it in the bill.

**Senator Cook:** I would like you to find that testimony and read it at your leisure. We put that criteria together and Representative Wrangham and Mr. Holmberg came and told us we had done it wrong. We are supposed to weigh it that was our challenge.

**Representative Koppelman:** I think what we did do in the House is discuss that issue and considered what Mr. Holmberg presented in the Senate. What we found odd is that what we inserted in this is the same criteria in current law for settling similar disputes. I don't know if there has been a problem settling those by using current law so for the Office of Administrative Hearings to come now and say that it doesn't work.

**Senator Cook:** I don't know if that criteria is in current law. Used for annexation and separation I do believe that we created the criteria and I think that there is process that is in current law.

**Representative Koppelman:** My comment this is the process of disputing in current law, although it might look unwieldy when you look at it, I am not sure it really is. If you look at the chart that you just showed us, it is a linear chart, there is one entity dealing with various applications and permits and actions and whatever else might be necessary. This, by necessity, is a little broader because it deals with more folks. If you look at the branch to the right, my thought is, if we are dealing with the outer tier and the township wants to put a development there. The township is going to put a manufacturing plant there then they would object. It is only where there is a dispute that you kick off to the right.

**Representative J. Kelsh:** They can go directly from the beginning of the chart to the bottom if they like. If they want to go to district court it costs \$40,000.



**Senator Cook:** Where do you get the prices?

**Representative J. Kelsh:** That was testified in committee. You may be wasting the \$40,000 if you don't.

**Representative Koppelman:** The reason the 2 charts are different is that the colored chart is dealing with the city doing everything and the township only being involved in the periphery. In those areas where the city has not done anything before it is more of a township issue and the city does not get involved. I think that most of this would be the city process within the inner ring and within the grandfathered area. This only deals with the area that is not grandfathered.

**Senator Cook:** If I lived in the outer ring and I wanted to change the area I go to the city and in your proposal you would go to the county.

Chairman Cook then closed the conference committee on SB2027.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.2027

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 04/21/09

Recorder Job Number: 12062

Committee Clerk Signature
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Minutes:

Cook opened the hearing, all members were present

**Senator Cook:** Criteria that came out of the interim committee in ref to ALJ. Mr. Holmberg is here

**Senator Holmberg:** All we testified about, both in the Senate and in the House, was to give as much guidance as possible. We can work with the language in the bill

**Representative Koppelman:** I believe that the criteria that House put in the bill was in a different section of law. We did the same thing with the mediation and negotiation and folk have the

**Senator Holmberg:** Yes it is. It is different than the annexation language. Basically it is to review to see that all the procedures were followed. That is about the only thing that is different

**Representative Koppelman:** We consulted council that asked for language that allowed going to district court. I hadn't thought about the right of tertiary but my understanding of that is that if we were insert that language it would allow for the district court to see what the ALJ would do.

**Senator Cook:** You said it is workable, if you had to live with it would you have some suggestions that would make it more workable.

**Senator Holmberg:** No, It is something that will have to be done on a case by case basis.

**Senator Cook:** Should it be vaguer than it is?

**Senator Holmberg:** I think that the criteria are workable.

**Senator Dever:** The thing that I struggle with, the decisions might be law and some policy decisions.

**Senator Holmberg:** Matters of policy are hard for ALJ to deal with as opposed to matter of law.

**Senator Dever:** If not spelled out in the law then it is a matter of policy.

**Senator Holmberg:** That is correct.

**Representative J. Kelsch:** After the ALJ, if it goes to district court they have to use section 28:34 and the reason for that was is 28.32 didn't have to judge properly. In 28.34-01 district court could overturn an ALJ but with the way the bill is written they can't just turn their back to them. These provisions can make the final decision. Is the heartburn in 2027 in the remedies? Don't you feel there should be more than one remedy?

**Senator Cook:** What is going through my mind is as a property manager you may not always satisfy the property owner. We have seen a situation with a zoning change that required 40 acres per lot. Again, for the most part, I am looking political subdivisions.

**Representative J. Kelsch:** This is maybe a little confusing, but a person lost the ability to sell 2 ½ acre lots and had to sell 40 acres. Who is taking on the responsibility to make that change? Otherwise I don't want to make that person responsibility I want to make the political subdivisions to be responsibility and pay for the process.

**Representative Koppelman:** The process that I understand it, in that scenario the rural land as always been platted, and then they go to their township and exercise the rights of objection that this legislation grants them. In the 1997 the procedure that we put in for dispute

resolution and that is why we changed the language, it is not that we didn't like what the Senate had done. Why have a dispute resolution process that is different than what other subdivisions have to deal with. Let's mirror that, it is already there and it works well. That is why we changed it.

**Representative J. Kelsch:** The email that we were discussing, if you look at it, it says that, "We will finance at least \$40,000 because we cannot sell our 2 ½ acre un platted lot.

**Representative Koppelman:** That creates the other scenario, a good different between House and Senate versions. In the Senate version the city continues to do zoning, for there to be an objection it would need to be from the land owner going to the township. Could they initiate that on their own or could the objection to a subsequent change. Under the house version, the land owner would be sanctioned by the township. The city then could still object to the township's verdict and they could initiate the process.

**Senator Cook:** The simpler the better. Sooner or later, as we have discussion we work on having some things drafted and have dialogue to see where we can end up.

**Representative J. Kelsch:** With the landfill in Grand Forks County it is not a platted land. That would be one of the criteria, if they spent money. Something to think about as a solution to what they did in Grand Forks County.

**Senator Cook:** Not sure what we can do about that issue in Grand Forks.

**Representative Koppelman:** That is fine, my thinking is which we would like to do away with and which we would like to amend

**Senator Horne:** Senator Nelson will be back tomorrow. Under the House version the outer ring, by the townships or county then it would go to an administrative judge.

**Representative Koppelman:** 2 pronged approach. If city has taken action on ET zoning, had to define what action means. The only thing they have done is what is evidence that there is

zoning or platted or a sight plan then the city continues, and then if it hasn't it goes to an ALJ.

In terms of city continue to zone, can object in area that would go to rural thingy.

**Representative J. Kelsch:** Basically city has zoning in inner and dual in outer ring, mediation, ALJ, district court if it goes that far.

**Representative Koppelman:** In the inner ring and outer ring it is rolled back the other entity can object.

Chairman Cook closed the public hearing on SB2027

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

Bill Number 2027 (, as (re)engrossed):

Date: \_\_\_\_\_

Your Conference Committee Govt + Veto Affairs

For the Senate:

For the House:

YES / NO			YES / NO		
Sen Cook		X	Rep Koppelman	X	
Sen Dever		X	Rep Headland		X
Sen Nelson		X	Rep J. Kelsh	X	

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 \_\_\_\_\_ 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: Koppelman

SECONDED BY: J. Kelsh

VOTE COUNT    YES    NO    ABSENT

April 23, 2009

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

That the House recede from its amendments as printed on pages 1202-1208 of the Senate Journal and pages 1148-1154 of the House Journal and that Engrossed Senate Bill No. 2027 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.

**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. Unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in any extraterritorial area assumed by a city 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.
- c. The extraterritorial zoning jurisdiction 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, 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 assumed zoning authority before the effective date of this Act or under a written agreement, 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 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, 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.
- 3- 6. 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- 7. 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- 8. 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 7 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- 9. 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- 10. 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- 11. 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.
12. 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."

Renumber accordingly

More Amendments

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

Bill Number 2027 (, as (re)engrossed):

Date: 4-23-09

Your Conference Committee Govt + Veto Affairs

For the Senate:

For the House:

YES / NO			YES / NO		
Sen Cook	X		Rep Kappelman		X
Sen Dever	X		Rep Headland		X
Sen Nelson	X		Rep J. Kelsh	X	

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 \_\_\_\_\_ 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: Dever

SECONDED BY: Horne

VOTE COUNT 4 YES 2 NO 6 ABSENT

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

Bill Number 2027 (, as (re)engrossed):

Date: 4-23-09

Your Conference Committee Govt + Veto Affairs

**For the Senate:**

**For the House:**

	YES / NO			YES / NO	
Sen Cook	X		Rep Kappelman	X	
Sen Dewel	X		Rep Headland	X	<del>X</del>
Sen <del>S. House</del>	X		Rep J. Kelsh		X

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

the (Senate/House) amendments on (SJ/HJ) page(s) 1202 - 1208

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

~~X~~, adopt (further) amendments as follows, and place ~~TH~~ 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: Dewel

SECONDED BY: Hume

VOTE COUNT 4 YES     NO     ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**SB 2027, as engrossed:** Your conference committee (Sens. Cook, Dever, Horne and Reps. Koppelman, Headland, J. Kelsh) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 1202-1208 and place SB 2027 on the Seventh order.



2009 TESTIMONY

SB 2027

## Testimony on SB 2027

### Senate Government and Veterans Affairs Committee

Senator Dick Dever, Chairman

Friday, January 23, 2009

Mr Chairman and members of the Government and Veterans Affairs Committee; for the record, I am Lee Kaldor, Representative for District 20. I am here today to ask for your favorable consideration of SB 2027, the recommendation of the Legislative Council and Advisory Commission on Intergovernmental Relations. During the past interim, the ACIR devoted several hours to hearings and study of the issue before you today—extraterritorial zoning authority as exercised by cities.

The ACIR is made up of four legislators and representatives of the League of Cities, North Dakota Association of Counties, North Dakota Township Officers Association, North Dakota Recreation and Park Association, North Dakota School Boards Association, and the Governor's appointee.

We heard testimony from several individuals and organizations. We made every effort to give every citizen interested a right to be heard. We deliberated on a full range of issues related to extraterritorial zoning. This legislation is certainly not perfect. It may raise more questions than it answers. It may be universally unsatisfactory to the parties of interest, but it is an attempt at a compromise that serves to protect citizens' property rights.

The commission considered 12 bill drafts that would have limited extraterritorial zoning authority or activities with the extraterritorial zoning area. These bills ranged from addressing a singular issue within the extraterritorial zoning authority to the repeal of extraterritorial zoning authority.

The final recommendation is the bill you have before you. This bill provides joint jurisdiction in the entire extraterritorial zoning area. The city and the previous jurisdiction with zoning authority would need to approve any changes in zoning.

**Joint Jurisdiction**--Effective after July 31, 2009 a city that has previously exercised its authority has joint zoning and subdivision regulation jurisdiction with the entity, either county or township, that otherwise would have jurisdiction. Any zoning change in regulation in this area must be approved by both governing bodies.

**Dispute resolution**—failure to reach agreement, either entity may petition the office of administrative hearings to appoint an administration law judge to resolve the dispute. The decision of the judge is binding on all of the jurisdictions.

If the parties are unable to agree, an administrative law judge would settle the dispute after considering the following factors. (See page 5 subsections a. through h.

- a. Whether the proposed change is consistent with a projected growth plan;
- b. Whether the proposed change is substantially related to planning practices consistent with adopted comprehensive plans;
- c. The impact of the proposed change on the present and planned uses of the area under review;
- d. The impact of the proposed change on the health and safety of the residents of the area;
- e. The effect of the change on the ability of the affected jurisdiction to adequately staff and enforce the change;
- f. 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;
- g. 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
- h. Any other factor determined to be relevant by the administrative law judge.

These actions are intended to change the current process so that citizens in the affected area have a voice in the decisions affecting their property.

Your ACIR passed recommended this resolution on a unanimous vote.

In closing, I refer you to the Interim Legislative Council Report for a full record of the deliberations and summary of the testimony heard by the ACIR.

Representative Dwight Wrangham  
January 23, 2009  
SB 2027 Testimony to Senate GVA Committee

Mr. Dever and Members of the Committee

I served on the Advisory Commission for Intergovernmental Relations who studied this issue over the last interim.

This Commission heard hours of passionate testimony from North Dakota citizens asking for relief from financial loss, loss of private property rights and the loss of the right to vote for those who govern them. Those citizens pleaded with us to restore the rights they lost because of ETA. They have said the Legislature gave this power, the Legislature should take it away. These citizens are not against planning, or zoning or permitting. The question is who should be in charge of doing it.

Please don't be fooled. This ETA discussion has nothing to do with whether there should or should not be planning, zoning, or permitting. The proponents of the status quo have tried to make the necessity for planning, zoning and permitting the discussion. But that is not the issue.

The question is who should do these things not whether they should be done. The question is, should a city be allowed to enforce their ordinances and control citizens private property uses outside of the city's legal corporate boundary. The question is, should cities be allowed to govern the citizen's uses of their private property in an area where the citizen cannot vote for the officials of that government. Governance without the right to vote for those who govern; seems I remember a tea party over this issue. Isn't the right to vote for governance and to own private property the very reason, this, the greatest nation in the world, was formed?

I would like to review some concerns brought forward by ETA proponents.

1. Without ETA there wouldn't be planning for roads, sidewalks, and bike paths.

Planning of roadways etc. began in 1871 when the Session Laws of the Dakota Territory accepted congressional section lines as granted by an act of Congress in 1866. This grid of section lines, public corridors, set aside for public uses, has been, is and should continue to be the backbone of public corridors. Efficient planning to expand upon this grid of public corridors should be done on a regional level. Often these corridors cross city, township and even county lines. The planning should not be limited to be done by one city or one township. The Bismarck-Mandan MPO consisting of the cities of Bismarck, Mandan, Lincoln, and portions of Burleigh and Morton Counties, The Fargo-Moorhead Transportation Improvement Program consisting of Fargo, West Fargo, and Cass County in North Dakota; and Moorhead, Dilworth, and Clay County in Minnesota, and The Grand Forks-East Grand Forks Metropolitan Planning Organization are examples of the way transportation needs should be studied.

2. Without ETA there wouldn't be utility planning.

Utilities always plan with an eye on future development. I serve on the board of an electric cooperative. We plan line extensions, substations and future power supply needs based on projections of community growth. Cities and rural water systems do the same. ETA is not needed to do adequate utility planning. Is government control over the usage of private property the goal? I don't think it is right for government to tell private property owners they cannot develop a particular parcel because the utility didn't plan for it. There may be need for a special assessment or a contribution of aid to construction if the property owner wants the services, but that should be their option.

3. Without ETA they wouldn't be able to provide municipal services outside city.

I am not aware of any municipal services provided in areas outside of the city corporate limits. If there are such services I would expect the citizens of that city to revolt. Why should their property tax dollars be spent on services outside city?

4. Without ETA there would be hodgepodge new development.

Private property owners know the best way to develop their property. They bought it with their own money. They care about it. Their personal interest and market pressure will make proper development their first choice. Do we need standards and limitations on how and what can be done with private property outside the corporate city limits? Absolutely, and that will be done by the townships who have been charged with zoning for over 60 years, in NDCC 58-03-11, and the counties who have been charged with subdivision platting for about 30 years by NDCC 11-33.2. The state is charged with building, electrical and plumbing permitting in NDCC Chapter 54. We have government entities in place to provide these services without ETA.

5. Without ETA there would be premature annexation.

Why? We have state laws to govern annexation in the NDCC. If those sections need to be changed and improved then we should look at them with an eye toward improvement. We should not use ETA to solve problems that may exist in annexations.

6. Without ETA there wouldn't be storm sewer and floodway development.

Storm sewers and floodways affect cities, townships, counties and multi county areas. Planning for them is best managed by water districts and the North Dakota Water Commission; not by any one city.

7. Without ETA there would be interference with long term comprehensive land use planning.

The whole current craze for comprehensive land use planning is suspect. Should current and future private property owners have the right to decide what is the best legal use of their property or should the best use of their property be decided by a government planning entity? But that aside, any comprehensive land use planning should be done on a regional level, not by one city, or one township or even one county.

8. If ETA was eliminated; what would happen to zoning and subdivisions done under ETA? Are they all voided leaving residents without zoning protection they had counted on?

Subdivision platting is done by the county. Zoning is done by townships. That would not change. Zoning done under ETA should remain in effect unless changed by the township. It may be necessary to spell that out in legislation. That can easily be done.

9. Without ETA; how will annexation disputes between geographically close cities be handled?

If geographically close cities need to be guided and or controlled by state law as they fight over corporate limits, then we should deal with that problem. That is a separate issue. It is totally wrong to disenfranchise citizens living between cities and use them as pawns in the war between the two cities.

We can change ETA without any negative effects on planning, zoning or permitting. In fact, it will improve planning, zoning and permitting.

SB2027 is the best bill we could get out of the ACIR. It is not good enough. It does not go far enough to limit cities to their proper role; that of governing within their corporate boundaries.

Let's make things better, let's do the right thing, give the citizens the right to control their own destiny, give back their right to vote for those who govern them.

Please amend SB2027 to limit city jurisdiction to their city limits.



# North Dakota Farm Bureau

*Bringing ag home*

1101 1st Ave. N., Fargo, ND 58102  
P.O. Box 2064, Fargo, ND 58107-2064  
Phone: 701-298-2200 • 1-800-367-9668 • Fax: 701-298-2210

4023 State St., Bismarck, ND 58503  
P.O. Box 2793, Bismarck, ND 58502-2793  
Phone: 701-224-0330 • 1-800-932-8869 • Fax: 701-224-9485

## Senate Government & Veterans Affairs Committee

*January 23, 2009*

### **SB 2027 Testimony presented by North Dakota Farm Bureau**

Presented by Sandy Clark, public policy director

Good morning, Mr. Chairman and members of the committee. My name is Sandy Clark and I represent North Dakota Farm Bureau. We appreciate the opportunity to appear before you today.

We stand in support of SB 2027. You have a lot of people who want to testify today, so I'll be brief.

Our members have adopted policy supporting legislation that gives residents in the ET area representation in the decision-making process.

Extraterritorial jurisdiction has been a contentious issue for a long time. Farmers and ranchers who live in these areas are severely impacted by the decisions made by the city.

Most of our members can co-exist with residential subdivisions, but they object to city officials imposing restrictions on how and where we farm. Especially, when they can't even vote in city elections.

We appreciate the provisions in SB 2027 that allow county and townships to approve city zoning and subdivision platting decisions and we support the protest process.

We hope you will give SB 2027 a do pass recommendation.

Thank you and I would stand for any questions.

My name is Dan Stephenson. My property is located in Burleigh County at 7521 Lariat Lane which is inside the 4 mile extraterritorial boundary of Bismarck.

I'm here to ask for your support of SB 2027 and I would like to present one example of why it is important to North Dakota's rural residents.

A few years ago the City of Bismarck approved a zoning designation of P.U.D. in the extraterritorial district. The Planned Unit Development designation was used because the majority of the development did not fit within the guidelines of the rural zoning regulations for the area. There are a variety of issues that surround the P.U.D. but the biggest issue, and the reason I'm here today, is that when I appeared to voice my concerns, I appeared in front of a commission that doesn't have any accountability to me or any of the other residents in the area.

I understand that approximately 80% of Burleigh County lives within the city limits, but I don't think that should mean that any part of the other 20% of county residents should be excluded from helping plan the growth of the area they live in. By means of the elected city commission, 80% of Burleigh County's residents have planning control in an area that those residents don't live in; and actually can't live in if they want to have a voice in the areas growth. It's interesting to note that a North Dakota resident who moves from inside the city limits to within the extraterritorial boundary no longer has any zoning and planning representation for the area they just moved in to.

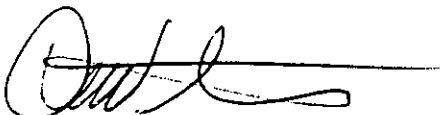
One option that has been discussed is a "compromise" that would allow the extraterritorial boundary to be jointly represented on the outer half. I don't believe that representation in any form should be compromised. Why should anyone be excluded from representation?

Extraterritorial planning and zoning will continue to have an impact on the rural residents of North Dakota and the residents that are directly affected should be equally represented by a group that is accountable to those residents.

I would like to emphasize just one thing...when I appeared before the city commission to voice my concerns of the P.U.D. designation, no one on that commission was representing me or any other residents from the area. The people who have planning and zoning control of any area should be accountable to those who live there. This should be true for any area of the state.

I respectfully ask your support of SB 2027.

Thank you.

A handwritten signature in black ink, appearing to read 'Dan Stephenson', with a long horizontal line extending to the right.

Mr. Chairman and members of the committee:

Thank you for this opportunity.

I am Richard Gross, a retired priest. I live Southwest of Grand Forks. It is a little over 5 miles to drive to town. But apparently a bird can fly it in less than 4 miles. I fall into that dreaded 4 mile twilight zone. I am here to testify against the 4 mile zone.

When our Founding Fathers rebelled against a Monarch, they devised a government called a democracy. The word 'democracy' comes from 2 Greek words, and means simply, 'the rule of the people'. And the root of democracy is that the people choose those who will govern them. We vote. We elect those who govern. It has no other meaning.

Democracy is complicated. It is not efficient. It is slow. And sometimes almost unwieldy. It requires debate, negotiation, compromise. It has checks and balances. I'm sure your job would be a lot easier if it weren't for the people on the other side of the aisle. And then you have to deal with the governor who can veto. And then you have to deal with the people. They might initiate a referendum. And if the people don't like what you're doing, they can replace you at the next election. Democracy is slow tedious work. But I wouldn't trade it for anything else.

But I, along with thousands of other citizens of this state, live in an area where democracy is denied us. I can vote for county and township officers. But it is useless. They have no say in my life. The City Council governs where I live. They can deny me permission to build a chicken coop. They can change the Zoning in my neighborhood. They have absolute power to do what they want in this zone. I have no recourse. I can't vote. Here they are accountable to absolutely no one. There are no checks or balances.

Don't you wish you had that kind of authority? They will tell you they need this absolute power in order to plan the orderly growth of the city. Don't believe that. They can grow the city with or without this power. The difference is that with this absolute power they can simply decree at will whatever they wish. Without this power they would have to work with the township and county officials. They would have to co-operate. They would have to negotiate. They would have to compromise. In other words, they would have to practice democracy.

A Monarchy or a Dictatorship is very efficient. I grant that. The state government would be more efficient if we disbanded both houses of the legislature and let the governor make the decisions. But it would not be a democracy.

This issue is very dear to me. I am hurt. I am angry. I have cried over it. I have lost sleep over it. I feel like I'm being treated like a felon. A felon can't vote either. But at least he has his day in court. I don't understand what I have done so bad that I am being treated this way.

For the cities the issue is not whether or not they can plan. The issue is how they plan.

And what I ask of you is to roll the zone all the way back, and give me back my vote. I dearly want to participate in this democratic process

Thank you



**To: Senate Government and Veterans Affairs**  
**From: Jerry Hjelmstad, North Dakota League of Cities**  
**Date: January 23, 2009**  
**Re: Senate Bill No. 2027**

Mr. Chairman and members of the Senate Government and Veterans Affairs Committee, my name is Jerry Hjelmstad and I am here on behalf of the North Dakota League of Cities to offer amendments to Senate Bill No. 2027.

Extraterritorial zoning authority was granted to North Dakota cities in 1975:

- one-half mile for cities under 5,000 population
- one mile for cities from 5,000 up to 24,999
- two miles for cities of 25,000 and over

The Legislature expanded that ET zoning authority in 1997:

- one mile for cities under 5,000 population
- two miles for cities from 5,000 up to 24,999
- four miles for cities of 25,000 and over

There is a need for extraterritorial zoning for:

- planning for city growth and orderly development
- protecting the health and safety of city residents

Most of the concerns expressed during the legislative interim seemed to be with the expanded ET authority:

- difficulties with landfill siting
- enforcement of health and safety regulations
- lack of representation in the ET zoning area

In an effort to balance these needs and concerns, we presented a bill draft to the Advisory Commission on Intergovernmental Relations (ACIR). That bill draft provided that the city and the township or the city and the county would both have to approve subdivision plats or changes in zoning in the expanded ET zone before those changes would become effective. We felt that this was a fair compromise, balancing the need for planning with the concerns expressed.

The amendments we are offering today would restore the bill to the compromise bill that we presented to the ACIR, providing for joint jurisdiction in the outer half of the ET zone. We ask for your support for Senate Bill No. 2027 with these amendments.

To: Senate Government and Veterans Affairs Committee  
From: North Dakota League of Cities  
Date: January 23, 2009  
Re: Senate Bill No. 2027

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

Page 2, after "cities" insert "and to provide an expiration date"

Page 4, line 21, after the period insert "A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction beyond one-half mile with the entity that would otherwise have jurisdiction."

Page 4, line 23, after the period insert "A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction beyond one mile with the entity that would otherwise have jurisdiction."

Page 4, line 25, after the period insert "A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction beyond two miles with the entity that would otherwise have jurisdiction."

Page 4, remove lines 28 and 29

Page 4, line 30, remove "jurisdiction."

Page 8, after line 9, insert:

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

Re-number accordingly



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ASSOCIATED WITH  
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OF HOME BUILDERS

## Testimony on Senate Bill 2027

Senate Government & Veterans Affairs Committee

January 23, 2009

Doreen Riedman, Executive Officer

North Dakota Association of Builders

Chairman Dever and members of the Senate Government & Veterans Affairs Committee, the North Dakota Association of Builders (NDAB) supports an amended version of Senate Bill 2027, with joint jurisdiction in the outer half of the extraterritorial zone and a two-year test period (sunset clause). We are willing to try this process in the outer half of the ET zone, but want to have a test period so that we can determine if it is workable.

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.

### CONCERNS:

- Builders and developers are concerned about the time and expense involved with a dual review process. Adding this hurdle doubles the efforts involved, as well as the costs.
- Developers employ engineers to assist with presentations before planning and zoning committees. This adds expenses that eventually get added to the costs of housing and commercial construction.
- With our short construction season, it's critical that decisions on new developments are made in an efficient and timely manner. Time is money, and the more time expended on a project, the more expensive it will be.

We respectfully ask the committee to amend Senate Bill 2027 to apply only to the outer half of the ET zone, and apply it for a limited period of time to test the workability of this concept.



[www.bismarckmandan.com](http://www.bismarckmandan.com)

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January 22, 2009

Testimony on Senate Bill 2027  
Before the Government and Veterans Affairs Committee

Kelvin L. Hullet, President  
Bismarck Mandan Chamber

Mr. Chairman and members of the Committee, my name is Kelvin L. Hullet and I am the President of the Bismarck Mandan Chamber or as Senator Cook would have me say, the President of the Capital City Metro Chamber. I am here today to testify in support of Senate Bill No 2027 with the proposed amendments. As a business organization in a growing community, we are very interested in how this proposed law moves forward as the outcome will have a significant outcome on our development and growth strategy.

In the last few years, significant discussion has occurred around the issue of the 4-mile extraterritorial zoning authority in Burleigh County. Some feel the city reached too far outside the city limits and is imposing undue regulation on county residents. The origin of extraterritorial zoning in the United States can be traced back to the period following World War II when many of the nation's large cities were experiencing explosive growth into adjacent unincorporated areas previously untouched by urban development.

As you know, Bismarck Mandan is making the transition from a big town to a small city. Since 2000, the metro-area has grown by 9% and hosts a population exceeding 103,000 residents. As we look to the future, our expectation is the metropolitan statistical area will continue to grow and reach 105,000 by 2010 and 117,000 by 2020. As our community grows, it is imperative that plans to grow in a logical fashion are formulated. This planning now will save tax payer dollars in the future. The ETA is an important tool in the toolkit of our local city commission.

As we look at what has happened in other communities when they've entered this dynamic period of growth, prudence tells us that some regulation and planning is essential to the future of the community. There is nothing more costly than when a community arrives on the doorstep of an area to be annexed and it is not compatible with city utilities, streets, setbacks and other community regulations.

As an organization, we support the amendments that create a expanding ring of Extraterritorial Authority for the city relevant to size. We would not support the idea of joint city / county jurisdiction from the city limit throughout the ETA.

Testimony Presented on SB 2027 to the  
Government and Veterans Affairs Committee  
Dick Dever, Chairman

by

Dennis Walaker, Mayor  
City of Fargo

January 23, 2009

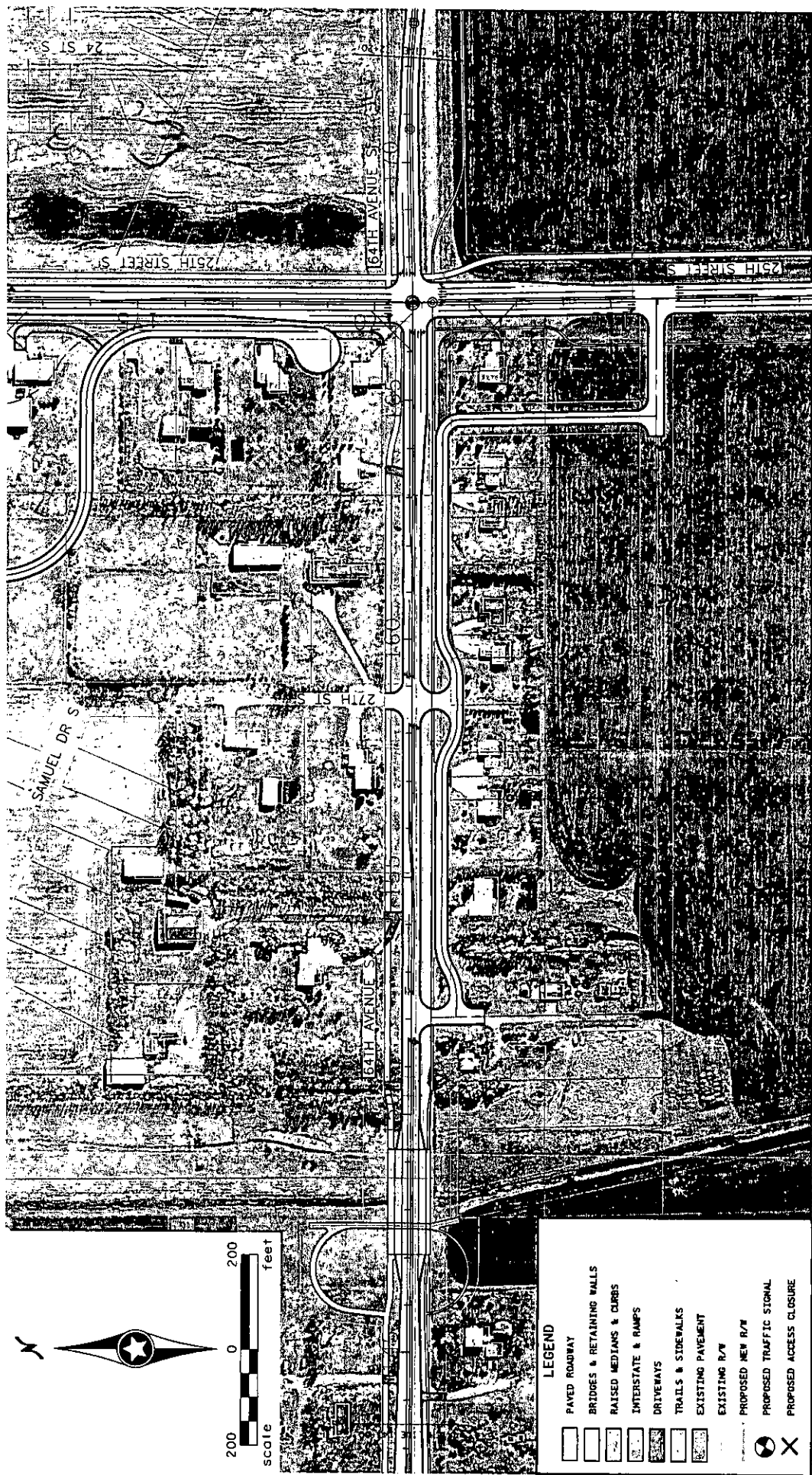
Mr. Chairman and Members of the Committee:

I am here to speak on behalf of the Fargo City Commission in support of cities retaining extraterritorial zoning jurisdiction, especially exclusive jurisdiction closest to the city.

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 then is already annexed into the city. Much of it has been developed for housing and other urban land uses.

I encourage you to amend the bill to allow large cities to retain exclusive zoning jurisdiction for 2 miles and shared jurisdiction for an additional 2 miles. With that amendment, I support a recommendation for a "Do Pass" for the bill.



**SENATE BILL 2027**

**JANUARY 23, 2009**

**9:00 AM**

**SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**

**Testimony in support of the bill with amendments**

**John Warford**

**Mayor**

**City of Bismarck ND**

Mr. Chairman and members of the Committee:

Senate Bill 2027 continues the State law provision that allows cities to administer planning and zoning regulations over an area beyond their corporate limits. The original law was enacted in 1975, and amended in 1997 to allow for a larger jurisdiction. In Bismarck's case, we managed growth in an area two miles beyond our city limits for over 25 years. In 2003, after completion of a Growth Management Plan we decided to extend our extraterritorial jurisdiction to the four-mile extent allowed by State law.

I believe Bismarck has been responsible in administering zoning in the surrounding areas over the years. It has allowed the City to plan for its growth by:

- ensuring that major road corridors are preserved in locations that allow for logical extensions of the current City road network,
- allowing for extensive master planning efforts to extend other infrastructure facilities such as sewer, water and storm water, and
- helping to ensure that the continued growth of the City will not be limited through enforcement of subdivision design standards that provide for eventual annexation and easier integration into the existing layout of the City.

Bismarck has been comfortable working with rural representatives on our Planning Commission. In addition to the three members from the extraterritorial area on the Planning Commission as specified in State law, we have added Township representatives and a County Commissioner as members. Participation by these other jurisdictions bring a valuable and important perspective on zoning and planning decisions, particularly in the rural areas.

I believe the amendments to the bill presented today providing for shared authority in the outer half of the ET area represents a more reasonable, measured approach to the idea of joint planning jurisdiction and would allow cities, counties and townships to work with this procedural change in a portion of the ET area on a more gradual basis. This approach would also have the benefit of lessening the impact of adding more review and approval requirements for the building and development industry.

With the inclusion of a two-year sunset clause in the amendment, the advantages and disadvantages of the new process could be evaluated and discussed. If necessary, further amendments could be considered at the next session of the Legislature.

Again, the extraterritorial zoning provision has worked effectively in the Bismarck area for many years. We have been prudent and thoughtful in using this important tool. We are very willing to work with Burleigh County and area Townships in jointly managing growth in the outer half of the extraterritorial jurisdiction. On behalf of the City of Bismarck, I would ask that you amend the bill as proposed and that you give Senate Bill 2027 a **do pass** recommendation.



January 23, 2009  
Testimony re: SB 2027 to 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 4-mile ET authority) for A-1 and A-2.
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



Registered & Commercial Angus

**Red River Angus**

*Frank W. Matejcek*

4150 Columbia Rd. N  
Grand Forks, North Dakota 58203

phone: 701-775-8572  
cell: 701-740-5038  
www.redriverangus.com  
email: matejceks@redriverangus.com



January 23, 2008  
Testimony to Advisory Commission on Intergovernmental Relations  
Frank Matejcek

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

City abused power by stacking Planning and Zoning Commission with city officials. When the 2-mile zone was taken, 3 extraterritorial (rural) representatives were mandated by State law. The city then 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 at large 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 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 2-mile 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 changed the code to make a landfill (now 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 rating 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

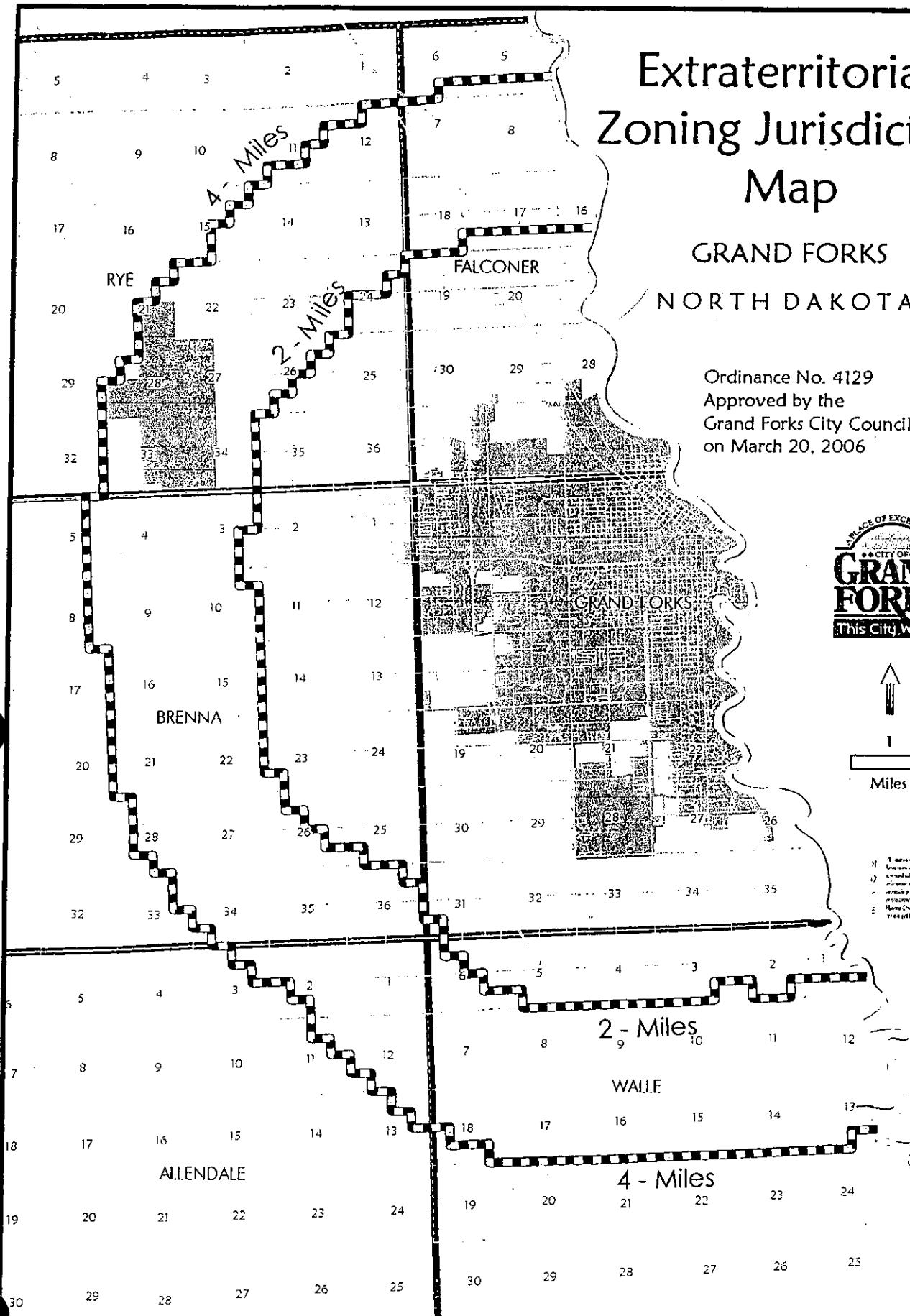
GRAND FORKS  
NORTH DAKOTA

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



1  
Miles

- 1. 1/2 mile extraterritorial jurisdiction boundary
- 2. 2 mile extraterritorial jurisdiction boundary
- 3. 4 mile extraterritorial jurisdiction boundary
- 4. 6 mile extraterritorial jurisdiction boundary
- 5. 8 mile extraterritorial jurisdiction boundary





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

GF Herald 11/22/07

**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."

**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

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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.

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 5+ 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	4	4			Distance to be measured in actual pipe to be installed from trunk line of sufficient capacity as determined by the City Engineering Department.
	1/2 mile	3	3			
	3/4 mile	2	2			
	1 mile	1	1			
II. Sanitary Sewer Availability	Further than 1 mile	0	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.
	Within: 1/4 mile	4	4			
	1/2 mile	3	3			
	3/4 mile	2	2			
III. Transportation Accessibility	1 mile	1	1			Distance from existing arterial or collector street to be measured in actual vehicle miles
	Further than 1 mile	0	0			
	Within: 1/4 mile	4	4			
	1/2 mile	3	3			
IV. Municipal Fire Station	3/4 mile	2	2			Distance to be measured in actual vehicle miles from existing fire stations
	1 mile	1	1			
	Further than 1 mile	0	0			
	Within 2 miles	1	1			
V. Improved Public Park	Further than 2 miles	0	0			Not Applicable for Commercial Property. Based on Soil Classification System prepared by the U.S. Soil Conservation Service.
	Within 1 mile	NA	1			
	Further than 1 mile	NA	0			
	Saline	2	1			
VI. Soils	Non-Saline	0	0			Points based on percent of existing urban development included in the area proposed for annexation
	75-100%	3	3			
	50-74%	2	2			
	25-49%	1	1			
VII. Existing Urban Development	0-24%	0	0			Points determined by the percent of the boundary of the proposed annexation area that is contiguous to the existing corporate limits.
	50-100%	2	2			
	25-49%	1	1			
	0-24%	0	0			
VIII. Contiguity	0-400 ft.	3	3			Distance to be measured from furthest point in the annexation area to the closet site of existing development within the corporate limits (excluding public right-of-way)
	401-800 ft.	2	2			
	801-1200 ft.	1	1			
	Further than 1200 ft.	0	0			
TOTAL POINTS						12 points is the minimum point total required to justify annexation.


4 mile E-f

## Proposed Annexation Point Rating System

Criteria		Comm. Dev.	Res. Dev.	Measurement Method
I. Municipal Water Availability	Within: 1/2 mile 1/2 mile to 1 mile Further than 1 mile	2 1 0	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: 1/2 mile 1/2 mile to 1 mile Further than 1 mile	2 1 0	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 Eng. Dept.
III. Transportation Accessibility	Within: 1/2 mile Further than 1/2 mile	1 0	1 0	Distance from existing arterial or collector street to be measured in actual vehicle miles
IV. Municipal Fire Station	Within 3 miles Further than 3 miles	1 0	1 0	Distance to be measured in actual vehicle miles from existing fire stations
V. Improved Public Park	Within Service Area Outside Service Area	NA NA	1 0	As determined by using Map 2.17 of the 2035 Land Use Plan, not applicable for commercial development
VI. Soils	Poor Farmland Prime Farmland	2 0	1 0	As determined by using Map 2.18 of the 2035 Land Use Plan
VII. Location	Tier 1 Tier 2 Tier 3	6 3 0	6 3 0	As determined by using Map 4.1 of the 2035 Land Use Plan and calculating the tier with the most existing urban development
VIII. Contiguity	80%-100% 60%-79% 40%-59% 20%-39% 1%-19% 0%	6 5 4 3 2 0	6 5 4 3 2 0	Points determined by the percent of the boundary of the proposed annexation area that is contiguous to the existing corporate limits.
IX. Flood Protection	Within City System Outside City System	3 0	3 0	As determined by the map approved and used to determine Flood Protection Special Assessments by the Special Assessment Comm.
TOTAL POINTS		23	23	12 points is the minimum point total required to justify annexation.

under no water in no good no Dues  
 no no no no no  
 9/5 passed  
 Location + Contiguity enough to trigger annexation.

redriverangus

: "Sheila Bichler" <sheila\_bichler@und.nodak.edu>  
 "redriverangus" <matejceks@redriverangus.com>  
 Sent: Thursday, January 22, 2009 12:24 PM  
 Attach: ATT00004.eml  
 Subject: RE: letter to legislators

Lucy,

Absolutely, I've made a couple changes and below is the most current version:

I hope this e-mail reaches you in a timely fashion. For some reason it was placed in my junk e-mail folder and I just discovered it.

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 just 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 the city of Grand Forks 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 house 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)." (Our other 2 ½ acre lot – part of our original 5 acre house purchase is not platted). 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". *Not only 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 use of our property, no benefits, and if we cannot make the decisions of what we do with our property (like being allowed to sell it) – that constitutes a loss. *We bought this property so we would not have to be under the control of Grand Forks.* And now, Grand Forks just takes 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, especially after we have invested so much money and time.* *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,



01/22/2009



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

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**From:** redriverangus [mailto:matejceks@redriverangus.com]  
**Sent:** Thursday, January 22, 2009 12:29 PM  
**To:** Sheila Bichler  
**Subject:** letter to legislators

Sheila

Can Frank carry your letter and present it to the committee on Friday?

Lucy

01/22/2009



#### Officers

Steven Zimmer – President  
Brad Gengler – Vice President  
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**Website:** [www.NDPlanning.org](http://www.NDPlanning.org)

## **North Dakota Planning Association Testimony on SB 2027**

Upon review of proposed Senate Bill 2027 the members of the North Dakota Planning Association have expressed the following concerns:

- 1) The way the bill is written and proposed would make the review process for any application very laborious, time consuming, and convoluted. The process as spelled out in the proposed bill could require up to five (5) hearings, without delays, for a subdivision and rezoning application within a city's extraterritorial jurisdiction, while currently it would only require two (2).
- 2) Administration of this bill for cities and counties that do not have trained professional staff will be difficult.
- 3) Current state statutes do provide for multi-jurisdictional representation on city planning and zoning commissions, due to prior ET legislation.
- 4) To what precedent will the townships be held in making a decision? Decisions made by city and county planning commissions are legally required to be based on a very specific set of criteria, i.e. findings of fact, consistency with city's plans and ordinances, etc., which have been set by federal and state case law decisions. Will the townships be held to the same standard? If so, what liability does the township incur while administering the city's zoning ordinance if that standard is not followed?
- 5) It is important for a city to have sole planning and zoning authority in their growth areas, directly adjacent to city limits, to plan and provide for future transportation and utilities connections.

The North Dakota Planning Association asks the Legislature to vote in **opposition of SB 2027 as written.**

The North Dakota Planning Association **supports the North Dakota League of Cities' proposed amendments to SB 2027.**

#13

## **TESTIMONY ON SENATE BILL 2027**

### **Senate Government and Veteran's Affairs Committee**

**Michael R. Brown, Mayor**

**City of Grand Forks, ND**

**January 23, 2009**

Mr. Chairman and members of the Committee, my name is Michael R. Brown and I am the Mayor of the City of Grand Forks. I want to thank you for the opportunity to testify on Senate Bill 2027 and request your recommendation of a DO PASS with the proposed amendments submitted by the North Dakota League of Cities and summarized below.

Senate Bill 2027 proposes to amend existing state law relating to extraterritorial zoning authority exercised by cities. It is important to be clear that it is the overarching goal of any governmental entity to provide for the needs of those it serves, to thoughtfully balance the interests of all operations within its jurisdiction and to manage the resources and infrastructure available both now and into the future. Furthermore, as is true for many cities in the state, the City of Grand Forks is responsible for the socio-economic strength of not only the city, but as a significant catalyst for the entire region. This responsibility includes providing planning functions for orderly growth and minimizing future conflicts and economic losses. Extraterritorial Zoning authority is a critical element to this responsibility.

I am here today because this issue is important. I'm here, obviously as the head of a political subdivision. But I'm also here because I represent people. I represent the citizens of Grand Forks, common North Dakotans, like those filling this room. I am here to speak for all the people in our region who utilize our services and resources and infrastructure. People with property interests, financial interests and principal interests, again like those in this room, and across the state.

With the proposed amendments, Senate Bill 2027 provides the tools to protect the interests of the people of North Dakota to promote responsible growth and development in our state.

The proposed amendments to Senate Bill 2027 can be summarized as follows:

The city shall retain sole extraterritorial zoning authority within the limits originally established in the 1970's. We do not support the concept of shared jurisdiction within the entire extraterritorial area.

We support a joint zoning system within the post-1997 extraterritorial range provided for in state law. This system would include all governmental entities authorized by state law to exercise zoning authority. In fact, our city and representatives of Grand Forks County have already begun discussions on developing a shared jurisdiction in this outer area. Regardless of what legislation is ultimately passed, we feel this shared jurisdiction in the outer area is important.

We also support the 2-year period during which time the townships, counties, and cities operate under the joint zoning system as would be established by this body. Following this period, the 2011 Legislative Assembly will review the matter and determine whether or not the joint zoning system has achieved the intended goals and objectives.

Of course, it is critical that any change to the existing legislation must be prospective in order to protect the good-faith investments and actions that have been made within the current extraterritorial jurisdiction.

The City of Grand Forks is very proud to serve as a resource for residents from all around our region, providing services such as health care, retail, employment, and many other opportunities. The responsibility to properly plan and prepare for the future as a strong city and regional hub is one we take very seriously. The City of Grand Forks must ensure that the Greater Grand Forks area is a strong, viable economic entity offering a high level of quality of life and effective services that will encourage people to remain or relocate to the area. This population growth, of course, is a prime goal of all North Dakota communities.

Our country is predicated on the delicate balance of individual rights and the common good. Progress in governing policy is made as we continue to strive for more perfect systems that stabilize this balance. Senate Bill 2027 with the proposed amendments is progress. I thank you, again, for the opportunity to testify and urge a DO PASS with the proposed amendments.

Thank you.

TO: Senate GVA Committee – Chairman Dever  
FROM: City of Minot  
DATE: 9:00 AM Friday, January 23, 2009 – Brynhild Haugland Room  
RE: Hearing on Senate Bill 2027 – ETA : Due pass as amended; shared authority for the next two years

*I am Dean Frantsvog and I currently serve as City Council President for the City of Minot. I would like to thank Chairman Dever and the committee for allowing me to submit this written testimony in supporting SB 2027 with an amendment.*

- Extra territorial (ET) zoning provides for orderly growth and is especially valuable during periods of rapid economic growth like the one the City of Minot is currently experiencing.
- History is being made in Minot regarding the number of building permits being issued, the number of projects being proposed and completed, and the proposed new mission at the Minot Air Force Base. We are currently receiving information from the local utility companies regarding the increase in hook ups and new services in the community and outlying areas.
- Planning does not stop at the city limits. We currently involve not only city staff to review all planning requests but also, Rural Fire, First District Health Unit, the County Engineer, North Prairie Rural Water, the Dept. of Transportation, and Township Board members. Each of these entities has the opportunity to weigh in on requests before presentation to the Planning Commission.
- The planning and zoning functions are tools a city uses to protect property owners. People are increasingly aware of land uses that surround their property. They depend on orderly development to protect property values and quality of life. No one wants to invest in a property without knowledge of zoning and possible uses of neighboring properties.
- In the interest of improving the health, safety and quality of life for the public, the extraterritorial area is extremely important to both the city and county. In past years,

the state allowed for planning and zoning in the extraterritorial area to provide orderly growth for communities as housing and growth trends change. This authority is essential for transportation planning and corridor preservation, as well as planning for extension of city services such as water and sewer.

- We are seeing a shift in what people want to live by and near. Not only does planning and the regulations within the extraterritorial area protect the health and welfare of the residents of these areas, it allows these areas to become partners in the planning process.
- Construction activity in Minot has been cyclic and the current building activity in our city is at an all time high for the last 7-10 years. The ability to plan ahead so that growth and development all fits together when the time comes, is the foundation for viable communities.

If SB 2027 is amended to try the shared authority in the outer portion of the ET zone over the next two years so we can see how to make it work for everyone, then I ask your favorable vote on Senate Bill 2027.

Thank you again for allowing me to present this testimony to the committee.

**SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**

**JANUARY 23, 2009**

**TESTIMONY FROM KEITH BERNDT**

**CASS COUNTY ENGINEER**

Good morning Chairman Dever 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.

One year ago on January 22, 2008 the Cass County Commission passed Resolution 2008-3. 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 around the Fargo and West Fargo area that Townships, Cities, and the County can work together as partners on planning issues. Nothing in the testimony I'm about to discuss is intended to reflect negatively on the fine work done by the many township volunteers in Cass County.

Counties in North Dakota have subdivision authority outside of municipal boundaries and extraterritorial zoning areas. Cass County has a comprehensive plan and detailed subdivision ordinance. Cass County has an active Planning Commission and exercises subdivision authority. Cass County does not exercise zoning authority because townships in Cass County do exercise zoning authority and North Dakota Statutes do not allow Counties to exercise that authority if townships do.

**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 staff, no engineering staff, and no legal counsel. Work is 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 yet the mile line roads near the metropolitan area that are under the control of the townships will become the future arterial corridors.

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;

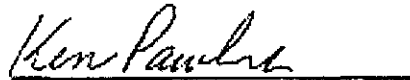
**WHEREAS,** In order to effectively plan for and reserve the opportunity to build future transportation facilities, water supply, sewage, flood control, schools, parks, emergency management and other public requirements, it is necessary for city officials to consider build out requirements that may 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;

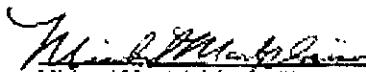
**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Cass County, North Dakota that the Cass County Commission supports statutory provisions that allow cities over 25,000 in population to exercise 4 mile extraterritorial zoning and subdivision authority and cities over 5,000 in 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.

61st Legislative Assembly  
SB 2027  
Senate Committee on Government and Veterans Affairs  
January 23, 2009

Testimony of Douglas A. Goulding  
on behalf of the  
Grand Forks County Citizens Coalition

My name is Doug Goulding and I am an attorney for the Grand Forks County Citizens Coalition (N.D. Lobbyist # 462). I have been asked by the Grand Forks County Citizens Coalition (GFC3) to testify before this Committee regarding the unrestricted grant of extraterritorial zoning authority to cities made by NDCC § 40-47-01.1. Senate Bill No. 2027 represents a consensus of the ACIR to address some of the injustices of that section.

GFC3 is a grassroots organization interested in responsible local government, the protection of rural communities, and the protection of the land, air, and water resources in the Grand Forks area. GFC3's membership includes residents and landowners in the City of Grand Forks' 4-mile ET zone. GFC3 is an affiliate of the Dakota Resource Council.

GFC3's Position: GFC3 supports Senate Bill No. 2027 and proposes amendments which are tailored to more clearly revise the state's grant of extraterritorial zoning authority to North Dakota cities so that citizens of a city's ET zone are not deprived of their rights.

Problems:

The legislature's purpose in delegating extra-territorial zoning authority to cities was to enable cities to plan for the orderly development of their adjacent fringe areas. Apple Creek Township v. City of Bismarck, 271 N.W.2d 583, 587 (N.D. 1978). The legislature thought that it was giving the cities a shield to protect themselves against inconsistent township/county zoning or the absence of township/county zoning in their adjacent fringe areas. In contrast, the City of Grand Forks has used extraterritorial zoning authority as a sword to serve the City's needs with little regard for the residents of the ET zone. ET zone citizens have no effective protection against a city making excessive land-use demands in its ET zone

1. Voting rights. The touchstone of responsible local government is political accountability. Zoning decisions are made by a Planning Commission dominated by City representatives and by the City Council. The City of Grand Forks need not consider the interest of the ET zone residents, because they have no political accountability. The legislature must structure ET zoning so that the zoning authority is politically accountable to ET zone residents.

2. Area. The ET zone surrounding the City of Grand Forks contains three times the area of the City of Grand Forks. The 4-mile ET zone is not rationally- related to the legislation's objective of enabling the cities to plan for the orderly development of their fringe areas. At historic population growth rates, the City of Grand Forks will not grow into the ET zone for 150 - 200 years. The legislature must roll back the ET zone so that it has some rational relationship to a reasonable planning horizon supported by growth projections over a reasonable period of time.

The prime example of the irrationality of the 4-mile zone is the City of Grand Forks identifying the 2-4 mile band of its ET zone as the area it has chosen to site a municipal solid waste landfill. The selection of candidate sites is driven by the City's self-interest in avoiding local zoning review, not by consideration of environmental data which would identify the safest site or citizen input regarding projected local impacts. No city would plan to site a landfill in an area it intends to grow into. By having a 4-mile ET zone, the legislature allows the cities to site "nuisance" uses in the outer reaches of its ET zone that it could not politically site within its corporate limits.

3. Abuse of property rights. The City of Grand Forks has chosen to site a municipal solid waste landfill in Rye Township, at the outer limits of its ET zone. Under the City of Grand Forks Zoning Code, no zoning hearing has been or will be held to give ET zone residents an opportunity to address the impacts of such a facility on their homes, farmland, transportation system, before a zoning authority that would have the power to compel the City of Grand Forks to mitigate the adverse effects of the landfill. The North Dakota Department of Health permitting review does not provide a substitute for zoning review. The legislature must protect ET zone residents from a City serving its own needs at the expense of the ET zone residents, without providing due process to the ET zone residents.
4. Abuse of property rights. The City of Grand Forks has zoned virtually the entire ET zone as an agricultural preservation area. The only permitted uses in the ET zone are agriculture and municipal utilities, such as wastewater treatment plants and landfills. Residential housing density is set at one house per 40 acres. The effect of this zoning has been to preserve a "greenbelt" around the City of Grand Forks, forcing development into areas that are within the corporate limits of the City of Grand Forks. This is an abuse of ET zone property rights. If any city utilizes ET zoning to preserve a "greenbelt" around the City, the landowners in the ET zone need to be compensated for the development value of their property.

### Solutions:

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

### Recommendations:

1. Cities must be prevented from siting their high-impact uses in their ET zones with no meaningful safeguards provided to ET zone citizens. We advocate limits which prohibit a city from acting like the City of Grand Forks, which plans to site a high-impact, polluting use in the outer reaches of its ET zone with no local-government permitting process and no political accountability to affected citizens. There must be a balance that protects ET citizens' right to have a voice in their governance but also serves the cities' interests in orderly development of ET zones. Our current legislation is flawed – it pays lip service to the rights of ET residents, but then writes the cities a blank check.
2. The 4-mile zone for extra-territorial zoning of cities with populations greater than 25,000 persons is too big. The size of the ET zone must be reasonably related to a city's valid growth-rate projections. The area contained in the ET zone must be projected for development and annexation within a reasonable period of time – not 100 to 200 years. There is no reasonable basis for defining a city's fringe area to encompass three times the area of a city's current territory, which is the situation in Grand Forks.
3. In an ET zone, the zoning regulations enacted and the permitting decisions made must be under the authority of an objective governing board with fair and adequate representation of ET zone citizens. The members of the governing board must be politically accountable to the citizens affected by its governance.

### Proposed amendments:

The proposed amendments at Page 1, lines 10, 12, and 15, roll back the ET Zone area to reasonable growth areas.

The proposed amendments from Page 2, line 10, through Page 9, line 12, specifically provides for a responsible sharing of zoning authority between a city and local governments representing ET zone residents, providing political accountability to the zoning process.

The proposed amendments from Page 7, line 13, through Page 10, line 4, encourage cities with overlapping zones to share ET zoning by agreement. The use of an administrative law judge to resolve disagreements transforms zoning, which should be a process of cooperation and reconciliation of competing interests, into an adversarial process. If cities fail to cooperate, they can either accept an arbitrary boundary or pursue the development of a regional zoning authority.

The proposed amendment at Page 10, lines 10 and 11, places a meaningful restriction on a city using “flagpole annexation” to assert ET zoning control.

The proposed amendments from Page 10, line 18, through Page 11, line 20, provide for local control and authority if a city decides to locate “nuisance” uses in its ET zone that it does not want to locate within its corporate limits. It will encourage cities to make agreements with ET zone residents to mitigate the adverse impacts of “nuisance” uses that the city wants to locate in the ET zone.

The proposed amendment from Page 11, line 21, through Page 12, line 10, provides for compensation to ET zone landowners who are subject to a city using its zoning code to provide itself with a “greenbelt” around its corporate limits.

Section 2 proposes to repeal the version of § 47-07-01.1 enacted to become effective after July 31, 2009.

Sections 3, 4, and 5 are intended to prevent the cities from making zoning grabs between the date of bill passage and bill effectiveness. They are also intended to remedy the City of Grand Forks using its ET zoning authority to site a municipal solid waste landfill in the ET zone while denying ET zone residents any participation in a meaningful zoning hearing where an objective authority can address mitigation of adverse effects on property values and other ET citizen rights.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

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 (Effective through July 31, 2009) of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities, and repealing section 40-47-01.1 (Effective after July 31, 2009) of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities."

**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]~~ One-quarter mile [.40 kilometer] if the city has a population of fewer than five thousand.
  - b. ~~One mile [1.61 kilometers]~~ One-half mile [0.80 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand.
  - c. ~~Two miles [3.22 kilometers]~~ One mile [1.60 kilometers] if the city has a population of twenty-five thousand or more.

1 ~~2. Subject to subsections 5 and 6, a city, by ordinance, may extend the~~  
2 ~~application of the city's zoning regulations to two times the distance~~  
3 ~~allowed under subdivisions a, b, and c of subsection 1 if the extension is~~  
4 ~~approved by at least five of six members of a committee established to~~  
5 ~~review the proposed extension. The committee must consist of three~~  
6 ~~members appointed by the governing body of the city and three members~~  
7 ~~appointed, jointly, by the governing bodies of any political subdivision that~~  
8 ~~is exercising zoning authority within the territory to be extraterritorially~~  
9 ~~zoned.~~

10 2. The governing body of the city shall specify by resolution the description  
11 of the area to be zoned within its extraterritorial zoning territory sufficiently  
12 accurate to determine its location and such area shall be contiguous to  
13 the city. The boundary line of such area need not extend to the limits of  
14 the extraterritorial zoning territory. Within 15 days of the adoption of the  
15 resolution the governing body shall declare its intention to prepare a  
16 comprehensive zoning ordinance for all or part of its extraterritorial zoning  
17 territory by the publication of the resolution of a newspaper having general  
18 circulation in the area proposed to be zoned. The city shall mail a certified  
19 copy of the resolution and a scale map reasonably showing the  
20 boundaries of the extraterritorial territory to the auditor of the county in  
21 which the extraterritorial territory is located and to the township clerk of  
22 each township, any part of which is included in such area.



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

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

17 4. The governing body may enact, without referring the matter to the  
18 planning and zoning commission, an interim zoning ordinance to preserve  
19 existing zoning or uses in all or part of the extraterritorial zoning territory  
20 while the comprehensive zoning plan is being prepared. Such ordinance  
21 may be enacted as an ordinary ordinance but shall be effective for no  
22 longer than 2 years after its enactment, unless extended as provided in  
this subsection. Within 15 days of its passage, the governing body of the

1 city shall publish the ordinance in a newspaper having general circulation  
2 in the area proposed to be zoned and the city clerk shall mail a certified  
3 copy of the ordinance to the auditor of the county in which the  
4 extraterritorial territory is located and to the clerk of each township  
5 affected by the interim zoning ordinance and shall file a copy of the  
6 ordinance with the city planning commission. The governing body of the  
7 city may extend the interim zoning ordinance for no longer than one year,  
8 upon the recommendation of the joint extraterritorial zoning committee  
9 established under subsection 5. No other interim zoning ordinance shall  
10 be enacted affecting the same area or part thereof until 2 years after the  
11 date of the expiration of the interim zoning ordinance or the one year  
12 extension thereof. While the interim zoning ordinance is in effect, the  
13 governing body of the city may amend the districts and regulations of the  
14 ordinance according to the procedure set forth in subsection (f).

15 5. If the governing body of the city adopts a resolution under subsection 2, it  
16 shall direct the planning commission to formulate tentative  
17 recommendations for the district plan and regulations within all or a part of  
18 the extraterritorial zoning territory as described in the resolution adopted  
19 under subsection 2. When the planning commission is engaged in the  
20 preparation of such district plan and regulations, or amendments thereto,  
21 a joint extraterritorial zoning committee shall be established. Such joint  
22 committee shall consist of 3 citizen members of the planning commission,

1 or 3 members of the planning commission designated by the mayor if  
2 there are no citizen members of the commission, and 3 township  
3 members from each township affected by the proposed plan and  
4 regulations, or amendments thereto. The 3 township members shall be  
5 appointed by the township board of supervisors for 3 year terms and shall  
6 be residents of the township and persons of recognized experience and  
7 qualifications. Township board members are eligible to serve. If the  
8 township board fails to appoint the 3 members within 30 days following  
9 receipt of the certified resolution under subsection 2, the board shall be  
10 subject to a mandamus proceeding which may be instituted by any  
11 resident of the area to be zoned or by the city adopting such resolution.  
12 The entire planning commission shall participate with the joint committee  
13 in the preparation of the plan and regulations, or amendments thereto.  
14 Only the members of the joint committee shall vote on matters relating to  
15 the extraterritorial plan and regulations, or amendments thereto. A  
16 separate vote shall be taken on the plan and regulations for each  
17 township and the township members of the joint committee shall vote only  
18 on matters affecting the particular township which they represent. The  
19 governing body shall not adopt the proposed plan and regulations, or  
20 amendments thereto, unless the proposed plan and regulations, or  
21 amendments thereto, receive a favorable vote of a majority of the six  
22 members of the joint committee. Such vote shall be deemed action taken

1 by the entire planning commission.

2 6. The joint committee shall formulate tentative recommendations for the  
3 district plan and regulations and shall hold a public hearing thereon.  
4 Notice of a hearing shall be given by publication in a newspaper having  
5 general circulation in the area to be zoned, during the preceding 30 days,  
6 and by mailing the notice to the clerk of the township for which the plan  
7 and regulations are proposed. The notice shall contain the layout of  
8 tentative districts either by maps or words of description, and may contain  
9 the street names and house lot numbers for purposes of identification if  
10 the joint committee or the governing body so determines. At a public  
11 hearing an opportunity to be heard shall be afforded to representatives of  
12 the township board of the township and to any person in the township for  
13 which the plan and regulations are proposed.

14 7. The governing body of the city may adopt by ordinance the proposed  
15 district plan and regulations recommended by the joint committee after  
16 giving notice and holding a hearing as provided in subsection 6, or the  
17 governing body may change the proposed districts and regulations after  
18 first submitting the proposed changes to the joint committee for  
19 recommendation and report. The joint committee and the governing body  
20 may hold a hearing on the proposed changes after giving notice as  
21 provided in subsection 6. The joint committee recommendation on the  
22 proposed changes shall be submitted to the governing body in

1 accordance with the voting requirements set forth in subsection 5.

2 8. The governing body of the city may amend the districts and regulations of  
3 the extraterritorial zoning ordinance after first submitting the proposed  
4 amendment to the joint committee for recommendation and report. The  
5 procedure set forth in subsections 5, 6, and 7 shall apply to amendments  
6 to the extraterritorial zoning ordinance.

7 9. The governing body of a city which adopts an extraterritorial zoning  
8 ordinance under this subsection may specifically provide in the ordinance  
9 for the enforcement and administration of this subsection. A township  
10 which has been issuing building permits may continue to do so, but the  
11 city building inspector shall approve such permits as to zoning prior to  
12 their issuance.

13 5- 10. If two or more cities have boundaries at a distance where there is an  
14 overlap of extraterritorial zoning authority under this section, the governing  
15 bodies of the cities may enter into an agreement regarding the  
16 extraterritorial zoning authority of each city. The agreement must be for a  
17 specific term and is binding upon the cities unless the cities agree to  
18 amend or rescind the agreement ~~or unless determined otherwise by an~~  
19 ~~administrative law judge in accordance with this chapter.~~ If a dispute  
20 arises concerning the extraterritorial zoning authority of a city and the  
21 governing bodies of the cities involved fail to resolve the dispute, the  
22 dispute ~~must be submitted to a committee for mediation. The committee~~

1 must be comprised of one member appointed by the governor, one  
2 member of each governing body of each city, and one member of the  
3 planning commission of each city who resides outside the corporate city  
4 limits. The governor's appointee shall arrange and preside over the  
5 meeting and act as mediator at the meeting. A meeting may be continued  
6 until the dispute has been resolved or until the mediator determines that  
7 continued mediation is no longer worthwhile. In the event that the cities  
8 do not enter into an agreement regarding the zoning of the territory  
9 subject to an overlap of city zoning authority, the jurisdiction over the  
10 overlapping area shall be divided on a line all points of which are  
11 equidistant from the boundaries of each city concerned so that not more  
12 than one city shall exercise power over any area. If the mediation  
13 committee is unable to resolve the dispute to the satisfaction of the  
14 governing bodies of all the cities involved, the governing body of any of  
15 the cities may petition the office of administrative hearings to appoint an  
16 administrative law judge to determine the extraterritorial zoning authority  
17 of the cities in the disputed area. A hearing may not be held until after at  
18 least two weeks' written notice has been given to the governing bodies of  
19 the cities involved in the dispute. At the hearing, the governor's appointee  
20 who mediated the meetings under subsection 4 shall provide information  
21 to the administrative law judge on the dispute between the cities involved  
22 and any proposed resolutions or recommendations made by a majority of

1 the committee members. Any resident of, or person owning property in, a  
2 city involved in the dispute or the unincorporated territory that is the  
3 subject of the proposed extraterritorial zoning, a representative of such a  
4 resident or property owner, and any representative of a city involved, may  
5 appear at the hearing and present evidence on any matter to be  
6 determined by the administrative law judge. A decision by the  
7 administrative law judge is binding upon all the cities involved in the  
8 dispute and remains effective until the governing bodies of the cities agree  
9 to a change in the zoning authority of the cities. The governing body of a  
10 city may request a review of a decision of an administrative law judge due  
11 to changed circumstances at any time ten years after the decision has  
12 become final. An administrative law judge shall consider the following  
factors in making a decision under this subsection:

- 14 ————— a. The proportional extraterritorial zoning authority of the cities  
15 involved in the dispute;
- 16 ————— b. The proximity of the land in dispute to the corporate limits of  
17 each city involved;
- 18 ————— c. The proximity of the land in dispute to developed property in the  
19 cities involved;
- 20 ————— d. Whether any of the cities has exercised extraterritorial zoning  
21 authority over the disputed land;
- 22 ————— e. Whether natural boundaries such as rivers, lakes, highways, or

1 other physical characteristics affecting the land are present;—

2 ~~f. The growth pattern of the cities involved in the dispute; and~~

3 ~~g. Any other factor determined to be relevant by the administrative law~~  
4 ~~judge.~~

5 7. 11. For purposes of this section, the population of a city must be determined  
6 by the last official regular or special federal census. If a city has  
7 incorporated after a census, the population of the city must be determined  
8 by a census taken in accordance with chapter 40-22.

9 8. 12. When a portion of the city is attached to the bulk of the city by a strip of  
10 land less than ~~one hundred feet [30.48 meters]~~ one-quarter mile [ 402.34  
11 meters] wide, that portion and strip of land must be disregarded when  
12 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.

14 9. 13. For the purposes of this section, a quarter quarter section shall be  
15 determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When  
16 appropriate, the phrase "quarter quarter section" refers to the equivalent  
17 government lot.

18 14. A city zoning regulation or zoning decision affecting a city's extraterritorial  
19 zoning territory shall not become effective within a city's extraterritorial  
20 zoning territory until approved by a vote of the board of township  
21 supervisors of the township or townships affected by the city's zoning  
22 regulation or zoning decision, whenever:



- 1           a. Such zoning regulation or zoning decision puts into effect a change  
2           of zoning that constitutes down-zoning;
- 3           b. Such zoning regulation or zoning decision permits or allows a use  
4           or activity which is subject to permitting or authorization by the  
5           North Dakota Department of Health pursuant to the North Dakota  
6           Century Code, by the U.S. Environmental Protection Agency  
7           pursuant to the United States Code, by the U.S. Army Corps of  
8           Engineers pursuant to the United States Code; or by the U.S. Fish  
9           and Wildlife Service pursuant to the United States Code; or
- 10          c. The population of the city has not shown a ten percent increase  
11          between the last federal decennial census and the federal  
12          decennial census immediately preceding the last federal decennial  
13          census.
- 14          15. A city exercising extraterritorial zoning authority is prohibited from locating  
15          a wastewater treatment facility, solid waste management facility, or any  
16          city-owned enterprise facility within the city's extraterritorial zoning territory  
17          unless the location of such facility or enterprise has been approved by a  
18          vote of a majority of the voters of: (a) the township in which the proposed  
19          facility would be located, and (b) any other township which lies within two  
20          miles of the proposed facility or enterprise.
- 21          16. If land located within a city's extraterritorial zoning territory owned by a  
22          private person or entity is located in a zoning district which restricts lawful

1 uses to agricultural, governmental, or open-space uses or is otherwise  
2 designated so as to restrict lawful uses to agricultural, governmental, or  
3 open-space uses, and has been subject to such restrictions for a period of  
4 two or more years, the owner of such parcel of land shall be entitled to  
5 compensation from the city exercising extraterritorial zoning authority in  
6 the amount of the fair market value of the parcel if developable as single-  
7 family residential property minus the fair market value of the parcel if  
8 restricted to agricultural use. In any action to recover such compensation  
9 from a city subject to this provision, the claimant shall be entitled to  
10 recover reasonable attorney fees, expenses, and costs from the city.

11 **SECTION 2. REPEAL.** Section 40-47-01.1 (Effective after July 31, 2009) of  
12 the North Dakota Century Code is repealed.

13 **SECTION 3. EFFECTIVE DATE.** This act shall become effective immediately  
14 upon its filing with the secretary of state.

15 **SECTION 4. RETROACTIVE.** This Act is retroactive in its application.

16 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

17 Renumber accordingly



Allen C. Hoberg  
DIRECTOR

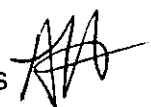
## OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA  
1707 North 9th Street  
Bismarck, North Dakota 58501-1882

701-328-3260  
Fax 701-328-3254  
oah@nd.gov  
www.nd.gov/oah

### MEMORANDUM

TO: Senate Government and Veterans Affairs Committee

FROM: Allen C. Hoberg, Director, Office of Administrative Hearings 

RE: Senate Bill No. 2027

DATE: January 23, 2009

On August 11, 2008, the Office of Administrative Hearings presented testimony to the Legislative Council's Advisory Commission on Intergovernmental Relations concerning three bill drafts that Commission was considering regarding amendments to N.D.C.C. section 40-47-01.1. We compared those bill drafts to the annexation law in N.D.C.C. chapter 40-51.2 (see N.D.C.C. sections 40-51.2-08 through 40-51.2-17). We then noted concerns we had with the bill drafts regarding the lack of factors for determination and criteria for making a decision, and the lack of criteria indicating which governmental entity would pay for the ALJ's services in holding a hearing and making a decision.

Although we believe it would be better if SB 2027 had a provision in it similar to N.D.C.C. section 40-51.2-17, which specifically states who is to pay for the ALJ's services in an annexation hearing, N.D.C.C. section 54-57-07 does authorize OAH to require payment for services rendered to various governmental entities. It appears,

then, that absent a specific provision in section 40-47-01.1, the governing body petitioning OAH to conduct an extraterritorial zoning hearing would be required to make payment to OAH for the ALJ services rendered, unless there was an agreement between the disputing governing bodies to share in the payment. Still, we believe it would be better to specifically state who will make payment to OAH for the ALJ's services.


A more important concern with SB 2027 is the basis for ALJ decision-making. In annexation hearings, N.D.C.C. section 40-51.2-13 provides the ALJ with the factors to consider in making a determination about whether to allow annexation (subsection 1), and also the actual criteria for making a determination based on those factors (subsection 2). Further, N.D.C.C. section 40-51.2-14 gives the ALJ some additional decision-making guidance and authorizes the ALJ to "approve or disapprove, with or without amendment, wholly, partially, or conditionally the petition for annexation."

Thus, even though N.D.C.C. chapter 40-51.2 does not give the ALJ guidance on how to weigh the factors or on specifically which factors to apply and how to apply them to the various criteria for deciding the annexation petition, it at least provides factors and criteria for making a determination.

SB 2027 is an improvement over the interim bill drafts in that it does provide factors for making a determination. But, it still does not state how the ALJ is to go about making a determination; it neither states how much weight to give any of the factors to be considered nor does it provide criteria for application in resolving an extraterritorial zoning, or other dispute between the governmental entities. In short, it doesn't have provisions similar to N.D.C.C. sections 40-51.2-13 (2) or 40-51.2-14, that give an ALJ guidance or principles to apply make annexation determinations.

While this failure may not be fatal to the legislation, the committee should certainly be aware that this places a very difficult burden on the ALJ to determine on just what to base his or her decision. We realize that an annexation determination is different than a determination about extraterritorial zoning authority, a change in zoning, subdivision plat approval, or a change in zoning or subdivision regulation. It may be more difficult to state criteria for determination in the types of determinations that must be made by the ALJ under section 40-47-01.1. But, that should also be an indication of how difficult it may be for an ALJ to make a determination if all the guidance they are given are factors with no indication of how to weigh them and no criteria to apply based on those factors.

In summary, although SB 2027 is an improvement over the interim bill drafts, it would be better legislation if it also provided appropriate zoning wording that would give more



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State of North Dakota  
Senate Government and Veterans Affairs Committee  
January 23, 2009  
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guidance to the ALJ. We suggest something more similar to the annexation legislation of chapter 40-51.2.

fz





www.westfargo.org

Sharon Schacher, Finance Director  
Larry M. Weil, Planning Director  
Wanda J. Wilcox, City Assessor  
Dorinda Anderson, Business Development Director  
Jim Brownlee, CPA, City Administrator

## **SB 2027 City of West Fargo Testimony**

SB 2027 as written intends to take away exclusive extraterritorial planning and zoning authority from cities and provide for shared authority between all affected jurisdictions. The City of West Fargo would like to go on record as **opposed** to the bill as written. However, the City is **in favor of the Bill with amendments** for the following reasons:

- West Fargo has experienced a tremendous amount of growth over the last several decades which required much forethought to the layout of streets and the development of compatible uses. Much coordination has taken place with Cass County, affected townships, and City of Fargo. The City's population increased by 96% between 1970 and 1980, 22% between 1980 and 1990, and 22% between 1990 and 2000. It is estimated that the population has increased by more than 75% so far since 2000. The City's land area has doubled since 2001 to accommodate all the growth taking place.
- The rationale for adding extraterritorial (ET) area in 1997 to the State Statute was to enable cities to better plan for the growth experienced by West Fargo and other cities.
- West Fargo has had a very good working relationship with Cass County and the four townships affected by the extraterritorial planning and zoning limits. All ET applications are sent to the County and/or township for review. Any comments/recommendations are taken seriously when giving consideration to the application. West Fargo has an extraterritorial area of two miles which has been in place since 1998. The ET area has helped to conduct proper planning in growth areas, and has helped to properly administrate floodplain regulations in flood prone areas. Township and County officials have been in support of the City's current two-mile area and have been actively involved in planning efforts and developing applicable zoning districts for the area.
- The current statutes have worked well for West Fargo, Cass County and the adjoining townships. The City supports the proposed amendments, as complete control would be maintained where the greatest development pressure is taking place.
- Without complete extraterritorial planning and zoning authority next to the city, cities may consider premature annexation of bordering areas to control the proper planning for and timing of development. Premature annexation causes tax implications for property owners and should be avoided.

- Joint jurisdiction, particularly of areas immediately adjacent to cities, will without a doubt cause significant delays for development applications because of the number of additional governmental entities reviewing and acting upon them. A typical subdivision and rezoning application under the proposed legislation would be reviewed and approved by the following entities: Township Board of Supervisors, County Planning Commission, County Commission, City Planning Commission, and City Commission. Each board has their review requirements and would have the ability to establish conditions of approval or the application would not proceed. This would cause frustration for the development community as greater governmental intervention is taking place rather than streamlining review and decision-making. Currently there is one authority with the various jurisdictions reviewing and commenting within a relatively short application period.
- The current statutes provides 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. If the proposed legislation would be approved, there would no longer be a need for ET representatives on the Planning and Zoning Commission. The result is individual authority decisions which may or may not be in agreement, rather than one decision with all jurisdictions concerns considered as part of the decision.
- The extraterritorial statutes were thought out well and have been in place since 1975 for the lesser ET area with few concerns. The expanded area, which is double the original area, was enacted in 1997. Since the expanded area was enacted more concerns have been raised by affected residents in the expanded area in some cities. However, in West Fargo the County and townships have worked well in coordinating development standards for the entire ET area.
- Cities are better equipped to address urban development pressures adjacent to cities than are counties and townships.

The City of West Fargo urges the Legislature to **amend SB 2027** to provide joint jurisdiction in the expanded ET area only.



[illegible]

Chairman Dever 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 this past spring, 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-relenting 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.

**Comments opposing Senate Bill 2027**  
**January 23, 2009**

**Comments on extraterritorial zoning authority**

**Richard Hammond - Burleigh County resident**

Senate Bill 2027 was produced by the Advisory Commission on Intergovernmental Relations as a result of extensive public hearings held over many months. Senate Bill 2027 is a monumental failure. The committee spent many hours and days holding public hearings only to ignore the concerns of the majority of the citizens. Bill 2027 is a feeble attempt to maintain the strangle hold that the cities have over their neighboring rural residents.

This bill has no relation to the testimony received by the committee. To help this committee evaluate this bill and any legislation having to do with extraterritorial zoning authority, I have included as Exhibit 1 to my comments, a list of concerns raised by citizens during these hearings. Since I did not attend all of the interim hearings, other witnesses may have additional issues that should be considered. The committee should have a complete list of citizens concerns in front of it when evaluating this bill or any other bill dealing with extraterritorial zoning. Then, for this bill, and for each piece of proposed legislation, the committee should ask, "does this bill address each and every one of the citizens' concerns listed?"

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 cities initially wanted to control 10 miles beyond their borders. That did not pass. The following session, they tried for 6 miles. Did not pass again. The third time they tried for 4 miles and did get 2. The legislature was duped and sold the idea based upon the cities' projections as to how well the system would work. For many years, those of us rural residents who have been the victims of this failed scheme have, tried to get the legislature to reconsider the decision. Now, the legislature can evaluate the merits of extraterritorial zoning based upon the actual real world application since passage. 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. The authority should be completely taken away from the cities - for cause. The cities were given a serious public trust and they were simply not up to the task. Anyone who listened to the testimony before the ACIR committee will be aware that this was not just one isolated irresponsible city commission, nor was it just a few bad eggs on one city commission. This did not work anywhere because the whole idea is fundamentally flawed. When power is

granted with no accountability we will always see the some type of irresponsible conduct like that we have experienced in the cities dealings with the rural residents. This if a flawed idea that the state tried. It did not work and never will work.

This committee has refused to recognize the fact that there are viable, capable, functioning, County and Township governmental entities in the state. All members of the Burleigh County Commission asked the City of Bismarck not to extend their zoning control from 2 miles to 4 miles. The city simply ignored the County Commissioners and increased their control to 4 miles anyway. No one has ever provided a credible explanation as to why the city is qualified to plan and zone and the counties and townships are not. There are no substantive qualification requirements for being elected to a city commission. The cities will never respect the rights of the non-voting rural residents.

As legislators, it is important that you always keep in mind that there is a necessary relationship between authority and responsibility. Any time there is a grant of power or authority, there must be corresponding responsibility and accountability associated with that grant of authority. This is the root of what is wrong with extraterritorial zoning. Since there is no accountability on the part of the cities, we will always see an unacceptable degree of disrespect and lack of concern for rural residents' rights on the part of the city. Power corrupts. This is why our entire system of government is based upon a system of checks and balances wherein no one branch of government can become dominant over the other branches.

I have a degree of frustration with extraterritorial zoning and the legislature's acceptance of it. If anybody should understand the fundamental basis of a democracy, it should be those serving as elected representatives in the legislature. If our elected legislative representatives do not recognize the importance of representing the wishes of the citizens as opposed to representing the wishes of special interest lobbyists, then it is downhill from here for North Dakota citizens.

There is considerable language in 2027 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 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. The citizen is at a disadvantage.

There is nothing in the documentation of the interim committee minutes that addresses the concerns raised by the citizens. I want to see some documentation justifying or explaining their decisions that went into drafting this bill. There is a disconnect between the testimony and resulting bill. It is as though the committee never heard any of the citizens' testimony at all. Just as a

judge, presiding over a court case, is required to write an opinion or explanation for his, or her decision, the committee should have provided the state's citizens with an explanation for their decisions, an explanation that addresses all the issues raised. Maybe by having to go through the exercise of preparing a rational explanation for the committee's decision that voters opinions are no longer relevant, a majority of the committee members would have begun to recognize the flawed thinking that went into the preparation of 2027.

The only excuse that I heard for the taking away the right to vote was the flimsy excuse that the legislature had the right to zone and that they delegated that right to the cities. Who authorized the legislature to give away anybody's constitutional right to vote? It was highly improper and disingenuous for the legislature interim committee to hold a series of public hearings when it appears now that there was never any intention to consider the testimony received from the citizens.

These citizen concerns are listed in my Exhibit 1;

There is an additional assault taking place by the cities against the rural residents. Somehow, the planning lobby convinced the legislature that townships and counties had to have some kind of "Plan". Then the city moved in and told the county, "we have planners and we are here to help". The cities ended up coming in the back door, doing planning in the rural area for the cities' benefit, and, to add insult to injury, spending my tax dollars to pay for this fraud. All this with no benefit to me or any other rural residents. Burleigh County hired a "consultant" to prepare a plan. The city planners were right there all the time steering the consultant to do exactly what the city wanted. This study cost over \$100,000 and was no more than a standard study wherein the consultant changed the name of the entity and recycled an old study. The Burleigh County Comission bought the proverbial bag of magic beans with my tax dollars. The study contains all the restrictions that the city has always wanted to have over the rural area. Not since Mark Twain's Tom Sawyer tricked others into whitewashing the fence for him has such a scam been so successful.

As a citizen, I am concerned about the functioning of our democratic process. Citizens will come and testify before this committee. 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 when 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 either.

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. They 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.



**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, just in case someone didn't get it.

3. Various county and township governmental subdivisions have lost substantial amounts of revenue to the cities. Follow the money.

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.

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.

At our 2005 annual convention the members of NDTOA passed a resolution calling for the roll back of the extra territorial zoning authority that had been given to the cities. This past December the membership passed another resolution calling for the elimination of extra territorial zoning by cities.

NDTOA will support this bill if amended to further restore the elector rights of affected citizens, but if SB2027 is amended to reduce the effects or scope of such restoration NDTOA will oppose this bill.

Chairman Dever and members of the Senate Government and Veterans Affairs Committee please consider this bill carefully and restore voting rights of North Dakota citizens that happen to fall under extra territorial zoning authority.

I will try to answer your questions.

# Response to SB2027

Albert FRISINGER, Stanley Township

I am here to speak on behalf of Stanley Township.

We believe that E.T. should go back to zero.

Our belief is based on these facts. Ets take away the right of voter representation. Those living within the ET do not have the basic rights to vote for the governing body that governs them. It's hard to listen to the complaints of the citizens of the township as a supervisor. We can only direct them to the city governments, in our case, those governments are Horace, West Fargo, Fargo, and Bryerwood.


We understand that at some point in the future that we will no longer have a township. We only ask that the land be annexed. This gives the people the rights afforded by annexation.

We also ask that until that time, the township be able to do responsible planning that is decided upon by the people of the township and their electeds.




**Jon Gregoire, Allendale Township, Grand Forks  
County (1318 11<sup>th</sup> Ave NE, Grand Forks ND 58201)**

**Extraterritorial authority across the state of North Dakota needs to be fixed, but especially in Grand Forks. We tell our kids to be good examples of a good example. Grand Forks is a good example of a bad example. The authority of the city of Grand Forks has gone too far. The affected areas they control are far too broad.**



**I purchased about 39 acres along Wilson Creek outside of Grand Forks to subdivide into lots and sell for my retirement. Out of 39 acres I could get as many as 8 to 10 quality lots. But, with the way the city of Grand Forks has twisted their ET zoning, we'd only be allowed to have one lot in 40 acres. That brings my retirement strategy to a halt. And I am one of many in our area.**

**How is it possible that city officials can so negatively affect country folks who live so far from the city? The city wouldn't be developing this property for at least 100 years. It's not fair to people like myself or my neighbors. Not only have they abused their zoning authority, but no one in the ET zone is allowed to vote for the people who are making the decisions.**



**What they are doing in Grand Forks is so many shades of wrong. We depend on you in the legislature to fix the problem created by a bad law. Repeal the 4 mile ET zone and make it retroactive so the City of Grand Forks only governs those people who vote for them.**

To: Senate Government and Veterans Affairs Committee  
From: North Dakota League of Cities  
Date: February 5, 2009  
Re: Senate Bill No. 2027

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

Page 1, line 2, after "cities" insert "; and to provide an expiration date"

Page 4, line 28, remove "A city that has exercised its authority under subsection 1 has joint zoning and"

Page 4, remove lines 29 through 31

Page 5, remove lines 1 through 28

Page 5, after line 28 insert "An application for a zoning change or subdivision plat or any change in zoning or subdivision regulation in the extraterritorial zoning area must be submitted to the city. Upon receipt of the application, the city shall notify the governing board that would otherwise have jurisdiction and provide that board with a copy of the application. After the city takes action on the application, the governing board that would otherwise have jurisdiction has fifteen days to object to the city's decision or it will be deemed final. If the governing board that would otherwise have jurisdiction objects, 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 a set of findings based on the record therein and the comprehensive plans on file from the city, township, and county."

Page 8, after line 9, insert:

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

Renumber accordingly

**Testimony on SB 2027**  
**Concerned Citizens Speak at ACIR Meeting**  
By Representative Dwight Wrangham,

The Advisory Commission on Intergovernmental Relations, ACIR, met January 23, 2008 in Fargo. The main agenda item was the extra territorial zoning authority cities use to exercise control over private property beyond their borders. As in all previous meetings there was no shortage of concerned citizens to share their individual and collective grievances. As I pondered how best to tell you about the meeting, I realized it could not be put any better than it was put by the affected citizens. I selected some quotes from their testimony. I encourage you to read the minutes of the meeting and the addendums at <http://www.legis.nd.gov/assembly/60-2007/interim-info/minutes/AC012308minutes.pdf>

"The legislature provided a well-intentioned tool that has been used bluntly on the rural citizens of North Dakota. It is appropriate for the same body to sharpen the tool, reinstate the rights of its citizens, and provide the opportunity for townships and counties to work with the cities on a level playing field to develop appropriate zoning codes." Beau Bateman

"And secondly, I ask that the legislators restore me to full citizenship. I am not a felon, or an undocumented alien. I should have a right to vote for or against those who govern me." Richard Gross

"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." Larry Syverson

"In closing, I moved to rural Grand Forks County so that I could have a shop and storage building to fit my needs. I was aware of the two mile extra territorial jurisdiction so looked for property beyond that. Now I find I am once again in the city's control." Larry Teters

"In 2000 Grand Forks Traill Water District came to a long range plan with Grand Forks whereby we have the water service just outside their then existing flood control levees and 2-mile extraterritorial zone. My Directors and I along with many township officers went to meetings on zoning to try to discourage the city from going out 4-miles as it added 21,000 more acres under the cities control. It also in effect voided our 2000 water service agreement. GFTWD had invested well over \$500,000 in infrastructure to serve the future growth we expected as per our 2000 agreement. Now those costs are stranded; GFTWD members have no potential to recover that investment. So much for planning!" Randal W. Loeslie System Manager GFTWD

"As a taxpayer of Cass County I feel that E-T expansion of this type takes away the vote of the people. The city would be in control of what the people can do with their property but cannot vote for these people on the City Commission." Perry Ronning

"This gerrymandering of the rural areas by the city of Fargo is bad government policy. They say that they need to protect the city's growth. It seems strange that in order to accomplish this it is necessary to use a method of governing that has been in our history for two hundreds years as an example of bad governance." Warren Solberg

"The most recent annexation which affects our farm is the additional acreage that was approved by the city of Fargo which extends into the neighboring township to the south. This narrow six

mile long strip of land has no functional purpose for the city of Fargo other than to allow them the control of zoning in this area.” Warren Solberg

“It is disturbing to me that I feel the necessity to be a participant publicly voicing my feelings and opinion before a legislative commission in an attempt to preserve the most basic of my constitutional rights, namely voting and representation. I am quite sure that when legislative permission was granted to the city of Grand Forks to extend zoning authority it was not anticipated that such flagrant omission of these rights would become implementation policy.” Paul Erickson

“We own a home and 3 small fields on both sides of Wilson Creek, and though these are currently used for agriculture, our long term plan is to subdivide. ----- it is very feasible that these lots would easily sell. They say land is a solid investment for the future, and our retirement plans included the sale of these lots. Now, with the ET Zoning limitations, the City of Grand Forks has dashed all hopes of development, and related income.-----It’s not reasonable to have seven city officials controlling the lives of so many who do not have voice, do not have a vote in any city of Grand Forks decisions.” Jon & Marilyn Gregoire.

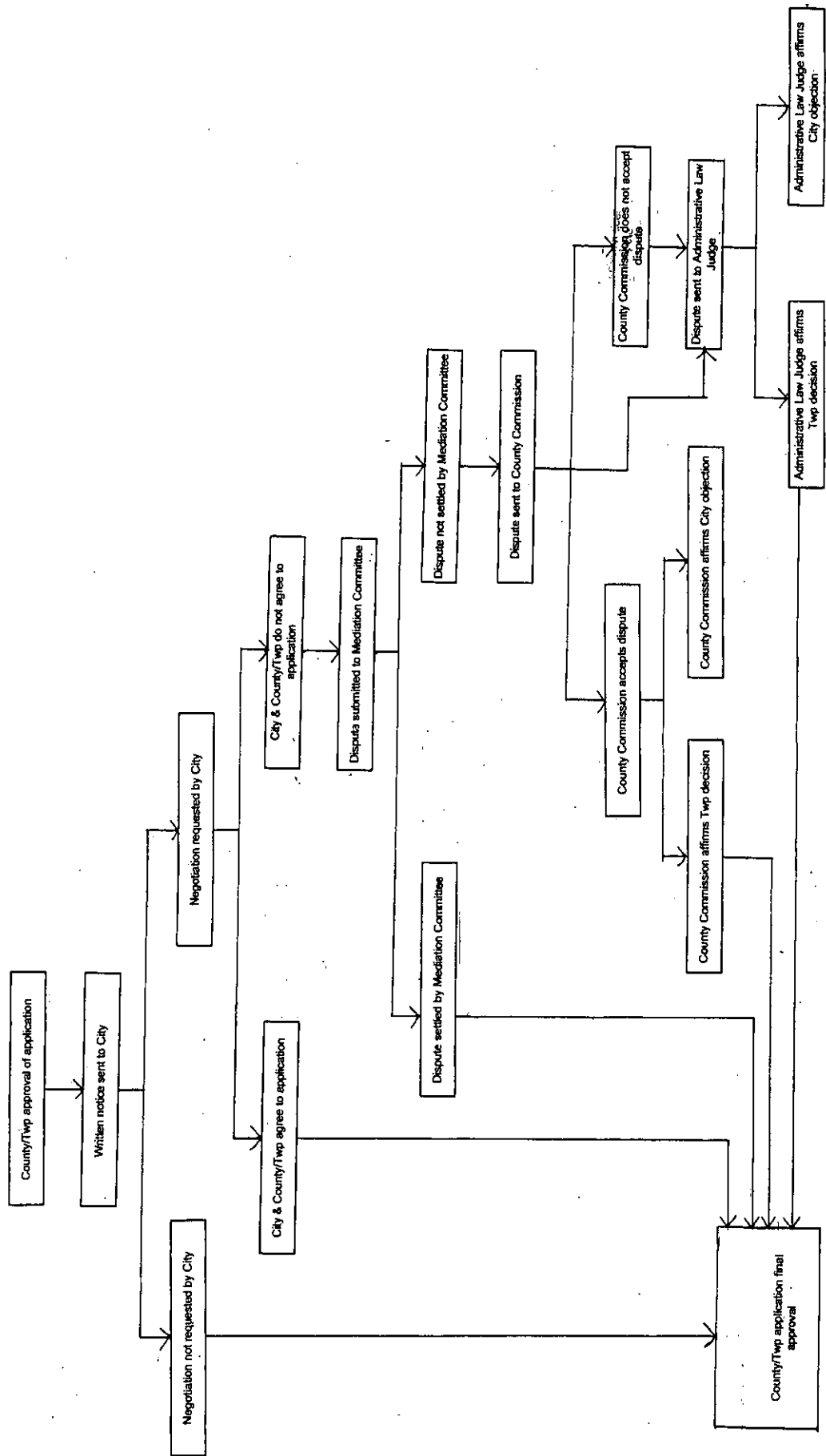
“This bill (ET zoning) has completely failed in far too many key areas, such as: 1) It did not provide for equal representation of the citizens, who live in/or own property in these (ET) zones to participate in the decision process of potential usage with respect to their land and property. 2) It did not provide for political accountability in the form of voting rights for the citizens of the (ET) zone. 3) It did not prevent “predatory zoning” of the (ET) areas which would adversely affect the property owners and the value of their lands and investment. 4) It did not include a component such as a moratorium which would empower the citizens to effectively challenge and cease, unfair practices or policies set forth by the governing authorities. It is obvious that the governing bodies entrusted with these additional (ET) authorities are performing in a manner contrary to the public good and that further review is necessary to determine a better course of action. With that on record, we would respectfully demand that a full, open and exhaustive review be initiated into these mandates and that a moratorium is established to cease all further extra-territorial (ET) activities.” David Koethe

“Cities typically assert their zoning jurisdiction with a mantra of “Smart 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.” Frank Matejcek

“Fargo’s efforts to control land miles and miles from it’s city limits in order to implement it’s rules and regulations on citizens who are not in the least bit interested in being citizens of Fargo must be stopped immediately!” R. D. Knutson

“ When Bismarck decided to exercise it’s authority to establish a four-mile jurisdiction, the Burleigh County Commission strongly objected. There was no strong reasoning for this move as Burleigh County already had Zoning and planning in Place. “ Doug Schonert – Burleigh County Commissioner

“Over the 20 years as County Commissioner I received many calls for help from citizens in the 2 mile territory. I can not recall that the city ever fairly listened to me or any of my constituents outside the city. The frequency of these types of calls for help increased greatly when the city extended it’s territory to 4 miles.” Claus H. Lembke Former Burleigh County Commissioner





#2

## 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.

**To:** House Political Subdivisions Committee  
**From:** North Dakota League of Cities  
**Date:** March 12, 2009  
**Re:** Senate Bill No. 2027

Extraterritorial zoning authority was granted to North Dakota cities in 1975:

- one-half mile for cities under 5,000 population
- one mile for cities from 5,000 up to 24,999
- two miles for cities of 25,000 and over

The Legislature expanded that ET zoning authority in 1997:

- one mile for cities under 5,000 population
- two miles for cities from 5,000 up to 24,999
- four miles for cities of 25,000 and over

Engrossed Senate Bill No. 2027 establishes a new procedure for changes in the expanded ET zone that would allow the township or other entity that would otherwise have jurisdiction to object to any zoning change or subdivision plat decision in the expanded ET zone. If an objection is made to any decision, the issue would go to the county commission for a final determination.

All of the changes to current law are found on pages 4 and 5 of the bill. The underlined changes on the bottom of page 4 and the top of page 5 define the area of joint jurisdiction in each of the city population categories. Lines 8 through 19 on page 5 of the bill set out the procedure that would be used in any application for a zoning change or subdivision plat approval in the area of joint jurisdiction.

An application for a zoning change or subdivision plat would be submitted to the governing body of the city. Upon receipt of the application, the governing body of the city would be required to notify the governing body of the political subdivision that would otherwise have jurisdiction. If the township has exercised zoning authority, the township board would be notified of the application for a zoning change. The city would then go through the usual procedures for determining whether a zoning change should be made. These procedures include a zoning change hearing with a required published notice of once a week for two successive weeks. At the end of the process, when a decision is reached, the township board would have fifteen days to object to the decision. If the township board objects, the issue would be submitted to the board of county commissioners for a final decision.

There are others here today who will testify about the need for extraterritorial zoning in order to plan for city growth and orderly development. You will also hear from others who have expressed concerns about the lack of representation in the extraterritorial zoning area.

Engrossed Senate Bill No. 2027 is an effort at compromise, balancing the need for planning with the concerns that have been expressed. There is an expiration date clause on page 8 so that the new procedures could be used for a two-year trial period.

We ask for a "do pass" recommendation on Senate Bill No. 2027.

#4

**North Dakota House Political Subdivisions Committee**  
**Senate Bill No. 2027**  
**March 12, 2009**

Chairman Wrangham 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 support of SB 2027.

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 support SB No. 2027 because it keeps the two mile zoning distance for cities the size of Dickinson and because it addresses the representation concerns of property owners outside of city limits. This bill provides them an objection procedure with meaningful representation by their elected county or township officials.

Thank you for the opportunity to appear before you and present my testimony.



#5

#### 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 SB 2027**

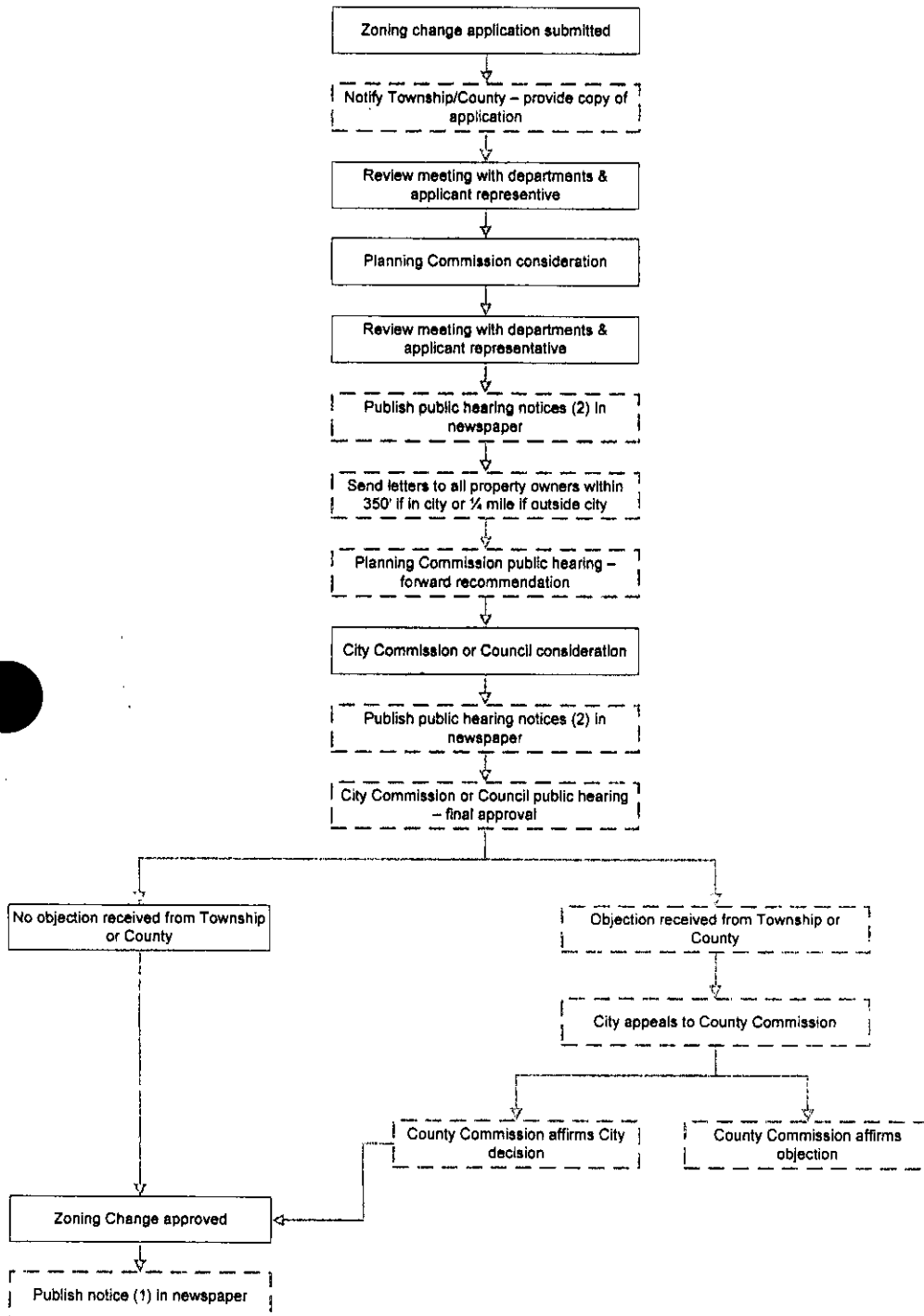
Upon review of Engrossed SB 2027 the members of the North Dakota Planning Association have forwarded the following comments:

- 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. This bill addresses this issue in a manner that gives property owners and townships a say on what happens with their property and also gives cities an ET area that allows them to plan for growth. The NDPA believes this bill properly addresses the issue of property owner and township representation.
- It is important for a city to have planning and zoning authority in their growth areas to plan and provide for future transportation and utilities connections. This bill allows for this and gives townships the ability to appeal any decision made by a city.
- All zoning applications would be reviewed by the township and the county as well as the city. The ET area would be under a cities' jurisdiction. The city would make a decision on an application, based on approved plans and ordinances, and forward it onto the township and county for their review. If either the county or township feel the city's decision is arbitrary they can file an appeal with the County Commission. All appeals would be reviewed by the County Commission for the decisions conformity to the city's adopted plans and ordinances. This gives the city the ability to plan for future growth and also gives property owners and townships a say on zoning applications in the ET area.
- Current state statutes do provide for multi-jurisdictional representation on city planning and zoning commissions, due to prior ET legislation. This allows residents of the township to help form a city's policies and ordinances for the ET area.

The North Dakota Planning Association asks the Legislature vote to **approve Engrossed SB 2027.**

## BISMARCK ZONING CHANGE APPROVAL PROCESS

*Same  
handover  
given to  
Senate*



Current process



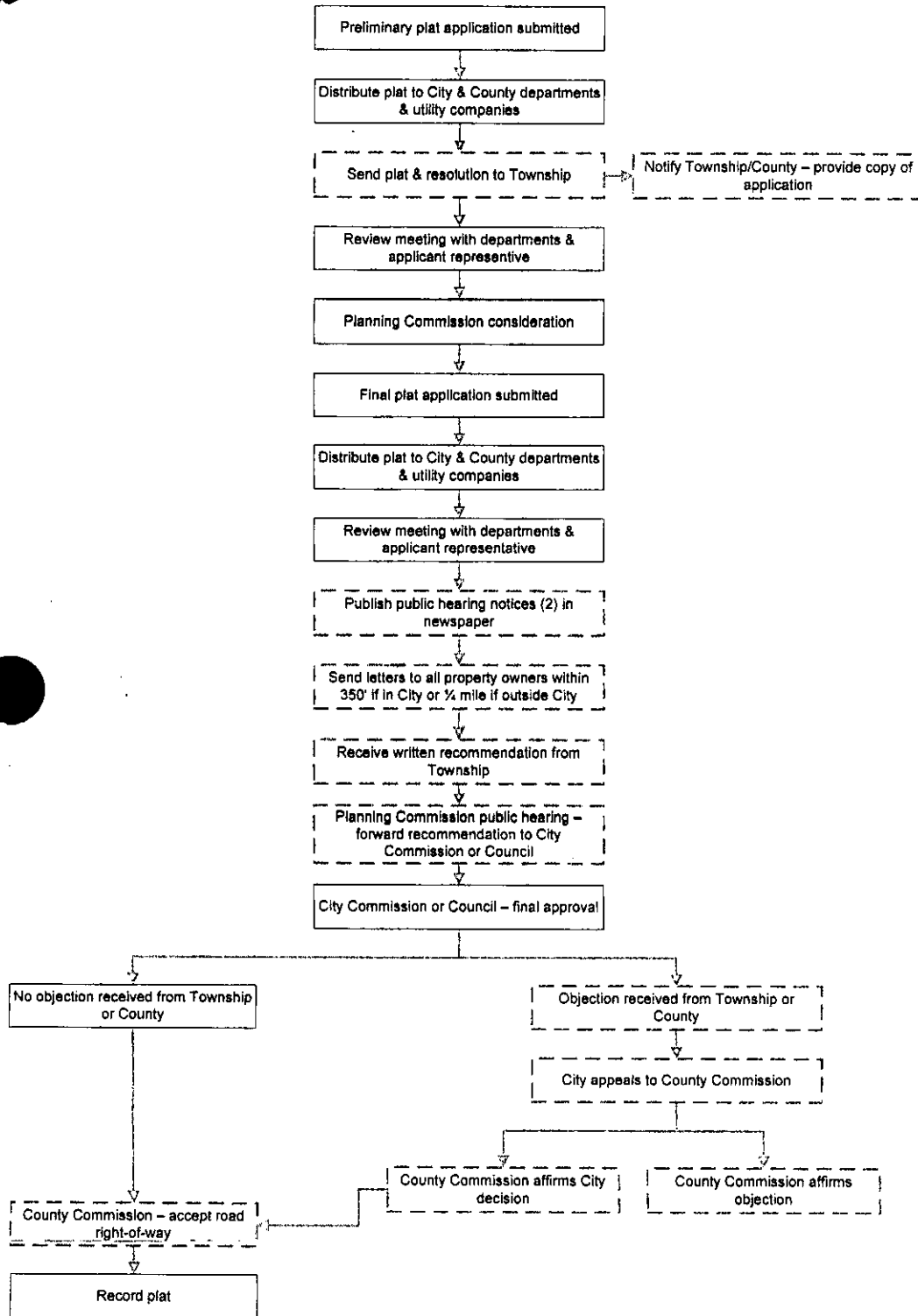
Public outreach/  
opportunities for input






Amendments -  
additional steps

## BISMARCK SUBDIVISION PLAT APPROVAL PROCESS

*Same  
handbook  
given to  
Senate.*



 Current process  
 Amendments - additional steps

 Public outreach/  
opportunities for input



#8

To: North Dakota Legislators  
March 12, 2009

About 20 years ago, I was appointed by the Grand Forks County Commission to be an ET representative on the Grand Forks City Planning and Zoning Commission. State law mandates 3 members from the ET area for any city has exercised its ET authority. The ET area of Grand Forks was 0-2 miles and remained that way until 2006 when the city decided it needed the 4 mile authority to site a landfill. Representing the people in the extraterritorial zone has always been somewhat contentious since we were outnumbered on the city commission by 10-3, and the city council had the final say, where there was no representation for ET residents.

Zoning is supposed to protect land uses; protect abused uses from being placed in an unfit area. That's why you zone--if you have an area where you can locate heavy industry, you zone it away from single family areas. Zoning changes are a process that are open to all by public hearings. Grand Forks has abused this system by changing use in a zone--making a landfill a permitted use in an agricultural zone after they took the 4-mile authority nullified a basic right of the citizenry. NO PUBLIC HEARING WAS REQUIRED; nor has one occurred on the zoning change.

Grand Forks is expanding its Industrial Park and it is needed. The property purchased south of their existing Park has been approved and acquired by the council for a price of \$20,155 per acre. Most of the property was purchased from a pet developer. The property north of Grand Forks that is sought for a municipal landfill is owned by an elderly widow whose family has farmed it for over 60 years. She is an unwilling seller; she would prefer to pass the land on to her children and grandchildren. She has been offered a price of \$1300 per acre, with the implicit threat that the city can ultimately utilize the eminent domain process to acquire her land. The money will be put into escrow, she has been told, and the city will take her land and then the court process will go forward to arrive at a "just compensation."

Let's review. . . a favored developer receives \$20,155 per acre and a widow under the threat of eminent domain proceedings is offered \$1300.

That's why you must set back the extraterritorial authority to two miles to protect and give some representation to the residents of this area. Only the legislature can correct this injustice.

Frank Matejcek  
Grand Forks, ND  
775-8572

*I support 2022 with the Kaldor administration*  
*JMM*

#9

# Grand Forks County

## Planning and Zoning Department

Lane Magnuson, County Planner

151 South 4<sup>th</sup> St. - P.O. Box 5294  
Grand Forks, ND 58206-5294

Phone Number: (701) 780-8413  
Fax: (701) 780-8212  
E-mail: lane.magnuson@gfcounty.com

### Memorandum

To: House Political Subdivisions Committee

From: Grand Forks County Planning Commission

Date: March 10, 2009

Re: Testimony on Senate Bill No. 2027

Grand Forks County has one concern regarding Senate Bill 2027. It pertains to the County Commissioner's involvement in making the final decision on appeals in areas with joint zoning. While the County is not opposed to the involvement, it is important for us to base our findings on the County's Comprehensive Plan and the County's Zoning and Subdivision Regulations. The bill currently has the County basing their findings on potentially three sets of Comprehensive Plans. This would pose many legal concerns, due to the probability that the plans would have conflicting goals and policies.

We understand that using the County Commission for the final decision on appeals strives toward the goal of equal representation. However, the County would be more comfortable ruling on these appeals based on regulations passed by the County Commission and reviewed by County staff and legal council.

To address our concerns, Grand Forks County would like to offer the following proposed amendments to Senate Bill No. 2027.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

Page 5, remove lines 6 and 7

Page 5, replace lines 6 and 7 with "The zoning and subdivision regulations of the county govern the portion of the extraterritorial area that has joint zoning."

Page 5, line 19, remove "city, township, and"

#10

In support of SB2027 (as amended by Rep. Kaldor)

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.

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.

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.

A few days ago I had a casual conversation with an attorney in Mayville; he 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.

At our 2005 annual convention the members of NDTOA passed a resolution calling for the roll back of the extra territorial zoning authority that had been given to the cities. This past December the membership passed another resolution calling for the elimination of extra territorial zoning by cities.

Chairman Wrangham and Committee members please give SB2027 with the Kaldor amendment a do pass recommendation.

I will try to answer your questions.

#11

**TESTIMONY ON SENATE BILL 2027**

**House Political Subdivisions Committee**

**Curt Kreun, Grand Forks City Council**

**City of Grand Forks, ND**

**March 12, 2009**

Chairman Wrangham and members of the Committee, my name is Curt Kreun and I am a City Council member with the City of Grand Forks. I want to thank you for the opportunity to testify on Senate Bill 2027 on behalf of the city and the citizens of Grand Forks and request your recommendation of a DO PASS with the proposed amendments.

Senate Bill 2027 proposes to amend existing state law relating to extraterritorial zoning authority exercised by cities. It is important to be clear that one of the key goals of any governmental entity to provide for the needs of all of its constituents and to thoughtfully balance the interests of all operations within its jurisdiction.

As elected officials, we are charged with the task of looking after the wellbeing of individuals and of our entity as a whole. Planning and zoning, in its best forms, can do both. The City of Grand Forks is responsible for the socio-economic strength of not only the city, but as a significant catalyst for the entire region. This responsibility includes providing planning functions for orderly growth and minimizing future conflicts and economic losses. Extraterritorial Zoning authority is a critical element to this responsibility.

Sometimes, faced with immediate concerns, the long-term consequences are blurred or nudged aside. But there are long-term consequences of poor planning. For example, we've recently had the example of an area in our city that was well outside of city limits when it was developed. At that time, the decision was made not to put in sidewalks. The reasoning? They were outside the city. That worked ok, for about 20 years.

Because of growth, the type of growth North Dakotans are hoping for, this development became surrounded by and eventually a part of the city. When this happened, they were required to have sidewalks, which shouldn't be a problem. Except that in those twenty years the homeowners got used to their yards, they were attached to the saplings that became huge trees, and didn't want their front yards dug up to put in new infrastructure.

How did this happen? A lack of planning and lack of making a tough decision by people who came before us. Who has to deal with it? Not the ones who didn't make the first decision, but those of us here now. This isn't how we do things in North Dakota. We don't push off difficult decisions to future generations. We don't shrink from doing the overall right thing because it is not universally popular.

With the proposed amendments, Senate Bill 2027 provides the tools to protect the interests of the people of North Dakota to promote responsible growth and development in our state.



The city shall retain sole extraterritorial zoning authority within the limits originally established in the 1970's. We do not support the concept of shared jurisdiction within the entire extraterritorial area.

We support a joint zoning system within the post-1997 extraterritorial range provided for in state law. This system would include all governmental entities authorized by state law to exercise zoning authority. In fact, our city and representatives of Grand Forks County have already begun discussions on developing a shared jurisdiction in this outer area. Regardless of what legislation is ultimately passed, we feel this shared jurisdiction in the outer area is important.

We also support the 2-year period during which time the townships, counties, and cities operate under the joint zoning system as would be established by this body. Following this period, the 2011 Legislative Assembly will review the matter and determine whether or not the joint zoning system has achieved the intended goals and objectives.

Of course, it is critical that any change to the existing legislation must be prospective in order to protect the good-faith investments and actions that have been made within the current extraterritorial jurisdiction.

The City of Grand Forks is very proud to serve as a resource for residents from all around our region, providing services such as health care, retail, employment, and many other opportunities. The responsibility to properly plan and prepare for the future as a strong

city and regional hub is one we take very seriously. The City of Grand Forks must ensure that the Greater Grand Forks area is a strong, viable economic entity offering a high level of quality of life and effective services that will encourage people to remain or relocate to the area. This population growth, of course, is a prime goal of all North Dakota communities.

Our country is predicated on the delicate balance of individual rights and the common good. One is not superior to the other and as we are testifying, and demonstrating with our cooperative discussions with the people in our county, we believe the current law can tilt the way back toward a compromise. You have before you a means to achieve a more balanced policy and system. In the end, we hope your action is thoughtful and reasoned and balanced. I thank you, again, for the opportunity to testify and urge a DO PASS with the proposed amendments.

Thank you.

#12

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

#13

**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

#14

**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

3/11/2009

#15

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 firsthand 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

#17



## Ward County Highway Department

900 13th St. SE • P.O. Box 5005 • Minot, ND 58702-5005 • (701) 838-2810 • Fax (701) 838-3801

### 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.



#18

*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



www.westfargo.org

Sharon Schacher, Finance Director  
Larry M. Weil, Planning Director  
Wanda J. Wilcox, City Assessor  
Dorinda Anderson, Business Development Director  
Jim Brownlee, CPA, City Administrator

#19

## Engrossed SB 2027 City of West Fargo Testimony

Engrossed SB 2027 as written provides for shared extraterritorial authority (ETA) for planning and zoning purposes in the expanded ET area which was granted in 1997 while maintaining exclusive planning and zoning authority in the original ET area. The City of West Fargo would like to go on record as in support of the bill as written for the following reasons:

- West Fargo has experienced a tremendous amount of growth over the last several decades requiring much forethought to the layout of streets and the development of compatible uses. Much coordination has taken place with townships, Cass County, and City of Fargo. The City's population increased by 96% between 1970 and 1980, 22% between 1980 and 1990, and 22% between 1990 and 2000. It is estimated that the population has increased by more than 75% so far since 2000. The City's land area has doubled since 2001 to accommodate all the growth taking place.
- The rationale for adding ET area in 1997 to the State Statute was to enable cities to better plan for the growth experienced by faster growing cities. Cities are better equipped to handle development pressures adjacent to the city.
- West Fargo has had a very good working relationship with Cass County and the four townships affected by the ETA. All ET area applications are already sent to the County and/or townships for review. Any comments/recommendations are taken seriously when giving consideration to the application. West Fargo has an ET area of two miles which has been in place since 1998. The ETA has helped to conduct proper planning in growth areas, and has helped to properly administrate floodplain regulations in flood prone areas. Township and county officials have been in support of the City's current two-mile area and have been actively involved in planning efforts and developing applicable zoning districts for the area.
- The current statutes have worked well for West Fargo, adjoining townships, and Cass County. The City supports the proposed amendments, as complete control would be maintained where the greatest development pressure is taking place. Shared review responsibilities for the outer ET area will only better our working relationship with the townships and county.
- Without the ETA provided for in SB 2027, cities may consider premature annexation of bordering areas to control the proper planning for and timing of development.

Premature annexation causes tax implications for property owners and should be avoided.

- The ETA statutes were thought out well and have been in place since 1975 for the lesser ET area with few concerns. The expanded area, which is double the original area, was enacted in 1997. Since the expanded area was enacted, more concerns have been raised by affected residents in the expanded area in some cities. Though the City of West Fargo already works closely with the townships and county, the proposed changes to the existing statutes incorporated in Engrossed SB 2027 are viewed as positive and will provide for better cooperation between cities, townships and counties throughout the state.

The City of West Fargo urges the Legislature to **approve Engrossed SB 2027** as written.



# 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 ~~REDACTED~~ 2027  
March 12, 2009

My name is Randal Loeslie, I am the Manager of the Grand Forks – Traill Water District, Thomspon 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.

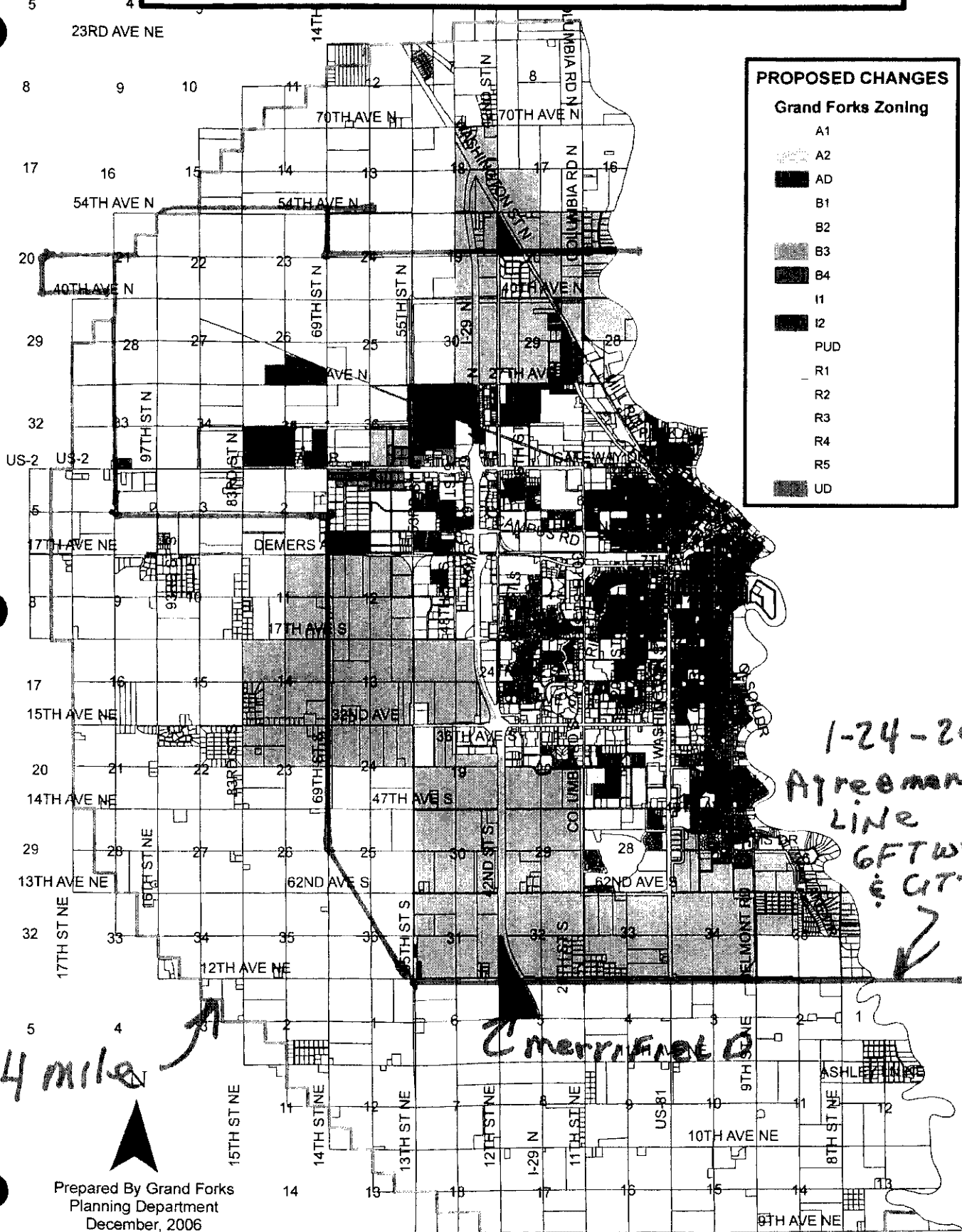
At a city council meeting on February 21, 2007 one councilman stated that the rural water had speculated to serve 400 – 500 members outside the 2-mile ET Zone. However, the City and Rural Water had agreed the 2 – 4 mile ET Zone would be GFTWD area to serve domestic water in a January 24, 2000 Agreement. 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



#21

SB 2027  
HOUSE POLITICAL SUBDIVISIONS COMMITTEE  
MARCH 12, 2009  
TESTIMONY FROM TIM SOLBERG  
CASS COUNTY PLANNER

Good morning Chairman Wrangham and committee members. My name is 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 in favor to Senate Bill 2027. 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 around the Fargo and West Fargo area that Townships, Cities, and the County can work together as partners on planning issues. Nothing in the testimony I'm about to discuss is intended to reflect negatively on the fine work done by the many township volunteers in Cass County.

Counties in North Dakota have subdivision authority outside of municipal boundaries and extraterritorial zoning areas. Cass County has a comprehensive plan and detailed subdivision ordinance. Cass County has an active Planning Commission and exercises subdivision authority. Cass County does not exercise

zoning authority because townships in Cass County do exercise zoning authority and North Dakota Statutes do not allow Counties to exercise that authority if townships do.

**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 staff, no engineering staff, and no legal counsel. Work is 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 yet the mile line roads near the metropolitan area that are under the control of the townships will become the future arterial corridors.

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;

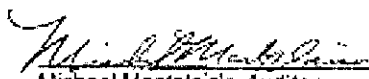
**WHEREAS,** It is necessary for city officials to have adequate statutory authority to effectively plan for future needs;

**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.

March 12, 2009

Testimony on Senate Bill 2027  
Before the House Political Subdivision Committee

Kelvin L. Hullet, President  
Bismarck Mandan Chamber

Mr. Chairman and members of the Committee, my name is Kelvin L. Hullet and I am the President of the Bismarck Mandan Chamber. I am here today to testify in support of Engrossed Senate Bill No 2027. As a business organization in a growing community, we are very interested in how this proposed bill moves forward as it will have a significant outcome on our development and growth strategy.

In the last few years, a lot of discussion has occurred around the issue of the 4-mile extraterritorial zoning authority in Burleigh County. Some feel the city reached too far outside the city limits and is imposing undue regulation on county residents without representation. We understand these concerns and are willing to be part of a compromise of this issue.

As you know, Bismarck Mandan is making the transition from a big town to a small city. Since 2000, the metro-area has grown by 9% and hosts a population exceeding 103,000 residents. As we look to the future, our expectation is the metropolitan statistical area will continue to grow and reach 105,000 by next year and 117,000 by 2020.

As our community grows, it is imperative that plans to grow in a logical fashion are formulated. The ETA is an important tool in the toolkit of our local city commission. From a business perspective, it is important that the overall plan for growth is well understood. Investment must be ready in the right place at the right time to meet the demands of our short construction season.

As we look at what has happened in other communities when they've entered this dynamic period of growth, prudence tells us that regulation and planning are essential to the future of the community. There is nothing more costly than when a community arrives on the doorstep of an area to be annexed and it is not compatible with city utilities, streets, setbacks and other community regulations.

As an organization, we support engrossed Senate Bill 2027 and ask for a do pass recommendation.

**SENATE BILL 2027**  
**MARCH 12, 2009**  
**HOUSE POLITICAL SUBDIVISIONS COMMITTEE**

#23

**Testimony in support of the bill**  
**John Warford**  
**Mayor**  
**City of Bismarck ND**

Mr. Chairman and members of the Committee:

Senate Bill 2027 continues the State law provision that allows cities to administer planning and zoning regulations over an area beyond their corporate limits. The original law was enacted in 1975, and amended in 1997 to allow for a larger jurisdiction. In Bismarck's case, we managed growth in an area two miles beyond our city limits for over 25 years. In 2003, after completion of a Growth Management Plan we decided to extend our extraterritorial jurisdiction to the four-mile extent allow by State law.

I believe Bismarck has been responsible in administering zoning in the surrounding areas over the years. It has allowed the City to plan for its growth by:

- Ensuring the major road corridors are preserved in locations that allow for logical extensions of the current City road network,
- Allowing for extensive master planning efforts to extend other infrastructure facilities such as sewer, water and storm water, and
- Helping to ensure that the continued growth of the City will not be limited through enforcement of subdivision design standards that provide for eventual annexation and easier integration into the existing layout of the City.

Bismarck has been comfortable working with rural representatives on our Planning Commission. In addition to the three members from the extraterritorial area on the Planning Commission as specified in State law, we have added Township representatives and a County Commissioner as members. Participation by these other jurisdictions brings a valuable and important perspective on zoning and planning decisions, particularly in the rural areas.

I believe the bill presented today providing for shared authority in the outer half of the ET area represents a reasonable, measured approach to the idea of joint planning jurisdiction and would allow cities, counties and townships to work with this procedural change in a portion of the ET area on a gradual basis for the next two years. This approach would also have the benefit of lessening the impact of adding more review and approval requirements for the building development industry.

With the inclusion of a two-year sunset clause in the bill, the advantages and disadvantages of the new process can be evaluated and discussed. If necessary, further amendments can be considered at the next session of the Legislature.

Again, the extraterritorial zoning provision has worked effectively in the Bismarck area for many years. We have been prudent and thoughtful in using this important tool. We are very willing to work with Burleigh County and area Townships in jointly managing growth in the outer half of the extraterritorial jurisdiction. On behalf of the City of Bismarck, I would ask that you give Senate Bill 2027 a **do pass** recommendation.



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 SB 2027 to the  
House Political Subdivisions Committee  
Dwight Wrangham, Chairman

#24

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 support of SB 2027 which addresses concerns about 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.

SB 2027 is a good bill because it 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 Pass" recommendation for the bill.

#1

Consider substituting for b. on Kaldor amendments:

- b. Whether the proposed change is substantially related to planning practices consistent with the portions of the adopted comprehensive plans which directly relate to a particular subdivision or the development of land, services, and utilities necessary to support the development but a comprehensive plan may not be used by the administrative law judge to limit the right of a person to determine the use of that person's property unless the use of the property is determined to threaten the health, safety, or welfare of an adjacent property owner or other individuals who use the adjacent property;

Passed  
out by  
Chairman!  
3-19-09