



Bismarck- Burleigh Commissions Committee

The Bismarck-Burleigh Commissions Committee is scheduled to meet on Tuesday, February 6, 2024, at 4:00 PM in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota.

Call to Order

1. Consider approval of minutes

Documents:

[December 5, 2023 - Minutes.pdf](#)

2. Discuss Extraterritorial Area (ETA)

Documents:

[Apple Creek ETA Agreement 2024.pdf](#)
[Missouri ETA Agreement 2024.pdf](#)
[Attorney General Letter Summary 2007.pdf](#)
[Attorney General Opinion 1995.pdf](#)
[Letter to commison on ETA.pdf](#)

3. Provident Building Update

4. Other Business

Adjourn



Bismarck-Burleigh Commissions Committee

12/5/2023 - Minutes

Call to Order

Chair Bakken called the meeting to order at 4:00 PM. Committee members present were Mayor Mike Schmitz, Burleigh County Commission Chair Steve Bakken, Burleigh County Auditor Mark Splonskowski, and City Administrator Keith Hunke.

1. Consider approval of August 4, 2023, meeting.

Administrator Hunke motioned to approve the August 4, 2023, meeting minutes, and Auditor Splonskowski seconded. Upon a roll call vote, all voted aye.

2. Discuss Extraterritorial Area (ETA)

Community Development Director, Ben Ehreth, provided an overview of the ETA and agreements with other jurisdictions including Burleigh County, City of Lincoln, Naughton Township, Apple Creek Township, and Missouri Township. The agreements relate to those entities retaining zoning authority beyond the City's ETA jurisdiction. Director Ehreth continued by noting that Community Development staff met with township officials in October 2023 and agreed to meet every two years to discuss the ETA boundary line and any modifications to consider. Director Ehreth noted that the Together 2045 comprehensive plan indicates that there should be no need to modify the ETA boundary in the immediate future because there is sufficient room for the community to grow for the next 20 years.

Director Ehreth noted that in discussion with Apple Creek Township officials it was discovered that the City has jurisdiction for flood plain administration for all of Apple Creek Township; however, this had not been the practice. City staff is working with County Building Official Mitch Flanagan to develop a course moving forward.

Director Ehreth reported that through discussions with Naughton Township officials, the zoning map that they are using is outdated and it references the former two- and four-mile zoning jurisdiction boundaries.

It was also noted that there is not a signed agreement between Missouri Township and the City of Bismarck on file. Staff is working to obtain a signed agreement.

The committee discussed various options pertaining to jurisdiction and building permits. Director Ehreth was tasked with researching North Dakota Century Code to determine if it is feasible for a city to relinquish its permitting authority within the ETA boundary. Director

Ehreth will report back at the February 2024 meeting.

3. Discuss Future Meeting Schedule

The group approved the proposed schedule.

4. Discuss Future Meeting Topics

The group discussed future meeting topics to include public health, prisoner care, IT services agreement, and the status of the Provident Building renovations. The group will discuss ETA at the February meeting, and budget related items at the March meeting.

5. Other Business

Mayor Bakken opened the meeting for public comment.

Gary Olson and Bob Stampka residents of Grand Prairie Estates Subdivision expressed concerns with a neighbor who is conducting his business from his residence in the neighborhood. The gentlemen expressed concern for the volume of equipment and employees coming and going from the property. Both gentlemen indicated that they have had discussions with both City and County employees and officials without a resolution to their issues. They also discussed covenants associated with the subdivision and questioned why the City would not enforce those rules.

Mayor Schmitz addressed the gentlemen and informed them that covenants are a private matter that must be enforced through a private homeowner's association and the city does not have the authority to enforce private agreements.

Both City and County members agreed to research the issues and work with the homeowners and staff to enforce the zoning regulations for the rural residential properties.

Adjourn

There being no further business to discuss, the meeting adjourned at 4:49 PM.

APPLE CREEK TOWNSHIP AND BISMARCK EXTRATERRITORIAL JURISDICTION AGREEMENT - 2024

This AGREEMENT, hereinafter referred to as "2024 Agreement", is between THE CITY OF BISMARCK, a Municipal Corporation, hereinafter referred to as "Bismarck", and APPLE CREEK TOWNSHIP, an organized township, hereinafter referred to as "Apple Creek".

WHEREAS, Section 40-47-01.1 North Dakota Century Code (NDCC), Section 40-48-18 NDCC, and Section 58-03-11 NDCC provide for the jurisdiction of Bismarck and Apple Creek over the zoning of land and generally provide: that Bismarck would have sole extraterritorial authority within two miles of its corporate limits in any direction, that Bismarck and Apple Creek would have joint jurisdiction with the area from two miles and four miles of Bismarck's corporate limits in any direction in Apple Creek Township, and that Apple Creek would have sole jurisdiction within the remainder of the township beyond four miles of Bismarck's corporate limits, and

WHEREAS, Title 14, Section 14-04-19 and Section 14-05-07 of the Code of Ordinances of the City of Bismarck further provide for the jurisdiction of Bismarck over the issuance of building permits and the administration of flood plain regulations and generally provide that Bismarck would have sole extraterritorial authority for such activities within four miles of its corporate limits in any direction in Apple Creek Township, and

WHEREAS Bismarck and Apple Creek previously agreed to the extraterritorial boundaries by Agreement dated January 4, 2010 by Apple Creek Township and January 12, 2010 by the City of Bismarck, hereinafter referred to as "2010 Agreement", and now the parties terminate the 2010 Agreement and contemporaneously modify the extraterritorial boundary between the two political subdivisions under this 2024 Agreement as delineated below, and

WHEREAS, Section 40-47-01.1 NDCC provide that two subdivisions may control authority pursuant to a written agreement and that Bismarck and Apple Creek have reached such an agreement,

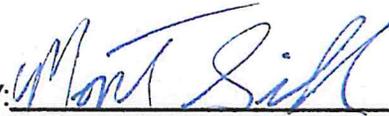
NOW THEREFORE, IT IS AGREED, between Bismarck and Apple Creek that Bismarck shall have sole extraterritorial zoning, building permit, and floodplain administration authority and Apple Creek shall have sole zoning, building permit, and floodplain administration authority as shown in Exhibit "A" hereto and by reference made a part hereof.

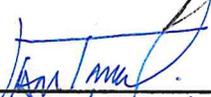
IT IS FURTHER AGREED that upon the written request of either party, the terms of the agreement shall be reviewed. Any amendments to the agreement shall be mutually approved by both parties.

IT IS FURTHER AGREED that the term of the agreement shall be for a period of five years from the date of approval of the last signature of a party noted below and shall automatically renew for successive five-year terms unless terminated in writing by notice to the other party at least six (6) months prior to the renewal date.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year written below.

BY: 
Vice President, Board of City Commissioners

BY: 
Chair, Township Board of Supervisors

ATTEST: 
Acting City Administrator / Assistant City Admin.

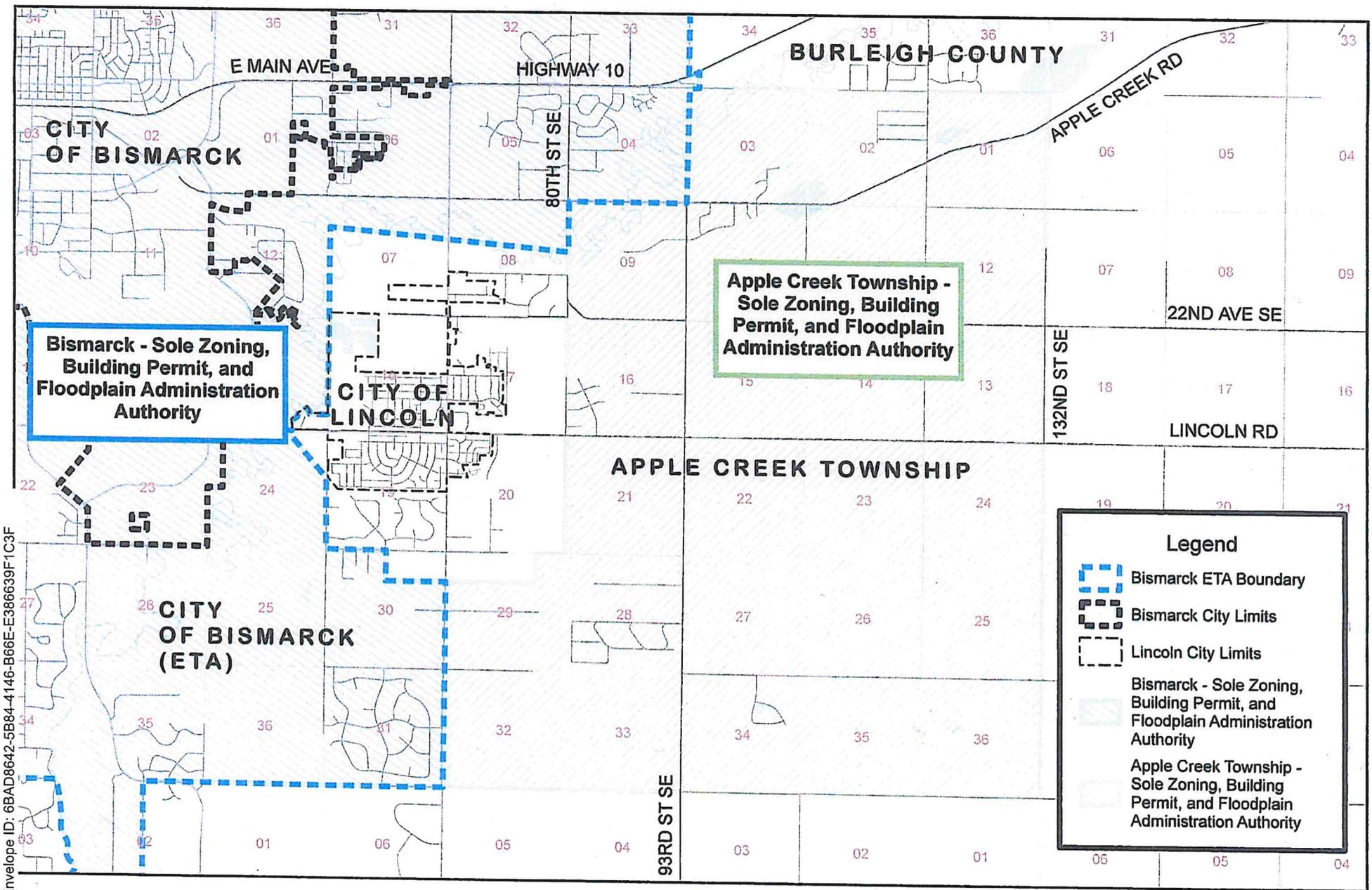
ATTEST: 
Township Secretary

DATE: 1/17/2024

DATE: 8 Jan 2024

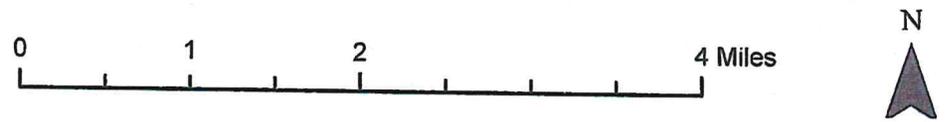
EXHIBIT A

December 2023



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This map is for reference only and is not intended as a survey. No liability is assumed as to the accuracy of the data delineated hereon.



**MISSOURI TOWNSHIP AND CITY OF BISMARCK
EXTRATERRITORIAL JURISDICTION AGREEMENT - 2024**

AGREEMENT between THE CITY OF BISMARCK, a Municipal Corporation, hereinafter referred to as “Bismarck”, and MISSOURI TOWNSHIP, an organized township, hereinafter referred to as “Missouri”.

WHEREAS, Section 40-47-01.1 North Dakota Century Code (NDCC), Section 40-48-18 NDCC, and Section 58-03-11 NDCC provide for the jurisdiction of Bismarck and Missouri over the zoning of land and generally provide: that Bismarck would have sole extraterritorial authority within two miles of its corporate limits in any direction, that Bismarck and Missouri would have joint jurisdiction with the area from two miles and four miles of Bismarck’s corporate limits in any direction in Missouri Township; and that Missouri would have sole jurisdiction within the remainder of the township beyond four miles of Bismarck’s corporate limits, and

WHEREAS, Title 14, Section 14-04-19 and Section 14-05-07 of the Code of Ordinances of the City of Bismarck further provide for the jurisdiction of Bismarck over the issuance of building permits and generally provide that Bismarck would have sole extraterritorial authority for such activities within four miles of its corporate limits in any direction in Missouri Township, and

WHEREAS Bismarck and Missouri wish to modify the extraterritorial boundary between the two political subdivisions, and

WHEREAS, Section 40-47-01.1 NDCC provides that political subdivisions may change their authority pursuant to a written agreement and that Bismarck and Missouri have reached such an agreement,

NOW THEREFORE, IT IS AGREED, between Bismarck and Missouri that Missouri shall have sole extraterritorial zoning and building permit jurisdiction within all of Missouri Township, as shown in Exhibit “A” attached hereto and by reference made a part hereof.

IT IS FURTHER AGREED that upon the written request of either party, the terms of the agreement shall be reviewed. Any amendments to the agreement shall be mutually approved by both parties.

IT IS FURTHER AGREED that the term of the agreement shall be for a period of five years from the date of approval of the last signature of a party noted below and shall automatically renew for successive five-year terms unless terminated in writing by notice to the other party at least six (6) months prior to the renewal date.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year written below.

BY: _____
President, Board of City Commissioners

BY: _____
Chair, Township Board of Supervisors

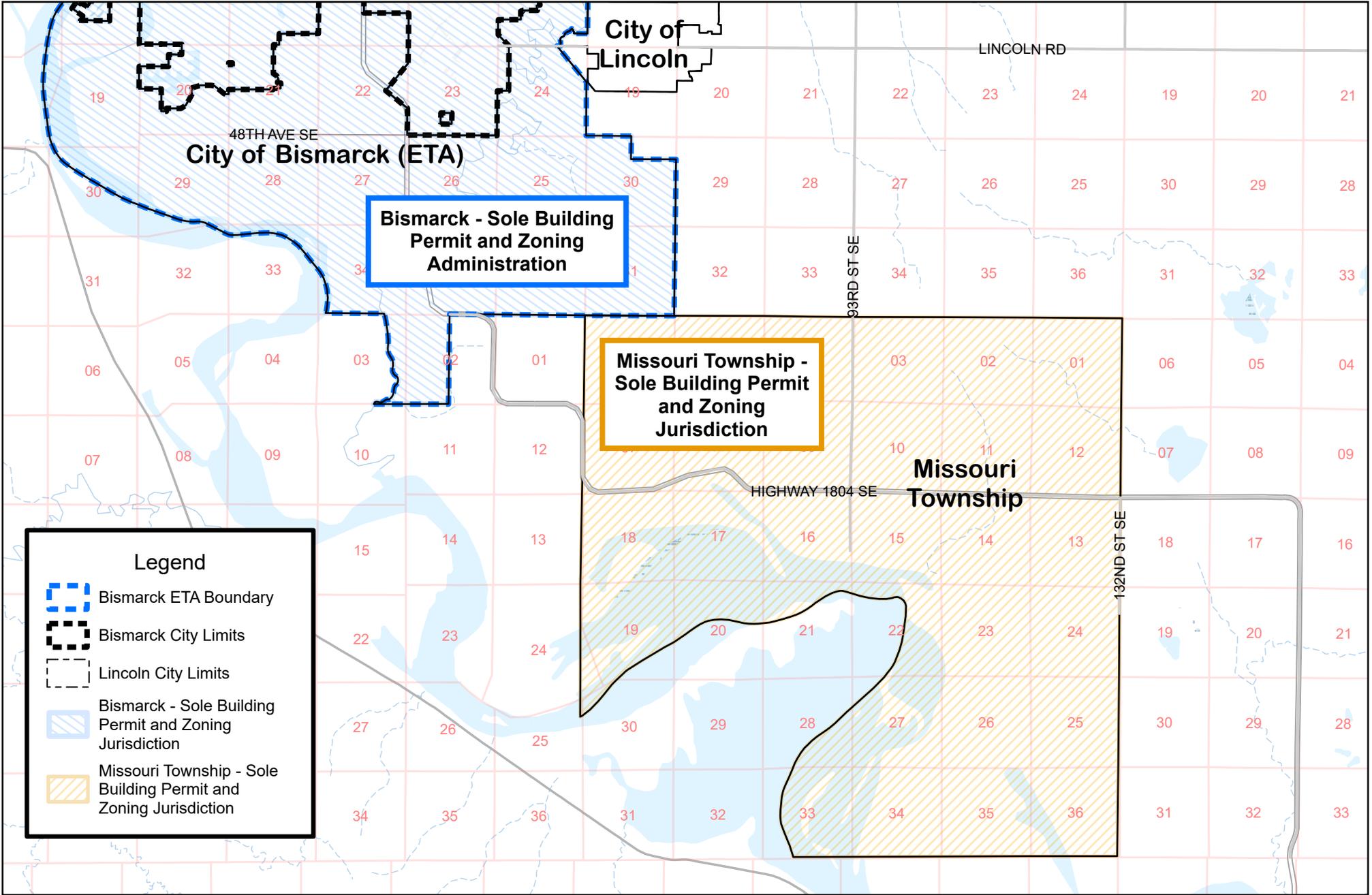
ATTEST: _____
City Administrator

ATTEST: _____
Township Secretary

DATE: _____

DATE: _____

EXHIBIT A



Legend

- Bismarck ETA Boundary
- Bismarck City Limits
- Lincoln City Limits
- Bismarck - Sole Building Permit and Zoning Jurisdiction
- Missouri Township - Sole Building Permit and Zoning Jurisdiction

This map is for reference only and is not intended as a survey. No liability is assumed as to the accuracy of the data delineated hereon.



required the city zoning or planning commission to provide at least 14 days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The bill also provided that the purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. In 1999 a technical correction was made to the law in House Bill No. 1049.

Since 1981, there have been a number of Attorney General's opinions interpreting NDCC Section 40-47-01.1. These opinions included:

- A letter dated November 6, 1989, which stated a city's extraterritorial zoning authority preempts township zoning occurring within that same extraterritorial area. If a city's floodplain regulations, building permits, building code ordinances, and building code regulations are enacted under a city zoning authority, these regulations and permits will preempt township counterparts within the extraterritorial area. If a city chooses to enforce the State Building Code, including any amendments it enacts to that code, township enforcement of the same code is preempted within the extraterritorial area.
- A letter opinion in 1996, 96-L-188, which stated only a city may zone in the area affected by extraterritorial zoning authority, even if the city has not adopted zoning ordinances.
- An Attorney General's opinion in 1997, 97-F-10, which opined that the authority to license the retail sale of alcoholic beverages is granted to the county for all parts of the county outside the corporate limits of a city notwithstanding a city's extraterritorial police power jurisdiction granted by Section 40-06-01. Section 40-06-01 provides that except whereas otherwise provided by law, a city has jurisdiction over all places within one-half mile of city limits for the purposes of enforcing health ordinances and regulations, and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the city. However, a city's zoning authority includes the power to regulate and restrict the location and use of a retail alcoholic beverage establishment and as such a city may effectively prohibit a person from engaging in the sale of alcoholic beverages at a particular location within the extraterritorial zoning jurisdiction of the city.
- An Attorney General's opinion in 1998, 98-F-18, which opined that a city may apply and enforce its fire prevention code in unincorporated territory within the city's extraterritorial zoning authority to the extent the city has adopted the fire prevention code under its zoning authority and extended the application of the zoning regulations by ordinance.

OTHER LAWS RELATING TO EXTRATERRITORIAL ZONING AUTHORITY

Zoning in General

Besides dealing with extraterritorial zoning authority, NDCC Chapter 40-47 relates to zoning in general. In addition to the provisions specifically addressed, the chapter contains provisions for creating, amending, enforcement, and repeals of zoning regulations.

Presently in the areas surrounding a city in which the city has not exercised jurisdiction, the county is the zoning authority, unless the township has exercised its zoning authority. Under NDCC Section 40-47-01, for the purpose of promoting health, safety, morals, or the general welfare of the community, the city may regulate the size of buildings, the size of lots and yards, the density of population, and the location of buildings based on the purpose of the buildings. This broad zoning regulation is limited by the provisions in state law relating to the State Building code. In particular, Section 54-21.3-03 requires a governing body of the city, township, or county that elects to administer and enforce a building code to enforce the State Building Code. However, the State Building Code may be amended by these political subdivisions to conform to local needs.

Under NDCC Section 40-47-02, the city may divide the city into districts for purposes of zoning. All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from another. Section 40-47-03 requires that regulations adopted for zoning ordinances must be part of a comprehensive plan and must be designed to:

1. Lessen congestion in the streets.
2. Provide for emergency management.
3. Promote health and the general welfare.
4. Provide adequate light and air.
5. Prevent the overcrowding of land.
6. Avoid undue concentration of population.
7. Facilitate adequate provisions of transportation, water, sewage, schools, parks, and other public requirements.

Under NDCC Section 40-47-06, the governing body of the city may give its zoning authority to a zoning commission. If extraterritorial zoning authority is exercised, the zoning commission must be made up of at least one person residing outside the corporate limits of a city having a population of fewer than 5,000, two persons residing outside the corporate limits of a city having a population between 5,000 and 24,999, or three persons residing outside the corporate limits of a city having a population of 25,000 or more. The persons to be on the zoning commission from outside the corporate limits of the city are appointed by the board of county commissioners within the area in which the zoning authority is exercised and must reside within the area in which zoning regulation authority is exercised by the city.

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 95-11

Date Issued: November 8, 1995

Requested By: Shirley Dykshoorn, Director
Office of Intergovernmental Assistance

- QUESTIONS PRESENTED -

I.

Whether home rule cities and home rule counties are required to adopt the state building code if they choose to administer and enforce a building code.

II.

Whether cities, counties, and townships may adopt a version of the Uniform Building Code or Uniform Mechanical Code of a year different from that adopted as the state building code by the Office of Management and Budget.

III.

Whether cities, counties, and townships choosing to administer and enforce a building code must adopt the building code pursuant to their zoning authority.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that certain home rule cities are not, and all home rule counties are, required to adopt the state building code if they choose to administer and enforce a building code.

II.

It is my opinion that cities (except certain home rule cities), counties, and townships may not adopt a version of the Uniform Building Code or Uniform Mechanical Code of a year different from that adopted as the state building code by the Office of Management and Budget.

III.

It is my opinion that cities choosing to administer and enforce a building code may adopt the building code pursuant to either their

zoning authority or their general authority relating to buildings, while home rule cities may also adopt a building code pursuant to their home rule power as indicated in part I. It is my further opinion that counties and townships choosing to administer and enforce a building code must adopt the building code pursuant to their zoning authority.

- ANALYSES -

I.

N.D.C.C. § 54-21.3-03(3) provides:

The governing body of a city, township, or county that elects to administer and enforce a building code shall adopt and enforce the state building code. However, the state building code may be amended by cities, townships, and counties to conform to local needs.

Despite N.D.C.C. § 54-21.3-03(3), a home rule city's ordinances may supersede state law in the subject areas listed in N.D.C.C. § 40-05.1-06 if those subject areas or powers are included in the city's home rule charter and are properly implemented through ordinances. N.D.C.C. §§ 40-05.1-05, 40-05.1-06. One power listed in N.D.C.C. § 40-05.1-06 authorizes a home rule city:

To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.

N.D.C.C. § 40-05.1-06(7). Thus, if this power is included in a city's home rule charter, that city may adopt ordinances "to provide for public health, safety, morals, and welfare, and penalties for a violation thereof." N.D.C.C. § 40-05.1-06(7). A purpose of the state building code is to "protect the health, safety, and welfare of the people of this state." N.D.C.C. § 54-21.3-01(3). If a city's home rule charter includes the power quoted above as N.D.C.C. § 40-05.1-06(7), that city may supersede the requirement in N.D.C.C. § 54-21.3-03(3) that cities choosing to adopt a building code must adopt the state building code.

Further indication that home rule cities may adopt a building code different from the state building code is that even non-home rule cities, all counties, and all townships that have adopted the state building code may amend it. This indicates the Legislature did not intend that the state building code preempt all local ordinances on the same subject. For a more detailed discussion of preemption, see

State v. Gronna, 59 N.W.2d 514,530-531 (ND 1953); 1990 N.D. Op. Att'y. Gen. 90; 1994 N.D. Op. Att'y. Gen. 64. One of the purposes of the state building code is to "[e]liminate restrictive, obsolete, conflicting, and unnecessary construction regulations" for the benefit of the construction industry. N.D.C.C. §54-21.3-01(2). This, arguably, may imply a legislative direction for uniformity. However, cities, townships, and counties that elect to administer and enforce a building code have the authority to amend the state building code to conform to local needs. N.D.C.C. §54-21.3-03(3). Thus, it may be inferred that strict uniformity across the state was not intended by the Legislature. Also, N.D.C.C. §54-21.3-03(3) formerly provided that a local government could amend the code only if the standards established by amendment met or exceeded those of the state building code, but this language was deleted during the 1991 Legislative Session. 1991 N.D. Sess. Laws ch. 593; see also Letter from Attorney General Nicholas J. Spaeth to Shirley Dykshoorn (August 2, 1991). This also demonstrates that the standards included in the state building code were not intended to be absolute statewide standards.

In conclusion, it is my opinion that a home rule city whose home rule charter includes the power in N.D.C.C. §40-05.1-06(7) is not required to adopt the state building code if it chooses to administer and enforce a building code.

Home rule authority is available not only to cities, but also to counties. Home rule counties, like home rule cities, have the power to enact ordinances to provide for "public health, safety, and welfare." N.D.C.C. §11-09.1-05(5). However, this power "does not confer any authority to regulate any industry or activity which is regulated by state law or by rules adopted by a state agency." Id. The activity of building construction is regulated by N.D.C.C. ch. 54-21.3, the law establishing the state building code. Thus, it is my opinion that home rule counties are subject to N.D.C.C. §54-21.3-03(3) and, therefore, are required to adopt the state building code if they choose to administer and enforce a building code.

II.

The state building code generally consists of the Uniform Building Code and the Uniform Mechanical Code. N.D.C.C. §54-21.3-03(1). The director of the Office of Management and Budget "shall adopt rules to implement and periodically update the code and may adopt rules to amend the code." Id. Thus, the state building code is that code reflected in the rules of the Office of Management and Budget.

As indicated previously, N.D.C.C. §54-21.3-03(3) provides:

The governing body of a city, township, or county that elects to administer and enforce a building code shall

adopt and enforce the state building code However, the state building code may be amended by cities, townships, and counties to conform to local needs.

(Emphasis added.) To comply with this statute, it is my opinion that cities (except home rule cities whose home rule charter includes the power discussed in part I), counties, and townships that elect to administer and enforce a building code must adopt the state building code as adopted in the rules of the Office of Management and Budget. Adoption of the state building code includes the versions of the Uniform Building Code and Uniform Mechanical Code of the same year as adopted by the Office of Management and Budget. After such adoption, the state building code may be amended to conform to local needs.

To help accomplish this, cities may adopt the state building code by reference to such code, thereby incorporating any amendments made to the state building code by the Office of Management and Budget. See N.D.C.C. § 40-05-01(1).

III.

A city's zoning authority includes the following:

40-47-01. Cities may zone -- Application of regulations. For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3 [regarding the state building code], regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained.

40-47-02. Division of city into districts to carry out regulations. The governing body may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter, and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within such districts. . . .

40-47-09. Hearing of appeal by board of adjustment -- Notice -- Authority of board -- Items taken into consideration by board. . . . Where there is practical

difficulty or unnecessary hardship in the way of carrying out the strict letter of the ordinance, the board, in passing upon an appeal, may vary or modify any of the regulations or provisions of the ordinance relating to the use, construction, or alteration of buildings or structures or the uses of land so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

In addition to a city's zoning authority, a city has general authority relating to buildings, including N.D.C.C. §§ 40-05-01(1) and 40-05-02(7). N.D.C.C. § 40-05-01(1) authorizes cities to "adopt by ordinance the conditions, provisions, and terms of a building code." In addition, N.D.C.C. § 40-05-02(7) authorizes the city council in a city operating under the council form of government and the board of city commissioners in a city operating under the commission system of government to "prescribe the manner of constructing buildings, structures, and the walls thereof; to require and regulate the construction of fire escapes on buildings; and to provide for the inspection of all buildings within the limits of the municipality and for the appointment of a building inspector."

The statutes discussed above indicate that cities may adopt a building code under either their zoning authority or their general authority relating to buildings. In either case, a city may administer and enforce the building code in the area in which it has zoning jurisdiction. See N.D.C.C. §§ 54-21.3-05, 54-21.3-02(5).

In addition, home rule cities may have the power to adopt a building code pursuant to the powers included in their home rule charters. See part I of this opinion.

Counties may also adopt a building code through their zoning authority. N.D.C.C. § 11-33-01, relating to county zoning, provides, in part:

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to . . . chapter 54-21.3 [regarding the state building code], the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes.

The county zoning regulations may be designed to accomplish the following purpose:

To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of

buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

N.D.C.C. § 11-33-03(3). No statutes other than N.D.C.C. §§ 11-33-01 and 11-33-03(3) authorize counties to regulate building construction. Therefore, it is my opinion that counties choosing to administer and enforce a building code must adopt the building code pursuant to their zoning authority as indicated in N.D.C.C. §§ 11-33-01 and 11-33-03(3).

State law regarding township zoning provides:

For the purpose of promoting the health, safety, morals, or the general welfare . . . the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 [regarding the state building code], regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

N.D.C.C. § 58-03-11. No statutes other than N.D.C.C. § 58-03-11 authorize townships to regulate building construction. Therefore, it is my opinion that townships choosing to administer and enforce a building code must adopt the building code pursuant to their zoning authority under N.D.C.C. § 58-03-11.

To the extent that the conclusion reached in part III of this opinion conflicts with a November 6, 1989, letter opinion from Attorney General Nicholas Spaeth to Mr. Brian D. Neugebauer, this opinion governs.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

January 16, 2024

To: Bismarck Burleigh Joint Committee

I am writing regarding the Bismarck ETA. We live at 6111 Apple Creek Drive and **fortunately** we are not in city limits but **unfortunately** we are in the Bismarck ETA. I have previously written letters to past and current mayors and city commission members. My position has and continues to be that we live in an area that is not in the Bismarck growth plan and because we in the special flood hazard area (SFHA), likely will never be in the growth plan.

I reviewed the minutes from the July meeting of this committee and comments regarding the ETA and the growth plan. This is the first time I have seen a connection between the growth plan and the ETA. One of the comments, and I will paraphrase, was 'no change is necessary to the ETA because the current ETA includes all the areas in the growth plan for the next 20 years'. This is missing one key point. **There are areas in the current ETA that are not in the growth plan.** Since they are not in the growth plan, these areas could be removed from the ETA. By removing these areas we would fall under the planning and zoning jurisdiction of Burleigh County, like our neighbors who are not in the ETA.

Using the growth plan as the ETA has precedence. The city of Fargo, uses the growth plan as the ETA. They also have a land development code and I see the city of Bismarck is currently in the process of soliciting bids for the development of a code.

The city of Bismarck has spent, and continues to spend, considerable amount of resources, both time and monetary, on the development of the growth plan. Time from the planning department, stakeholder groups, planning and zoning committee, city commission and holding public meetings. Why not use this growth plan for the ETA?

I have also discussed the growth plan with Mr. Nairn with the planning department in relationship to our property. There are various reasons why we are not in the growth plan, but the main issue is we are in the SFHA and connection to city services is problematic. The low elevation makes connection to city sewer and storm water management very difficult and costly. I believe this has been confirmed by the Paradise Valley development and there sewer and storm water costs.

In summary, Bismarck has spent and continues to spend a lot of resources on the growth plan. There is precedence for using the growth plan for ETA management. There is also a process for updating the growth plan versus the ETA. I know the county has proposed changes to the ETA, but the city has not acted on the proposed changes and have taken the same position which is basically **NO CHANGES ARE NECESSARY**. There doesn't seem to be a process for changing the ETA and it is my understanding the ETA has changes for over 10 years, while the growth plan was updated in 2023. Even with the update to the growth plan, or area is not in the growth plan. If we are removed from the ETA, we will still have to follow Burleigh County planning and zoning requirements.

I have attached a few sections from Fargo's ordinances.

§20-0108 - Zoning of Extra-Territorial Areas



When the City Commission elects to exercise its zoning authority within its Extra-Territorial Zoning Jurisdiction, it shall have the following three options:

To classify such land in the AG zoning district;

To classify such land in a zoning district that reflects the existing use of the property; or

To classify such land in any other zoning district included in this Land Development Code, in accordance with the procedures of [Sec. 20-0906](#).

§20-0905. - Growth Plans



A. Applicability

Effective April 1, 2000, an approved Growth Plan is a prerequisite for the approval of a Zoning Map Amendment or Subdivision Plat in portions of the City that have been annexed to the City after February 17, 1998, in Sections 33 and 34 of Reed Township (T140N, R49W), and in the extraterritorial jurisdiction of the City. This section sets out the required review and approval process for Growth Plans. The requirement of an approved Growth Plan shall not take effect until July 1, 2000, provided, however, that as to proposals for zoning map amendments for areas currently zoned Agricultural (AG) in which an approved Growth Plan is not in place, the Planning Commission shall be provided with the following:

1. The opportunity for preliminary review to occur prior to a public hearing;
2. The Planning Department shall provide analysis of the compatibility of the proposed development with existing development, the Comprehensive Policy Plan, physical features of the land and infrastructure availability; and
3. The written notice requirements of 20-0901 shall be extended to landowners within five hundred (500) feet of the subject property.
4. The requirements of subparagraphs 1 through 3, above, shall not apply to development applications submitted prior to March 23, 1999.

Growth Plan

§20-0906. - Zoning Map Amendments



This section sets out the required review and approval procedures for amendments to the official zoning map (zoning changes).

A. Growth Plan Prerequisite

No zoning map amendment application will be accepted for land that is not covered by an approved Growth Plan. If the subject property is not included in an approved Growth Plan, a Growth Plan must be submitted for review and approval before or concurrently with the zoning map amendment application. This provision shall not be interpreted as requiring an approved Growth Plan prior to initial zoning of land brought into the City's Extra-Territorial Zoning Jurisdiction (See also [Sec. 20-0108](#)). The requirement of an approved Growth Plan shall not take effect until April 1, 2000, provided, however, that as to proposals for zoning map amendments for areas currently zoned Agricultural (AG) in which an approved Growth Plan is not in place, the Planning Commission shall be provided with the following: