

Testimony in Opposition to House Bill 1165  
March 18, 2021  
Senate Political Subdivisions Committee  
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the Senate Political Subdivisions Committee. For the record, my name is Bill Wocken. I am testifying in opposition to House Bill 1165 on behalf of the North Dakota League of Cities. House Bill 1165 gives every resident of the extraterritorial area of a city exercising extraterritorial zoning authority the right to vote in every municipal election.

State law governing the manner in which extraterritorial zoning decisions are reached has changed several times over the years to give extraterritorial residents and their elected representatives more voice in extraterritorial zoning decisions. County and township representatives have been added to the statutory Planning and Zoning Commission makeup. (NDCC 40-47-06 attached) All zoning decisions are made at open public hearings, but since 2009 extraterritorial zoning decisions in the outer part of the extraterritorial area are also subject to the process of joint jurisdiction. In joint jurisdiction the city and county must both agree on a zoning decision or the matter can be sent to mediation by a board consisting of both city and county elected officials along with a gubernatorial representative. The final decision, should mediation be ineffective, is made by the county commission. (NDCC 40-47-01.1 attached) Appeals are very uncommon. I am aware of one such situation that settled itself amicably.

In lieu of this joint jurisdiction approach, existing law encourages a city and a county to divide the extraterritorial area into any configuration the two bodies can agree upon and to establish exclusive jurisdictions. This is used in most areas of the state with which I am aware and with very few issues. With both the appeal and division of the extraterritorial area options available there are many fewer zoning disputes than in the past. I have attached to my testimony two visual aids to identify the extraterritorial zoning process options available under existing state law. They are not polished but

hopefully they make the provisions of Chapter 40-47 of the Century Code more easily understood. I was fortunate to attend numerous conference committee meetings at the end of the 61<sup>st</sup> Legislative Assembly as these most recent extraterritorial zoning regulations were being drafted. The committee's overriding concern was to insure the extraterritorial residents had input into the zoning decisions in their back yard.

As I listen to those who are troubled by this statute I often hear the concern that zoning decisions in the extraterritorial area, outside the city limits, are being made by the city. The flowchart I have provided shows that the County Commission has the final say in zoning decisions in the outer half of the extraterritorial zone. What I do not hear often anymore are recent examples of zoning decisions that disadvantage residents. Many of the examples given pre-date the most recent changes instituting the rule of joint jurisdiction. Indeed, in the outer portion of the extraterritorial area most of the decisions are whether or not a residential zoning change should be granted. Often the existing residential units argue about whether or not additional units like their own should be allowed. This decision is up to the County Commission in the end, not the city governing body.

Giving extraterritorial residents the ability to vote in all municipal elections is hard to justify in any event. The extraterritorial residents have no financial stake in the city yet they would be able to vote on all city issues including, Home Rule governance and fiscal matters. This is an unprecedented ability granted to one group of voters to impose taxes on another group of voters without being subject to those same taxes.

For these reasons the North Dakota League of Cities respectfully asks for a Do Not Pass recommendation on House Bill 1165.