

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

14410

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1410

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1410

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-08-01

Tape Number	Side A	Side B	Meter #
2	xx		4580--end
2		xx	1--end
3	xx		1--800
Committee Clerk Signature <i>Alan Dever</i>			

Minutes: Chair Froseth opened the hearing on HB1410 relating to appointments of zoning commissions. Chair had to leave and Vice-Chair Severson took the gavel.

Rep. Dennis Renner, Dist 31 : prime sponsor and support HB1410. During the last session, we passed some laws allowing the cities to extend their zoning influence a mile, I think. The experts behind me will know more. We are trying to fix this problem and create a joint powers agreement.

Sen. Steve Tomac, Dist. 31 : (5130) support this bill. During the last session he extended city zoning. For the most part, this was good legislation; however, there are unintended consequences. The focus of this bill is to try and correct this legislation by giving some shared powers with the county commission. The county is now subject to a whole new bureaucracy. They did not have the ability to elect those people who are now making the decisions where they live. I think we extended the cities 2 miles last session. We erred. We need to give the county commission some control and have more say over that particular gray area. They don't have any

recourse if they don't like the decision of the governing body. This bill will provide for cooperation between the two.

Dick Tokach, Morton County Commissioner : here to support this bill. I feel there is a flaw in present law.

Gregg Greenquist, Morton Co. Planning Director : support HB1410. (SEE ATTACHED)

End Tape 2 side A, begin Tape 2, side B. Gregg continues to testify. This bill's intent is to remove jurisdictional barriers of communications. This is a state wide issue wherever extraterritorial area's exist.

Vice-Chair Severson : (450) Did you in Morton County get together with the city?

Gregg : We formed committee of 4 people from the county and 4 people from the city. We meet every Thursday at 3:30.

Rep. Niemeier : (520) It looks to me that all the language that describes the makeup of the former has been struck in this new proposal. Do you think that language laying out the requirements for a new zoning commission should be included in this bill?

Gregg : Excellent point.

Vice-Chair Severson : Do you think has slowed down the extraterritorial zoning by the city by setting up this zoning?

Gregg : If concerns have not been raised, I think the city would already be out 2 miles. It was at a zoning transition meeting that concerned citizens came forward with questions and concerns. The committee was formed to respond to those questions.

Wade Williams, ND County Assessors : (720) here in support of HB 1410. There is a problem when the extra-territories are first set up. Generally, after they are in place a few years, we don't have problems. It's good for the two boards to get together, county and city.

Rep. N. Johnson : (810) At this point has there been lots of hassles between counties and cities?

Can't they sit down and figure things out without a law?

Wade : I don't think we have lots of hassles between county and cities. Mainly complaints from constituents once they come under new zoning. They were not part of the city, and then all of a sudden they are. Very confusing. He gave an example in Jamestown.

Rep. Herbel : What is the most common complaint?

Wade : From an officials point of view, is that there is not a lot of discussion about what is going to happen with the new area and the owner. The complaint of the people who are effected by this, would be not understand the new ordinances.

Rep. Niemeier : Sometimes, does extraterritorial take in farmland? How is that handled as far as buyout?

Wade : Yes, but there are no buyouts. They just have different zoning restrictions.

Lisa Keidel, Mandan : here in support of HB1410 as a citizen who has been effected by zoning changes and not has not had a vote or say on anything. (1075--1450) Lisa told a history of family land and the difficulty in trying to build a house.

Mike Kemnitz, Mandan : In support of HB1410. (SEE ATTACHED)

Bill Kessler, Mandan : (1950) I am a homeowner and support this bill. I went to a meeting in Mandan concerning the zoning changes in my area. There were so many questions raised. No one knew what was going on. We decided to form a committee and that was good. County zoning and city zoning meet jointly with a public hearing, and nothing can be changed or enacted without the majority of the city group and a majority of the county group. I think that is right. I don't think it's right to have city officials making all the decisions for the county people. It

doesn't feel good when you have city commissions, you can't vote for, making all the decisions for you that effect my life style.

Rep. Kretschmar : (2260) Has the city zoning commission been making decisions that have hurt the people that live out in your area.

Bill : I don't know. I don't think they have my best interest in mind because they represent the city. You have to have two teams on a field to play a game.

David Wyum, Fargo : I live in an extraterritorial area of W. Fargo. I am opposed to HB1410.

(SEE ATTACHED)

Rep. Delmore : (3099) You are an extraterritorial member of a planning-zoning commission. You have played a direct role, unlike most of the people who have testified here. Do most planning and zoning allow a member from the area to be a member?

David : State law require the cities to have representation from outside the city to be on the commission. Fargo has two from the township. (Chair Froseth returns to hearing)

Vice-Chair Severson : When a city makes use of the extraterritorial zoning, and that property remains agricultural, who receives the taxes?

David : Nothing changes on taxation.

Cindy Gray, Fargo City Commission/Planning : (3670) opposed to HB1410. **SEE ATTACHED**

Carl Hokenstad, Bismarek City Planner : (5000) opposed to HB1410 **(SEE ATTACHED)** We feel that cooperation is best and that extraterritorial is not broken. We urge a DO NOT PASS.

Rep. Kretschmar : (5750) How do you work it out, say isn't some land both Bismarek and Mandan jurisdiction?

Carl : In that case, the river is a good thing.

Rep. Kretschmar : I'd also like to comment on page 2, the word "may" is a style change in L.C. and doesn't change the meaning of that statute at all.

Mike Simonson, ND Planning Assoc. : (6000) opposed to HB1410. Our current law has served this state well. We have had a diversity that respects both rural and urban interests. If passed, this bill would seriously disadvantage landowners and developers. A joint hearing isn't going to remove the independent actions by city, county, and township zoning commissions. This bill will still not have representatives from extraterritorials on the city council. The bill does nothing to address the major problems that have been raised. This bill will put delays on progress. **End**

Tape 2, side B. Begin Tape 3, side A.

Vice-Chair Severson : (139) We have had problems reported to us and this law has created problems and we need to deal with it.

Dave Patience, Land Developer, : here opposed to HB1410. (SEE ATTACHED) I have 20 subdivisions that are being persuaded by developers. Every time we put in a rule or regulation, you have to jump through a hoop. Well, I'm that guy. We have state law that says we have to advertise if we have a planning commission hearing. I have to have all of my proposals in to a planning commission a month before they meet. Too time consuming for me.

Keith Kietel, Mandan : (488) here to support this bill. I am Lisa Keidel's father-in-law. I wasn't going to speak, but I have personally been affected financial and personally by not having any say in extraterritorial issues. I urge a DO PASS. Thank you.

Chair Froseth : Any more testimony? Hearing none, HB1410 is closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1410 b

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-15-01

Tape Number	Side A	Side B	Meter #
2	xx		1170--1550
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: Chair Froseth : Take up HB1410. Amendment 10727.0101 was passed out.

Rep. Ekstrom : This is basically a hog house. This will give the ACIR something to do.

I move a DO PASS ON AMENDMENTS.

Rep. Delmore : 1 second.

VOICE VOTE: ALL YES and 1 NO.

Rep. Maragos : I move a DO PASS AS AMENDED.

Rep. Tieman : 1 second.

VOTE: 12 YES and 2 NO with 1 absent. PASSED. Rep. Ekstrom will carry the bill.

VR
2/15/01

HOUSE AMENDMENTS to HB1410 HOUSE POL. SUBS 2-16-01
Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a study of extraterritorial zoning.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS STUDY - EXTRATERRITORIAL ZONING. The advisory commission on intergovernmental relations shall study during the 2001-02 interim the extraterritorial zoning authority of cities and the feasibility and desirability of revising the extraterritorial zoning provisions. The commission, in the same manner as legislative council interim committees, shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-eighth legislative assembly."

Renumber accordingly

Date: 2-15-01
 Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1401410

House POLITICAL SUBDIVISIONS Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number 10727.0101 .0200

Action Taken Do Pass As Amended

Motion Made By Rep. Maragos Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	/		Rep. Wayne W. Tieman	/	
Vice-Chair Dale C. Severson	/				
Rep. Lois Delmore	/				
Rep. Rachael Disrud	/				
Rep. Bruce Eckre		/			
Rep. Mary Ekstrom	/				
Rep. April Fairfield	AB				
Rep. Michael Grosz		/			
Rep. Jane Gunter	/				
Rep. Gil Herbel	/				
Rep. Nancy Johnson	/				
Rep. William E. Kretschmar	/				
Rep. Carol A. Niemeier	/				
Rep. Andrew G. Maragos	/				

Total (Yes) 12 No 2

Absent 1 AB

Floor Assignment Rep Ekstrom

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

REPORT OF STANDING COMMITTEE

HB 1410: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1410 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 provide for a study of extraterritorial zoning.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS STUDY - EXTRATERRITORIAL ZONING. The advisory commission on intergovernmental relations shall study during the 2001-02 Interim the extraterritorial zoning authority of cities and the feasibility and desirability of revising the extraterritorial zoning provisions. The commission, in the same manner as legislative council interim committees, shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-eighth legislative assembly."

Renumber accordingly

2001 SENATE POLITICAL SUBDIVISIONS

HB 1410

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1410

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 15, 2001

Tape Number	Side A	Side B	Meter #
1	X		17.3-34.0
March 22, 2001 1	X		10.4-16.8
Committee Clerk Signature <i>Mary J. Wicker</i>			

Minutes:

The hearing was opened on HB1410 which relates to appointments of zoning commissions.

DICK TOKACH: Morton County Commissioner and member of the Planning and Zoning Board for many years. I appear in support of HB1410. It's considerably different than it was introduced in the House chambers, but, I believe that it was moved to an Advisory Committee to have more time to study this and take care of some of the problems as far as representation and coordination of zoning and extraterritorial area. GREGG GREENQUIST: Planning Director and Zoning Administrator for Morton County. Before I begin my testimony, I would just like to clarify that the county understands it is very important to plan our future growth around cities. Zoning is the tool that assures an orderly growth and development. It isn't a statement against zoning. The county supports this bill, because the bill provides for a study of the problems with the existing laws. That study could result in improvements. What are the problems? Problems are related to representation. See written attached testimony. SENATOR LYSON: How far out do you go

from the city? GREGG GREENQUIST: The zoning goes out proportional to the population. The farthest out a city can go, a city of over 25,000 can go out four miles. Currently, Fargo is the only city in the state that goes out that far. SENATOR LYSON: Mandan is going out how far?

GREGG GREENQUIST: Mandan is currently at one mile beyond the corporate limits. And there proposing to go out an additional mile, to the fullest extent allowed by law. Mr. Greenquist then continued his testimony. SENATOR WATNE: I sit on that Advisory Commission for

Intergovernmental Relations and I look forward to a study like this especially as a realtor. Can you tell me how the Minnesota law on the Urban Expansion Zone differs from our North Dakota Territorial Zoning now based on population cities? Do you know any of the? GREGG

GREENQUIST: The primary difference is that right now in North Dakota regardless of the population or the size, the main issue in an urban expansion zone both the city and county work together to decide the issues in the growth areas around the cities. Currently, that's not permitted by our law here. Growth, rapid growth requires a lot of planning. Right now the area that is allowed to come under a cities jurisdiction is based only on its population, not on its growth. So if we have a city that is no longer growing, they could, as in Mandan's case, the growth projection are for the next twenty five years are very low. But still the city, even though there is a slow a period of growth, it can go for now an additional mile. SENATOR TOMAC: District 31.

Cosponsor of this bill. The bill was hog housed as I think Commissioner Tokach has probably outlined in the House. I would characterize the amendment as a chicken house maybe amendment rather than a hog house amendment because I think the bill speaks in its original form to a situation in Morton County primarily due to legislation that we passed in our recent legislature. I think we are trying to work out the wrinkles of that, who actually has what to say, at what distance, and as we allow cities to grow at what point does the county commission give up

their ability and their rights to city commission that does not, in fact, have any legal jurisdiction but what is allowed by this as they extend their zoning powers. Who delivers services and that, there's a whole ray of unanswered questions, so, while I applaud the decision to study, I also feel that quite strongly that the bill in its original form actually resolved the issue and provide for some joint powers in that the end zone if you will. So, I accept the study resolution, but really would've preferred in its original form. REP. RENNER: District 31. As Senator Tomac illustrated the original House bill would've solved the problem but it was met with considerable opposition in the House Committee and was converted to a study resolution and we would urge this committee to pass this resolution so we can resolve some of these issues. Looking at Mr. Greenquist's testimony here, I see what some of our neighboring states do and as he indicated in South Dakota they practice in a form of joint powers and that is what the original bill would've done. So I would support, urge you to support the amended bill. SENATOR MATHERN: Rep. Renner, what were the problems that House has with the bill? REP. RENNER: There was opposition from the City of Bismarck, City of Fargo, with creating another layer of bureaucracy for lack of a better word. It was felt, maybe a study resolution is the best way to address this problem. SENATOR MATHERN: I gathered from Mr. Greenquist's testimony though, that West Fargo and some other areas maybe haven't created that layer, but have worked with the outlying areas? REP. RENNER: I think that is correct. SENATOR MATHERN: Territorial. KERN YANTES: Represents the North Dakota Township Officers Association. Spoke in support of this bill. I also serve on the ACIR with Senator Watne, for the past two years. I have been on this committee as long as anybody has been on there. I was first elected to serve on that committee in 1988, and I would like to say that I welcome this gentlemen's testimony at that committee, and others. What we need to do is develop I believe, a policy, for a statewide coverage, not for just an

Page 4

Senate Political Subdivisions Committee

Bill/Resolution Number HB1410

Hearing Date March 15, 2001

area, a small area of the state but something that is going to work statewide and develop a policy that will work for everybody and work very hard at it, to accomplish this and then bring the results of that study back to you for your consideration as we really serve as the Interim Committee on Political Subdivisions. The ACIR does. We would bring that back to you for your consideration. We hope to iron out and try to make it a statewide workable piece of legislation for you to consider in the next legislation session.

Hearing Closed on HB1410.

March 22, 2001 (Tape 1, Side A, Meter # 10.4-16.8.0)

Senator asked the committee to come together and discuss HB1410.

Senator Flakoll moved a Do No Pass

Senator Lee- 2nd

Roll call vote: 7 Yeas, 1 No, 0 Ab

Carrier: Senator Lee

Date: 3/22/01
 Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. H.B. 1410

Senate Political Subdivisions Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken No Not Pass

Motion Made By Sen. Flakoll Seconded By Sen. Lee

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne		✓			

Total (Yes) 7 No 1

Absent 0

Floor Assignment Sen. Lee

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

REPORT OF STANDING COMMITTEE (410)
March 22, 2001 11:30 a.m.

Module No: SR-50-6393
Carrier: Lee
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1410, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman)
recommends **DO NOT PASS** (7 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).
Engrossed HB 1410 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1410

House Political Subdivisions Committee
February 8, 2001
Information Packet on HB 1410

Submitted on behalf of Morton County by:

Gregg Greenquist, Morton County Planning Director
Morton County Planning Department
2916 37th Street Northwest
Mandan, ND, 58554

Morton County supports this bill because it allows the people to vote for and elect political leaders who will make the rules that regulate the land they own. It's a matter of principal, a fundamental democratic principle.

The following testimony covers four areas:

1. The representation issue;
2. How our neighboring states deal with this issue;
3. How some cities in ND deal with this issue;
4. And what our local extraterritorial joint-committee has discussed

The Representation Issue

Existing law allows city commissioners to make all final decisions on planning, zoning, and land development issues in a city's extraterritorial zone. The people who live in the extraterritorial zone cannot vote for city commissioners. These people are not represented.

It's the city commissioners who make all the final decisions on regulations and fees, such as building permit fees... in the extraterritorial area. If building permit fees, and mandated planning and zoning application fees could be considered as a form of taxation then we may have a situation here of taxation without representation.

What do other states do?

In Montana, cities are not allowed to enforce any zoning authority beyond city limits. If a city in Montana wants to zone land, they have to first annex that land.

In Minnesota, they have "Urban Expansion Zones" where there is joint decision making between the city and county on growth areas around cities.

In South Dakota, they practice a form of joint powers, where the city and county leaders share in the decision making process. That is what this bill is modeled after (see attachment entitled (Joint Meetings of the City and County Planning Commissions))

How some cities in ND deal with this issue:

Bismarck requires Burleigh County to sign-off on all subdivision plats in the city's extraterritorial jurisdiction before they are recorded and before lots are allowed to be sold. This is a good practice because it allows the counties to review and approve plats. West Fargo has a similar policy. But this practice is not mandated by existing state law; it's a courtesy, it's voluntary and not a requirement.

Mandan and Morton County formed a joint committee to examine this issue.

The bill before you is a result of the City of Mandan's proposal to extend their zoning jurisdiction by an additional mile and the county's concern with that proposal.

The city has followed all the procedures and met all the criteria established by law and can now, if it wishes, extend the city's zoning authority out to two miles.

The city, at the county's request, agreed to participate in a joint city/county committee to address the concerns of the county. That committee has been meeting almost every week since last December. The purpose of the committee is to make recommendations to the city commission on the extraterritorial issue.

The four city and four county members of the committee, along with their support staff, have closely examined this issue. Some of the discussions have been about the purpose of extraterritorial zoning; all agreed that the purpose is valid. The committee has discussed the representation issue, and growth areas. The committee has tried to think outside the box. Ideas have been brought up suggesting a consolidated city/county planning department and a joint building inspections department.

One committee member, a resident of the proposed extraterritorial zone, prepared a draft list of five recommendations for the city commission that summarizes many of the issues that have been discussed. That list may be valuable to this committee, so it is also included in this packet.

The list represents some of the considerations that have been made by our joint committee. The full committee has not yet approved this list; it will be discussed at our next meeting. One recommendation on that list is to initiate a procedure that would allow joint decision making, much like the bill before you proposes.

In Summary:

The purpose of this bill is to allow proper representation of the people in the extraterritorial zone. Other states around us don't have this problem. It's time for a second look at the existing law. Joint decision-making in the growth areas around cities will provide a solution to the representation problem and allow better planning of these areas.

**JOINT MEETINGS OF THE
CITY AND COUNTY PLANNING COMMISSIONS
Meeting Guidelines**

INTRODUCTION

The City and County Planning Commissions meet regularly in joint session on the fourth Monday of each month to consider land use matters in the extraterritorial zoning jurisdiction surrounding Sioux Falls. At times in the past it has been difficult for planning commission members, members of the audience, and planning staff to understand some of the discussion leading to motions on agenda items. Therefore, it would be beneficial to establish guidelines for the conduct of business at the joint meetings.

MEETING CHAIRPERSON

The County and City Chairpersons shall alternate each month in presiding over the joint meetings. This is currently being done.

FORM AND CHARACTER OF THE MOTIONS

The form and character of motions shall conform to those offered in Robert's Rules of Order, Revised, except as specified below.

Upon review of the full public record and after due deliberation among the members of both the County and City Planning Commissions on a land use matter, the meeting chairperson shall call for a motion. Upon being recognized by the meeting Chairperson, any member of either Planning Commission, except the chairperson may make a motion. The initial motion shall be for either approval, approval with specified conditions, deferral or denial, and preferably include the particular findings which support the motion.

First Planning Commission

Whichever Planning Commission first makes a motion on an agenda item shall also be the Commission that shall second the motion. A motion shall die for lack of a second. The meeting Chairperson shall recognize any member of either Planning Commission who wishes to speak to the motion. Following discussion on the motion by both Planning Commissions, the Chairperson of the Planning Commission that made the motion shall call for a vote on the pending motion.

Second Planning Commission

The Chairperson of the second Planning Commission shall call for a motion and second on the same agenda item. The motion may be the same as that made by the first Commission or may be different. A motion shall die for a lack of a second. The meeting Chairperson shall recognize any member of either Planning Commission who wishes to speak to the second motion.

Following discussion on the motion by both Planning Commissions, the Chairperson of the Planning Commission that made the motion shall call for a vote on the pending motion.

DECISIONS NOT IN AGREEMENT

1. Conditional Uses - When the decision rendered by each Planning Commission is not in agreement, the conditional use application shall be considered at a joint meeting of the Board of County Commissioners and the City Council (per the zoning ordinance.) A rezoning request requires final action at a joint meeting of the Board of County Commissioners and the City Council regardless if the decision of the Planning Commissions is in agreement or not.
2. Deferral by one Planning Commission - If one planning commission votes to defer an item and the other commission votes to approve or deny the item, the matter will be deferred until the next regular joint meeting of the Planning Commissions. At the next meeting, the Chairperson of the Commission that voted for deferral shall call for a motion following any further decision on the deferred item. If new information is presented by the applicant or the public at this meeting, the other Commission may reconsider their previous decision.

SUMMARY

In this proposed framework where simultaneous discussions, motions and votes by the two Planning Commissions are avoided, general courtesy will be extended to the Planning Commission members, staff and the public. Such a methodology should result in a clearer understanding of the proceedings and less confusion during the motion and vote portions of the meetings.

Mandan / Morton County

Extra-Territorial Jurisdiction Committee

DRAFT

Recommendations for Consideration

Feb. 1, 2001

- 1) That the City of Mandan refrain from expanding the Extra-Territorial Jurisdiction in a single action and instead consider each $\frac{1}{4}$ / $\frac{1}{4}$ of a section (40 acre) parcel on it's own merit.
- 2) That the City Commission remains sensitive to the issues involved when a governmental entities authority is expanded beyond the political voting boundaries and that citizens owning affected private property will be concerned on issues of representation and re-dress.
- 3) That the areas or parcels of land deemed necessary for inclusion into the Extra-Territorial Jurisdiction be part of a planning process that is documented with the Zoning and Planning reasons for changing the status of the land.
- 4) That the City of Mandan make known to the County of Morton, the protections it deems necessary for orderly growth in the vicinity of Mandan. These identified areas and items of growth concerns would be considered by Morton County as they made considerations on zoning and planning issues
- 5) That the City of Mandan and the County of Morton utilize a Joint Powers arrangement to more fully utilize the talents of planning, zoning and building inspections personnel as well as sitting boards.

Note: this list of recommendations has not yet been approved by the joint committee but it illustrates the concerns of one of the four county representatives on the eight-member committee.

- EXAMPLE OF A MINNESOTA PRACTICE -

URBAN EXPANSION DISTRICT

Purpose:

The Urban Expansion District is intended to provide an area adjacent to incorporated municipalities, which is designed to:

- Contain and manage urban development within planned urban areas where basic service such as sewers, water facilities, road maintenance, and police and fire protection can be provided efficiently and economically.
- Conserve resources by encouraging orderly development of land.
- Preserve farmland and open space.
- Make more economical use of local tax dollars in locating facilities and providing services for the benefit of all citizens within the urban growth area.
- Provide property owners greater security in long-range planning and investments.
- Make it possible for utility extensions, transportation facilities and schools to be designed and located so as to match population growth more closely.
- Preserve and enhance the livability of the area.

It is intended that the status of each area in these districts be reviewed jointly by the incorporated city planning commission and the county planning commission or their representatives once each calendar year. Upon completion of this review each of the planning bodies would recommend to their appropriate governing bodies any land use changes for the Urban Expansion District. Recommendations for changes may include the following:

- The addition or removal of land from the UE Urban Expansion District.
- The rezoning of land to a more appropriate land use classification.
- The orderly annexation of land.
- The revising of land use plans and ordinances affecting land within UE Urban Expansion District.

It is intended that development in the UE Urban Expansion District occur via orderly transition from farm to urban uses by:

- Annexation, rezoning and development of areas adjacent to the incorporated limits of existing urban centers.
- Contiguous development as a logical extension of similar urban land uses and zoned to the appropriate district.

Testimony From: Mike Kemnitz
2157 Missouri Dr. N.
Mandan ND 58554-8201

Date: Thursday, February 8, 2001

SUBJECT: HB-1410, relating to Zoning

Testimony in favor of HB-1410.

SUMMARY: The existing law is too broad in granting power to expand zoning jurisdictions. It allows total control to the cities desiring to expand their extra territorial jurisdiction and no recourse to the citizens and government bodies being absorbed. It allows the county or township zoning authority to be swept aside at the whim of the city. A fairer balance of power is needed to encourage joint powers and/or other agreements. The county citizens deserve to have voting control over officials governing them. The law, as currently written, does not accommodate that basic right.

1. The current law allows great authority to expand and no method to contain extensions of jurisdiction. The testimony brought to the required public meeting has no effect on lessening the ability of the city to extend their zoning authority. The existing zoning authority can be swept aside with a simple city ordinance change.
2. The cities are not currently required to show cause when extending their authority over property in the county. The citizens within an expanded extra-territorial area do not have voting rights recourse should fees assessed become excessive or the city departments become unresponsive. There is not an appeals process in the current law. The decision by the city is final.

3. The cities are moving jurisdiction to the extremes allowed by law instead of lesser distances. The distances allowed are substantial. The cities are not required to show cause for extension or identify smaller sized parcels. Most of the cities in the state of North Dakota would be hard pressed to document demographic reasoning behind their request for such increased jurisdictions.
4. The acquiring city will set and collect the building permit fees. These fees by themselves are an enticement for extension of authority when there is building activity in the area. The county loses the ability to collect fees paid by county citizens. The power to withhold Building Permits out in the jurisdiction as a device to force annexation is a real issue and has been used. When extra-territorial jurisdiction is expanded out to two and four miles from the city limits, these requirements can become abusive.

I request that you will vote to allow HB-1410 to rein in the authority now allowed. The burden of proving a need and building concurring partnerships should be placed upon those requesting the increased authority and the force of law over citizens outside of their corporate limits. Better that they be placed in a position requiring them to build relationships and exercise joint powers agreements than to allow such continued freelance authority over their neighbors.

FEBRUARY 8, 2001

OPPOSE 712 211

TESTIMONY AGAINST HOUSE BILL NO. 1410

I oppose this bill from three points of view:

1. As a home owner in the Extraterritorial area of a large city:
 - My ability to have a voice, in the form of having a representative from outside the city limits, on the planning and zoning board is important.
 - Have zoning issues enforced. The Township or County Governments don't have the manpower to accomplish enforcement.
2. As a Real Estate developer:
 - The need to promote passage of a land development plan before two zoning commissions, a township board, a county commission and a city government (commission or council) is to place an undue burden on the land owner that is trying to change and improve their property.
 - The change from; "shall not" to "may not" hold public hearing or take action... gives the governing body the ability to act without due process, and if the governing body has an agenda that is not necessarily in the best public interest, that governing body will act before the zoning commission can report.
 - This (part 2 of the bill) is duplication of governmental bureaucracy.
 1. I see three unfortunate consequences from this potential change.
 - If changes sought by the land owner are not agreed to by all of the governmental bodies involved, or in a timely manner, there will be a great increase in landholder suing, because the lack of action can be seen as a governmental taking.
 - A city will be forced to annex greater areas of land surrounding the city than is wanted or needed in order to control it's own destiny.
 - The county or township may attempt to entice inappropriate development to occur beyond the E. T. area and not have the ability to provide the services that would needed for the development.
3. As an extraterritorial member of a Planning and Zoning Commission:
 - The E. T. member brings the ability to have the P & Z Commission look beyond the city itself and look to the larger community.
 - The E. T. member has to sometimes voice the concerns of the residents surrounding the city.

Respectfully submitted,

David L. Wyum, 3522 Hidden Court, Fargo ND 58104

Homeowner in an extraterritorial area

Real Estate Broker with George Wyum Real Estate, 96 Fifth St. E., West Fargo ND 58078

Cass County Representative to the Fargo Planning and Zoning Commission

Testimony in opposition to HB 1410

North Dakota House of Representatives Political Subdivision Committee

Hearing – 2:30 PM, Thursday, February 8, 2001

Presenter: Cindy Gray, Senior Planner, City of Fargo, North Dakota

Representing: Fargo City Commission, Fargo Planning Commission, and City of
Fargo Planning Department

I am here representing the Fargo City Commission, the Fargo Planning Commission, and the planning professionals at the City of Fargo. On Monday, February 5th, 2001, the Fargo City Commission went on record in **strong opposition** to House Bill 1410.

The bill is strongly opposed for the following reasons:

- The requirement for joint approval of zoning proposals by both the City Planning Commission and the Township or County Planning Commissions and governing bodies defeats the purpose of having extraterritorial zoning authority. The purpose of extraterritorial zoning authority is to allow a city to better plan and regulate the area into which it is growing. The city's review and approval structure works to ensure that once an area becomes part of the city, the new residents of those homes, or owners of those businesses do not incur unexpected costs associated with the extensions of city utilities. Our zoning authority also ensures that land uses that are not compatible with urban development are not permitted in the extraterritorial area. Our requirements

and considerations sometimes seem to go above and beyond what is necessary to property owners who are accustomed to a rural way of doing things, but they are always enforced with the future in mind – the future of the residents of both the extraterritorial area and the rest of the city.

- The requirement for joint approval by the City Planning Commission and the Township/County Planning Commission will create a situation where a property owner finds him or herself having to satisfy the concerns of two local governments who typically have very different philosophies about development in general, and the manner in which that development should be regulated. Compromises and concessions made by one entity or the other to achieve joint agreement will do nothing but sacrifice the integrity of the development as part of a future urban environment. They will result in unnecessary monetary or quality of life costs to future property owners and the city as a whole.
- Our City has recently encountered specific examples of high costs incurred by both home owners and by the city itself, brought about by the annexation of areas that were allowed to develop with large lots and on-site drain fields, facing directly into a section line road that is quickly becoming an urban arterial roadway.
- The bill specifies the requirement for joint approval. This raises a huge unanswered question that is not answered within the language of the bill - *What recourse does the property owner have if joint approval by both entities is not possible?* As far as we can tell, there is no recourse.

Furthermore, the bill simply refers to joint approval of "zoning regulation" which affects the extraterritorial area. This ambiguous language does not clarify whether this means the zoning laws themselves, or the zoning designation applied to land within the extraterritorial area.

- Planning Commissions have an advisory role with regard to zoning. They do not have final approval authority. That authority rests with elected officials. This bill essentially takes that authority away from the elected officials and enables one Planning Commission or the other to effectively deny a rezoning if it will not give its approval. Planning Commissions do not approve zoning. Their role – the reason they are appointed – is to recommend approval or denial of land use and zoning proposals to the elected officials.
- The responsibilities associated with being appointed as a Planning Commissioner are significant. These are voluntary positions in which it is very important to have dedicated, thoughtful, and fair individuals. It is not always easy to find individuals who are willing and able to take the time to fulfill this role. The addition of joint meetings with other local governments on a regular basis, which we would have in Fargo (three townships currently and eventually two or three additional townships), would place a very heavy burden on our Planning Commissioners. Although this seems less important in the big picture, it is important to consider in that it is so vital to have thoughtful, knowledgeable, and fair people who are willing and able to be appointed to these Commissions. That is what makes local government work.

- Finally, we appreciate the presence and dedication of the extraterritorial members of our Planning Commission. They are full, equal and active members, who vote on all of our agenda items, whether they are inside city limits or in the extraterritorial area. Their perspective on urban growth and their knowledge of the areas into which we are growing is valuable. To see them eliminated and substituted with such an ill-defined and cumbersome process is something we strongly oppose.

**HOUSE BILL 1410
FEBRUARY 8, 2001
2:30 PM
HOUSE POLITICAL SUBDIVISIONS COMMITTEE**

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

House Bill 1410 would change the way a city exercises its extraterritorial zoning authority. Since passage of the original legislation in 1976, we have been able to use this provision to help manage city growth. I believe the existing law has worked well over the years for cities, counties and townships.

I have several concerns with this proposed bill:

1. The section requiring that residents of the extraterritorial area be members of the city planning commission would be deleted. In Bismarek, we presently have three members from the extraterritorial area on the city planning commission which are appointed by the county commission. In addition, the mayor and one other city commissioner are members of the county planning commission. Members from other jurisdictions on these commissions bring their particular perspective to zoning and planning decisions. I believe a more beneficial, comprehensive discussion on the issues takes place on decision making boards and commissions that include representatives from all areas of the community.

2. Passage of this bill would dramatically change extraterritorial zoning from the concept of a city growth management tool to a mandated joint city/county/township approval process.

3. The length of time to approve a development application would probably be increased. The bill would require that all zoning changes be approved by all the

governing bodies involved – city, county or township. All applications would need an additional approval.

4. Additional planning commission meetings would have to be scheduled. In Bismarck/Burleigh County, we would probably have to have three planning commission meetings per month – one joint city/county meeting, one city meeting and one county meeting. That would be in addition to adding all extraterritorial items to the county commission's agenda. Also, the bill gives no guidance as to how such joint planning commission meetings are to be conducted. Who would chair the meetings? Would a simple majority of all members be required to approve applications? Would a numerical majority of city or county planning members in such joint commission meetings give either one an advantage?

5. The requirement that both the city and county commissions approve all zoning applications within this area would grant one governing board veto power over the other governing board. In theory, development within the area adjacent to a city could be prevented by action of a county or township board. Rather than promote cooperation between jurisdictions, this bill would promote adversarial relationships between jurisdictions. We have found that a cooperative approach between the city and county has been much more effective. For example, the planning function in the Bismarck area has always been a joint city/county department. Another example is that we include Burleigh County in the decision making process for subdivisions because our zoning ordinance requires county commission approval of the dedication of public roads in all plats within the extraterritorial area. If the county commission decided to not grant such approvals, plats could not be recorded.

6. Finally, I have some specific questions on the wording in the bill. Does the substitution of the word "shall" with "may" on page 2, line 4 mean the governing bodies will be able to approve applications without a report from the planning commission? If so, why? The major function of a planning commission is to review development applications and send recommendations to the governing body for a final decision. Does the term "zoning regulations" on page 2, line 16 mean only zoning changes, or does it

also include subdivision plats, special use permits, annexations and ordinance text amendments?

Again, the existing extraterritorial zoning provision has been well accepted and has worked effectively in the Bismarck area for many years. On behalf of the City of Bismarck, I would ask that you give House Bill 1410 a **do not pass** recommendation.

Political Subdivision Committee

Re: House Bill No. 1410

Committee Members:

My name is David Patience, I am a Land Development Consultant and Certified Planner. I am with the firm of Swenson, Hagen & Co. Consulting Engineers. The majority of my professional effort is involved in the development of property adjoining existing cities or within their extraterritorial jurisdiction.

House bill 1410 alarms me due to the impact this legislation will have on any proposed development within the extraterritorial jurisdiction. The creation of another planning commission inside of the cities jurisdiction implies that I will be required to acquire another political approval. At present I am required to obtain the approval of a City Planning Commission, City Commission and County Commission on a project of this nature. That is if the project has no circumstances involving state, federal or special interest considerations and approvals. Another political approval would require another meeting and additional opportunity for delays, lack of a quorum, conditional requirements, redundant public hearings, additional staff reports, more documented confirmations of approval and no functional accomplishment.

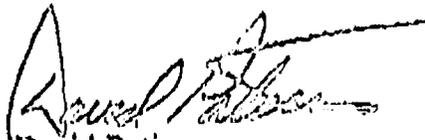
The existing progression of events results in the City Planning Commission having a consideration of the project one month followed the next month by an advertised public hearing. The City Commission then considers the project the next meeting and calls for a public hearing the following month. Another such group could consider the project one month and call for a hearing the following month. The result would be a political approval time equal to the entire construction season in the state of North Dakota. The addition of delays or the political scrutiny of proposed improvements in our region often discourages investment by regional and local developers. The lowest impact resulting in such an obstruction to community improvement is simply higher prices for where we live and more government intervention in our endeavors.

The City Planning Commission has the ability to involve representation from the county. The County Commissioners have the ability to review the City Planning Commission agenda. The County Commission also has the opportunity to review the projects in question when they are asked to accept the dedication of road right-of-way on these projects that are within the extraterritorial jurisdiction.

My concerns are for the product available to the members of our community and the cost they are required to pay for these improvements. This bill seems to put territorial disputes above public benefit.

I will try to attend your scheduled hearing and I would be most happy to appear on this matter but I have a conflict at 2:30 on February 8, 2001 and would have to schedule an appearance later in the afternoon if the hearing permits or at a latter date if the matter continues

Please keep me posted on this matter. My phone number is 223-2600 and my email address is patience@btigate.com.


David Patience

March 15, 2001
Senate Political Subdivisions Committee
Senator D. Cook, Chairman

Informational Packet on
Engrossed House Bill No. 1410
Study of Extraterritorial Zoning

Submitted on behalf of Morton County by:
Greg Greenquist, Morton County Planning Director
Morton County Planning Department
2916 37th Street Northwest
Mandan, ND, 58554
Phone: 667-3346
Email: gggreen@btigate.com

Morton County supports this bill for three reasons:

1. The bill provides for an examination of fundamental problems with the existing laws on extraterritorial zoning. These problems have statewide consequences.
 2. The bill provides for researching the feasibility and desirability of revising the extraterritorial zoning provisions.
 3. Such a study could result in recommendations that will fix the problems with the existing laws on extraterritorial zoning.
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PROBLEMS: Lack of Representation

Existing law (NDCC 40-47-01.1) fails to provide political representation for residents living in a city's extraterritorial zoning area.

- A city's zoning authority can extend beyond a city's corporate boundary onto land owned and occupied by county residents.
- City officials make decisions on all zoning matters and establish building permit fees that directly impact the land and lives of county residents.
- County residents cannot vote for city officials.
- There are no reasonable provisions for county participation in zoning matters within the extraterritorial zoning areas or in expansions of city zoning authority.

City planning and zoning commissions do include members from the county. Planning and zoning commissions are merely advisory bodies made up of appointed, not elected members. It is the elected body, the city commissioners, who make all the final decisions on zoning in the extraterritorial area.

Existing laws (NDCC 40-47-06 and 40-48-03) provide for up to three county members on a ten-member planning/zoning commission. This is the only form of representation allowed . . . minority representation on an appointed advisory board.

The city commission establishes building and zoning permit fees. These mandatory fees apply to the residents outside city limits, within the extraterritorial areas. Again, those residents cannot vote for city officials. If permit fees can be considered as a form of taxation, we could be raising a constitutional question. Is this taxation without representation?

What Have Our Neighboring States Done?

In Montana, cities cannot impose zoning beyond city limits. If a city in Montana wants to zone land, they have to annex it.

In Minnesota, they utilize "Urban Expansion Zones" where there is joint decision making between the city and county on growth areas around cities.

In South Dakota, they practice a form of joint powers, where the city and county leaders share in the decision making process for the extraterritorial area.

Some North Dakota Cities Have Addressed this Problem

Bismarck requires Burleigh County to sign-off on all subdivision plats in the city's extraterritorial jurisdiction before a plat is recorded and before lots are sold. This is a good practice because it allows the counties to review plats before dedication of public road right-of-ways. West Fargo has a similar policy. But this practice is not mandated by existing state law; it is a courtesy and purely voluntary, not a requirement.

This is a good policy because cities are not responsible for road maintenance and snow removal outside of city limits; counties and townships provide these services. Yet cities grant approvals for subdivisions and the streets within those subdivisions. Existing law does not allow the county or township an opportunity to provide input on the design or location of the streets they will be maintaining.

Summary

The purpose of this report is to illustrate the shortcomings of existing North Dakota laws or extraterritorial zoning and to provide some suggestions for future study. These problems are significant and warrant examination.

Our neighboring states don't have this problem. It's time for a second look at the existing law. Some form of joint decision-making in the growth areas around cities will solve the representation problem and allow better planning of these areas.