

2017 HOUSE POLITICAL SUBDIVISIONS

HB 1258

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1258
1/20/2017
Job # 27189

- Subcommittee
 Conference Committee

Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to extraterritorial zoning and subdivision authority

Minutes:

1,2,3,4,5,6,7,8,9,10

Chairman Klemin: Opened bill on HB 1258

Rep. M. Nelson: (Testimony and handouts 1,2,3) Introduced the bill and referenced the maps. (Testimony ends at 6:40).

Chairman Klemin: As I understand this bill it doesn't say who can vote for that sort of thing.

Rep. Nelson: No, it's not trying to put any of those band aids on. It says there is not extraterritorial zoning.

Chairman Klemin: It repeals extraterritorial zoning, is that the intent of this bill?

Rep. Nelson: Yes.

Rep. Maragos: If the township gets the taxes why aren't they responsible for taking care of the roads and keeping them open?

Rep. Nelson: A township is more limited in its mill levels than a town is. I believe it is 18 mills plus 18 mills excess is the maximum mills they can do. It's not enough to provide city services based on the value of a bunch of buildings. So townships will plow when they do their county roads but they won't and can't provide city like services.

Rep. Maragos: (Inaudible, mic is not on).

Rep. Nelson: In some ways yes. You could count on getting a phone call and them wanting snow removal.

Kit Konschak: (Testimony handout #4). (Recording (9:48 to 15:04)

Ray Ziegler, Building Official/Director and Burleigh County Building/Planning/ Zoning Department: (Testimony #5) (Recording 15:28 to 21:13) We are in support of HB 1258. Building County Building, Planning and Zoning commission is made up of 2 city commissioners, 2 county commissioners, and 5 at large people. Two of those live in that E.T.A. area. I hear the reason all the time that they want connectivity of the roads. Yet if you go back and look when the city of Bismarck expanded that 4-mile reach, a lot of that development happened in the time span and you will not see connectivity with roads. If you look at the county part of it, it's all laid out nice and squarely with avenues and streets. As you get closer into that town it disappears. So this connectivity excuse doesn't work. The point I want to make is every two years this comes up this is the third time already that we are going to rewrite this. At least bill 1258 makes it clear, it draws the line, enough is enough.

Chairman Klemin: Are you here at the request of Burleigh County Commission?

Mr. Ziegler: Yes, I am.

Rep K. Koppelman: We had issues with extraterritorial zoning in West Fargo when it comes to cities adjoining one another. It's not an issue here with Bismarck and Mandan because of the river. But it might be with Bismarck and Lincoln and some other areas. Our issue was the distance because the population base allows the distance. So until West Fargo moved by population in that large tier, we had a neighbor who had twice the extraterritorial zoning authority than we had. So that created all kinds of problems. Rep. Nelson talked about if extraterritorial zoning authority goes away cities and outlying areas would have the opportunity to deal with the kinds of issues you are talking about. Whether it is road alignment and the other issue I have heard for a long time is zoning authority so you don't end up with an industrial plant right next to a residential area. In your opinion would the county and city cooperate on those kinds of issues if there were no extraterritorial zoning or would that be a different kind battle?

Mr. Ziegler: We are all here to provide a public service and come up with the best possible scenario for the people that live there and work there. I don't think that will happen if someone has the rights over another one. It gets overwhelmed, ignored or whatever but it's not working now but it needs to.

Rep. Simons: On page 2 lines 24 to 31, if they deemed it city by my ranch than all of a sudden I cannot feed cows and my land is my land. If I wanted to put a feedlot there 10 years down the road it might not be the most ethical thing to do but it is what I bought the for. How are we looking at this?

Mr. Ziegler: In the Century Code it gives a lot of rights and authority to ag use and different entities that can come in proximity to that. Ag use always has the upper hand on a lot of things. If you want to apply for a feed lot situation there is a lot of departments to go through and that will take in a lot of consideration on what's around it and who it affects.

Robert Bolinske: I did not come here intending to speak and I have not even read the bill. We are having issues at Apple Creek with the city of Lincoln. A couple of fellows took over about 60 acres of land without approval or permits from anyone. They piled dirt up about 10 feet, we don't know what they are doing, we are concerned they are jeopardizing our health,

our welfare, our rights. We have a fellow who was seeking and now has obtained a special use permit for sandblasting, heavy industrial use. It is going to vastly destroy the value of our property, the quality of our lives, and we have no say. It is an impossible situation. They are running rough shot over us at the city of Lincoln. We go to testify and they don't hear us, they don't listen to us, they say only one person can speak it's an unimaginable thing. If you believe in democracy and that prevents abuse like that. These people wouldn't be doing this to us if we had control over them as the people should. There is something going on between the city of Lincoln and these developers.

Bill Wocken, North Dakota League of Cities: (Handed out Testimony #6,7,8). (Recording 27:32 to 30:35) In Section 9 of the bill the repealer basically repeals extraterritorial zoning. There is a lot of other collateral references in front of that. Extraterritorial zoning of subdivisions goes back to the 1960's. At that time HUD 701 plans recommended a 6-mile jurisdiction around cities. North Dakota Legislature has debated this many times over the years. We presently have an arrangement which there is a 1,2, or 4-mile jurisdiction around the city that is based on population. The outside half of that area was most recently changed so that is an area joint jurisdiction. It is a jurisdiction between Bismarck and Burleigh County they jointly govern outside ring. The other alternative, and Bismarck and Burleigh County have done this, is to set up the jurisdictional line that is mutually agreeable to both the county and the city. So they have taken a map and split it up and said Burleigh County is going to have exclusive jurisdiction in this area and Bismarck will have exclusive jurisdiction in this area. That can also be done under the present statute. I think the changes that have been made in the extraterritorial zoning have given the rural residents more voice in the discussion. And the areas closest to the city have been more closely held by the city which is appropriate as cities expand. I think for every issue we have here we have part of the solution. Rep. Nelson's comment about the roads in Bismarck and Burleigh County, we have required the County Commission to sign off on a plat. So that when a plat is approved we know who's responsible for those roads, we know who is going to plow, and maintain them. In many cases the developers build the roads and the township or the county puts in their standards. So they have to build them to that standard and they are inspected. I think the road issue has the opportunity to be resolved within the existing statute.

Rep. K. Koppelman: I understood the reason when you talked about the history of extraterritorial zoning. I have always understood the reasoning to be is alignment of roads, the assurance that as cities grow that they have some planning abilities so you don't have zoning that is all messed up as the city expands. Yet I have also been told extraterritorial zoning is not a precursor to annexation. Those two statements conflict so I would like your comment on that. Then if it is for the purposes that I have described then the assumption should be at some point a city grows into that area. Have you ever looked at that progression and should there be a time frame? Should something say if you are going to exercise extraterritorial zoning authority in an area outside your city you better expand in that area within X number of years and if you don't than the authority goes away? Something to avoid the situation that seems to exist, which is arguably cities imposing restrictions on rural areas, with the rural area having little voice, and no recourse and the city having no annexation plans in the near future.

Mr. Wocken: Sometimes cities grow disproportionately, sometimes it moves out in one area and not the other and sometimes we don't move at all for several years. So setting up a time

frame in advance of growth would require that we are able to see the future and I'm afraid that's not possible. I would like to have it because that would answer a lot of the questions but I don't think that would be a possibility. What we do try and do when the city of Bismarck and Burleigh County negotiated the boundary change we talked about what are the pressures that we are likely to see.

Carl Hokenstad, Director of Community Development: (Testimony #9) (Recording 34:14 to 39:32) I would like to address a question that came up earlier about ag zoning and whether or not livestock would be allowed. If an area is zoned agriculture and much of the area is an ETA area as well as in the county, ag zoning allows the use of livestock. So ETA has no affect as long as it is zoned agriculture. If a property is zoned residential and is a subdivisions plat it would not allow livestock in residential area.

Chairman Klemin: Going back to what you said that state law requires that 3 members of the ETA must be members of the City Planning and Zoning Commission?

Mr. Hokenstad: That is correct, for the city the size of Bismarck there is a state law requirement that 3 residents of the ETA area be voting members of the Planning Commission. Those 3 members are appointed by the County Commission.

Chairman Klemin: Is there a population requirement relating to the appointment of those members such as we have heard about the city of Lincoln having some issues?

Mr. Hokenstad: That is correct, it is a tiered system depending on the size of the city. If I remember correctly if the city is a lesser size, there is a requirement for 2 members to be on the City Planning Commission. Then I believe it goes down to 1 member according to the size of the city. So there are 3 different standards.

Rep. Johnson: Could you walk me through the process of becoming an ETA? The City and County Commissioners get together, there is a public hearing and it's a noticed public hearing to discuss the issues regarding extraterritorial zoning and whether a property becomes part of the extraterritorial zoning? It is noticed and a public hearing?

Mr. Hokenstad: In the 70's when we initiated extraterritorial zoning we split the area into quadrants, we did this over a couple of year. We went through the public hearing process and notification to owners. In most cases the existing county zoning in agriculture was reverted to city agriculture zoning. Which is the same as far as regulations. The same with areas that were zoned county residential they were transferred to rural residential and similar districts. We treated it as an official zoning change so that it kicked in the requirement for notification. Public hearings at the Planning Commission and a final public hearing at the City Commission. That is how we went about converting the county zones into city. As time went on we continued to use that process, every time the city annexes property it would bump out the 2 or 4-mile line so it was constantly being changed. The property that is now in the ETA we went through the public hearing process. Our latest negotiated boundary, is in all cases, it is a lesser boundary than the 4-mile was. Most of the boundary that we have is about a 2-mile area with certain critical growth corridors. Like Highway 83, that is about 3-mile out. So we actually shrunk back much of our jurisdiction that we used to have. Because of that we did not have to go through a process because we were not extending any jurisdiction over

formal county land. In those cases, the county gained property that had been zoned by the city.

Rep K. Koppelman: Can you refresh my memory, I remember years ago when the distances were doubled from what they had previously been, then I remember the roll back. But you started to touch on that, can you explain more fully what happened when that occurred?

Mr. Hokenstad: It started out with 2 miles in the 70's and then about 20 years later the ability was doubled to 4 miles for a city the size of Bismarck. The city did not take advantage of that for 3 or 4 years. We looked at it, studied it, and did a growth plan. It was the recommendation from that plan that the city would take that 4-mile area, which we did. We exercised that jurisdiction until 2009, the Legislature changed the law again to retain the 4-mile but to split it in half. The 2-mile boundary would be the full jurisdiction of the city. But the 2 mile to 4 would be joint jurisdiction idea which was fairly complicated. Certain sections of the county would take the lead, certain sections of the city would take that lead and in the end if a development was approved the other jurisdiction would have the right to object to it or enter into negotiations. A full scale mediation which never happened in our case, there was only one case where the county had a question on an action that the city took. We had a meeting and it was resolved. In trying to administer the joint jurisdiction was very difficult. The county contacted us and asked if we would consider working out a hard and fast line. It's a line that does not change unless both Commissions get together and decide we are going to propose changes.

Rep K. Koppelman: Do you know how that is working in other areas in terms of the cooperative rim around that outer 2 miles you are talking about for the larger cities? Was there such a thing as city agriculturally zoning prior to extraterritorial zoning?

Mr. Hokenstad: I am not aware of how other cities and counties in the state have handled this. Bismarck and Burleigh County are the only ones that I know about who have actually drawn up a new boundary. The city has always had an agriculture zoning district. Which is not practical within the city limits but it is used extensively in the ETA.

Rep K. Koppelman: That is why I asked the question before extraterritorial zoning authority existed, that is why I wondered if there was such a thing?

Mr. Hokenstad: I think there were a few incidents in the city say a cemetery or very open space may have been zoned agricultural but it was very much an exception to the rule.

Rep K. Koppelman: In my area it is very fast growing and the ETA gets annexed quickly because the city is growing quickly. I have not heard of a lot of problems in recent years, but we are hearing about problems in Burleigh County. How do we work these out? You keep saying you work with people and then we hear people who come in saying not so much. How can we as State Legislatures dealing with state law create a system whereby that kind of cooperation and general satisfaction with the way things are going exists? Verses the competing interests and the heartburn we are hearing about?

Mr. Hokenstad: I know that there will always be issues and there are people who have very strong opinions. I don't know that we can always solve everybody's concerns. I think the part

of current law that we appreciate the most is the ability for us to sit down with other jurisdictions, in our case it was with the county. But it could be with a township as well and work out this boundary. I think that is just the first step. We are always open to communication and sitting down with other jurisdictions working out these issues changing boundary lines. I don't know that the state can compel that to happen, but that would be our wish that we would be allowed on a local level to work on these issues.

Rep. Simons: I'm from the Dickinson area and my phone has rung off the hook with what the city has done as of lately. They took 300 ft. of his land saying they were going to make a 4 lane road and did not offer to pay for it but took it. This is just one case of many I can definitely see the frustration it is really a taxation without representative. You say you are dealing with that but how are you dealing with it? Obviously there are people who aren't too excited about it.

Mr. Hokenstad: I can't comment on what's happening in the Dickinson area. I can assure you that we haven't as a locality been involved in doing any of those activities. Things can always be made better. I think all jurisdiction can be more careful, can be more prudent, we will never be perfect there will always be some issues. But I believe in the end we can work out many of them if you try and work together.

Chairman Klemin: I want to point out to Rep. Simons that there are Constitutional requirements that say that private property can't be taken for public use without payment of just compensation. I was thinking there was some provisions for mediation in this whole process if the parties can't agree?

Mr. Hokenstad: Yes, the current law specifies the ability to have this joint jurisdiction, so in cities that do deal with that anything that happens in that 2 to 4-mile area that is the joint jurisdiction. If one jurisdiction approves something that the other jurisdiction is opposed to, there are a couple of steps specified in State law. You first have to have a meeting talk about it try to resolve it. If it cannot be resolved it does get kicked up to a formal mediation process which is presided over by an Administrative person that specializes in that. I have not heard of that option being used, it certainly hasn't been used here. But it is a part of the State law that allows for that.

Rep. Ertelt: Can you briefly tell me why the cities would like the ETA versus annexation?

Mr. Hokenstad: I think in the perfect world cities would love to be able to annex a lot of property and it would simplify things. With annexation comes the requirement that a city is able to offer the full range of services. We do a lot of annexations; we've probably annexed over 5 square miles of property in the last 10 years. But we do annexations at the request of the land owner. When they are ready to develop and receive city services they will request that we consider annexation. We do not engage in any forcible annexations or requiring that they come into the city. We simply respond to land owners that wish to do that. I think cities are pretty limited in the ability to do an annexation especially if the land owner is opposed to it.

Natalie Pierce, Planning Director for Morton County and representing North Dakota Planning Association: (Testimony #10) (Recording 56:25 to 1:05:03). I want to clarify a

question asked earlier as far as representation from the ETA area. Cities under 5000 in population have one representative from the ETA. Cities under 25,000 have 2 representative and cities with 25,000 or more have 3 representatives. This bill is suggesting to completely get rid of ETA's I would strongly advocate that if changes were to be made don't throw the baby out with the bath water. Look at issues of further representation on the part of the county in the ETA area as opposed to getting rid of ETA's. ETA's are pretty well established throughout the country as a normal planning practice. One comment I would make given the testimony that was already presented, think about the idea of 1 to 4 miles out of city, we think about what is rural. What does that mean? If you are 1, 2 or 4 miles out of the city not only do you have the amenities of being in more of a quiet and rural setting you are also close enough to the city to benefit from services and amenities that the city provides. So that is a very desirable place to be in. If the market forces being what they are, everybody wants to live in that area, and we allowed lots of subdivisions to happen. Then you have this chunk of encumbered land that if you have not adequately planned for that you just bump up against it and have to route city services around it if the city grows very rapidly.

Rep K. Koppelman: I know you are here representing the organization today which I assume are rural as well as urban, but as a county planner would you see cooperation that currently exists in the outer 2- mile ring for the larger cities? Maybe extending that to any extraterritorial zoning being a wise step versus doing away with ETA although, which the bill proposes to do? The rub seems to come in that some are saying we live outside the city, we don't vote for these people, we don't have a voice that seems to be the area with the most friction. Would you see better cooperation there being a help?

Ms. Pierce: I think people often take it for granted the fact that the location in which they live. As planners it is our job to look into the future and certainly there are many legal protections for land owners and the bundle of rights that come with that. If you live in an area just outside the city that property does have a responsibility to the future of that city, the future of that area and it's not just the land owners there at that moment that we need to think about. We have to think about that property in the larger context. In Morton County we have both examples, we have smaller cities who don't have the capacity to plan their auditors are service planners and they would much rather leave their zoning authority to the county, and certainly we work with that and help them as much as we can. We cannot make decisions for them. In the city of Mandan, I'm in a situation where we have good relationship and came to an agreement where the city of Mandan would keep their one mile and relinquish the second mile to the county. With ETA or without it we do cooperate and as a county planner, it is a large county but, I am very focused on growth around the city of Mandan. I think having an ETA is very beneficial because when push comes to shove it's going to be the city that eventually has to provide services. In here we talk about infrastructure and roads, and sewers but it is also fire protection, schools that all needs to be planned for.

Rep. Ertelt: You mentioned that those who are living near the city limits but outside them benefit from the services that the city does pay for. How currently do those living outside the city limits help to pay for those city services?

Ms. Pierce: There is property tax that gets rolled up. I don't mean to say city services but city amenities being close to the city. If a person wants any chance of being annexed into a city you would probably be much further out than 2 or 4 miles out of the city. Being close to a city

you more likely to get your roads plowed quicker even if it's the county and you are able to go into town restaurants, shopping that type of thing. Just being closer is a positive thing for those who live there.

Rep. Ertelt: Is anyone outside of the city limits exempted from paying city sales tax?

Ms. Pierce: I don't know but if they are buying something in the city that is where the sales tax at the point of sale is my understanding.

Chairman Klemin: Closed the hearing on HB 1258.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

HB 1258
1/27/2017
Job # 28149 (Time 0:00 to 1:37)

- Subcommittee
 Conference Committee

Carmen Hicklo

Relating to extraterritorial zoning and subdivision authority

Minutes:

[Empty box]

Chairman Klemin: Discussed HB 1258. We won't act on this one. I have asked the Intern to do legal research on the history of extraterritorially zoning, she has prepared a paper on this. I will be distributing to all of you before we get into this bill so you can see what the history is. Extraterritorial zoning started about 1975. We have had a lot of bill through the Legislature since then and this bill would totally repeal extraterritorially zoning so that is radical departure from the last 35 or more years on this subject. Before we discuss this bill and vote on it, I think it's important for you to know the history of what's happened in the past in the Legislature on these bills. We will take this up at a later date.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee
Prairie Room, State Capitol

HB 1258
2/10/2017
Job # 28149

- Subcommittee
 Conference Committee

Carman Heckel

Explanation or reason for introduction of bill/resolution:

Relating to extraterritorial zoning and subdivision authority

Minutes:

1,2

Chairman Klemin: (Handout #1) Opens HB 1258 for committee work. Explained the history of extraterritorial zoning. Today we have a situation that primarily involves the city of Lincoln from what we heard. A number of residents that live outside of the city limits of Lincoln, they are having problems with the planning commission in Lincoln. There was also Burleigh County supported the bill and the city of Bismarck said there was no problem. There is also testimony from others in the state in opposition to this bill. This bill will repeal the last 40 years of extraterritorial zoning legislation and we would back to square one.

Rep. Maragos: Do not pass motion.

Vice Chairman Hatlestad: Second the motion.

Rep. Ertelt: We are hearing the argument about localized issues and I don't necessarily think the issue is localized. Just so happens that those most recently impacted and most willing to come before the committee. Even if it were a localized issue what would you suggest Mr. Chairman as recourse?

Chairman Klemin: I am not going to propose that we undo the years of work that has been put in on revising this legislation to where got in 2009. That set forth a fairly good procedure in my opinion is to shared jurisdiction, negotiate, mediation and board representation by affected parties. I think the law is fine the way it is right now and I wouldn't want to repeal it and go back where we were prior to 1975.

Rep. Ertelt: I understand the members on the city commission are represented by perhaps an individual from extraterritorial zoning that is taken place by the municipality. But there are obviously multiple areas outside the city that are within these zones. So just because you have a representative on the commission they are not necessarily going to be representing the concerns of everyone who is impacted by extraterritorial zoning but rather a local of the extraterritorial zone.

Chairman Klemin: It was in 2007 that the bill added someone to the zoning commission residing outside the limits of the city.

Do not pass 11 yes, 2 no, 2 absent.

Rep. R. S. Becker: Will be the carrier.

(Handout #2 had been provided to the committed following the hearing on January 20, 2017).

Date: 2-10-17
 Roll Call Vote: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1258**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg	/	
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt		/			
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	-				
Rep. Simons	-				
Rep. Toman		/			
Rep. Zubke	/				

Total (Yes) 11 No 2

Absent 2

Floor Assignment Rep. Becker

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

REPORT OF STANDING COMMITTEE

HB 1258: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1258 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1258

1-20-17 #1
HB 1258

HB1258

Rep. Marvin E. Nelson, District 9

1/20/2017

House Political Subdivisions Committee, Chairman Klemin

HB1258 is a basic look at should one political subdivision, control another. Extraterritorial zoning allows cities to plan, zone, issue building permits, and by expanding their zoning to include many things, control many things that take place outside of their normal jurisdiction.

For instance, Bismarck's zoning ordinance is 351 pages. All regulations a person outside the city, in the zone, is subject to even though they have no say, no vote in the imposition of those regulations.

Now realize this bill does not say that cities cannot plan outside the city. Cities in cooperation with Counties and townships can certainly do that, the key is it must indeed be cooperative with the agreement of the governed through their elected officials.

Take out the two maps I printed the simple one so you can tell the city limits more easily. Then see all the developments outside the city but under control of the city. Do you see the plan?

Google Maps

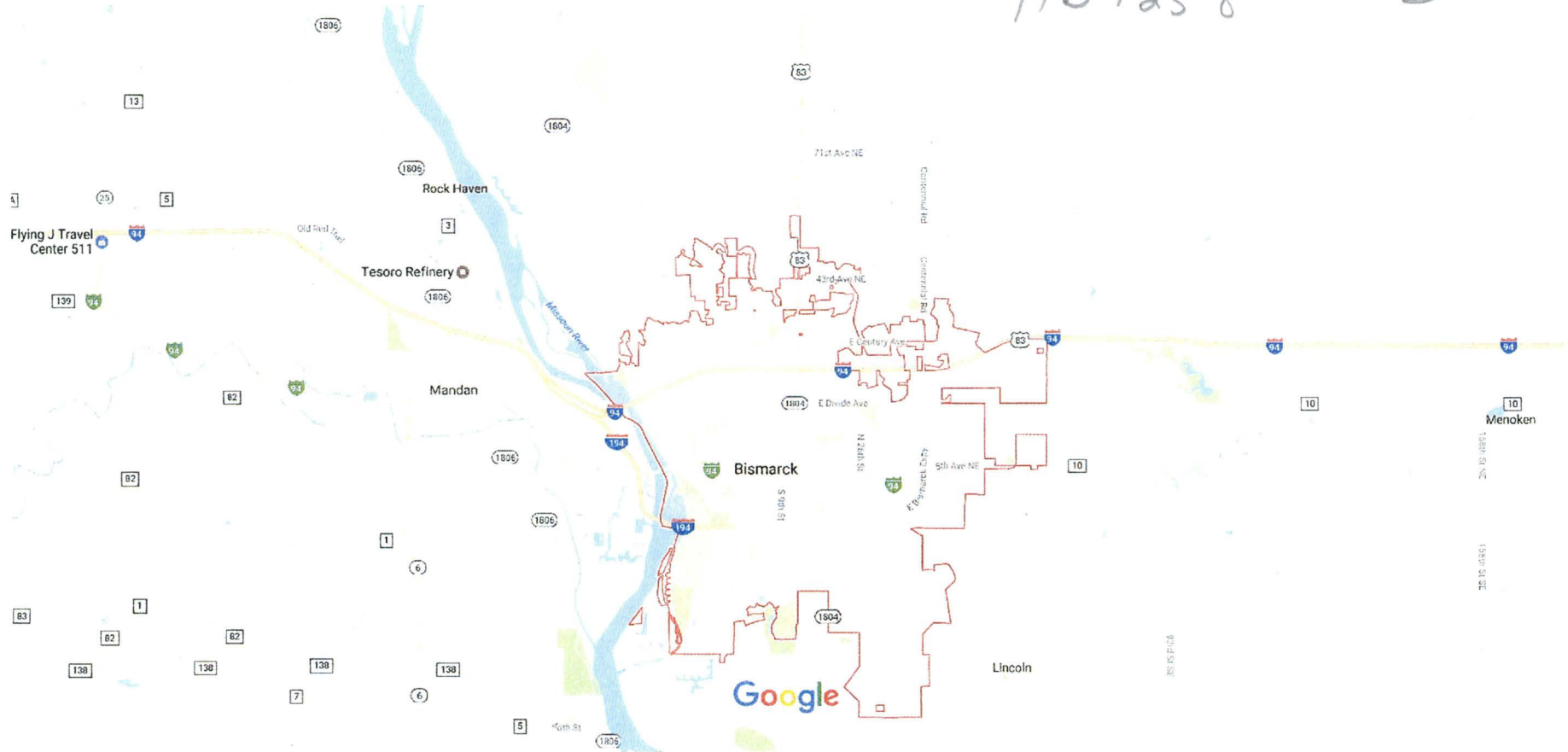
Bismarck

Rep. Nelson

1-20-17

HB 1258

#3



Map data ©2017 Google 1 mi

1-20-17

HB 1258 #4.0

Committee Members:

My Name is Kitt Kenschak. For over 20 years, my husband, Blair, and I have owned and have lived on 50 acres of agriculture zoned land in Burleigh County that within the past several years became part of the city of Lincoln's ETA.

Let me preface this letter by firmly stating we are very unhappy with being in the ETA and we want out.

We would welcome being back into the County's sole jurisdiction. I have heard this bill has no chance of approval, but I still need to give this testimony in hopes that some, if not all of you will take from here the message that there are things wrong, things that need to be fixed with how ETA's are handled in North Dakota.

As ETA residents we enjoy few, if any, benefits of city infrastructure and services while the city enjoys, at no expense to them, the authority to dictate future zoning ordinances, regulations and plans for our neighborhoods. No, ETA residents do not pay city property taxes because we do not use city sewers, water, street lights or snow removal. The cities do not have to and often do not provide ETA residents with health or safety services. Their police and fire (if they have them) are not first responders to our home's emergencies. It is more often the case that our county services **that we do pay for** back up the services for the city.

Annexation into the city is not our desire or intent, we live in the country for a reason. Aside from that, annexation is only possible when the city is able to provide infrastructure and emergency services to the annexed properties or it is required that the ETA citizens foot the bill to establish those services.

Another problem with ETA rule is the differences between ordinances and rules when being volleyed from county to city control. While many ordinances are even across the board, things like flood mitigation, allowable building sizes, housing or landscaping setbacks and building inspections can vary greatly from city to county. This leads not only to confusion, but irritation and hard feelings among neighbors and city and county officials.

1-20-17
HB 1258

#4.1

I happen to be in one of the ETA's where the governing city can't even fill their Planning and Zoning or Board of Adjustment committees. Those committees make decisions that affect me based on **2 or 3 votes**. That normally would not even be a quorum on a committee that is supposed to have 7 members. How is that fair to anyone that they can't find enough willing or qualified people to fill their committees that can potentially make life changing decisions for someone?

As a tax paying citizen of my County, I want my money to go where the mouth is. I will gladly pay my fair share in taxes but I have a right and I demand to have a say in where and how that money is spent and to be able to vote for the people I feel will have my best interests, and that of my fellow ETA residents, at heart. As the current Century Code reads, I feel that one could easily argue that ETA residents are treated like second class citizens and can be pushed or pulled at will with no voice, no rights. Passing this bill will put everyone on the same page. In the long run, I believe it will be more efficient and economically sound.

Your approval of this bill will give ALL the citizens of this state equal rights and a voice that was taken away from them without their approval or having a say so right from the beginning. We had no rights, nor voice when we got dumped into the ETA. I do not think the ETA's should apply to residents who resided there PRIOR to the ETA. It should only apply to people who had a CHOICE in the matter, those who chose to move into the area AFTER the ETA was set. This is our home, our property. It is not fair that we can be manipulated in such a way. We know this is not just a Burleigh County issue. We know this is happening state wide. We know it is something that needs to be done for the citizens of North Dakota in every county.

Respectfully Submitted



Audrey (Kitt) Korschak

January 20, 2017

Testimony in Support of **House Bill 1258**.

Ray Ziegler
Building Official/Director
Burleigh County Building/Planning/Zoning Department

1-20-17

#15

HB 1258

ETA (Extra Territorial Area) Century Code language has been written and re-written, time and time again, simply because it doesn't work in many areas. You have heard all about the reasons that it is needed over the years from City Planners and City Administrators. They talk about the need of planning and zoning for future growth and the alignment of roads. My experience comes from out in the field, where the true reality of a City's control over the E.T.A. takes place. I'm the guy that deals directly with the issues and I hear the complaints daily. There is such wide spread confusion and frustration over this jurisdiction and it's not just a lack of representation being forced on property owners, but it also impacts business and industry. I hear it from state and local government agencies, realtors, insurance companies, lenders, appraisers, contractors, developers, surveyors and engineers. In my seventeen years of dealing with this (13 with the city/county and 4 solely with the county) I can tell you that it has always been a problem and no matter how the ETA laws get rewritten it still comes back as a huge infringement against the rights of property owners. People live outside the city limits for multiple reasons with one of the main reasons being to live a rural lifestyle. They naturally assume it is supported by County or Township ordinances which are developed, adopted and then enforced by commissioners they voted to represent them.

Other Departments use the City Annexation Line for defining their jurisdictional authority, except for city planning and zoning. However in the City's 2014 Growth Management Plan it makes the statement that "the City does not currently-and does not intend to in the future-provide water, sanitary sewer, storm sewer and local roads infrastructure in rural residential areas". But they want to have the planning and zoning authority over the ETA.

City Annexation Line used by others for defining Jurisdictional Authority;

- *Tax Assessors and Property Taxes.
- *Fire Departments.
- *Law Enforcement, States Attorney and Emergency Services.
- *City Environmental Health and the State Health Department.
- *County Road Departments and City Public Works.
- *City Building Codes and State Building Codes.

House Bill 1258 is a way to finally clean up these issues and give the two thousand plus home owners who find themselves entrapped and voiceless in Burleigh County's ETA what they overwhelmingly want. Planning and Zoning should not have more authority than any other agency. We want consistent, clear transparency on jurisdiction. If a city truly wants control over this area then they should annex the property and provide full service, which would justify applying their rules and regulations.

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Planning and Zoning Department

PO BOX 1306 • WILLISTON, ND 58802-1306

January 19, 2017

Representative Lawrence R. Klemin
House Political Subdivisions Committee
600 E Boulevard Ave
Bismarck, ND 58505

RE: HB1258

Please accept this testimony in opposition to House Bill 1258 on behalf of the City of Williston and the Planning and Zoning Department.

The extraterritorial zoning jurisdiction is an important tool in implementing the City's long term growth plan, which is part of the update to the city's current comprehensive plan. The extraterritorial zoning jurisdiction ensures that areas important to the long term growth of the City are developed in accord with the City's water and sewer plan, land development plan, transportation plan, and emergency services plan. Further, the extraterritorial zoning jurisdiction reduces the risk of incompatible development that would be inconsistent with the future land use plan and transportation plan on the edge of the City boundary.

House Bill 1258 would remove the extraterritorial zoning jurisdiction from City regulation and management and would allow county subdivision regulations and jurisdiction up to the edge of the City.

Extraterritorial zoning jurisdiction is instrumental for the City in pursuing a long term growth strategy that manages future growth and allows for the efficient extension of city infrastructure in the short and long term. I ask that you oppose HB 1258. Thank you for your consideration.

Respectfully,

Kent Jarcik
Planning and Zoning Director
Williston Planning and Zoning Department

HB 1258 City of West Fargo Testimony

HB 1258 relates to extraterritorial authority (ETA) for zoning and subdivision purposes for cities and proposes to repeal all ETA. The City of West Fargo would like to go on record as being in opposition to 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, 22% between 1990 and 2000, and 73% between 2000 and 2010. It is estimated that the population has increased by more than 30% since 2010. 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 townships affected by the ETA. All ET area applications are sent to the County and/or townships for review. Any comments/recommendations are taken seriously when giving consideration to the application. West Fargo has exercised their authority for ET area for many years. 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 exclusive ET area with an additional two miles of joint jurisdiction 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 opposes the proposed legislation, as it would detrimentally affect planning for orderly growth and development of the City. The City understands how to accommodate municipal growth and needs for infrastructure. The townships and county have other pressing needs, and are not set up to manage development adjacent to the city.
- Without the ETA provided for in the current statutes, 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

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should be avoided.

- The ETA statutes were thought out well and have been in place since 1975. The ETA was expanded in 1997 which raised some concerns. As a result the outer area of the ET was changed in 2009 to be considered joint jurisdictional area. The City of West Fargo works closely with the townships and county and would like to go on record as maintaining the current statutes.

The City of West Fargo urges the Legislature to **defeat HB 1258**.

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Testimony Presented on HB 1258 to the

House Political Subdivisions Committee
Representative Lawrence Klemin, Chairman

#8

1-20-17

by

Jim Gilmour, Planning Director
City of Fargo

January 20, 2017

Mr. Chairman and Members of the Committee,

I am here to speak on behalf of the Fargo City Commission in support of continuing extra-territorial zoning as it currently exists.

Extra-territorial zoning is provided for in Chapter 40-47 of the North Dakota Century Code. The ETJ grants a city the authority to extend its zoning and subdivision regulations into areas adjacent to the city as prescribed in the statute.

The Century Code recognizes that a city must make adequate provisions for transportation, water, sewage, schools, parks, and other public requirements (Section 40-47-03); that the land outside a city's boundaries bears a relation to the planning of the municipality (Section 40-48-08); that there is an inter-relationship and interdependence between a municipal corporation and areas contiguous or adjacent thereto (Section 40-51.2-02); and the importance of proper arrangement of streets in relation to other existing and planned streets (Section 40-48-20).

The ETJ facilitates these principles of the Century Code, as it allows a city to determine that infrastructure in areas adjacent to the city into which the city may expand would be contiguous with the city's existing infrastructure. Further, the ability to apply city zoning and subdivision regulations to areas adjacent to the city allows the city to review development proposals and manage land uses so that land uses and development are compatible with land uses and future development in the adjacent city. Often, a city can provide a detailed review of proposed development that may be beyond the resources of the township.

Extra-territorial zoning is essential to implement plans for the future of the City of Fargo and other cities in North Dakota.

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HB 1258

**TESTIMONY IN OPPOSITION TO HOUSE BILL 1258
JANUARY 20, 2017
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
CARL HOKENSTAD, DIRECTOR OF COMMUNITY DEVELOPMENT, ON BEHALF OF THE
CITY OF BISMARCK**

Good morning Mr. Chairman and members of the House Political Subdivisions Committee. For the record, my name is Carl Hokenstad, Director of Community Development, appearing on behalf of the City of Bismarck in opposition to House Bill 1258.

In my reading of the bill, all references to extraterritorial zoning in the North Dakota Century Code would be removed. After being on the books for forty years, cities of all sizes would no longer have jurisdiction over zoning or platting decisions beyond their corporate limits.

The City of Bismarck has several concerns with this bill. In the years since enactment of the law, we have been able to plan for our growth through the use of platting and zoning, and master plans for land use, roads, and sewer and water infrastructure. We have expended a considerable amount of time and expense on these master plans. Would those plans still be valid if the City lost the ability to implement them through zoning and plat approval? The use of extraterritorial zoning allows cities to plan for their growth into those areas surrounding them that will eventually be a part of the city. If that option was no longer available, would a city have a voice in ensuring that a proposed zoning is compatible with the adjacent land uses within the corporate limits, or whether or not a plat that is proposed on or near the corporate limit line be designed to allow for future annexation into the city? Or would immediate annexation be required for the city to be able to approve a plat on its border, even if the landowner is not ready for that to happen?

We have used extraterritorial zoning carefully, while considering the viewpoints of other jurisdictions. In addition to the State Law requirement that three residents of the extraterritorial area be members of the City Planning and Zoning Commission, we have added a County Commissioner as a full voting member, and have added Township Supervisors as voting members for development proposals that are within their particular Township. We have approved several hundred plats over the years in the extraterritorial area, using a strict process of public hearings, adherence to numerous master plans and policies, involvement of City and County staff and Township Supervisors, and deliberations by the Planning and Zoning Commission.

Extraterritorial zoning has changed over the years – starting with a 2-mile boundary for cities the size of Bismarck in 1976, expanding to a 4-mile boundary in 1997, then to the current joint jurisdiction in the outer half of the extraterritorial area in 2009. Bismarck and Burleigh County tried using the joint jurisdiction for several years, but found it to be complicated to administer and confusing for property owners. In 2014, we took advantage of the option to establish a negotiated boundary where Bismarck and Burleigh County would each have sole areas of jurisdiction. The agreement was negotiated and approved by both the County Commission and the City Commission. We believe the new boundary is a much improved way of clarifying what jurisdiction has zoning authority and protects the ability of the City to plan for its growth, but we are always open to working together to solve issues that might come up or to make changes to boundary lines if they no longer make sense.

In summary, we believe House Bill 1258 is not needed and would have the undesirable effect of removing the ability to zone areas around cities and making it more difficult to effectively plan for future growth. The City of Bismarck has been prudent and thoughtful in using this tool for the past forty years. If there are issues and concerns with extraterritorial zoning, there are other options to resolve issues through communication and common sense changes rather than throwing out the entire law. We urge you to give the bill a Do Not Pass recommendation.

Natalie Pierce

1-20-17

#10

HB 1258

North Dakota Planning Association Testimony

HB 1258

HB 1258 intends to take back the authority previously granted to municipalities to establish an extraterritorial area. The North Dakota Planning Association opposes HB 1258 on the basis that extraterritorial areas (ETAs) provide an effective mechanism to plan for the orderly growth and development of cities. Current ETA legislation has established a framework that fosters cooperation between local governments and includes representation from both inside and outside municipalities.

ETAs are especially beneficial in growing urbanized areas where development pressures are continually driving the expansion of the city's boundaries. As a city grows and annexes land directly outside its corporate boundary, the city must assume responsibilities to provide infrastructure and city services to these annexed areas. If newly annexed areas have not been the subject of long-range planning and have not been well organized, it can become a major fiscal liability for the city to provide infrastructure and city services after those areas are annexed. In fact, these areas can become a barrier to city expansion. The ETA allows cities to make strategic decisions about where streets, infrastructure and capital facilities should be or are likely to be available within a few years, and allows cities and developers to focus growth in a way that harmonizes with these planned facilities.

It is ultimately the public – the citizens – who invest in homes or businesses in the path of city growth that ultimately pay the price for urban expansion into areas that may have initially developed as rural subdivisions. Without extraterritorial planning and zoning, communities may choose to annex bordering areas in order to have zoning jurisdiction over them. This can lead to premature tax liabilities for those who live in areas just outside the city boundary.

The ability to exercise ETA authority has long been challenged with the line of reasoning that it will take many decades for cities to grow into the land within the ETA and joint jurisdiction area. However, it is important to understand that: 1) cities often do grow into portions of these ETAs (rather quickly in some cases) and 2) it is the presence of the city that influences what property owners or developers wish to do with their land one, two or four miles outside the municipal boundary. The dilemma lies in the fact that this appeal to develop near but not within the municipal boundaries only works against cities' ability to grow in an orderly and cost effective manner.

ND Century Code currently allows municipalities the option of establishing an ETA, but does not require a municipality to establish an ETA. As such, ETAs can be established only where they are relevant and useful to the wider community. If a county wishes to relinquish joint control in the ETA to the city, there is a process to accomplish this as well. Given this flexibility, NDPA holds that the current regulations are already adequate to accommodate the preferences of each local community in the state. Therefore NDPA has taken a position to oppose HB 1258.

2-10-17

TO: Representative Klemin

FROM: Kelly Johnson, Intern

DATE: February 2, 2017

RE: Extraterritorial Zoning (In Reference to HB 1258)

HB 1258 Summary:

- **Take Away:** Removing city control over and references to extraterritorial zoning in the sections of the NDCC referenced below
- Amending the scope of authority for county regulation of extraterritorial zoning jurisdictions adopted pursuant to NDCC section 40-47-01.1
- Amending subsections 1 and 2 of NDCC 23-25-11 removing prohibition in areas over which a city has extraterritorial zoning under 40-47-01.1 to discharge objectionable odorous air contaminant. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.
 - Removes prohibition to discharge objectionable odorous air contaminant within 100 feet of any residence, church, school, business, or public building, or within a campground or public park; at any point located beyond one-half mile from the source of the odor; and the setback distance requirement for a zoned area for an animal feeding operation
- Amending 40-47-06: Zoning commission – Appointment – Duties – Preliminary and final report. The appointed commission (zoning commission) created by the governing body of the city shall not include at least one person residing outside of the corporate limits of the city
- Amending 40-48-03: Planning commission – Creation – Members – Ex officio members: The planning commission that may be created by the governing body of any city shall not include at least one person residing outside of the corporate limits of the city
- Amending section 40-51.2-05: Mediation: Removes reference: land area petitioned to be annexed to the city (if within the extraterritorial zoning area) if no written consent to the annexed area from the governing body of the other city, the annexing city may stop the annexation pursuit or submit for mediation under 40-51.2-07.1
- Amending subsection 2 of 40-51.2-07: Removes reference of extraterritorial zoning from territory owners who may protest annexation
- Amending 40-51.2-11: Notice required: Removes the requirement to save a copy of the notice and petition for time and place of hearing before the administrative law judge for extraterritorial zoning areas when hearing involves extraterritorial zoning
- Amending subsection 1 of 40-51.2-13 and removing consideration of whether the area to be annexed is in extraterritorial zoning

Current laws in place:

- Chapter 40-51.2
 - Included in annexation land agreements
- Chapter 40-47
 - A city may extend the application of the city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter is located within the allowed limits of the city

Bills from last session in reference to extraterritorial zoning:

HB 1398 (64TH SESSION)

<http://www.legis.nd.gov/assembly/64-2015/documents/15-0899-01000.pdf>

Summary: Extraterritorial zoning jurisdictions shall appoint at least one resident of the territory subject to the extraterritorial zoning jurisdiction to serve as a non-voting member of the governing body

- Failed to pass in the House

HB 1258 (64TH SESSION)

<http://www.legis.nd.gov/assembly/64-2015/documents/15-0653-01002m.pdf>

Summary: A political subdivision is responsible for the enforcement of regulations in any zone created through its extraterritorial zoning authority

- Failed to pass in the Senate

HCR 3029 STUDY ON ETA: <http://www.legis.nd.gov/assembly/64-2015/documents/15-3077-01000.pdf>

Summary: Called for a study to determine how residents of extraterritorial zoning jurisdiction cities are represented on city governing bodies

- Failed to adopt in the House

Past Session Laws

- **SB 2290** (1999 Session Law): Amending Section 40-47-01.1 of 1997 Supplement of the NDCC
 - **Summary:** 40-47-01.1: Extraterritorial zoning – Mediation – Determination by administrative law judge: a city with extraterritorial zoning authority shall hold a transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall give at least 14 days' notice of the meeting to the zoning board of the political subdivisions losing their partial zoning authority.
 - Passed and filed with the Secretary of State in 1999
- **HB 1410** (2001 Session): Amending Section 40-47-06 of the NDCC
 - **Summary:** If a city has extraterritorial authority under section 40-47-01.1, the city shall enter into an agreement to share zoning decision making authority with the county or township that previously had zoning authority in the area which the city is exercising extraterritorial zoning authority. If the city zoning commission proposes consideration of a zoning matter concerning an area over which it has extraterritorial zoning authority, the commission shall notify the zoning

commission of the county or township that previously had zoning authority over that area. After giving notice of a joint hearing (provided in section 40-47-04), the zoning commissions shall hold a public hearing for all interested parties to be heard. Before a zoning regulation may be implemented or amended which affects the area over which the city has extraterritorial zoning authority, each zoning commission and governing body involved must, by a majority vote of each entity, approve the regulation.

- Failed to pass in the Senate in 2001
- **HB 1321** (2007 Session): Amending Section 40-47-01.1 of the NDCC
 - **Summary:** Amending 40-47-01.1. Extraterritorial zoning – Mediation – Determination by administrative law judge:
 - Amendments:
 - A city may extend the application of its city zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city: (a) ~~One~~ One-half mile if the city has a population of fewer than 5,000; (b) ~~Two miles~~ One mile if the city has a population of 5,000 or more but fewer than 25,000; (c) ~~Four miles~~ Two miles if the city has a population of 25,000 or more
 - 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 by the governing bodies of the political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned
 - Passed and filed with the Secretary of State in 2007
- **HB 1321** (2007 Session): Amending Section 40-47-06 of the NDCC:
 - Section 2 Amendment: Zoning commission – Appointment – Duties – Preliminary and final report.
 - The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission (a zoning commission) to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. If the city exercises extraterritorial zoning authority under section 40-47-01.1, the zoning commission must include at least one individual residing outside of the corporate limits of the city if the city has fewer than 5,000 people, two individuals residing outside of the corporate limits of the city if the city has a population of more than 5,000 fewer than 25,000; or three individuals residing outside of the corporate limits of the city if the city has a population of 25,000 or more. Those individuals must be appointed by the board(s) of county commissioners of the county or counties within which the zoning authority is to be exercised and must reside within the territorial limits of the zoning regulation authority exercised by the city, if any such individual is available to serve on the zoning commission. Staggered term appointments. The

commission shall make a preliminary report and hold public hearings before submitting its final report. The governing body may not hold its public hearings or take action until it has received the final report of the zoning commission.

- Passed and filed with the Secretary of State in 2007
- **HB 1554** (2009 Session): Amending Section 40-47-01.1 of the NDCC
 - **Summary:** Amending 40-47-01. Extraterritorial zoning – Medication – Determination by administrative law judge – Definition.
 - 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: (1) One mile if the city has a population of fewer than 5,000. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile to one mile with the other political subdivision; (2) Two miles if the city has a population of 5,000 or more but fewer than 25,000. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile to two miles with the other political subdivision; (3) Four miles if the city has a population of 25,000 or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles to four miles with the other political subdivision
 - Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and the regulations in place on May 1, 2009, unless changed as allowed under this section.
 - The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.
 - Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing

body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

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

Background Information:

- Extraterritorial zoning allows a city to enforce zoning regulations outside of the city limits up to a certain distance.
 - *Source:*
<https://www.cityoffargo.com/CityInfo/Departments/PlanningandDevelopment/FrequentlyAskedQuestions/FAQExtraterritorialZoning.aspx>
- Concern from individuals in these extraterritorial zoning-controlled areas is the lack of representation “in the decision to exercise the jurisdiction.”
- Reason for extraterritorial zoning: to allow cities to expand
- Authority was created in SB 2395 in 1975
 - *Source:*
<http://www.legis.nd.gov/files/resource/committee-memorandum/99013.pdf>

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#2

TESTIMONY ON HOUSE BILL 1258

House Political Subdivisions Committee

**Brad Gengler
City of Grand Forks, ND**

January 20, 2017

Mr. Chairman and members of the Committee, my name is Brad Gengler and I am the Planning and Community Development Director for the City of Grand Forks. I want to thank you for the opportunity to provide written testimony on House Bill 1258 and request your recommendation of a DO NOT PASS as it is currently proposed.

House Bill 1258 proposes to repeal, in its entirety, the extraterritorial zoning authority of cities. By doing so House Bill 1258 eliminates a city's ability to properly plan for the orderly growth and development of the city as a whole. Transportation routes, housing needs, adequate commercial and industrial lands, would all be critically impacted without a city's ability to exercise extraterritorial zoning authority.

By no means do cities haphazardly plan for future growth on the fringe of their corporate limits. For example, the City of Grand Forks recently adopted the Year 2045 Land Use Plan Update. The document provides a responsible and comprehensive growth management plan for not only urban growth beyond city limits, but also provides protections from the overconsumption of valuable farmland within the extraterritorial zoning jurisdiction. Through proper zoning ordinances that support the growth management plan, cities are able to:

- Preserve and protect agricultural land use and the activities associated with it.
- Direct non-farm development and urban-oriented growth into lands adjacent and/or contiguous to the city and to promote a compact development pattern.
- Preserve agricultural land and protect it from land use conflicts associated with non-farm development.
- Prevent non-farm rural development that will inhibit the city's ability to grow in an orderly manner in the future or that will cause future conflicts unforeseen to all parties involved with the non-farm rural development.

This can only be accomplished with sound long-range planning accompanied by the tools afforded to cities through extraterritorial zoning authority. It is for these reasons that I would respectfully ask for a DO NOT PASS recommendation of House Bill 1258.

Thank you for your consideration.