

2019 HOUSE POLITICAL SUBDIVISIONS

HB 1471

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

1/24/2019

HB 1471

Job # 31452

Subcommittee

Conference Committee

Committee Clerk: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to extraterritorial zoning fees and regulations

Minutes:

1,2

Chairman J. Dockter: Opened the hearing on HB 1471.

Rep. D. Ruby: Introduced HB 1471. We are regulated by people we do not elect. There is local zoning and city zoning, some of those members are on the county zoning. In our area they are charging building permits double in the zoned area than they are in the city limits of Minot. Their reason for that is you are not paying property tax in our area. But they are paying county tax. You need to go to them and get permits but then you need to pay double because they have to inspect it. If it is that much of a burden to inspect then why are they taking in those areas and taking on the regulation expense? My bill does not allow them to impose any additional regulation or fees on the permits than what they would charge in the city limits. I think it is a reasonable issue and a fairness issue. Because the growth Minot had in the oil boom and some of the issues it caused financially, now through zoning they are trying to limit any further growth outside of their initial planned areas. They want more building and growth to fill in city. If you own land outside of the preferred area you have lost value on your property. I think this committee and this Legislature need to rein it back and give people some say. In my opinion that is regulation without representation and also with the fees that is taxation without representation.

Rep. Adams: Have you taken this to Minot city council?

Rep. Ruby: I have not. I appeared at their meeting voicing my displeasure, it fell on deaf ears.

Rep. Adams: Do other cities charge the two different permit fees?

Rep. Ruby: No, I didn't check to see if all of them do.

Rep. Fegley: Maybe we have to change the law so the people in the extraterritorial zones have a vote in the city government. Especially the people in the closest extraterritorial zones.

Rep. Ruby: I would appreciate that. Even if the landowner vote in that zone not all city elections. But if we are going to be regulated by them we should be able to vote for them too.

Rep. Johnson: HB 1210 will be heard tomorrow would allow those in the extraterritorial to vote in the city.

Rep K. Koppelman: In the past the larger cities had 2 miles for extraterritorial zones, medium cities had 1 mile and that distance was doubled at one point. Do you know what the current distances are?

Rep. Ruby: The smaller ones that qualify is 1 mile, the largest is 4. Grand Forks was having a hard time getting zoning for a landfill so went out the 4 miles.

Rep K. Koppelman: Cities think they need this to plan for city development and zoning is compatible. Were you actually told they charge this higher fee is because you are not paying property tax?

Rep. Ruby: The conversation was from one of my constituent.

Patti Eisenzimmer: (Handout 1) Property owner in Minot.

Rep. Adams: When you get a permit does the county not have their own site, or is all of it at the city?

Patti Eisenzimmer: The county does but it cannot be within the ETA.

Larry Syverson: North Dakota Township Officers Association. We support this bill.

Kevin Ternes: City Attorney for Minot. Read and handed out #2 for Lance Meyer who is Minot City Engineer.

Rep K. Koppelman: Do the people in the ET area have a choice to not use the building inspecting service of your city?

Kevin Ternes: They do not have a choice. If they want to be in compliance with the city, our planning commission, which has a lot of authority in the 2 mile is the members of ET that live out there are appointed by the Mayor. They do have representation and a voice on the planning commission.

Rep K. Koppelman: If things were changed so you did not have to worry about building inspections in the extraterritorial area, if it is treated the same as in other areas of the county, that would solve your extra cost problem. Would it not?

Mr. Ternes: Correct, if city feels they have no vested interest inspecting in the ET we could get by with less staff.

Rep K. Koppelman: If the city has the authority and currently it does. I understand the bill where it says we live in an area outside the city limits and being controlled by extraterritorial zoning. Then we have to go to the city for building inspections and forced to pay permits, then pay double fees compared to what the city pays.

Mr. Ternes: It becomes philosophy.

Rep. Hatlestad: It would seem the city wants to control its growth so that is the cost if they want to take on that opportunity to control?

Mr. Ternes: I would agree. Some people were surprised that Minot is the only city that does that. It was examined and looked at and decided to continue forward.

Vice Chairman Pyle: What is the percentage of building permits inside the city limits verses the ETA?

Mr. Ternes: I don't think it is half but maybe 25% come from the 2 mile.

Chairman J. Dockter: Closes the hearing on HB 1471.

Chairman J. Dockter: Reopens for committee work.

Rep K. Koppelman: Made a do pass motion.

Rep. Magrum: Second the motion.

Rep K. Koppelman: I just don't think they should be charged double.

Chairman J. Dockter: I agree.

Rep K. Koppelman: They are choosing to do building inspections outside of the city. If they don't want to do building inspections and travel 2 miles out of the city don't do them.

Rep. Hatlestad: The point we need to make is when you decided to do this then that is the obligation you take on so they should pick up the tab.

Vote: Yes 13, No 1, Absent 0.

Carrier: Rep. Magrum

Date: 1-24-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES HB
BILL/RESOLUTION NO. 1471

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 Koppelman Seconded By Rep. Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	/				
Vice Chairman Pyle:	/				
Rep. Ertelt:	/				
Rep. Fegley:	/				
Rep. Hatlestad:	/				
Rep. Johnson:	/				
Rep K. Koppelman:	/				
Rep. Longmuir:	/				
Rep. Magrum:	/				
Rep. Simons:	/				
Rep. Toman:	/				
Rep. Strinden:	/				
Rep. Adams:	/				
Rep. Guggisberg:		/			

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Magrum

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

REPORT OF STANDING COMMITTEE

HB 1471: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1471 was placed on the Eleventh order on the calendar.

2019 SENATE POLITICAL SUBDIVISIONS

HB 1471

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB1471
3/1/2019
Job # 33064

- Subcommittee
 Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to extraterritorial zoning fees and regulations.

Minutes:

Written attachment #1 Rep. Dan Ruby pgs.1,2
Written attachment #2 Patti Eisenzimmer
Written attachment #3 Shaun Sipma

Chairman Burckhard opened the hearing on HB1471. All senators are present.

Representative Dan Ruby, (1:18-) **Written attachment #1**. In support of and introduced HB 1471.

Chairman Burckhard: The argument that the residents did not ask to be in the zone, well most people that live in the outskirts of a city are aware they are not in the city and that there probably in an extraterritorial zone. Would you agree or not?

Representative Hruby: What happens is as the city expanded some people who had never been in there, did get included and have been absorbed in. That happens quite a bit, especially when Minot was growing like it did. Minot only has the 2 mile. There is actually one city that has a 4-mile territorial zone. That is quite a reach. I understand that yes they have personal that are driving out. They are going within the 2-miles. I don't see why the extra costs are to the extent that they need to charge that much more. I think they are the only city that does it. So if it was such a big issue you would think the other cities that have territorial zones would be imposing the same costs.

Chairman Burckhard: The fairness issue. You know that is a relative term. How do we determine the fairness? I will remind you that there is 2100 political subdivisions in our state. We have 1400 townships, 357 cities, 180 school districts, 53 counties, and a plethora of park boards and recreations. We have a lot of government to govern.

Representative Ruby: Thank god they don't all have territorial zones. Fairness I think is simple. If a building permit and take somebody who is right on the line. How much more did it cost for that person to inspect or have that building code or permit fee for the inspections when it might be sometimes just across the street. So, fairness would be that it should cost the same. There are not asking to get a break. Obviously their not paying. Some of the

information you will hear, they're not paying city sales tax but their also not getting city sewer, they have to have their own septic system. They usually are on rural water. They are paying more for some of the other basic services that they have already, that is they were annexed in, yes their property taxes would go higher, but then more likely the city garbage service would show up, they could tap into the sewer, at some point and whatever accommodations the city could make to take over the water or not. If is such a huge cost I think every city would be doing this and it would be just understood that that's happens, but it's not.

Senator J. Lee: I don't think it's really fair to compare the cost one way or the other. People chose to live wherever they chose to live. I absolutely can't imagine having a different fee. I served on a planning and zoning commission for 12 years, however, we have in West Fargo we have a 2-mile boundary as well. We have two extraterritorial zone members on the city planning commission, voting members not ex-officio. They are part of the discussion. They obviously can't nominate as they are not in the majority. But they have an important role to play. Part of this is because as you well know you can't just say that everything stops at the city boundaries because the city limits change. We have to plan the transportation so all the streets connect. ET zoning reach is terribly important. Somebody who may have been on a farm close to town, I can't understate the importance of that ET zoning. I also can't understate the importance of the city recognizing the circumstances of the residents who are there. So, really this is a local issue. I am very disappointed that we're looking at this in the Legislature. But I do have a question about the sub-section 2, imposing a regulation. That sounds a bit ambiguous. So can you explain a little bit more about what you mean, because it seems to me that this an equal opportunity for lawyers' phrase here if we don't clarify it a little bit more?

Representative Ruby: Mainly, the intent is that if there is a building code, or restriction offset, variances, all those things that they do for the properties that are within their limits. That's what they would apply to the extraterritorial zones. They would not apply additional or more burdensome regulations on somebody out in those zones. To tell you the truth I don't have examples of that being a problem. I just thought that is a good way to make it consistent with the regulation of their building codes, their zoning requirements, those types of things that would be the same. Obviously this bill does not remove the ET zones because as I said in my testimony, many townships welcome being in it and having the inspectors to be able to do the zoning and all the stuff that they don't have the resources for. So in many cases it is a very good working relationship. It's just the residents in there, yes you may have some members on the board but they weren't really elected, they were appointed. They weren't elected by the people in that zone, so yes technically they are representing them, but maybe they really aren't. Maybe they don't have the same view as the majority of the people in that zone. So they aren't really elected and then they are on the board, then they have the city council that basically makes that decision on the recommendation and there is only two members and they are outvoted, then the people that they don't elect are the ones making final decisions.

Senator J. Lee: I would just remind the crowd that nobody on a planning and zoning commission is elected. They are all appointed. So there would be somebody who represents the city or ET zoning area. They all would have equal authority on a planning and zoning commission. But the regulation part that concerns me is, if you're talking about set-backs and that kind of thing, that isn't where I see this being an issue. I would certainly hope that there would be some conversations between the people in an ET zoning and the city officials but

what if the city decides that they can only be used for A, what if the city decides that area can't be used to move an historical village that you've been fighting about that in Minot too. What if the city decides that there is going to be, because there are regulations all over the city? If you are in a planned development, you have different regulations than if you are in a larger lot set up. My concern is that it is a pretty open area, there and how are you going to be limiting the land use of the person in the ET zoning area, by saying that can't be more restrictive because there are tons of different zoning in the city itself. I am just trying to figure out how that works.

Representative Ruby: I think those decisions are consistent, because they would also be not allowing agriculture in within the city limits or something; or they wouldn't allow an apartment into a certain area, just like they may not allow an apartment somewhere in the territorial zone. Those decisions are still going to be made. As far as that type of stuff; the zoning and land use that's not where I am talking about with regulation. I am talking about building codes, and off-sets those types of things that are regulations proximity to neighboring land as far as making sure you can't put a garage or something within so many feet. If that's the rule that is in the city limits, that should be the rule that is out in the territorial zone. So that's where I was going with this and my intention for it. I do understand that nobody on the zoning board is elected but the people who appoint them are elected by the people within the city limits.

Senator J. Lee: The point is that the word regulation is more open in my head than it is. I can understand, but set-backs- garages are varied depending on what the zoning category is. The regulation gives me a whole lot of heartburn than the other one does.

Representative Ruby: If you feel like tightening that up on those types of things that would be acceptable. I would welcome that improvement on that.

Mr. Larry Syverson: North Dakota Township Officers Association. We stand in support of 1471. We'll leave it at that.

Ms. Patti Eisenzimmer: (17:21-27:25) **Written attachment #2**, pages 1-5.

Senator J. Lee: You should be able to go the Planning Commission also just to let you know that is possible.

Ms. Patti Eisenzimmer: I do understand that but they still really can't represent us.

Senator J. Lee: But I did want to know what the fee is?

Ms. Patti Eisenzimmer: It's not that high yet. But if they keep raising it then we are paying double.

Senator J. Lee: But what you're paying once anytime you build a building.

Ms. Patti Eisenzimmer: Right, but right now residential is \$5 per thousand dollars of the construction value and that is residential. That is in the city of Minot. The 2-mile jurisdiction is \$10 per thousand dollars of construction value. A lot of us feel that if they do raise the fees,

in the city, of course, ours are going to double and we're still would have no say. But if we can be on across the board and equal and fair with the city then if they do raise the city fees, the city property owners would be representing us because they would speak on our behalf also because their fees are going to be the same.

Senator D. Larson: Last session we had a concern with an extraterritorial zone with Lincoln. One of the things that they did was they went to their county commissioners and asked the county commissioners to help them meet with the city commissioners.

Ms. Patti Eisenzimmer: I've spoken to the county commissioners and they told me because we are in the ETA they can go talk to them on our behalf but it doesn't mean it is going to change anything.

Senator D. Larson: But you have gone that route to this point.

Ms. Patti Eisenzimmer: I have talked to our commissioners and there is a reason why there is an ETA.

Opposition Testimony

Mr. Shaun Sipma, Mayor of Minot (30:14-36:20) Opposed to HB 1471. Written attachment #3, p1-3). In reference to what Chairman Burckhard asked what is reasonably fair? I think anyone can argue looking at their tax bill, whether it is a person living within the city, that also pays county taxes for services they do not receive. Or for someone living in a ET zone that is in within a public school district who does not have children that also pays for services that are not taken advantage of. So the perception of fair is depending upon which angle of the issue you want to view it on. We do have two members from the planning committee that are from the ET zone and we also do have a Liaison Committee that does interact with county and school officials that reaches out to our elected county officials and our elected school officials on those issues. This issue has not been brought up to us from that county side as being an issue.

Senator D. Larson: Can you tell me what is the benefit to a person living inside the ET zone versus one mile outside the ET zone? I know there is a benefit to the city. You get to plan how it builds out. But what benefit does a person living in the ET zone have versus one person living right outside of it?

Mr. Shaun Sipma: I think it depends on who you're going to ask with that to which benefit that they are looking for. Is it the lower property taxes that they're going to pay on the county versus within the city? Now those taxes are the same whether they are in the 2 mile or in the 3 mile. That benefit might be closer to services that they do want that are provided within the city, whether it's shopping or whether it is closer to a school they want their children to go to or whether it is closer to their job. So I think to answer the question it would really depend on what services that they are looking for to be able to capitalize on or to enjoy by living outside of city limits and paying those lower property taxes.

Senator Anderson: The city of course could avoid all those extra costs you talk about by dropping their extraterritorial zone to ½ mile and they wouldn't have to have any, that would be their choice. Now, as a practical matter, Senator Lee asked what the fees were, and so

somebody with a \$400,000 house that they're going to build, is going to pay an additional \$2000 for that building permit over what the person in the city pays. In your perception is that the reasonable additional amount to cover all those other costs?

Mr. Shaun Sipma: That has been explained by our department heads and by our city manager. It is the actual cost of having to go out and to do those inspections and the actual cost of our employees to do that. The person in Minot building that same home is paying that actual cost partly from the permit fee, and partly from his property taxes that are going to be much higher than individual who lives in the ET zone.

Senator Kannianen: So your department. How many employees do you have?

Mr. Shaun Sipma: I would actually have to look over to my city manager for the exact number within our building department or within our inspectors for that approximately 20.

Senator Kannianen: Now, Senator Larson with her question, as far as what benefits or services that somebody would receive within the ETA versus like outside. You mentioned a lot of. You didn't mention any specific services for example by city employees or from city. Are there specific benefits that they receive from the city employees?

Mr. Shaun Sipma: To talk about specifics maybe I would look at a joint powers agreement with maybe out Minot Fire Department and Rural Fire Department. It does fall within out ET zone that they would have the ability to assist within that capacity as well. That is something that to my understanding we do not have a fire department surcharge that is also in that benefit. To the other city employee benefits, with living in that 2 mile ET zone, I can't come up with anything directly, other than convenience. The cost of convenience or the savings of convenience of living with that 2 mile ET zone and also taking a look at the potential for what we saw in 2007 through approximately 2014 and 2015 growth, and then some areas being brought into the 2 mile ET as our city boundaries grew. Now as we grow into those areas absolutely they do receive benefits. As we have to extend those services, as we have to bring those areas up to the specifications that are required by our fire folks within the city.

Senator Kannianen: So, the issue of local control that you brought up. Of course when the authority for the Extraterritorial zoning was given by the state legislature, so do you think it is appropriate for an issue like this to come back before the State Legislature and it's not really an issue?

Mr. Shaun Sipma: I think we have to ask ourselves is how do we want to our communities to grow? Do we want to have orderly growth that does have substantial planning, ideas on how our communities are going to grow into the future, or do we act haphazard and grow into areas where the future land use maps didn't exist? You don't have orderly growth and what we've seen many times within that when you have plan versus unplanned is the costs that are associated with the unplanned and the disorderly as those communities grow. If we are going to do this efficiently, if we do this effectively to the most efficient way to do growth, and enjoy growth and to have that planning and to make sure that we keep those costs as low as we can as those communities grow. To do that is absolutely having those two mile ET areas so that the cities can look into the future and decide for themselves on what areas are more likely to grow and absolutely encourage that growth. But also have it orderly so that when a

city does reach those limits, we don't have absorbent costs to try to bring it in compliance with what exists within the city limits.

Senator Kannianen: We're not arguing here whether we should or not have ETA's we're just talking about these extra surcharges. So I mean as far as everything you just said it was about the local control issue of saying the State Legislature shouldn't decide what the permit fees are or being able to charge surcharges. That is a different issue I think.

Mr. Shaun Sipma: This is absolutely where we have to ask ourselves is how much local control are we going to give ourselves or how much are we going to limit ourselves on to what the local elected body sees best for its community that it is trying to navigate through. It is trying to lead as efficiently, effectively, and cost effectively that it can within this absolutely. What is the cost of service, and who's paying for it? If we are subsidizing a portion of that within city limits, if we're charging that same fee outside of those city limits, it is a subsidy. Now, as was testified prior to this, the cost absolutely is double but what is the cost of that and who pays for it when? We've tried to cut down a significant amount of subsidizing costs within our own city and this is one that was brought to our attention to look at the decision back in the 1980's as to why it came into the per-view of okay that does make sense, why did they do that to try to encourage growth within our city. Also, if it is going to grow outside of our city let's make sure that the people that are getting the services are paying the actual fee for it.

Senator J. Dotzenrod: What's happening in Minot is kind of spectacular with the growth there. I was on a tour last summer and I got to see what was happening there. If you look at a map of Minot ten years ago, and you look at the map of Minot today, you would really have a hard time understanding how any city council or group of managers could accommodate that growth and try to pay for everything. The new sewer, water systems, fire and all that, it's where Minot has really gone through a lot. I am a little concerned about this idea that we have to so much more going outside there in the ET. I think it's real important when you look at what's happening in Minot that those ET's really serve a valuable function because of the way that city as expanded the fact that they had those ET zones there ahead of time, allowed them I think some planning to go into so that when the city needed to grow there was a good fit. But, you said here in your testimony that as far as the planning and building department the people inside the city are paying for that with property tax and so that you're not recovering all of that through the fees you charge. The property owners are paying for some of that. So does the planning and building department have responsibilities that go beyond the idea that they are going to go out to a site and make some judgment about the building permit? Have they had to have other responsibilities in other things their doing so that the property owners are having to pay for that with their property taxes? It seems to me that if you were just paying for the work of the building permits and evaluating permits, then you would want to have a fee that would be about the same wherever you are, because it would just be a fee for service. You must have some other activities that their doing in this planning and building department that the property owners need to pay for in the city.

Mr. Shaun Sipma: It's in essence not just paying for the one- time service of going out to the location whether it is in city limits, or out in the ET. There are also the overhead costs of 165 days a year of paying for that department. That is figured into the large term costs of what that permit fee is. So, in that sense to where somebody within city limits is paying a higher

property tax because we have a higher rate than what the county does. They are in essence paying more for the cost of what to their property value which is funding back to the department 365 and also then a portion when they actually come in for that permit fee. Personal example cited (49:10). It is one of those costs within where we have to fund departments 365 days a year and not just stand them up as needed for individual projects.

Senator J. Dotzenrod: Like we have some operations that at the state level, like Game and Fish Department. They are self-funded. They have to charge whatever they- there is no general fund money, through their fees. I am looking at this Planning and Building Department and wondering is that a department that is essentially is going to fund itself. It is going to charge fees and cover those fees need to be to cover the operations of that department. You're telling us well it doesn't really work that way. There is property, owners' contribution's which tells me then there must be other activities that they are engaging in besides just providing building permits. Because if it was just doing building permits, it seems to me it wouldn't matter whether that building was two miles inside the city limits or two miles outside the city limits. It seems to me the cost would be about the same as far as what it takes for the city.

Mr. Shaun Sipma: They do more than just inspections and building fees. When we talk about planning and all of the other activities within the building department. Absolutely! There is a lot of different work that goes into just the permits.

Chairman Burckhard: He talked about the growth of Minot. I think I've heard the percentage of growth in square miles that has occurred in Minot in the last 10 years. It is pretty significant.

Mr. Shaun Sipma: Our city from 2007 has grown by square miles 80%. It is a significant amount of more lane miles of road, and infrastructure that we had spent, our debt services went into over \$100 Million dollars in terms of all of those costs. Some of that absolutely was a quarter of our city destroyed to and having to pay for a lot of rebuilding in that amount of time in terms of that debt. But, the flood did not cause us to grow and those costs that as we expanded we found ourselves growing in population as a portion of our city was destroyed. I bring this up because that plays right into or that relates directly to the long term planning, the ET zone, as the community grows. Now again, I just keep coming back to it, is the real costs of what these permits are, or the work that is done, and who's paying for what? The permit fees whether it's in the ET's at twice that rate or the people inside paying half the rate but a lot more taxes to fund that department 365.

Senator D. Larson: Some of the items that your bringing up it seems like, I am having a hard time understanding the real meat of this thing because when you say that these people that live in ETA zone are not paying those property taxes and so that has to kind of be made up when you're paying for the building inspectors and so forth. But, the people in the ETA zone are paying for the county ones, and yet they don't get to use them because the city wants control over that area. So, it seems to me that as I am trying to figure this out, and I've never been involved in city government, but it seems to me that the city is benefiting by having these people in their ET zones whereas that's kind of why I asked what benefit do they get? Yes, they are close to town, but other than that, they have to pay for all of the county services with their property taxes, and some of them then they don't get to access because the city wants to control it. Do you understand what I am trying to say here?

Mr. Shaun Sipma: Absolutely, and to throw a little more bake on the noodle on that, is the exact same issue with the city people that pay the county that don't access any of the county-building permit or any other county services that are offered in that same sense. So again we're not going out to the county and therefore not requiring any further and higher level of service, so we just pay those county taxes within the city if you want to relate it to that. But within the folks within the ET that they might pay a smaller fee if they were just outside of the ET, but seeing as they are in the ET and do get some higher level of service because of that, whether it is that joint within the fire department, and that is a significant aspect of having the Minot Fire Department with a joint service agreement with Minot Rural Fire.

Sen. D. Larson: It is sort of like the Sheriff's department enforces laws inside of town as well as in the county. They serve all of it. So. On page 2 of your testimony you said that the city incurs additional costs by servicing rural water and sewer lines. Do you service rural water and you pay for that independently of the people that are receiving this?

Mr. Shaun Sipma: Part of that comes into our Northwest Area Water Supply project. So are you familiar with NAWS? We do have a significant amount that is serviced in that sense through NAWS through our water treatment plant. To those fees, yes they do pay a little higher fee there as well to pay for some of those services, but we do as a city absolutely incur costs by dealing with those rural projects right in house the same way that we are incurring costs with our regional flood control project that is being paid through our city sales tax but it is the city staff and the city elected that are dealing with all of that. So it is the holistic picture not just essentially a receipt that is paid for a specific item. There is cost with manpower. It takes times and takes a lot of effort. It is paid for by the tax payers within the city limits.

Senator J. Lee: I kind of like to get away from the smoke and talk about rural fire and water and all that kind of stuff. Well because frankly, I respectfully disagree that the city has its onerous burden of being involved with that. Because the people who live in the rural areas are paying significant rural water fees as you know, and if they have a rural sewer mound system for subdivision or something like that, there are fees involved with that as well that are not necessarily part of this question. Let's not get silly about all of this really. Let's back up to the real issue here. Same with the rural fire. Somebody who is living in a rural area, the rural fire departments cover the rural areas. City fire fighters cover the city area, and so somebody who is paying for rural fire may have a higher insurance rate because perhaps their coverage isn't quite as extraordinary as in the city. I live in a city that has a ton of growth. I get the ET zoning part and we have had Fargo, West Fargo and Horace, in significant discussions 20 to 30 years ago. We solved a lot of problems at that time. I get the growth thing. It's working for us and I would help it would work for you as well. But only the property owner is paying that fee that your saying that everybody who lives in a ET zone has to do. If I am going to build a building but none of these other people at the table who are my neighboring property owners. I am going to build the building and they will pay nothing and I am going to pay all. That doesn't seem like. That's why I see an iniquity in a way that this is being done, by asking the person who is building a structure, whether it is a house, or a shed or commercial property, to ask that person who is building a new building to absorb what your saying is this extraordinary cost of serving that area. I am having a little trouble with that. So I would like to back off from all the other stuff about the ancillary things here and ask a

question again about the regulation part of it. Where do you see the part in subsection 2, about regulations? How do you see that working for you or against you or even more importantly making it easier to be collaborative with the people who live in the ET zoning area?

Mr. Shaun Sipma: (59:45) Taking a look at the local regulation, as I think any city that looks at more and more restrictive regulation coming down from the state side and having less local control, can be very detrimental.

Senator J. Lee: When Rep. Ruby talked about that he felt it would go along with the permit fee things, to talk about regulations being the same, where do you see. Give me an example or two that you can think off the top of your head that would apply to a regulation that you might see as perhaps being different in the ET zoning area than what it would be for someone who lives just across the line and wants to put an addition on his house?

Mr. Shaun Sipma: In terms of direct to the city versus the ET. I would have to take a look at specific services that are provided and that is exactly what we're talking about in what's being provided. Now to say that argumentatively let's say a city wants to provide extra services on their fire department. But if they wanted to provide more services out to the county for a fee, for something that otherwise they would not be getting and would not be paying in property taxes. This bill would say no absolutely you cannot do that and would be subsidized by the property taxes within the city limits. Now that would also tell any jurisdiction absolutely that they are not going to provide any more than the bare minimum to that ET zone, because it is then all going to be subsidized through the property taxes within that jurisdiction.

Senator J. Lee: So, could you have a joint powers agreement between the city and townships the might be in that ET zoning area concerning any expansion of rural fire service, or whatever other services that might that the city would enhance. I don't see a joint agreement between the rural and city fire to help one another in time of need as being the same thing. They are all over the place.

Mr. Shaun Sipma: yes, perhaps the fire department isn't the best way to look at this.

Senator J. Lee: Couldn't you do a JCA with fire. Why couldn't you look at having a joint powers agreement if you were going to be something with the people in the township. Obviously the township surrounds the city. But the townships who are affected by this unless they have ceded their responsibilities to the county in which case you will be dealing with the county, but not to make this too complicated, let's say it's all incorporated townships that are in an ETA area. Why wouldn't that be a way that some of those things that could be done rather than kind of an absolute all or nothing kind of thing?

Mr. Shaun Sipma: I think it comes down to again the specific services that we're talking about and in this case let's use an area that has substantial construction, that has roads, that is looking for city services that might be looking for road clearing or something else that the township itself has recused itself from which in some cases is the case and the county doesn't want to do because it within the 2 mile ET. It would prevent us from being able to recoup those costs. In this case again, it is absolutely who's paying for what cost. That's what I just

keep coming back too. What is the total cost of it? As we've looked at this more restrictions coming down just limit the ability to functionally control it at a more local level.

Senator J. Lee: I am not crazy about the regulation section. But I am trying to figure out where the problems are going to be so that we create them by putting this in here. But I don't see that a joint powers agreement would violate the regulation. I think that is different because both the township has legal authority as standing and the city does as well. If this stays in there, how can you do that? If it goes away what power is taken away to both the ETA residents and the city might do? It is hard to anticipate something that hasn't happened I get that, but from the cities perspective?

Mr. Shaun Sipma: For the day to day as I am hearing over might right shoulder I might have my city manager step forward and give some examples.

Senator J. Lee: Ask how many permits there are in a year?

Senator D. Larson: We have information from Ms. Eisenzimmer that Minot is the only city that charges this additional fee. Do you know if that is accurate?

Mr. Shaun Sipma: As far as my understanding is, looking around yes that is accurate.

Tom Barry, City Manager of Minot (1:05:06) We are talking a lot about fairness. But there is nothing really about this that is fair in any way, right. If you look at the ET, the ET is designated as a zone that is different than the county. It is different because of the zoning requirements of the planning requirements of the design requirements, of the growth requirements that are anticipated to occur over the period of growth of the community into the future. So there are different standards in the ET. Let's recognize that. There's different standards for planning and design and building so we're focusing on the cost now. So for some reason we don't like that there's a difference on the cost but we're okay with the fact that and recognize the need for the fact that there are differences in planning and design and roadway width and all of those kinds of things in the ET. Add the sizes of infrastructure, like sewer and water infrastructure and those kinds of things. So it's not going to be fair. I think what's important about Minot situation here is we've heard a lot today about the folks in the ET are being punished, they are being charged double. There is a surcharge and I ask you to think about it this way. Every city has under Home Rule Charter have the option to decide how it wants to recover its cost for the services it provides. That's what the state grant does. How does Fargo recover costs? How does Minot recover costs is very different? We don't tend to use special assessments all that much in our community. We have \$2 million dollars out of \$180 Million dollar, budget that comes in the form of revenue from special assessments. Other towns in this state have 40 times the amount of special assessment revenue that come into them. Now why is that my business how they want to manage what they manage. It is under their home rule charter. If they want to charge the residents that way and there's a lot of fairness in equity issues that are going on in those questions. This is the same thing. What I would ask this committee to consider is that the cost for processing a permit on average based on our analysis in the city, the differential is about \$500. That is what we're talking about here. The giant windfall for the city is not \$35,000, \$40,000 a year. This is a more important issue about local control. This is a more important issue about how a city gets to maintain it's right on how it chooses to provide the services and recover the

cost of those services. Think of it this way. The cost of the building permit is the cost of the building permit, no matter what it is. How the city recovers its cost for that permit is what at issue here. We've said that since no one in the county ETA or extraterritorial area, is paying property taxes but they need to pay the full cost of the permit. Those folks who are inside the city because we've structured our fees and our taxes the way we have are actually getting a discount, because they are paying at the time they pay their taxes, that tax subsidy essentially. About half of our entire planning, zoning, building and inspection department is financed through property taxes. So here we're talking about folks who are receiving a service that we are providing but have discounted it for those who live in our community. Think of it that way. The true cost of the permit is what those in the ET paying, the folks inside of the city are getting a discount. Instead of thinking it as a weight, the true cost is what the citizens of Minot are paying and the people outside are getting penalized. That is not true. They are paying the true cost of the permit. That's how we are recovering the cost. So I think that is a mix characterization of this issue. Every city has an option to decide how it wants to pay for growth. Growth will pay for growth. Every developer and every new project paid the full cost of that growth. There are some cities that are begging for growth, they are willing to incentivize growth by lowering standards, lowering fees, having property tax subsidize those growth activities. But that is up to them. This is why it is so important to maintain the local control issue here. The city of Minot has said we're willing to in our jurisdiction subsidize some of that growth, because we want to incentivize those inside our community. We want infill to occur because it is cheaper. This is what our Governor has been preaching since he's been in office. We are effectively doing this. But now we're being told wait a minute, we want to pick on you about the cost because despite the fact that you're incentivizing growth inside your city your discounting for growth inside the city because people are paying for it through property taxes. We're going to call this out as an unfair situation. I think that is absurd. In reference to Senator Larson's question, what are the benefits of being in an ET zone? There is a lot of benefits in an ET zone. Orderly, efficient, cost effective growth. Imagine when a community grows it doesn't have to redo its water and sewer line, just roadway width. Those are increases to taxpayers who have to pay for that. There's property protection afforded inside and ET zone because now we have zoning regulations which generally tend to be more insightful than some county regulations. We are protecting private property by having a better standard for zoning. What can be next to what? There is access to services when the time comes. As an ex-public work director for 9 years I can't tell you how many times the city has had to come in and rescue folks who have failed septic systems that want to go and provide the service but they never paid the impact at the very beginning. Zoning enforcement is done inside the ET zone. We fight with the county because they don't want to touch it. They don't want anything to do with this, so the city is left to do zoning enforcement. We're doing zoning enforcement in the ETA, at our cost right. Enhanced emergency services is another benefit. Convenience, we've already talked about that. There are lots of benefits for being in an ET area. The matter of fairness. There are many arguments I could make about well the city residents are paying for this and not getting a service as is being the case made here. The city dedicates 77% of one of its pennies of sales taxes to finance flood control. A four county project, a \$1 billion dollar project that no other county is paying. In Ward counties case, many county residents are paying the \$20-million dollar project in the ET zone that is occurring with Minot taxpayers footing the bill in sales taxes. Now one can make the argument well, those folks shop in Minot, all that stuff too, but they do. But there is a fairness thing. Why don't we make it fair and have everybody charged the same amount? The point I am trying to make to all of this is that nothing is fair. You don't have kids you have to pay the

school tax; you don't use the parks, you still have to pay the Park district tax; this is a cost recovery issue and essentially it is an issue that the city has decided our residents are getting a discount because they live inside our city limits, and those that don't have to pay the full cost.

Senator Anderson: What happens to agricultural property through no fault of their own but because the city expands toward them, they automatically fall into this extraterritorial zone? What happens to them and their property taxes? Is there rezoning of that property or what happens to that situation? What happens then if that farmer decides to build a new \$200,000 barn on his farm property after he falls in to that ETA through no fault of his own?

Mr. Tom Barry: A couple of things, first of all just as a reminder the city does not collect taxes in the ET zone. So we don't have anything to do with that. Their taxes would likely go up it's in the evaluation of their property. So if they have a piece of agricultural land and you build a \$200,000 structure on it, that would get reevaluated by the county assessor, and the county would assess a higher tax for them for county services, but the city doesn't see a dime of that.

Senator Anderson: What happens then if that farmland falls within the city limits because you've expanded the city? What happens in that case?

Mr. Tom Barry: It remains as farm land. The zoning that is designated it's not like we've forced them to okay you can't farm anymore. They get adopted into an agriculture zone, which is inside the city when they develop that's when the zoning gets changed. That's when say you want to redevelop your property or you meet the thresholds for redevelopment there are certain criteria depending upon their circumstances that have to be met. But if simply, the ET grows and it's an agriculture land we have all sorts of agriculture land in our city ET zone right now.

Senator Anderson: This is more of a comment. But some of us get spoiled because I live outside of a city, that is small city and if I want to build a new house I go to the county and I get a \$50 building permit and that is it. No other costs, so I am kind of spoiled and it's hard for me to understand when I have to pay \$4000 for my building permit compared to the \$50 that I pay now.

Mr. Tom Barry: I would suggest that the \$50 is absolutely not covering the cost of that permit and you have the same situation going on in your county where your property taxpayers are subsidizing the permit issuance. There is no way you could process a building permit for \$50 dollars.

Senator Dotzenrod: Around Minot, is there a lot of activity in the ET zone? It appears from what I am hearing there really is quite a bit of stuff going in because Minot is growing? There must be a lot of relative inside the city is it about 50-50 or is there really a lot more activity going around the outside?

Mr. Tom Barry: I don't know if I can give you a specific answer, but I can give you a feel living there right. I would say it was less than 50/50. There is some activity that is occurring. As the mayor said earlier, our city limits have grown by 85% in the last decade or so, so one

could argue a decade ago, was there a lot of activity in the ET zone? I would say absolutely, right, because that's what led to the growth that we have. Right now we don't see that kind of growth occurring. Building permit numbers are down those kinds of things, but, essentially there is some activity but there really to be quite frank there's not a ton of activity across the board.

Senator J. Lee: In five words or less, can you tell me how many permits are issued in a year?

Mr. Tom Barry: I do not know. I can get you that information if you would like it. I would say it is around 1100, but I don't want to give you a wrong answer.

Senator J. Lee: In ET zoning?

Mr. Tom Barry: Not in ET zoning, I don't have the numbers for the ET zoning.

Chairman Burckhard: asked for any other testimony. No one came forward. He then closed the hearing on HB1471. We are going to come back to this bill. Is this a state issue, local issue, and all the complexities of the discussions we've heard today?

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB1471
3/14/2019
Job # 33755

- Subcommittee
 Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to extraterritorial zoning fees and regulations.

Minutes:

Chairman Burckhard asked the committee to discuss HB1471. The hearing was March 1, 2019. All senators are present. We had in favor Representative Dan Ruby, Larry Syverson, and Patty Eisenzimmer. In opposition we had Mayor Shaun Sipma, and city manager Tom Barry.

Senator Anderson: After this bill was over with, I talked to my County Auditor to see if they paid county taxes or not and he told me that all cities pay the same property taxes in the county that the county residents pay in the county. So the people in the city pay the same county taxes these people in the extraterritorial zone would plus whatever the city levies out of it.

Chairman Burckhard: Honestly this is another one of those local issues, but in my opinion the cities have several sources of revenue. Obviously it is property taxes, sales taxes, they get state aid distribution so in the state sales taxes go down, the revenue they get also goes down. So Minot has seen that happen both sales tax wise and state aid distribution. Then we have fees and services. Some of those include special assessments which Minot does not use very much according to Tom Barry. He said it was not a big budget item. They are somewhat limited in their sources of revenue and for someone to question how they determine rates I find that kind of unusual to, it's like why would you argue about how the rates are determined. In my opinion this is a clear local issue.

Senator J. Lee: When I look at subsection 1 and subsection 2, separately because I kind of think you need to do that. It's easier for me by addressing number 2, about the regulation because Rep. Ruby when he was asked about that he said he thought they kind of went together, there wasn't any particular area, so I would definitely if we're going to do anything to move the bill forward like to suggest that we would consider amending that part out. I think that is a can of worms.

Chairman Burckhard: Part 2. **Senator J. Lee:** The subsection 2. On the other one, I am a local control nut and they did send information which I guess I didn't print, but it was only \$24,000 for permits or something. I guess I look at this compared to the Grand Forks that we just talked about and the City of Grand Forks, and they had more people involved. I get that too. But they had many meetings and trying to find some way they could agree on this whole thing. I tell you what, I can't imagine that anybody would be able to negotiate with either of these very capable gentlemen who are here talking about why it ought to be the way they want it. So, I can understand why they're a little peevisish about the fact that its doubled. On the other hand, I hate to tell the city what to do. So I am in a quandary here, but I do think that **the number 2 should go and then maybe we can talk about the number 1.**

Chairman Burckhard: Number 2 says impose a regulation.

Senator Judy Lee: Because regulations can be anything. It could be a difference in that they can't impose a regulation that's different and they may have a different water source; different septic source; they may have roads that aren't matching up or need to match up or any of those kinds of things. The city already got there's all planned out but if it is in an ET zoning it is likely at some point to perhaps be annexed and you want to make sure that it is all compatible so that my mound septic system doesn't fight with Senator Anderson's city sewer system or whatever. There has to be some planning done with all of that, so I have a little more problem with the regulation part. I just wanted to mention that if we're going to do anything about moving it forward. I am not arguing that point now. I would like to see that part go.

Senator Dotzenrod: Replied I will 2nd that.

Senator Judy Lee: I move that we would amend to remove subsection 2 lines 11 and 12,

Chairman Burckhard: "imposing a regulation on any section of unincorporated territory which is more restrictive than an existing regulation in the city exercising the jurisdiction". Any discussion on that.

Senator Diane Larson: Well I do have some first-hand knowledge of this. When we built out home the city of Bismarck told us that since we live in a flood plain, we were not allowed to have a basement. My husband wanted to build our house higher than we did, and we were told no, we can't because then there would be enough room for a basement. He said but if then I fill in some dirt and they said no you can just remove it and you would have a basement. So we had to build our house not as high as we wanted too, which resulted in us having water in our floor joists for 3 months during the flood. I think it was probably more restrictive to say for our building permit we were not allowed to have a basement than they would have in town. So, I am just saying an example of one of the times that that happened, I know of personally.

Senator Anderson: I don't know why the regulations need to be more stringent than in the extraterritorial area than in the city. I mean if you require a sewer line or require a street that should be the same for the city as it is in the extraterritorial because you're trying to make it

the same because you want to annex it later. So I am not sure why they need to be more restrictive than what is in the city. I am going to vote on the amendment.

Chairman Burckhard: Minot as experience 80% growth in square miles over the last 10 years. We had a crisis going on. We had severe growth and we had 1/3 of our city flooded and that was a crisis at its finest. I don't know what to say other than they were forced to grow, because 1/3 of the city was flooded and they were trying to recover from that. That works in their fees to I suppose, because they are wondering where they are going to get the revenue for some of this stuff. They are trying to plan their growth rather than having a knee jerk reaction to growth. Then they have a flood. There is some knee jerk reaction to growth, trust me because we are not a metropolitan statistical area so we don't get a lot of money for planning. We were trying to stop the bleeding on a knee jerk growth reaction as to what they were trying to do back in 2011-2012.

Senator J. Lee: I just had a question because I understand the tremendous growth and the cities cope with it really remarkably well and have seen a lot of hard work to get there. But by doing it the way they are doing it, why wouldn't they if they needed it for the Planning Department, why wouldn't they just raise everybody's fees \$10 everywhere instead of getting the ET zoning people more. The second part of that is, why is it only the people who are building a structure who are paying that extra fee? Because if you need it to manage the cost of city government, then everybody ought to pay it whether they are building a new structure or not. So then you could add ½ mill or something. I am just curious.

Chairman Burckhard: I thought you were talking about building permit fees right. That was the basis for that.

Senator J. Lee: But it is only for the people who are building that are paying that permit.

Senator Dotzenrod: As far as the amendment goes. The only reason I am supporting the amendment is that it is a little hard for me to tell exactly if we had a better definitions of the kinds of different things of different fees that might be used. It is a little hard to tell when they are so general that I am a little concerned that we might be getting into something where we may have a good justification. It might be something going on in that city that really would say to them that they need to have for one reason or another, another different fee structure in one part of the city. I am unclear and it is so general that is why I am supporting the amendment. I think it might be good for us not to have that in there. Let them use their own judgments.

Chairman Burckhard: I imagine 1/3 of your tax base going down the drain literally when you've lost 1/3 of your city. So that source of revenue also went south. Those were the days where if there was a house for sale, the cost was outrageous and would you like to bid?

Senator Anderson: It seems to me like there was such a crisis, if the fees weren't so much higher in the ET area you could've built the houses there and then the county could've worried about the service.

Chairman Burckhard: Well we didn't plan that kind of growth to, I just recall the growth.

Chairman Burckhard: Okay the motion is to remove item 2, lines 11 and 12. Is that correct?

Senator Dotzenrod: I just believe that by taking that out, we're essentially granting some additional authority to the city to use their own judgment and instead of being real restrictive on their behavior we're in some ways we are saying to them, we're not sure we want to impose this sort of restriction on your city right now, so we're going to take it off and let you use your own judgment. Unless the behavior become egregious and I really do think when you have a double the permit fee, in an extraterritorial zone that to me is just. I don't know how you can justify that. To me that is just out of line. If they charge an extra 10% or added an extra \$50 fee, or something for being out in the ET, something that indicated the little extra, but it seems like. The thing that brought this here just seems to be a pretty egregious behavior.

Chairman Burckhard: Are we ready to vote on this amendment? **It is a do pass motion to remove item 2 lines 11 and 12.**

Roll call vote: 4 Yea, 2 No, 0 absent

Chairman Burckhard: The motion passes 4-2. So that is gone. What do we want to do with the verbiage that remains?

Senator Anderson: I am not ready to make a motion yet, but I would like to say that I wish we had a way to solve this argument between extraterritorial areas in the cities. We've seen it come with various cities over the years and I am guessing it will keep coming up because those people in that extraterritorial area have no say in what the city decides that is going to happen to them. You know we have some say, well, the Township Zoning Board and their people on the zoning commission or whatever, but really effectively they have no say. However, having said that, I don't see that restricting this instance really gets us any closer to solving the fight between the extraterritorial people and the city.

Senator Kannianen: it is interesting like Senator Anderson said, before we always to referee certain issues. In this case the legislature created extraterritorial zoning so I think in a situation again where it crosses boundary lines. Anytime when you cross political subdivision lines that is where I think legislature does have not really a local control argument really, holds as much weight. I think there is a place to play for the legislature but I will support the bill but.

Chairman Burckhard: Are you supporting the motion? Have you made a motion?

Senator Anderson: We haven't made one yet.

Senator Judy Lee: In response to Senator Anderson's comment a whole lot of people in my real estate life wanted to move outside the city limits within two or three miles of town to avoid all those nasty rules like you can't let your dog run at large. If you do recall, our wonderful colleague Senator Lyson, he said they had the 3 "S" solution in Williston. Shoot, shovel and shut-up.

Senator Judy Lee: There is a reason why people move there also. But that is not relative to whether a double fee is appropriate or not. I realize that.

Senator Anderson: However, what happened is they moved out there so they want their dog to run anyplace he wanted too. But then the city because they were in the extraterritorial zone made a rule that said they can't let their dog run. So now cancelled the reason why they moved out there in the first place.

Chairman Burckhard: So how do you know that the city made a rule that they can't let their dog run?

Senator Anderson: I am guessing they did.

Senator J. Lee: No, they are running large out there. I can guarantee that. It has to do with building permits and structures.

Senator Dotzenrod: To get us moving. **I will move a do pass on HB1471 as amended.**

Senator Kannianen: 2nd the motion

Chairman Burckhard: I am going to vote against this motion for the reason I gave, this is a local issue and we should kill it. Make it dead.

Senator Anderson: I oppose the motion too because it seems to me I listen to Senator Dotzenrod argument that this is an egregious increase and I agree with that. However, it is a difference in degree, not a difference in kind. So if we agree that the city has the right to do that stuff out there, then whether they charge five dollars extra or one thousand dollars extra, it is a difference in degree, not a difference in kind.

Senator Dotzenrod: I would like to respond to Senator Anderson's comment. We just voted on the bill on Grand Forks, and allowed them with that bill to do that zoning and charge a \$25 fee. Had they been charging \$500.00 I would've voted differently. That is an egregious amount. That is not a reasonable thing. The state should step in and say your behavior is out of line, but I thought that what they had arrived at in Grand Forks was appropriate. To have a building permit that is double I think they were talking in excess amount for a building permit in the ET, and half of that if you were inside the city. If we saw the city was charging an extra \$50, or extra 10% I would probably be voting no on this bill. We shouldn't really have to have this bill. I am just surprised of that sort of level of behavior. I do think that the kind of behavior is important but also the level of the size of the behavior does play into my sense of whether or not we need to be acting. That's just all that I have to say.

Chairman Burckhard: I will remind you again, the amount of revenue they take in from fees is very small. They had a crisis of property taxes going downhill, they had an 80% growth in their square miles in Minot. Those are like how do we finance our way through this?

Senator J. Lee: They had to have a higher mill levy than the whole area. Not just for the people in Minot.

Chairman Burckhard: It is a choice, they have a choice, but we had financial crisis going on at the same time. How do you finance this? You deal with rates and fees in many cases. But in this case it was like you had to make a lot of money.

Senator Dotzenrod: I think that the City of Minot and the leaders of Minot should be given a lot of credit for what they've done. Considering the kind of growth, they've had to deal with. I got in on a tour there, the summer before, but it is just amazing to see the infrastructure they've been able to put together and they've done a pretty good job of trying to hold down your property taxes at the same time. They've got some city sales taxes that the voters have voted in, and so if you take a tour of Minot and see what's going on I think the city leaders need a lot of recognition for what they do. It is amazing.

Chairman Burckhard: The property taxes went up 28% one year, and 29% the next year. So some of the people think guess what you're killing me. I've got two mortgages now and I have a house in the valley and my property taxes are high.

Senator Dotzenrod: Those two increases for the last two years they sound awful high. But I assume that when you look around at the new stuff that got built, I was amazed they could keep their houses.

Chairman Burckhard: Thank you for the compliment. They've done a lot. Some of it has been under crisis terms.

Senator Anderson: The crisis is over now though?

Chairman Burckhard: I don't know. We've got NAWS to pay for, and we've got flood protection to pay for. Two big water projects to pay for.

Senator Anderson: You have the option of moving up the hill. Fargo doesn't have that option. They don't have a hill.

Roll call vote: 4 Yea, 2 No, 0 Absent

Carrier: Senator Kannianen

March 14, 2019

SL
3/14
108

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1471

Page 1, line 2, remove "and regulations"

Page 1, line 8, remove the underscored colon

Page 1, line 9, replace "1. Impose" with "impose"

Page 1, line 10, remove "; or"

Page 1, remove line 11

Page 1, line 12, remove "than an existing regulation in the city exercising the jurisdiction"

Renumber accordingly

Date: 3.14.19
 Roll Call Vote #: /

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1471**

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: Move to amend to remove Subsections 2, line 11+12
 take out this section

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 Sen. Judy Lee Seconded By Sen. Jim Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson		X			
Sen. Diane Larson		X			
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment _____

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

Date: 3.14.20
Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1471**

Senate 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 Sen. Dotzenrod Seconded By Sen. Kannianen

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard		X	Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson		X			
Sen. Diane Larson	X				
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen. Kannianen

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

REPORT OF STANDING COMMITTEE

HB 1471: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1471 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and regulations"

Page 1, line 8, remove the underscored colon

Page 1, line 9, replace "1. Impose" with "impose"

Page 1, line 10, remove ";or"

Page 1, remove line 11

Page 1, line 12, remove "than an existing regulation in the city exercising the jurisdiction"

Re-number accordingly

2019 TESTIMONY

HB 1471

#1
1-24-19
HB 1471

Dear Committee Members,

I am contacting you regarding HB 1471, I feel this bill if passed will give equal rights to the property owners of the Extra Territorial Area (ETA).

I personally did my own research by contacting other cities Jamestown, Fargo, and Bismarck etc. from this research I found that the City of Minot appears to be the only city in the state that charges a 100% surcharge for any services that are offered to the property owner's in the ETA. An example of the 100% surcharge is for the building permits,

Residential \$5.00 per thousand \$ of construction value

Plan Review \$75.00

Excavation in City \$15.00

In 2-Mile Jurisdiction \$10.00 per thousand \$ of construction value

Commercial \$5.00 per thousand \$ of construction value

Plan Review \$70.00 per hour maximum of 4 hours (\$280)

Excavation in City \$15.00

In 2-Mile Jurisdiction \$10.00 per thousand \$ of construction value

I was told by the City of Minot, the 100% surcharge to the property owners in the ETA was implemented over 30 years ago for some of the reasons listed below.

A. As property owners in the ETA we do not pay any city taxes:

1. Each property owner in the ETA pays property taxes in the county, and the city sales tax just like the city property owners pays property taxes in the city and the city sales tax.

B. When first implemented the council wanted to encourage growth in the city and deter property owners from building in the ETA:

1. There are many different reasons why a property owner chooses where to build their homestead whether it is in the city, county or the ETA. Speaking on the cities behalf I can say they did not hide the fees from us as property owners in the ETA, to be honest we probably did not question the reasons why the 100% surcharge or even realize there was this surcharge, as a property owner you want to get started on your project so you just pay the fees that are stated on the application.

C. To help pay for the overhead costs, (mileage and wages):

D. Pay for the services we are receiving from the city:

I feel the 100% surcharge is unjustifiable, majority of the property owners in the Extra Territorial Area (ETA) do not have city services, we do not have city garbage every property owner has a contracted service for their garbage, majority of the property owners in the ETA do not have access to city sewer & water our roads are maintained by the township and the county.

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If ever annexed into the city as property owners we will gladly pay for our share of services that are offered by the city, currently we are not receiving the extra services that are offered to the property owners in the City of Minot.

In 1986 when the fees for building permits were decided upon for the City of Minot. Property owners in the ETA were not given an opportunity to vote on the new fees. The county or township has no control over how building permits are issued or charged, taking away the rights of the property owners in those areas to help decide what is best.

As a property owner in the ETA we can attend the city council meetings, we can speak at a public forum meeting. We do not have representation from the city council members when it comes to addressing our concerns about the ETA or any other issues that can or does directly affect the property owner compared to a property owner in the city. One example is the 100% surcharge this is something that was implemented that we could not vote on or still cannot vote on.

When it comes to the ETA we have no rights on what the city decides for us.

Whether you live in the city or county or ETA, all fees and regulations should be the same for all the property owners in that particular jurisdiction whether it is implemented by the city or county.

Thank you for giving me the opportunity to address this committee and the public, I strongly feel that this is something that needs to be implemented at the state level and to give the property owners in the ETA the same rights as the property owners in the cities when it comes to the fees and regulations and to be given the opportunity to vote on anything that can directly affect the ETA.

Thank you

Patti Eisenzimmer

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1-24-19

**North Dakota House of Representatives
Political Subdivisions Committee
Chairman Jason Dockter**

January 24, 2019

By: Lance Meyer, P.E.
Minot City Engineer
lance.meyer@minotnd.org

HB1471

Thank you for allowing me to submit my testimony regarding House Bill No. 1471.

Currently, the City of Minot exercises a 2 mile extra territorial (ET) jurisdiction, but we are allowed up to 4 miles. Within our 2 mile ET, the City currently charges twice the permit fees for new construction and twice the monthly utility rates. The City has had this fee structure in place since 1986.

The fee structure exists for two primary reasons. First, the City does incur extra travel expense, time, and overhead costs to service the 2 mile ET with building inspection services. The City's building inspection division is heavily subsidized with Minot property taxes, which those in the 2 mile ET do not pay to the City. Thus, the City has to charge the actual cost of service to perform the work required in the 2 mile ET. If equal rates must be charged for inspection services as stated in HB 1471, then the base rate for all users, whether in the City or outside would have to increase to compensate for the lost revenue.

In addition, the City incurs additional costs by servicing rural water and sewer lines farther away from the City. The cost to treat, pump, and maintain the service also costs more outside the City. Again, if the provisions of HB 1471 pass, the loss in revenue would have to be spread to all rate payers inside and outside city limits.

The second reason the City Council set the fees in this manner was to help control urban sprawl outside of City limits. Unorderly growth is costly from a service standpoint, as infrastructure, staffing, and overhead costs to service this type of growth are higher. Planned orderly growth of the City limits helps to build a sustainable tax base and helps to lower service costs by a reduction in overhead and inefficiency costs.

The City feels it should have local control over the services it provides and fees it charges. The fees being charged in our 2 mile ET are not out of line when compared to the cost of services. As an example, for a new single family home valued at \$312,000 in the 2 mile ET, the permit cost differential is \$570 compared to a permit within City limits. This additional fee covers the

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cost of the required inspections the City performs, which is over and above the minimum required inspections the county inspector performs. Thus, the rural resident in the 2 mile ET is getting a better service for slightly more money than what the county would perform.

The City of Minot requests a "Do Not Pass" recommendation on HB 1471.

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House Bill 1471
Senate Political Subdivisions Committee
March 1st, 2019

Good morning Chairman Burckhard and members of the Political Subdivisions Committee. For the record I am Dan Ruby, Representative from District 38.

I introduced House Bill 1471 after a constituent brought an issue to my attention that is happening in the extra-territorial zone surrounding the City of Minot. Minot has a two-mile zone in which they regulate the planning of the property in that two-mile radius. Most people accept that there is a need to have standards and planning for developments and structures that could eventually be absorbed within the city limits through annexation. Townships will often turn over zoning responsibilities to a larger subdivision that has the personnel already performing duties of planning and inspection of construction projects. The problem that is happening in the Minot area is that the city is charging the people in the extra-territorial zones double what they charge people in the city limits.

So, House Bill 1471 simply says that cities can't regulate or charge permits at higher levels than they do for the property owners within the city. The city justifies this by saying the people in the zone do not pay city property taxes, so they should pay a higher rate than city residents. My problem with that argument is that those residents did not ask to be in the zone and had no vote to be included. Nor do they vote for the people that are imposing the regulations and permit fees so there is no ability of them to contact someone who represents them when those decisions are made.

Some might question whether this prevents local control. This bill does not prevent a city from charging whatever they want for permits and it does not limit what zoning regulations can be imposed. It simply asks for fairness for all residents in and around the cities that have created extra-territorial zones.

Chairman Burckhard and members of the committee, I ask for your support for a do pass recommendation and would be happy to answer any question you may have.

State House rightly supports fairness for extra-territorial residents

Editorials

Feb 1, 2019

A bill prohibiting cities from charging higher building permit fees in their extra-territorial areas passed the North Dakota House overwhelmingly Wednesday – overwhelming to the tune of a 91-1 vote.

Given the support in the House, it would seem to set up a no-brainer in the North Dakota Senate, although strange things can happen in Bismarck.

The sponsor of the bill is Rep. Dan Ruby, R-Minot. House Bill 1471 states cities cannot charge more for permit fees in extra-territorial areas than in the corporate city limits. Cities also cannot impose more restrictive regulations in extra-territorial areas under the bill.

The issue arose from Minot.

Patti Eisenzimmer of rural Minot had asked the Minot City Council last year to reconsider building permit fees that are doubled in the extra-territorial area. The city upheld the fees last fall. Minot has extra-territorial zoning jurisdiction in the two miles around its city limits.

Eisenzimmer is on the ethical high ground, despite a reasoned argument from the city about the additional cost of services delivered to extra-territorial areas.

But the ethical high ground is mighty powerful position and the people of this region are nothing if not supportive of ethics and fair play.

Mr. Ruby warrants a tip of the hat for advancing the bill.

Hopefully the Senate will abide fundamental fairness and this issue will be closed by the end of this biennium.

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Dear Members of the Senate:

I am reaching out to you on behalf of (HB 1471), I feel this bill if passed will give equal rights to the property owners of the Extra Territorial Area (ETA).

I personally contacted Jamestown, Fargo, and Bismarck etc. and found out that the City of Minot appears to be the only city that charges a 100% surcharge for any services that are offered to the property owner's in the ETA.

An example of the 100% surcharge is for the building permits,

Residential \$5.00 per thousand \$ of construction value

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Commercial \$5.00 per thousand \$ of construction value

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In 2-Mile Jurisdiction \$10.00 per thousand \$ of construction value

I was told by the City of Minot, the 100% surcharge to the property owners in the ETA was implemented over 30 years ago for some of the reasons listed below.

In 1986 when the fees for building permits were decided upon for the City of Minot. Property owners in the ETA were not given an opportunity to vote on the new fees. The county or township has no control over how building permits are issued or charged, taking away the rights of the property owners in those areas to help decide what is best, or at least have a voice on the cities decisions.

1. To help pay for services that we receive from the city.

Majority of the property owners in the ETA do not receive extra services from the city, such as water, sewer or garbage services.

2. Since city property taxes are not collected on parcels outside the city limits, the doubling of fees ensures city costs are covered for the services and not subsidized by the city property owners.

3. To help pay for the wages of the employees since the property owners in the City of Minot pay for these services through their taxes.

- 1. If they are using the 100% as a reason to pay wages for the building inspectors or other staff within this department, maybe it is time to reconsider other alternatives than the 100% surcharges to the property owners of the ETA. Could it be that the city is overstaffed in this department and without the 100% surcharge they cannot meet their budget.**

- a. As a property owner in the ETA we already are paying for the wages of the county employees and paying for the services offered by the county & township.
- b. The County also has their own Building Inspector which the property owner's in the ETA can't utilize but we pay for this service through our property taxes.
- c. To offset the overhead expenses the city incurs by servicing customers outside the city limits.
- d. If the 100% surcharge is to help cover the extra mileage for the building inspectors than you have to consider that some of the properties in the ETA are closer to the City of Minot's office than the property owners that live on the North side of town.
- e. To encourage growth inside the city limits versus people building outside the city limits, the property owner should not have to pay double just because they choose to move out of the city limits.

As property owners in the ETA we are paying for the county building inspector with our property taxes a service we cannot utilize.

We also have to pay a 100% surcharge to pay the City Building Inspector for any services we may receive in the ETA (an example is the building permits).

Speaking on the cities behalf I can say they did not hide the fees from us as property owners in the ETA, as a property owner we probably did not question the reasons why the 100% surcharge or even realize there was this surcharge. As a property owner you want to get started on your project so you just pay the fees that are stated on the application.

When it comes to the ETA we have no rights on what the city decides for us, we are not allowed to vote on services being implemented that has or can directly affect the property owners in the ETA.

Whether you live in the city or county or ETA, all fees and regulations should be the same for all the property owners in that particular jurisdiction whether it is implemented by the city or county.

As one party stated the ETA is what you would consider taxation without representation, or the city double dipping.

Any concerns that need to be addressed about the ETA, cannot be presented to the county board or our township boards, we are controlled by the city.

I strongly feel along with the other property owners in the ETA, this is something that needs to be changed at the state level, all we are asking for is to be charged the same fees to do away with the 100% surcharge on any services we may receive from the city, and for the regulations to be the same in the ETA as in the city.

If the ETA is under the cities jurisdiction than everything should be the same for all property owners whether you live in the city limits or the ETA.

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As property owners in the ETA all we ask from you today is vote yes to pass HB 1471.

Patti Eisenzimmer

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...I believe it is ridiculous that we get slammed on fees and receive no benefit for that. To me it does not make any sense, it was just another way for the city to dig into the county's pockets and over charge at the same time. When we built our house out here, the two mile jurisdiction literally ended at our driveway and I basically had to pay double for a building permit however the city provides no benefit to me out here and Ward County gets my taxes directly. It makes no sense to me whatsoever.

I think it should be expected for the city to be fair and reasonable to all applicants who apply for permits. Managing the two mile zone literally costs them zero extra dollars but the way it is designed has punished those who found themselves trying to build within this imaginary zone.

Matt

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3.1.2019
att #2
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Patti Eisenzimmer

From: rgeisen@srt.com
Sent: Wednesday, February 27, 2019 8:44 PM
To: Patti Eisenzimmer
Subject: Fwd: ND house Bill 1471

EXTERNAL email received. DO NOT open suspicious emails.

----- Forwarded Message -----

From: Chad Mosser <Chad.Mosser@enbridge.com>
To: rgeisen@srt.com, druby@nd.gov
Sent: Wed, 27 Feb 2019 11:42:52 -0600 (CST)
Subject: ND house Bill 1471

Patti and Dan,
I support you in your efforts with House Bill No 1471. I live in the extra-territorial zone that would fall under the City of Minot jurisdiction, therefore deserve the same treatment as city residents when it comes to permitting. We residents out of city limits, yet under city jurisdiction, already are "last" when it comes to most things and already pay more for services such as sewer and water. Please continue to fight and represent citizens such as myself!

Chad Mosser

5212 4th ST SW
Minot ND 58701

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acc # 3
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**Senate Political Subdivisions
Chairman Randy Burckhard
March 1, 2019**

**By: Shaun Sipma
Mayor, City of Minot
shaun.sipma@minotnd.org
701.857.4750**

HB 1471

Chairman Burckhard and Members of the Senate Political Subdivisions Committee, my name is Shaun Sipma. As Mayor of Minot, I am here in opposition to HB 1471. It is true that we do impose a higher permit fee on building permits in our extraterritorial zone than we do within city limits and we would very much like to retain that authority.

Those persons and businesses outside of our city limits and within our extraterritorial zone do not pay property taxes but receive services from our community. When such persons or businesses apply for a building permit, the city incurs certain costs. Within the city limits, those costs are recovered through both a building permit fee and an assessment of property taxes. In fact, property taxes pay for about half the cost of the Planning and Building Department – a tax paid by our residents and not those in the extraterritorial zone. In short, our property taxes subsidize building permit activities within our city limits.

This is not the case in the extraterritorial zones. To make sure we recover our costs, we decided to charge a higher fee than we do within the city limits. It is simply a reasonable effort to make sure the cost of government is paid by those who access and utilize its services. Also, the committee should note that when a building permit is processed outside of city limits, our city staff may travel further from our city core. This takes more of their time and increases costs. So, any building permit applied for in an extraterritorial zone also consumes, on average, more city resources than those within city limits.

More specifically, our permit fee structure exists for two primary reasons. First, the City incurs extra travel expense, time, and overhead costs to service the two-mile extraterritorial zone with building inspection services. Thus, the City has to charge the actual cost of the service to perform the work required in the two-mile extraterritorial zone. If equal fees must be charged for inspection services as stated in HB 1471, then the base fee for all users, whether in the City or outside would have to increase to compensate for the lost revenue. In addition, the City incurs additional costs by servicing rural water and sewer lines farther away from the City. The cost to treat, pump, and maintain the service also costs more outside the City. Again, if the provisions of HB 1471 pass, the loss in revenue would have to be spread to all rate payers inside and outside city limits.

The second reason the City Council set the fees in this manner was to help control urban sprawl outside of City limits. Unorderly growth is costly from a service standpoint, as infrastructure, staffing, and overhead costs to service this type of growth are higher. Planned orderly growth of the City limits helps to build a sustainable tax base and helps to lower service costs by a reduction in overhead and inefficiency costs.

Perhaps most disturbing with HB 1471 is that this is a local control issue. HB 1471 proposes to override local control. This intervention into local affairs, operations, costs, and revenues of political subdivisions upsets local decisions that were fairly and reasonably deliberated. Our efforts to capture the cost of government in a way that does not provide for property tax subsidies for those who chose to live outside our jurisdictional boundaries, but still receive our services, is equitable and fair. Citizens living in the extraterritorial zone receive some city services, but do not customarily pay their fair share of the cost of those services. If HB 1471 passes, our City would be forced by the State to restructure our fees and services because a scant few want to receive the same services our residents do at half the cost. I

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fundamentally disagree with that inequity and the effort in this bill to force that inequity upon our city.

For all of the reasons I have just stated, the City of Minot asks for a "Do Not Pass" recommendation on HB 1471. Thank you for your time today and I would be happy to address any questions.